



Guidelines for action in cases of sexual abuse and exploitation of children and adolescents in the Basque Country

General Recommendation of the
Ararteko 2/2021, of 18 May

ararteko

Herriaren Defendatzailea
Defensoría del Pueblo



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1. Background

In recent reports submitted to the Basque Parliament, the Ararteko – Ombudsman of the Basque Country has expressed its concern¹ vis-à-vis the response of different public authorities to cases of sexually abused (in its broadest sense) children and adolescents in the Basque Country. Such concern, which draws from citizen complaints - including children affected by this serious abuse -, has been shared by different institutional and social stakeholders. Key stress points refer to the often fragmented and disconnected responses by different public systems, and to the somehow related lack of guide or protocol with clear shared criteria and pathways between systems within the Basque territory. It has also been noted the lack of a specialised public service, which shall guarantee therapeutic care to every child and adolescent victim of sexual abuse.

With the aim of contributing to the assessment of the situation and of improving these services, in the summer of 2018 the Ararteko organised a dedicated course entitled "[Child sexual abuse. A complex reality that raises questions for the whole of society](#)", which brought together every institutional stakeholder involved. The course concluded with the Ararteko's commitment to continue promoting a comprehensive and structured response to detect, intervene and treat children and adolescents victims of any type of sexual abuse or exploitation.

¹ See the reports of the Office for the Rights of Children and Young People of the last five years, along with the Annual Reports of the Ararteko to the Basque Parliament.

Following the aforementioned commitment, in the second quarter of 2019 the Ararteko initiated the process to prepare a draft technical protocol, which involved officially appointed representatives from all invited institutions, including: the Basque Government's Departments² of Employment and Social Policies, Education, Health, Safety and Labour, and Justice – the Victim Support Service and the Basque Forensic Institute also participated due to their involvement in the judicial psychosocial teams –; the Departments of Social Policies/Social Action of the three Basque provincial councils, which are responsible for child protection services (public protection entities); EUDEL - the Association of Basque Municipalities, through representatives from Bilbao, Donostia/San Sebastián and Vitoria-Gasteiz city council social services; the Office of the Prosecutor of the Basque Country; the High Court of Justice of the Basque Country, along with its Secretariat; and, the Basque Bar Association.

This large group of individuals met throughout 2019 to work in plenary and sectorial sessions, facilitated by the Ararteko and with input from an expert on protocols and manuals to address child sexual abuse. The outcome of this process was a technical proposal that had reached the necessary degree of consensus by the end of 2019.

In the first quarter of 2020, the Ararteko began sharing the technical document with key representatives from participating institutions, whose subsequent contributions were integrated into the final technical proposal, as outlined in the guidelines of action integrated as annex into this recommendation.

The approval process was interrupted up until now by the dissolution of the Basque Parliament and the call for new elections through Decree 2/2020, 10 February, followed by the formation of the new Basque Government, which brought changes in leadership and departmental structures, as well as the COVID-19 pandemic outbreak.

All the above circumstances, together with the urgency to have a set of guidelines for action operational in the short term and with the highest technical endorsement, have convinced the institution of the Ararteko of the need to issue this general recommendation.

Given the nature and powers of the institution of the Ararteko, the general recommendation is directed to the Basque public administrations. Nevertheless, while safeguarding the maximum respect for judicial and prosecutorial independence, it is of the utmost interest to invite the justice system to take the guidelines into consideration so that these are integrated into its own procedures, in the form of good practices that contribute to the shared goal of protecting children and adolescents victims of sexual abuse or exploitation. The more considering the judiciary's participation in the technical work leading to the guidelines, and the fact that effective legal proceedings are key to fulfilling the goals set by the proposed guidelines for action.

² With the designation of the departments of the XI Parliamentary Term.

2. Considerations

2.1. Object and purpose of the proposed technical guidelines for action

Drawing from the shortcomings noted in the way this type of violence against children is addressed in the Basque Country, the main goal of the proposed guidelines for action is to ensure an effective intervention in cases of child sexual abuse and exploitation, while guaranteeing the protection of the victim and redress for the harm caused (physical, psychological or emotional). For those cases where legal proceedings are brought, the purpose of the guidelines is to provide such protection and redress while guaranteeing the respect for the procedural safeguards of the victims and the persons accused, including that evidence exists.

In any case, the interdisciplinary and interinstitutional approach to work has not sought to design new instruments (except for the ones deemed to be essential) or to start "from scratch", ignoring the existing references, tools and procedures. The initial premise has been to incorporate what already exists and what is deemed to be valid and useful for the intended purpose of the goal to be achieved; and if not already the ideal procedure, it is the most effective, the most useful and adapted to our realities at the present time. To summarise, it could be said that these guidelines have been prepared taking into account the functional, regulatory and competence framework reality of the Basque Country, along with the existing procedural, technical and judicial instruments.

Moreover, the proposed guidelines for action do not undermine any aspect regarding each stakeholder's mandate. They do not seek to substitute, but rather to supplement their work, by pointing to the elements that, with special focus, must be taken into consideration towards the goals. The guidelines place their emphasis on the pathways to navigate from one system to another, and the limits within which each of these systems shall strive not to interfere in the work of other stakeholders and essential partners. Thus, the proposed coordinated response defines the responsibilities of each stakeholder and sets out the sequences and timelines for these actions.

2.2. Principles and core ideas

As is to be expected in an institution such as the Ararteko, this recommendation adopts a children and adolescents' rights approach to address the phenomenon of child sexual victimization. People with rights and us subject of rights. According to this paradigm, and as reminded by the Convention on the Rights of the Child and its Committee, child sexual abuse constitutes violence against children and is a serious form of abuse against children and adolescents.

Drawing from such rights-based perspective, there are **two core ideas** guiding the rest of elements:

1. All actions are aimed at mitigating secondary victimization, avoiding repetitive proceedings and in line with the criteria of minimum intervention, expeditiousness and specialisation. A particularly relevant aspect to be highlighted in this regard is that all the professionals involved must avoid, as far as possible in each phase of the process, the minor for repeating the account of the facts, both to preserve the original cognitive evidence (in the interest of its usefulness as evidence in possible legal proceedings) and to avoid reliving the trauma of the events.

In this regard, in the field of justice, it is of particular importance to conduct the pretrial discovery, the cornerstone in the case of child sexual abuse, in the best possible way for it to be fully deployed in the future, with due process considerations for all parties, and in a timely manner so that treatment can start as soon as possible.

2. Access by all children and adolescents victims to treatment to redress the harm as quickly as possible. This implies that available treatment services shall be public and universal (i.e., not dictated by the greater or lesser degree of protection by parents), and that, directly related to the above idea, all stakeholders shall work to facilitate the start of the remedial treatment without any unnecessary delays.

Additionally, proposed action principles, which are developed further in the proposed annex, include:

- Mutual recognition as intervention partners of all signatory institutions in the case of child sexual abuse and exploitation, and, consequently, the principle of collaboration and cooperation among all the institutions involved.
- Principle of flexibility and efficiency, embodied in the cases of child sexual abuse and exploitation being considered by all institutions as priority cases.
- Adoption of measures that ensure support for children and adolescents, and their families, throughout the process, along with the specialisation of the intervening stakeholders.
- Attention to the particular complexity of cases where child abuse converges with situations of gender-based violence. The response to the needs of those children must address their dual status as victim, insofar as the children exposed to the latter are recognised as "direct" victims of gender-based violence.
- Respecting the due process of the victim, of the accused and the robustness of the evidence.

2.3. A collective enterprise: first achievement of the process

The very broad and diverse configuration of the working group is probably the reason for its **first achievement**, which is none other than that of being a **collective enterprise**. During work sessions, and throughout the exchange of documents, professionals from different areas of work, fields of knowledge and disciplines have shared – learnt and understood - perspectives, processes, procedures, practices, etc. of different systems to their own, thus facilitating consensus between different institutions and stakeholders (judicial, health, education, social services, law enforcement). Emphasis was given to seeking a language that was felt as common to every stakeholder, as well as to explaining those elements that the guidelines would include.

This "instructional" endeavour is revealed in the document where, unlike with other such instruments, there is a dedicated attempt to defining concepts and explaining in detail what is proposed for each system, even at the cost of seeming repetitive.

2.4. A step in the right direction

The process to elaborate the proposed technical protocol has coincided, particularly in recent months, with other initiatives with shared purpose and direction. Reference should probably first be made to the Draft Organic Law for the Comprehensive Protection of Children and Adolescents against Violence, which is currently being brought to discussion at the Spanish Parliament. Even though the long and arduous journey into the making of the Organic Law should be a sign of caution, it seems almost certain that the law will finally be adopted. And such law will surely affect some of the provisions of the proposed guidelines for action, not in the sense of making them null and void, but rather making them unnecessary as they are covered by the legislation.

As regards the Basque context, mention should be made to the "Paper to conduct a study to provide proposals for research, prevention, truth and redress in the cases of child sexual abuse" of the XI Parliamentary Term of the Basque Parliament, which could not be taken forward due to elections being called on 10 February 2020. During that same parliamentary term, the Basque Government produced a detailed report on violence against children in the Basque Autonomous Community, which is the basis of the anticipated Basque strategy to prevent violence against children and adolescents.

More recently, the current head of the Basque Government's Department of Equality, Justice and Social Policies has submitted the main lines of action of the Department for the XII Parliamentary Term (2020-2024) to the Equality and Social Policies committees of the Basque Parliament. These include, for the purposes of this recommendation, the commitment to the Barnahus response model to respond to children and adolescents victims of sexual abuse and exploitation. This model promotes specialized and comprehensive care for children in a single and unified resource (i.e. *children's homes*).

The Barnahus model is admittedly an ambitious proposal that the Ararteko has always considered to be a good benchmark, with increasing presence in Europe. In any event, drawing from the Catalan experience, as the first attempt and benchmark in Spain (still in pilot phase though), its deployment will require consensus and preliminary work that will take some time.

The technical proposal that accompanies this recommendation, as noted at the start of this section, not only does not contradict all these new initiatives, but also fully shares its purpose and direction. It considers sexual abuse as a form of (serious) violence against children; it is based on the greater interest of each child or adolescent victim; it proposes avoiding revictimization and providing the necessary treatment for the redress of the harm caused; it is aimed at improving the detection of and intervention in the cases; and it considers intervention to be a task that is inevitably shared among the stakeholders of the different public systems involved.

The proposed guidelines for action have already gone over the ground to set shared goals and directions, achieve consensus and agree coordinated ways of work. As said at the beginning, it is not the best model (which, of course, should not be foregone), but it is, arguably, the most useful in the present circumstances. Therefore, these guidelines for action could be seen as a first step in the right direction, a real and actual instrument to provide a better and more ambitious response to continue improving.

On the basis of the above, the Ararteko considers of utmost interest to:


1. **Recognise** the commitment, engagement, and quality of the contributions made by the participants (representing the institutions that appointed them) of the working group set up to prepare the proposal.
2. **Disseminate** and inform citizens of the result of the technical work carried out to prepare guidelines for action in the cases of the sexual abuse and exploitation of children and adolescents in the Basque Autonomous Community.

In light of the foregoing, and pursuant to Article 11 b) of the [Law 3/1985, of 27 February](#), which created and regulates the institution of the Ararteko, the Ararteko furthermore formulates the following **RECOMMENDATIONS**:

- A. To public administrations involved, i.e., to the Basque Government's Departments of Security, Education, Health, and Equality, Justice, and Social Policies; to the Department of Social Policies of Araba Provincial Council; to the Social Action of Bizkaia Provincial Council; to the Department of Social Policies of Gipuzkoa Provincial Council; and, to the local councils of the Basque Autonomous Community:
- To implement measures set out in the annexed "Guidelines for Action in Cases of the Sexual Abuse and Exploitation of Children and Adolescents in the Basque Country", as regards those specific aspects affecting their system or institution.
 - To disseminate those guidelines in their sphere of competence and implement all necessary actions and reforms so that each procedural and action model is in line with and includes measures envisaged in it.
 - To promote training and specialisation of professionals in their relevant sphere, including those working in private practice. Furthermore, they should ensure that that specialised technical practice is carried out from human rights, child-friendly and gender-sensitive approaches.
 - To monitor and assess implemented measures, incorporating correction and improvement aspects as deemed necessary, and to notify the Ararteko with any updates to those guidelines.
- B. To the social services system:
- As the first step in their commitment to a comprehensive care model, to coordinate all necessary services to guarantee access to public treatment for all children and adolescents victims of sexual abuse, regardless of any assessment of the capacity for protection of their family.

Furthermore, it **INVITES** institutions composing the judiciary, i.e., the High Court of Justice of the Basque Country's Government Chamber and Government Secretariat, Office of the Prosecutor of the Basque Country, along with the Basque Bar Association:

- To, as far as possible, enable the integration of the guidelines contained in this general recommendation into their procedural practices and, therefore:
 - ✓ To recognise the aforementioned guidelines for action as good practice, in order to foster the rights of children in the judicial system and avoid their revictimization.
 - ✓ Evaluate the opportunity of fostering the application of the guidelines for action by means of their ratification, approval or any other means that the Governing Body of each institution deems appropriate.
 - ✓ Proceed to their dissemination and circulation using the means of communication that are available and they deem appropriate.
 - ✓ Promote training and awareness-raising actions among members of the judiciary to share the content of the Guidelines in Action and put them into practice.



GUIDELINES FOR ACTION
IN CASES OF SEXUAL
ABUSE AND
EXPLOITATION OF
CHILDREN AND
ADOLESCENTS IN THE
BASQUE COUNTRY.

Annex



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Table of Contents

INTRODUCTION	1
1. GENERAL GUIDELINES FOR ACTION IN CASES OF CHILD SEXUAL ABUSE AND EXPLOITATION	2
1.1. Focus on the human rights of the child and adolescent.....	2
1.2. Relevance of the gender perspective for these guidelines for action.	3
1.3. What does child sexual abuse refer to?	4
1.4. What does evidence and suspicion refer to?.....	6
1.5. Guidelines for action	7
2.SPECIFIC ACTIONS FROM EACH AREA IN THE DIFFERENT PHASES OF THE PROCESS	9
2.1. Detection and Notification	9
2.2. Judicial Process	18
2.3. Intervention, Treatment and Monitoring.....	25

INTRODUCTION

Participants involved in the elaboration of this document have shared concerns regarding:

- the scale¹ and seriousness of child sexual abuse and exploitation, along with the difficulty to achieve a coordinated and effective institutional response to a complex problem
- the goal of avoiding the secondary victimization of children and adolescents who are victims of child sexual abuse and exploitation,
- along with guaranteeing the reparations and restoration of the rights of the victims.

Therefore, the **goal** of these guidelines for action is **to ensure effective intervention** in the cases of child sexual abuse and exploitation in the Basque Country, **while always guaranteeing the protection of the victim and redress for the harm caused (physical, psychological or emotional)**. For those cases where legal proceedings are brought, the purpose of the guidelines is to provide such protection and redress while guaranteeing respect for the procedural safeguards of the victims and the persons accused, including robustness of the evidence.

This document has been prepared taking into account the functional, regulatory and competence framework reality of the Basque Country, along with the existing procedural, technical and judicial instruments.

¹Pereda, N. (2016) *¿Uno de cada cinco?: Victimización sexual infantil en España*. Papeles del Psicólogo 2016. Vol. 37(2), pp. 126-133. Available at <https://www.redalyc.org/html/778/77846055005/>

1. GENERAL GUIDELINES OF ACTION IN CASES OF CHILD SEXUAL ABUSE

1.1. Focus on the human rights of children and adolescents

Participants recognise child sexual abuse and exploitation as a breach of the rights of the child/adolescent, a human rights approach that underpins all the measures envisaged in the agreement. In this context, **legal instruments** of particular importance² include: [United Nations Convention on the Rights of the Child](#), [Council of Europe Convention on Protection of Children against Sexual Exploitation](#) (Lanzarote Convention), [Law 4/2015, of 27 April](#), regarding the Statute of Victims of Crime, [Circular of the Prosecutor General's Office 3/2009](#), of 10 November, regarding the Protection of Child Victims and Witnesses, [Organic Law 1/1996, of 15 January, on the legal protection of children](#) and [Law 3/2005, of 18 February, on child and adolescent care and protection](#).

Pursuant to what is established in the main text of reference - the Convention on the Rights of the Child -, the participants:

- Understand that all measures envisaged are applicable to **children and adolescents up to the age of 18³** and, consequently, that adolescents victims of child sexual abuse and/or exploitation require the same measures of protection as younger children. This consideration also affects minors who commit some form of sexual abuse, whose right to protection and therapeutic intervention is likewise guaranteed.
- Acknowledge the guiding principle of the **best interest⁴ of the child/adolescent** and the child or adolescent as the particularly vulnerable subject of rights and victim.
- Incorporate the **principle of non-discrimination⁵** in their actions, guaranteeing the same quality of intervention regardless of the race, age, nationality⁶, sex, any form of disability or territorial location of the child or adolescent victim of abuse.

² A more exhaustive list of the legal framework is included in Annex VI.1

³ Article 1 of the Convention of the Rights of the Child. Article 1, Law 1/1996, of 15 January. Article 2, Law 3/2005, of 18 February.

⁴ Article 3 of the Convention of the Rights of the Child. Article 2, Law 1/1996, of 15 January. Article 4, Law 3/2005, of 18 February.

⁵ Article 2 of the Convention of the Rights of the Child. Article 3, Law 1/1996, of 15 January. Article 5.c), Law 3/2005, of 18 February.

⁶ Foreign children and adolescents residing in the Spanish State are guaranteed access to the public services on the same footing as any Spanish minors regardless of their administrative status or of that of their parents. Article 10.3 of Organic Law 1/1996, of 15 January, of Legal Protection of the Minor, of the partial amendment of the Civil Code and of the Code of Civil Procedure (amended by Organic Law 8/2015, of 22 July and Act 26/2015, of 28 July)

- Recognise child sexual abuse as a **serious form of child abuse**⁷ where there are child victims and male and female abusers. That being said, and in the same way that happens in other forms of child abuse, child sexual abuse can also involve a gender component (see Section 1.2).
- Include the measures referring to **child sexual exploitation**⁸ - that envisage the trafficking of children and adolescents for sexual exploitation (which includes pornography and prostitution). Accordingly, it should be noted that a child or adolescent under 16 years old cannot give their consent to participate either in pornography or in prostitution. Therefore, it is inappropriate to speak of child pornography, but rather of images recorded of different forms of child sexual abuse, or of child prostitution, where children and adolescents are forced to have sexual relations with other people, in other words, minors used in prostitution networks.
- Commit to the right of each child and adolescent to enjoy the highest level of health⁹ and to their **physical and psychological recovery** from the harm caused by any form of sexual abuse or exploitation¹⁰, which takes the form of an appropriate and specialist treatment.

Placing priority on redressing the harm is particularly relevant in the cases of dismissal in the legal field: the judicial process may have concluded that there is no evidence of a crime, but that does not deny that psychological harm was inflicted. Such harm must be addressed in a similar way to any physical illness or injury.

1.2. Relevance of the gender perspective for these guidelines for action

Incorporating the gender perspective into this document - which pursuant to Title II of the *Law 4/2005 on Gender Equality*, shall be generally mainstreamed across every action of the Basque public authorities and administrations, including those aimed at children - entails the need to ensure that actions to remedy the harm caused to child victims of sexual abuse or exploitation are implemented, including measures specifically addressed at offsetting the possible additional negative impacts that could occur on gender grounds.

Against that backdrop, and for the purposes of these guidelines for action, the legal framework of reference is the 2011 Istanbul Convention (*European Convention on preventing and combating violence against women and domestic violence*, ratified by Spain in 2014), whose provisions include sexual abuse and exploitation as one

⁷ Article 19 of the Convention of the Rights of the Child.

⁸ Article 34 of the Convention of the Rights of the Child.

⁹ Article 24 of the Convention of the Rights of the Child. Articles 18 to 24, Law 3/2005, of 18 February.

¹⁰ Article 39 of the Convention of the Rights of the Child.

of the different forms of violence against women and children, among others. The Convention also refers to measures needed to combat violence perpetrated by men against women and children in the domestic arena, which in our criminal justice system is known as gender-based violence.

Thus, it is essential to take into account that, even though the gender perspective must, according to the law, be applied transversally to all the measures envisaged in this document, in light of the aforementioned convention such approach is also of particular importance in at least two cases:

- In those cases where victims are female children or adolescents (sexual violence in the sense described in the above-mentioned Istanbul Convention),
- As well as in the case of child victims of sexual abuse or exploitation in a family context with situations of gender-based violence against their mothers.

Notwithstanding that this gender perspective necessarily results in specific measures during the different envisaged phases, its scope and impact should be assessed operationally throughout the monitoring of the application of these guidelines.

1.3. What does child sexual abuse refer to?

For the purposes of this agreement, **sexual abuse** is subjecting a child or adolescent to sexual acts by a person (adult or another minor) for his/her own pleasure (or to provide it to other individuals, in the case of child sexual exploitation). Sexual abuse may involve physical contact (rubbing, masturbation, touching penetration...) or involve non-contact acts (forcing a child to watch sexual activities of adults, exhibitionism, sexual jokes or humiliation...).¹¹

Participants deemed it appropriate to highlight the following points given their particular importance in order to understand child sexual abuse and exploitation and measures envisaged in this agreement:

- Child sexual abuse always involves a **relationship of power** between the abuser and the abused, due to the asymmetric, hierarchical relationship or one of emotional dependency, that **means that no greater threat or coercion is needed** than that intrinsically linked to that relationship. There may be other additional relationships of power, arising from the different status of the victim and abuser, respectively, particularly gender, race, disability, the administrative status, among others.

¹¹ This definition has to be supplemented with the definition in the Criminal Code and in the Basque Country's instrument to assess at-risk situations (BALORA), included in Annex VI of this document.

- Child sexual abuse must **always be assessed from the relationship of power and not only from the sexual behaviour**. There may be sexual overtures or infrequent sexual conduct at the developmental point of the child that are not abusive, in the same way there are abusive sexual behaviours that do not involve any sexual contact at all. This aspect is particularly important in the document when addressing the cases of suspicion of sexually inappropriate behaviour between peers.
- Child sexual abuse and exploitation are forms of serious abuse that can cause extreme harm to the child or adolescent, but **that harm is not always adequately reflected** in the different phases of the process. Accordingly, all the professionals involved in a case of child abuse or exploitation need to bring attention to the harm to the child and adolescent, so that it can be appropriately considered when adopting any decision in the process.
- Child sexual abuse is a **traumatic experience** for the child or adolescent in question. This means that, apart from the consequences on their development, the child or adolescent may present symptoms of post-traumatic stress (anxiety, panic, recurring nightmares, phobias, eating disorders, dissociative symptoms, lack of emotional expression, glazed eyes or difficulties of linguistic understanding and expression). These symptoms place them in a position of vulnerability that does not depend on the age or level of maturity of the child or adolescent.
- Cases where child sexual abuse or exploitation occur within the family or by people close to them (which is the situation of power over the child or adolescent that that emotional relationship provides them) are more complex. In those cases, the experience of being sexually abused or exploited will condition the emotional development of the child or adolescent and their relationship models; the minor will find it harder to disclose the abuse and, for the family it will be harder to support the child and adolescent emotionally. Furthermore, the risk assessment is highly complex.
- A **minor that commits some form of child sexual abuse** is, again and above all, a child or adolescent with the right to protection, therapeutic intervention and monitoring measures. Accordingly, such abuser should be guaranteed their therapeutic care, even when possibly serving a sentence at a centre for juvenile offenders.
- Attention should be drawn to forms of abuse that children and adolescents may commit and that are considered to be criminal offences, such as the possession, consumption and distribution of recorded images of child sexual abuse.

1.4. What does evidence and suspicion refer to?

For the purposes of this document, participants establish **two separate pathways of action for situations of suspected child sexual abuse and evidence of child sexual abuse.**

- a. **Evidence of child sexual abuse or exploitation** is considered when there are highly specific indicators¹²: physical indicators (injuries in the genital or anal area, bleeding, teen pregnancy, sexually transmitted diseases), disclosure by the child or adolescent or proof of some form of child sexual exploitation¹³.

The following cases shall be treated as **urgent** within evidence:

- Acute or recent sexual abuse. In the case of prepubescent children, 72 hours is the generally accepted cut-off point, as the possibility of gathering valid medical-forensic proof decreases after that time. That time period has been extended to 5-7 days in the case of adolescents¹⁴.
- Physical manifestations that require medical care.
- Need to provide post-exposure prophylaxis for sexually transmitted diseases (STDs), including the human immunodeficiency virus (HIV).
- Need for emergency contraception for female children and adolescents who have experienced menarche (first menstruation).
- The cases of recorded images of child sexual abuse where there a risk of greater distribution of the material.
- The cases of the use of minors in prostitution or in a human trafficking network for the purpose of child sexual exploitation.

Participants consider that the disclosure made in the detection and referral phases always has to be treated as evidence of child sexual abuse or exploitation, regardless of the context where the disclosure is made. Accordingly, these guidelines for action do not differentiate between cases where the disclosure occurs during a contentious divorce between the parents, with it being understood that it is during the legal proceeding when the disclosure will be assessed.

In this sense, it is important to recall that, particularly if the abuse is committed by one of the parents, disclosure may be encouraged by the end of parents living together, when the child or adolescent feels sufficiently safe and confident to report the sexual abuse. This may similarly happen in the cases of abuse or exploitation committed by a professional with whom the child or adolescent is in daily contact.

¹² See Annex II: Indicators of Child and Adolescent Sexual Abuse

¹³ It is important to refer here to the signs to detect situations of human trafficking set out in the Framework Protocol for Protection of Victims of Human Trafficking (See footnote No. 15), specifically in its Point 7. Common Catalogue of Evidence to Detect Child Victims of Human Trafficking.

¹⁴ Guidelines for Professional Conduct in the Care of Victims in Legal Medicine and Forensic Science Institutes. Spanish Ministry of Justice, Technical Secretariat General, 2018.

US Department of Justice: A national protocol for sexual assault medical forensic examinations adults/adolescents. Washington, DC, Office on Violence Against Women, 2013.

It is likewise important to point out that, in cases of highly contentious divorces that may include suspicions in the child's testimony, the latter is always the victim of severe abuse, due to either the abuse committed by one of their parents, or the emotional abuse leading to a false accusation of the other in the separation process.

- b. For the purposes of this document, **suspicion of child sexual abuse or exploitation** is considered when the child or adolescent shows behavioural indicators observed by professionals or by the family, or referral accounts by third parties, without there being any physical indicators or disclosure by the child or adolescent or proof of any form of child sexual exploitation.

1.5. Guidelines for action

With respect to the measures envisaged in these guidelines for action, the participants have defined measures that are coherent with the principles of each area involved within their jurisdictions. In any event, they jointly agreed the following **guidelines for action for all institutions involved**:

1. Mutual recognition of all institutions involved as intervention partners in the cases of child sexual abuse and exploitation. The available resources within each area are considered as support by the other institutions to guarantee the effectiveness of their intervention.
2. Principle of collaboration and cooperation among all the institutions involved, which is essential to set up an effective response to a complex reality.
3. All the actions are aimed at mitigating secondary victimization avoiding repetitive proceedings and in line with the criteria of minimum intervention, expeditiousness and specialisation. A particularly relevant aspect to be highlighted in this regard is that all the professionals involved must avoid, as far as possible in each phase of the process, the minor repeating the account of the facts, both to preserve and give validity to the original cognitive evidence and to avoid reliving the trauma of the events.
4. Principle of flexibility and efficiency, embodied in the cases of child sexual abuse and exploitation being considered by all institutions involved as priority action cases. Furthermore, the transparency and appropriate communication of the decisions made must be guaranteed.

5. Guarantee the right to honour, personal image and personal privacy of the child or adolescent, as well as the personal data protection that may allow identifying the child or adolescent victim and/or those children or adolescents who have abused the other minor. In this regard, the institutions and persons involved should inform the Public Prosecutor of any leak of which they are aware in order for the appropriate measures to be taken to preserve those rights.
6. As regards the status of particularly vulnerable victims, measures shall be set up to ensure support throughout the process, along with the specialisation of the players involved. That vulnerability is even greater in children and adolescents with disabilities, who shall require specific support measures to guarantee their rights in all the phases of the intervention and legal proceedings.

Furthermore, special protection measures shall be adopted in the cases of children and adolescents who are victims of human trafficking, where majority of them are foreigners and in an irregular administrative situation.

7. Focus on the particular complexity of cases where child abuse converges with gender-based violence situations. The response to the needs of those children shall address their dual status as victim, insofar as the children exposed to the latter are recognised as “direct” victims of gender-based violence.
8. Respect the due process for the victim, for the accused and the robustness of the evidence.

2. SPECIFIC ACTIONS FROM EACH AREA IN THE DIFFERENT PHASES OF THE PROCESS

Actions included in this document are structured into intervention phases. The areas and institutions involved in the process, and the relevant differences on how to act are distinguished in each phase depending on whether it is a case of suspicion or evidence of child sexual abuse or exploitation.

Furthermore, in order to delineate actions of these guidelines, relevant actions already in force through technical instruments in different areas and territories of the Basque Country have been included, particularly, those mentioned in the *Protocol for prevention and action in the areas of education regarding possible child and adolescent at-risk situations, and abuse, sexual abuse and harassment and regarding collaboration and coordination between the educational field and the stakeholders intervening in the protection of the minor*.

In the cases of human trafficking, proposed actions shall also consider the different protocols and instruments envisaged for that purpose¹⁵.

2.1. Detection and Notification

In cases of **evidence** of sexual abuse or exploitation, all institutions shall report said allegation¹⁶, i.e., they shall inform the duty court (or Public Prosecutor, when the aggressor is a minor). Furthermore, they shall duly notify the municipal social services so that these can provide the necessary support to the victim and his/her family.

In cases of **suspicion**, they shall notify the municipal social services, which shall gather all relevant information and pass it on to be assessed by the provincial social services (See Section 2.3. Intervention, Treatment and Monitoring). They shall inform the Public Prosecutor of the suspicion of abuse in order to assess possible criminal liabilities from existing evidence.

2.1.1. EDUCATION

¹⁵ In particular, the Annex to the Framework Protocol for Protection of Victims of Human Trafficking: [Actions to detect and care from child victims of human trafficking](#), approved by the Plenary Session of the Childhood Observatory held on 1 December 2017.

¹⁶ Reporting the allegation is to inform the Judiciary of the existence of certain facts that could constitute an offence. (Criminal Procedure Act, Book II, Title I: Reporting the allegation. Articles 259 and following)
Reporting the allegation is a civic duty and, if the facts were learnt in the performance of a post, profession or office, it is furthermore mandatory. Failure to do so may lead to a fine (Article 262 of the Criminal Procedure Act).

The education system and, particularly, education centres are in a special position to detect cases of child sexual abuse and exploitation. In every case, regardless of events of sexual abuse occurring within or outside the family context; if parents provide adequate care or are negligent; or if there is evidence or suspicion of sexual abuse, **the task of the education centre¹⁷ is to detect and notify**, and under no circumstance to prove the existence of the abuse or investigate what could have happened.

As in the other areas, actions will defer in cases of suspicion of a case of child sexual abuse or exploitation compared to the cases of evidence, where highly specific indicators occur. However, there are some **common guidelines** to both situations:

- The education centre shall handle the personal privacy of the child or adolescent and any information referring to the case with the highest confidentiality possible.
- The professional who notices the indicators (of suspicion or of evidence) shall inform the management of the centre, and the principal/headmaster - in tandem with the actions with the child or adolescent - shall notify the Inspection Headquarters and the territorial delegate.
- Should the presumed abuser be a member of staff of the education centre, the procedure shall be similar and following the guidelines in this Section 2.1.1., without prejudice to additionally activating measures set out in Point 2.3.1.
- Notifications shall always be in writing. Consultation calls to social services or the meetings held shall have no legal weight. The notification document prepared by the education centre (both the notification to social services and the allegation reported to the duty court or Public Prosecutor) shall be made jointly by the professionals who have witnessed the indicators or been the recipients of the disclosure with the support of the management team of the centre. This document shall be added to the administrative case file of the social services for all intents and purpose. Parents or legal representatives, if they so request, may access the case file and obtain, as applicable, a copy of it, pursuant to current legislation. Therefore, in those cases where a situation is envisaged that threatens the integrity of the professionals, notifications may be made using formulas that allow their personal data not to be made available, even though the person who is responsible for the information passed on is clearly identified in-house (stamp of the centre, payroll or randomly assigned number...).
- It should be noted that education professionals are bound by the legal obligation to notify any suspicion or evidence of a case of child sexual abuse or exploitation, and such notification does not require the consent by parents or legal representatives of the child or adolescent.

¹⁷ Section 3. Action procedure in the educational environment What the school MUST do and What the school MUST NOT do.

- Schools shall notify actions that were undertaken to parents or legal representatives of the child or adolescent, unless it is considered that this communication could put the minor at risk. In the cases of separation or divorce, this communication shall be made to both parents regardless of which one holds the legal guardianship or custody.

2.1.1.1. In cases of **evidence of child sexual abuse or exploitation** (those cases where there are highly specific indicators: disclosure or existence of physical injuries), schools shall act as follows:

- If evidence of child sexual abuse or exploitation is revealed from the spontaneous account made by a child or adolescent, it is particularly important that the professionals do NOT question the child or adolescent about what has happened. The professional who has been the recipient of the disclosure, together with the management team, shall produce a written transcription of that account and of the circumstances in which it occurred, along with all the behavioural indicators gathered by the professionals in contact with that child or adolescent in the most objective way possible and without giving any value judgement. This document shall be the basis of the allegation reported to the duty court (or the Public Prosecutor if the abuser is another minor), at the same time that the municipal social services are notified.
- If it is deemed advisable the adoption of interim measures of protection¹⁸ for the child, the professionals shall set out the grounds in the report to the duty court (or Public Prosecutor as applicable) so that the latter may assess and order, as applicable, the necessary actions to protect the child or adolescent.
- Should social services determine that the child or adolescent is in an at-risk situation, they shall urgently adopt the necessary protection measures. They may seek cooperation from the education centre (through its management team) to implement those measures when the situation poses a serious risk for the mental or physical integrity of the minor and requires their immediate admission to care services (residential or family) or when there is a flight risk.
- In cases in which the evidence of child sexual abuse or exploitation is recent (in pre-pubescent children, 72 hours; in adolescents, 5-7 days), there are physical manifestations that require medical attention, need for treatment for sexually transmitted diseases, emergency contraception or teen pregnancy, the education centre shall take the child or adolescent to the referral hospital of the Basque Health System – Osakidetza in each

¹⁸ Interim measures are those that the judge adopts to protect the child or adolescent victim from the cause of the harm throughout the criminal proceedings, which sometimes last for a long time period. It can lead to a removal order, to stopping visitations or overnight stays, etc. They must comply, at least, three requirements: be instrumental, provisional and proportional.

province, both to provide them with required urgent medical care and to guarantee the collection of physical and biological evidence in a prospective forensic medical examination. As far as possible, the form teacher of the child or adolescent, accompanied by a member of the management team, shall take the child or adolescent to the referral hospital. In this case, the referral hospital shall activate the relevant protocol.

2.1.1.2. In cases of **suspicion of child sexual abuse or exploitation**, municipal social services and parents or legal representatives shall be notified within 48 hours.

- In cases of sexual abuse outside the family and where one of the legal representatives is the guardian, the centre (the form teacher of the child or adolescent, together with the management team) shall notify the parents or legal representatives and the municipal social services of the suspicion indicators identified. From then onwards, the latter shall support the family throughout the subsequent intervention process, including facilitating the access of the child or adolescent to treatment.
- In the cases of suspicion of child sexual abuse or exploitation where there is no guardian figure in the family or the centre (management team, with the advice of the counselling team) believes that the communication to the parents or legal representatives may put the child or adolescent at risk, the education centre shall notify the suspicion to the municipal social services, which shall act in accordance with current protection procedures.

2.1.2. HEALTH

The health system plays a key role in the detection of child sexual abuse and exploitation, mainly through the primary care centres and hospitals. Detection is a necessary condition in order to be able to intervene and notifying such a case is a legal and professional obligation. The healthcare response to child sexual abuse is set out in specific **protocols** (See Annex IV).

2.1.2.1. The Department of Health shall appoint a referral **hospital** for cases of child sexual abuse in each province: Hospital Universitario Araba (HUA), Hospitales Universitarios de Cruces (HUC) and Basurto (HUB) and Hospital Universitario Donostia (HUD). Those hospitals are tasked with providing a team of professionals specialised in child and adolescent sexual abuse, with direct intervention functions and mentoring other healthcare professionals. The education centres, the Ertzaintza (police), the primary care centres, private healthcare centres that decide to sign up to these guidelines action¹⁹ and the social services shall refer the children and adolescents where there is evidence of sexual abuse or exploitation (pursuant to what is set out in Section 1.4.) to those hospitals for medical care and examination. They shall also be referred there by the hospital emergency services, continuous case united (PAC) and by the emergency coordinator staff (112).

2.1.2.2. In cases of **evidence of child sexual abuse or exploitation**, identified by the presence of highly specific indicators: disclosure by the minor or physical injuries, urgent cases have to be differentiated from non-urgent ones. **Urgent cases** shall be considered to be those where: there are physical injuries that require medical care, there is need to start treatment (see above), or there are possible physical or biological traces from a period under 72-168 hours that can constitute evidence of the crime.

The response by the primary care centres (Paediatric units in the case of children under 14 and General Practice in adolescents between 14 and 18 years old) or by the emergency services (hospital or outpatients) in urgent cases shall be the immediate referral to the relevant hospital (after providing the necessary health care at that time), so that the referral hospital can conduct the relevant examinations and tests required. The referring professional shall prepare a report including what has been detected, heard and performed (including the decision to refer to the hospital).

The healthcare professionals who identify cases of sexual abuse in private healthcare centres or consultations that have subscribed to this document shall act in a similar way: transferring the child or adolescent to the referral hospital for their location and informing the municipal social services of the municipality of residency of the minor of the actions performed.

In such urgent and evidence cases, referral hospitals shall provide the necessary medical care and shall inform the court of the facts. The emergency team shall notify (by telephone or in writing) the Duty Court (or the Public Prosecutor, if the alleged abuser is also a minor) immediately, who shall assess whether a forensic medical examination should be conducted. If authorised, the examination shall be conducted at the referral hospital, with the forensic doctor in attendance in order to carry out the examination and gather the physical and biological evidence. Except in the case of life-threatening severity, the process shall for the arrival of the doctor. In any event, the hospital shall guarantee the chain of custody, and safeguard the evidence that may have been gathered prior to the arrival of the forensic doctor and until it has been handed over to the latter.

If the duty court does not authorise the presence of the forensic doctor or the Public Prosecutor does not initiate a criminal investigation, the hospital shall provide the child or adolescent with the necessary healthcare, following the specific protocol.

Should the child or adolescent need to be admitted to the hospital, the healthcare centre shall ensure that they are not released until the court, public prosecutor or the provincial council in question has established their protection.

¹⁹ From then onwards, whenever private healthcare services are mentioned, it shall be understood that the reference is to those who have signed up to these guidelines for action.

In **non-urgent cases**, defined as those in which the abuse is NOT recent (72 hours, in the case of pre-pubescent children; 5-7 days for adolescents), there are no physical manifestations that require medical care or the need for treatment of sexual treatment diseases, emergency contraception or teen pregnancy, or which are directly disclosed by the child or adolescent, but without physical indicators, any of the healthcare workers who have detected the abuse, regardless of whether that occurred in the hospital or in primary care, in the public health system or in private healthcare services - has the obligation to report the allegation to the duty court (or Public Prosecutor, if the abuser is a minor). The allegation shall be reported withing 48 hours following the detection of the case.

If it is deemed advisable the adoption of interim measures for the protection of the child or adolescent, the professionals shall set out the grounds in the report to the duty court (or Public Prosecutor as applicable), so that the latter may assess and order, as applicable, the necessary actions to protect the child or adolescent.

Both in urgent cases and those classified as non-urgent, once the allegation has been reported, the professional (from primary care, hospital or private consultation) who has detected the abuse shall inform the municipal social services, so that they support the family if the latter is able to offer protection for the child or adolescent, or to proceed with the protection procedure in force in those cases where the people legally responsible for the minor are negligent or do not provide adequate care.

Furthermore, and unless there were reasonable doubts of signs that doing so would threaten the life or integrity of the child or adolescent, they shall inform the people legally responsible for the minor of the measures taken, including the notification of the facts to the municipal social services and shall provide the contact details. That communication shall be made in person by means of an interview within 7 calendar days from notifying social services; however, it can be made in writing if it is suspected the communication could put the professional making it at risk.

Healthcare staff shall produce an injury report to accompany the medical report and be the basis for reporting the allegation. Reference should be made in the report to the fact of whether the findings (medical history, symptoms, injuries, laboratory) are compatible with a possible case of sexual abuse (clinical opinion) and include what the child or adolescent (or the persons accompanying them) has said about their origin ("refers to..."); the staff should avoid questioning them and asking direct and leading questions about the fact.

2.1.2.3. The response in the **cases of suspicion of child sexual abuse and exploitation**, regardless of the service (primary care-specialist-hospital; public-private) in which it occurs, must always include notifying the municipal social services. Such notification shall always be in writing. Verbal or telephone communications or those during coordination meetings shall not be valid (for the purposes of formal notification). The communication shall be made within the 48 hours of detecting the suspicion indicators.

Once social services have been notified, the health services shall inform the persons legally responsible for the child or adolescent of the action taken. This communication shall be performed in the conditions and with the provisions set out in the above section referring to the response in the case of evidence of sexual abuse or exploitation.

Should there be no protector figure in the family, or the healthcare service considers that notifying the partners or legal representatives may put the child or adolescent at risk, the healthcare service shall notify the municipal social services, which shall act as per the protection procedures in force.

2.1.2.4. Both in the cases of notifying the suspicion of child sexual abuse or exploitation and when reporting evidence, the notification form of the healthcare service, whether issued in primary care or at hospitals, shall be added to the administrative file of the social services, to which the persons legally responsible for the child and adolescent, if they so request, have access as established by the current legal system. Therefore, in those cases where a situation is envisaged that threatens the integrity of the professionals, the notifications may be made using formulas that allow their personal data not to be made available, even though the person who is responsible for the information passed on is clearly identified in-house (stamp of the centre, professional association number etc.).

2.1.3. SOCIAL SERVICES

Both the municipal social services in the framework of their interventions (community or grassroots services, family and socio-educational programmes, etc.) and the provincial authority's social services in the exercising of their functions (assessment of the degree the minor is at risk, family intervention programmes, residential and family fostering...) and the child and adolescent guidance and counselling online and telephone hotline (116111 ZEUK ESAN) may detect cases of sexual abuse and/or exploitation, with highly specific (evidence) or suspicion indicators of sexual abuse.

2.1.3.1. In the **cases of evidence of sexual abuse or exploitation** detected in the framework of their interventions, the provincial or municipal social services shall report the allegation to the duty court (or Public Prosecutor, if the abuser is also a minor).

If the evidence is from the account by a child or adolescent, a written transcription shall be prepared of that account and of all the behavioural indicators noted by the professionals dealing with the child. It is here particularly important to insist that they do not question the child or adolescent about what has happened, even though they are used to doing so in their assessor role; in this case, it is essential that they only transcribe as faithfully as possibly the verbalisations by the child or adolescent and proceed to report the allegation to the duty court or Public Prosecutor, as applicable, and avoid any leading questions or prompting the account.

If it is deemed advisable the adoption of interim measures for the protection of the child or adolescent, the professionals shall set out the grounds in the report to the duty court (or Public Prosecutor as applicable) so that the latter may assess and order, as applicable, the necessary actions to protect the child or adolescent.

At the same time as preparing the above report and provided that the parental authority of the persons legally responsible for the child or adolescent has not been suspended or there are reasonable doubts or signs that doing so would threaten the life or integrity of the child or adolescent at risk, those persons shall be informed that the allegation is being reported in order to provide them with the opportunity to do so jointly.

In those cases where the evidence of the child sexual abuse or exploitation is recent (72 hours in pre-pubescent children; 5-7 days in the case of adolescents), there are physical manifestations that require medical attention, need for treatment for sexually transmitted diseases, emergency contraception or teen pregnancy, the child or adolescent shall be transferred to the referral hospital established by the Department of Health in each territory, both to guarantee the urgent medical care of the minor, and to ensure the gathering of physical and biological evidence in a possible forensic medical examination.

In those cases where there is evidence of child sexual abuse, but legal proceedings are not brought due to the impunity of the abuser (as they are under 14 years old) or on any other grounds, the municipal and provincial social services shall refer the child or adolescent victim and, where applicable, the child or adolescent who has been the abuser to the Specialist Treatment Unit (see 2.3) to guarantee the care, treatment and monitoring of both of them.

2.1.3.2. In cases of suspicion of sexual abuse and/or exploitation detected in the direct intervention by social services, those professionals who have noted indicators shall inform their superiors²⁰, by issuing a report that contains all the available information and which shall be referred to the team designated in the provincial social services to assess those facts. The municipal social services shall likewise forward to those teams the notifications received from the education

²⁰ The document always refers to the technical manager of the service, programme or area. If the municipal social service only comprises one professional, they shall directly report to the provincial social services.

centres, the health centres and the Ertzaintza, together with a complementary report described in the “Intervention” phase of Section 2.3.3.

Provincial social services shall be notified within 15 days and not within 48 hours after learning the facts (as established for the preceding public systems), in accordance with the circumstance indicated in the previous paragraph of their obligation to carry out additional actions.

2.1.4. ERTZAIN-TZA AND LOCAL POLICE

Response by members of the Ertzaintza - Basque Police - (and by local police forces) regarding children or adolescents victims of sexual abuse or exploitation shall, in general, comply with the principles and guidelines contained in the Instruction of the Deputy Minister for Security of the Basque Government's Department of Security regarding *Police Action with Minors*.

Upon learning facts requiring the implementation of these guidelines for action, the Ertzain-Etxea station (police station) for the areas where the alleged criminal acts have been committed will be one of the competent institutions to perform the necessary requirements. Each station has a “Hurbiltzaile”-contact officer-, and one of their tasks is to be the point of contact with the other institutions involved in these guidelines for action. Therefore, the information should be channelled, wherever possible, through that figure.

The action of the competent Ertzain-Etxea or of the local police stations, in each case, shall consist of, once the allegation has been received, to start the investigation and the police proceedings, which shall include immediately informing the duty court (or Public Prosecutor, in the case of abusers who are minors).

In cases where the evidence of the child sexual abuse or exploitation is recent (72 hours in pre-pubescent children; 5-7 days in the case of adolescents), there are physical manifestations that require medical attention, need for treatment of sexually transmitted diseases, emergency contraception or teen pregnancy, the acting police force, after being authorised by the duty court (or Public Prosecutor, in the case of abusers who are minors) notified of the facts, shall transfer the child or adolescent to the referral hospital in the Basque Health Service – Osakidetza in each territory, both to guarantee the urgent medical case of the minor, and to ensure physical and biological evidence is gathered in a prospective forensic medical examination. In this case, the referral hospital shall activate the relevant protocol.

The Ertzaintza and local police shall not take a statement from the child or adolescent where the data previously provided are sufficient to start the police investigation. Specifically, a statement shall not be taken if there is an allegation by a professional,

if there is sufficient proven evidence of the abuse or if proof can be obtained in another way. The minor shall only be examined when the age of the victim so allows and when it is strictly essential for the purposes of the criminal investigation. It shall be performed without any unjustified delays and always avoiding the revictimization of the minor and focusing the questioning on the aspects of the police investigation (data that can be used to identify or locate the perpetrator, for example), not on the account of the criminal acts.

In the case of an allegation made directly at the police station, a copy of the police report shall be given to the person making it.

The Contact Officer or the designated person in each local police station shall notify the facts to the social services of the municipality of residence of the child or adolescent victim so that the family can receive support, if the latter is providing the protection or, if that is not the case, the social services shall act in accordance with the protection procedures in force.

2.2. Judicial Process

Participants of the process of elaborating these guidelines for action understand and recognise the independence of the courts and judges and magistrates and of the Public Prosecutor in the proceedings. Consequently, the content of this chapter should be considered as recommendations drawn from best practices of other experiences to protect the rights of the child and adolescent victims of child sexual abuse.

It should be recalled in this point, even though it is clearly stated in the previous section on detection and referral and in each of the spheres, that the **judicial process** explored in this chapter always refers to **actions in case of evidence** (highly specific indicators: disclosure or physical injuries) of child abuse or exploitation. That said, it should be mentioned that there are some exceptional circumstances (such as when the perpetrator of the facts cannot be identified), where the crime cannot be brought to court, even though evidence exists.

On the other hand, regardless of the obligation to report the allegation in all the aforementioned cases of evidence, the procedure described below refers to the circumstances where the alleged abuser is over 14 years old, which is the age of criminal responsibility. In the case of children under that age, who therefore cannot be brought to trial, the Public Prosecutor will apply what is envisaged in the rules regarding protecting minors in the Spanish Civil Code. In any event, the civil liability that may be sought by the victim will be clarified in the civil jurisdiction, beyond these guidelines for action.

2.2.1. General Considerations

Pursuant to the Victim's Statute and in accordance with its regulatory norm, the protection and support of the victim is based on a broad concept that goes beyond the merely procedural one in the interest of their comprehensive protection. In general, protection measures seek to be effective against reprisals, intimidation, secondary victimization, psychological damage or assaults on dignity during the questioning and statements as witnesses²¹.

In accordance with the principle of urgency, and to avoid revictimization and unnecessary delays to the therapeutic treatment, the role of the Office of the Public Prosecutor²² and the Judicial Office (through the lawyers of the Judiciary) is of special importance in giving momentum to the cases of child sexual abuse or exploitation. Consistent with their "special victim" status, they should be classified as **grounds for preferential procedure** and should ensure the case is fast-tracked.

Furthermore, the lawyers of the Judiciary should ensure that the victims are informed and instructed about their rights²³ and of the services and support to which they may access and the information updated throughout the proceedings. The translation or interpreting services needed to communicate with foreigners or people with sensory disabilities should be expressly arranged.

In the case of foreign children and adolescents in irregular administrative situations or not accompanied by a family member, the information on their protection and guarantees of not being expelled, documentation or, as applicable, on voluntary return is of particular importance.

In order to protect the right to privacy and the data protection of the child victims, the lawyers of the Judiciary should take utmost care in the identification of the records and the proceedings and ensure that the personal information is included in a separate document.

2.2.2. Support during the Victim Services (SAV) process

Giving the importance of the **victim being accompanied** in the future legal proceedings²⁴, it is important that the investigating court and the Public Prosecutor inform the legal representatives of the child or adolescent right from the start of the existence of the Victim Support Services and facilitate direct contact with them. Given that taking up the referral is a personal decision of the victim, there is the possibility that they turn down the offer or decide to contact the SAV at a subsequent point of the process. However, given that in the cases of child sexual abuse or exploitation - due the seriousness of the crime and their vulnerability - that support is particularly recommended from the start of the process and the SAV

²¹ In the recitals of Law 4/2015, of 27 April, of the Statute of the Victim of the Crime.

²² Circular 3/2009 of the Prosecutor General's Office. 8th conclusion of 12.1

²³ Law 4/2015, of 27 April, of the Statute of the Victim of the Crime. Right to understand and be understood (Article 4) – clear, simple and accessible language; right to be accompanied by a person of their choice-; right to information (Article 5); right to receive information on the criminal case (Article 7); right to translation and interpretation (Article 9); right to access the assistance and support services (Article 10); right to the active participation in the criminal proceedings (Article 11); right to protection (Article 19); right to privacy (Article 22).

will be simultaneously informed of the existence of this victim. On receipt of the referral, the SAV will respond proactively and will contact the victim in order to offer them the service again. The process will be:

1. Receipt of the referral by the Public Prosecutor or Court.
2. Contact with the victim.
3. Information to the referral authority on the outcome of the contract: whether or not the support of the SAV has been accepted and, if it has, report on the circumstances and conclusions of the SAV intervention.

2.2.3. Investigation Phase

During the criminal investigation, the authorities and civil servants tasked with conducting it shall ensure that²⁵:

- The statement by the child is made without undue delay
- The statement by child is made the least possible number of times and only when strictly necessary
- The medical or psychological examinations are performed that are essential for the purpose of the process and the number of them reduced to the minimum.
- The child or adolescent may be accompanied by a person of their choice²⁶ (parent or legal representative, relative, social services professional ...)

Once the allegation has been received by the duty court, the judge:

- Should proceed to order, ex officio or at the request of the Public Prosecutor, the measures to protect the victim that they may deem necessary.
- Should the victim be in hospital, they will agree to send the forensic doctor to the referral hospital to gather physical/biological evidence. Should that procedure not be authorised by the duty judge, the Public Prosecutor shall assess whether or not to challenge the ruling that denies the forensic examination of the victim.

Once the order to commence the proceedings has been issued, the investigating judge:

²⁴ The aim of the referral is to assess the need for support for the victim in any possible future legal proceedings or their degree or scope, along with supporting the victim in their contact with the legal system, with detailed explanations of the actions taken and which are appropriate to each specific circumstance. It plays an important role when guaranteeing that the child or adolescent and their family understand the implication of the decision-making in all the phases of the judicial process. In that regard, it is also important that it guarantees that the information of subsequent summons and rulings are adequately understood by the child or adolescent and their legal representatives.

²⁵ Law 4/2015, of 27 April, of the Statute of the Victim of the Crime. Article 22

²⁶ Law 4/2015, of 27 April, of the Statute of the Victim of the Crime. Article 21

a) Should proceed to issue an order stating the reasons for adopting the appropriate **protection measures**.

In cases where the child continues to live with the alleged abuser and in order to safeguard the child from any possible harm, the desirability to adopt interim separation measures should be assessed.

The application of Article 544d of the [Criminal Procedure Act](#) is considered to be highly useful for this task. It establishes protection measures relating to parental authority, guardianship, conservatorship, foster care or residential area, along with the visitation and communication regime, which can remain in force until the end of the proceedings, where they will be lifted or ratified by the competent judge or court.

Furthermore, the possibility of appointing a guardian ad litem should be assessed²⁷.

The protection measures adopted shall be notified to the institutions involved so that they can be appropriately implemented, and all the stakeholders concerned act in a coherent manner.

b) Forensic-medical examination

The forensic-medical examination shall be conducted at the referral hospital, to where the forensic doctor shall immediately travel at the request of the duty court.

The hospital medical staff shall provide the care and the forensic doctor shall investigate the crime (type of injuries, gathering biological and non-biological samples...)

Insofar as possible, they shall explain to the victim what is going to happen and seek their consent. Should the adolescent to be examined is over 16 years, they should give their consent to carry out the intervention or medical tests, pursuant to Article 9.4 of *Law 41/2002, of 14 November, concerning the autonomy of the patient and of the rights and obligations regarding clinical information and documentation*²⁸. That consent shall be given in writing.

The Basque Forensic Institute shall be in charge of the custody of gathered evidence.

c) Conducting pretrial discovery and assessment of witness credibility.

In accordance with the principle of avoiding the secondary victimization of the child or adolescent, and, in turn, given the necessary due process and the preservation of evidence,²⁹ pretrial discovery³⁰ is generally recommended. Therefore, the investigating judge (or the public prosecutor in cases where the abuser is a minor) should agree to pretrial discovery conducted by the Judicial Psychosocial Team of

²⁷ Statute of the Victim of the Crime. Article 26.2

their territory, as a service consisting of expert professionals to conduct the discovery, as indicated in the Victim's Statute³¹.

The Judicial Psychosocial Team will coordinate with the Court and the parties to conduct the discovery as timely as possible, and with the aim of it taking place within a maximum of 15 days from the Court or Public Prosecutor agreed to the discovery. Such a short time period protects the witness account from any impairment, and also allows the victim to start treatment immediately afterwards.

Should it be deemed appropriate to assess the credibility of the witness or other psychosocial aspects other than the psychological harm, the request shall be made jointly at that time, so that both matters can be addressed during a single appearance of the victim.

The pretrial discovery will be conducted in an appropriate setting to avoid any visual confrontation³² between the victim and the person being investigated, both at the place where it is conducted and along the access routes, and it will be recorded using audio-visual resources³³ and shall be submitted to the trial stage as documentary evidence, when the Public Prosecutor deems for it to be of interest for it to be played and watched during the trial³⁴.

It is important that the lawyers of the Judiciary guarantee the effectiveness of the summons to conduct the discovery, ensuring beforehand that it has taken place according to the law, which would avoid the risk of suspension and subsequent recurring summons. Accordingly, the quality and state of the recording system should be checked.

Without prejudice to the above, and whenever necessary, it may be agreed to conduct a new pretrial discovery, when the conditions point to a positive outcome, even though the account of the victim could not be obtained from the initially convened session.

²⁸ An exemption to this precept (Article 9.3 of the aforementioned legislation is "*when the minor patient is not intellectually or emotionally capable of understanding the scope of the intervention. In this case, the legal representative of the minor shall give consent, after having listening to the opinion of the latter, pursuant to Article 9 of Organic Law 1/1996, of 15 January, on the Legal Protection of Children and Young People*".

²⁹ Circular 3/2009 of the Prosecutor General's Office. The intensity of the protection may be calibrated (Conclusion 4) taking into account, apart from the age, "the fact of whether the minor is or is not the victim of the crime, to the nature and seriousness of the alleged crime, of whether they are a relative with the person charged or the accused, etc." In the cases of child sexual abuse, the child or adolescent is always the victim, the crime is sexual and extremely serious, and, as set out in the definition, it occurs in the framework of a relationship of kinship or trust, which means the victim deserves maximum protection.

³⁰ Pretrial discovery will have to be conducted in accordance with the requirements set out in Articles 448 and 777.2 of the Criminal Procedure Act.

³¹ Statute of the Victim of the Crime, Article 26.1. Protection measures for minors and people with disabilities requiring special protection

³² Final Provision 1. 3 of the Organic Law 8/2006, of 4 December, added a new paragraph to Article 448 Criminal Procedure Act (LECrIm), pursuant to which statements by child witnesses shall be conducted in such a way to avoid any visual confrontation between them and the accused, using any technical means making it possible to gather that evidence.

³³ Statute of the Victim of the Crime, Article 26.1. Protection measures for minors and people with disabilities requiring special protection.

d) Assessment of the harm

During the investigation phase, the competent judge or tribunal, when they deem necessary, should agree for the Comprehensive Forensic Assessment Unit of their territory to assess the mental and mental harm to the victim, along with the after-effects, expected evolution and treatment, etc., and the report will be added to the legal case.

In the exceptional cases when the statement of the child or adolescent has not been taken in pretrial discovery and the Court deems it convenient to assess the credibility of the witness account, it shall agree to the Comprehensive Forensic Assessment Unit conducting both procedures simultaneously and as part of the same appearance of the child or adolescent.

The participants believe it to be advisable, insofar as it may be relevant to the case, to include the reports referring to the victim that may have been issued by social services, healthcare or education public systems - in which the harm or the indicators related to the possible abuse are stated or reflected - in the legal proceedings and in the expert assessment processes. Contact between professionals to share information on those reports is also considered of interest.

2.2.4. Opening phase of the trial stage and indictment

a) Civil Liability³⁵

As regards the harm and the ensuing right to treatment, it is recommended that both the Public Prosecutor and the counsel representing the victim include in their indictment report and as compensation all the damages suffered, including the psychological and medical treatment up until that point, along with those deemed necessary for the full recovery of the victim, in order to obtain adequate material and moral damages arising from the crime.

b) Trial stage

Should the judge or tribunal deem it necessary for the child or adolescent to give evidence at the trial stage, applying the protection measures envisaged in Circular 3/2009 of the Prosecutor's General Office,³⁶ of 10 November, as well as in Statute of the Victim of the Crime³⁷, is considered desirable. The possible measures, applicable either ex officio or at the request of the party, are as follows:

- a) Advocate that the trial in which the child or adolescent has to intervene is the first on the docket
- b) Ensure that the minor is the first to give evidence, and avoid waiting at the door to the courtroom

³⁴Conclusion 11 Circular 3/2009 of the Prosecutor General's Office.

³⁵ Circular 3/2009 of the Prosecutor General's Office. Conclusion 1 of 12.9

- c) Avoid visual contact between the child and the alleged perpetrator of the facts
- d) Guarantee that the minor can be heard without being present in the courtroom facility (appropriate communication technologies)
- e) Avoid questions being asked about the minor's private life that are not relevant to the criminal offence being tried
- f) Hold the trial stage without the general public being present
- g) Provide support when giving evidence (psychologist or relative)
- h) Use easy-to-understand language
- i) Eliminate the use of robes while the minor is giving evidence, and
- j) Allow the child or adolescent to be seated while giving evidence

Pursuant to their **right to receive information on the criminal proceedings**³⁸, the child and adolescent victims of sexual abuse or exploitation shall be notified (through their legal representatives or of the Public Child Protection Agency) of the date, time and place of the trial, the shelving of the proceedings, as applicable, the conviction or acquittal reached, and the committal to prison of the accused or any other protection measures adopted.

2.2.5. Enforcement phase

Furthermore, and during the enforcement phase³⁹, the child and adolescent victims of sexual abuse or exploitation shall be notified (through their legal representatives or the Public Child Protection Agency) of the decisions of the prison system and of the judiciary that affect their safety, parole order and day-release permits, along with any move to Grade 3 open prison regime (lowest category within the prison system, which allows for day release). Similarly as throughout the process, the notification shall take into account the possible secondary victimization and caution should be taken to avoid automated responses.

The child or adolescent may appeal those rulings through their legal representatives, even if they have not appeared in the proceedings, and shall likewise have standing to request that legal measures or rules of conduct to ensure their safety are imposed on the person released on parole.

2.2.6. Specificities for the cases of evidence when the accused is a minor, but is criminally responsible (14-18 years old).

In the cases of evidence of sexual abuse or exploitation where the assault has been allegedly committed by another child or adolescent, the Public Prosecutor is in charge of investigating the case. It should be here noted that if the alleged perpetrator is under 14 years old, criminal legal proceedings shall not apply and the

³⁶ Section 5. Evidence of the child victim at the trial stage: analysis of the applicable guarantees.

³⁷ Article 25.2

³⁸ Statute of the Victim of the Crime. Article 7.

³⁹ Statute of the Victim of the Crime. Article 13.

Public Prosecutor shall apply what is envisaged in the rules regarding the protection of minors in the Civil Code.

Pursuant to Article 22.1.b) of Organic Law 5/2000, of 12 January, regulating the criminal responsibility of minor and parallel to Article 448 of the Criminal Procedure Act for the investigating judge, the appointment of a private or duty lawyer for the alleged minor abuser within 24 hours shall be guaranteed. This will ensure that assistance is provided from the first step at the courtroom, either to conduct the pretrial discovery, or at any time when the victim makes a statement or give evidence, in order to avoid subsequent repetitions and secondary victimization, while safeguarding the right to a defence, to a fair hearing and equality of the parties, and respecting the due process of both parties.

On the other hand, in cases where a minor commits some form of child sexual abuse, the principle enshrined into this document establishes that, again and above all, this child or adolescent is entitled to the right to protection, therapeutic intervention and monitoring measures. Accordingly, such abuser should be guaranteed his/her therapeutic care, even when possibly serving a sentence at a centre for juvenile offenders. In these cases, if the adolescent is already being treated at a Specialist Treatment Unit, the treatment offered shall be monitored from the detention centre and facilitating as far as possible the coherence and continuity of the care. In cases when the sentence is being served in semi-open detention centres, the possibility of authorising releases to attend the treatment sessions established by the Unit shall be assessed, at the request of the representative of the adolescent.

Finally, in those cases where the victim and the abuser who is a minor live together or there is a family relationship between both –siblings, cousins or children and adolescents that live together at a foster home or with a foster family -, adopting precautionary measures to protect both is particularly important. Therefore, the services making the allegation should include a petition setting out the grounds for those protection measures, which shall be in any of the forms ⁴⁰ set out in the *Organic Law 5/2000, of 12 January, regulating the criminal responsibility of minors*.

2.3. Intervention, Treatment and Monitoring

2.3.1. EDUCATION

In particular and for the cases where **the accused is a professional of the education centre**, it is particularly important to establish - throughout the investigation process by social services in cases of suspicion and the judicial process in case of evidence and allegation -, **organisation and surveillance measures that guarantee the immediate protection of the child or adolescent, as well as of the other students:**

⁴⁰ Detention under the appropriate regime, probation, restraining order not to approach or communicate with the victim or with any of its relatives or other people that the court establishes, or living with the other person, family or education group.

that professional must never be left alone in the classroom and there must always be another duty teacher present; playground and lunch breaks, increased surveillance, etc.

The organisational and surveillance measures aimed at preventing the contact of the abused with the abuser, thus guaranteeing their protection, are also applicable in the cases where both (victim and abuser) are in the same class or attend the same education centre.

In the specific cases in which legal proceedings are initiated, the Territorial Delegation, as a precautionary measure, may order the provisional suspension of the functions of the person under suspicion. The disciplinary proceedings underway will be halted until the end of the judicial process. The Court and the Public Prosecutor shall notify the Territorial Delegation of the rulings to shelve the case or the sentence in order to establish whether to shelve or continue with the administrative disciplinary procedures.

Furthermore, and in addition to what is set out herein, the education centres:

- Shall establish the child and adolescent victims and sexual abusers who are minors with *specific education support needs*, in keeping with the Framework Plan for the Development of an Inclusive School (2019/2022).
- Shall introduce, for the cases of child sexual abuse between minors (*"between peers"*), the prevention and intervention measures envisaged in the Protocol for Situations of Bullying at Schools⁴¹.

2.3.2. HEALTH

2.3.2.1. The healthcare response to child sexual abuse is set out in specific **protocols** (See Annex IV)

The circumstances have been set out for a medical examination and treatment in the **cases of evidence** of sexual abuse or exploitation. Both the cases of acute or recent abuse and those non-recent must be seen by a medical professional. In the first case, the referral must be as an emergency, but in the second of the cases, the health system must see them as soon as possible, but not as an emergency.

In the **cases of suspicion** of non-acute or non-recent sexual abuse, it is strongly recommended that the child or adolescent is seen by Paediatric/Medical professionals, preferably with experience and training in child sexual abuse. A full assessment is very useful even in the absence of clinical findings. It is therapeutic when the family and the child or adolescent hear from the professional that they trust that the physical examination is normal and there is no apparent injury.

⁴¹ The Protocol for Situations of Bullying at School establishes the **steps to be followed** by the education centres in the cases detected or reported of a possible case of school bullying. The 10 types of bullying in the protocol include "sexual abuse/harassment".

In addition to the initial assessment and measure, appropriate healthcare **monitoring** of the children and adolescents with evidence or suspicion of having suffered sexual abuse is essential.

The Basque Health Service – Osakidetza shall provide this monitoring in specific consultations: Social Paediatrics, Paediatric Infectious Disease, Primary Care consultations, etc. Different aspects shall be addressed in those consultations:

- Results of the tests conducted, establishing whether further tests are needed, monitoring secondary effects and adherence to the treatment, if it has been prescribed.
- Ensuring that the minor receives psychological support and monitoring at the Specialist Treatment Unit.
- Promptly identifying the behavioural, emotional and physical manifestations that may appear as the result of the sexual abuse suffered.
- Offering support to the children and adolescents and to their families. Answering any questions that emerge about their health, consequences, psychological and physical recovery, future problems, etc.
- Establishing the necessary coordination with the professionals of the different areas of intervention.

2.3.2.2. The healthcare centres shall deploy the **necessary measures to** guarantee that the standard protocol is met of the child or adolescent being accompanied by their legal representatives when being seen by a healthcare professional. However, in those cases where the accused is a healthcare professional, the centre shall adopt the appropriate measures so that the professional in question is not in contact with minors throughout the investigation in cases of suspicion and the legal proceedings in cases of evidence.

2.3.2.3. The Basque Health Service - Osakidetza provides the **specialist therapeutic care to the adults who were victims of sexual abuse in childhood**. The mental and physical health problems arising from child sexual abuse require specialist professionals and services, which include the referral hospitals of each territory.

The cases shall be referred to those treatment units in referral hospitals by the mental health and primary care services. The associations and organisations that have been supporting the victims of sexual abuse in childhood up to that time shall cooperate with the public service.

Child and youth mental health professionals shall systematically include differential diagnosis with possible history of trauma for patients with personality disorders, particularly borderline personality disorder, antisocial personality disorder and dependent personality disorder. In the case of a history of social abuse in childhood, the case shall be referred to the specialist treatment unit at the referral hospital that, in coordination with the child and youth mental

health service, shall guarantee the specialist intervention as frequently and for as long as necessary.

2.3.3. SOCIAL SERVICES

Social Services shall play a key role in assessing the cases of suspicion of sexual abuse or exploitation, in supporting the families of the child and adolescent victims (and abusers, if they are minors) and the treatment of all the child and adolescent victims or who have committed some form of child sexual abuse or exploitation. Furthermore, they play a decisive role in assessing a possible at-risk situation of the child or adolescent.

Furthermore, it should be pointed out that a significant number of cases, including evidence of child sexual abuse or exploitation, may not led to legal proceedings. Cases where there are only indicators of possible sexual abuse (suspicion) that are not validated; cases where the legal proceedings cannot take place in the terms described (abusers under 14 years old, existence of indicators, but the abuser has not been identified...) or cases where the child sexual abuse or exploitation has not been proven⁴². In all those cases, both the municipal and provincial social services shall intervene and prioritise redressing the harm.

2.3.3.1. Intervention

2.3.3.1.a) Case manager.

Both in the cases of evidence and of suspicion of child abuse or sexual exploitation where the social services that have detected it assess that there is at least one responsible adult able to protect the child or adolescent victim (and this include sexual abuse within the family when, immediately on learning about the situation of abuse, one of the parents adopts measures that effectively protect the child or adolescent), the facts shall be deemed as a situation of at-risk vulnerability⁴³, according to what is established in the regulations of the instrument to assess at-risk and distress. This assessment is the acknowledgement that, even though there is appropriate care of the needs of the child or adolescent by the people legally responsible for them at that time, there may be social, family or personal difficulties that prevent at-risk vulnerability⁴⁴ (high level of stress, difficulty to uphold the measures adopted to protect the minor...). This vulnerability situation requires intervention by the public administrations and, specifically, of the municipal social services, who are legally empowered to implement indicated and selective prevention measures (secondary prevention programmes), which shall always allow monitoring actions to be deployed. Thus, the social services of the municipality where the child or adolescent resides shall offer the parents social support⁴⁵ and, as the case manager, shall facilitate the relevant actions to guarantee the wellbeing and educational, social, family and personal development of the child or adolescent.

⁴² Cases of children with disability, with serious emotional harm, very small children, etc... where the possibility of them providing valid evidence in the courtroom is very difficult, if not impossible.

In those cases where the assessment by the social services (performed either as a referral as the protection measures adopted by the Investigating Court or at their own initiative given the at-risk indicators observed) concludes that neither of the parents adequately protect the child or adolescent and, therefore, are in a situation of distress or at serious risk, the responsibility of the case shall fall to the provincial social services.

2.3.3.1.b) The intervention of the social services in the cases of **evidence of child abuse and sexual exploitation** shall be structured taking the following points into consideration:

- The **municipal social services** shall intervene by supporting the families of child and adolescent victims of sexual abuse considered to be vulnerable to being at-risk. As set out in the previous section, cases where, even though one of the parents is providing protection, the child or adolescent is considered to be at risk due to the possible difficulty of the families to provide appropriate care and attention to the child or adolescent at that time as that parent is hampered by high levels of stress or lack of knowledge or unaware of fast and effective action to prevent greater harm to the child or adolescent.

The municipal social services shall provide the family with support throughout the subsequent process, in coordination with the Victim Support Service in those areas directly related with the legal proceedings. The support by the municipal social services may include providing information, emotional containment and, particularly, offering guidelines to handle the situation with the child or adolescent.

They shall likewise guarantee the referral of the child or adolescent to the Specialist Treatment Unit to access treatment. That referral shall always be performed in coordination with the responsible social services of the Unit, and in the cases with legal proceedings once the pretrial discovery has been conducted.

- In those cases of evidence of child sexual abuse or exploitation in which the social services - either the municipal ones from the start of the process or the provincial at a subsequent stage - find the child or adolescent to be at risk due

⁴³ This is also the term chosen for the new Basque Child and Young Person Bill, which is in the pipeline at the time of writing.

⁴⁴ Decree 152/2017, of 9 May, defines vulnerability to being at-risk (Point 2 of Part I of the Annex) when “*There is a **background** of family problems or a crisis situation, shortcomings or problems in the family that may negatively affect or **significantly limit** the ability of the parents to provide adequate care and attention to the child or adolescent and lead to at-risk situations (...) in the near future*”.

⁴⁵ Social support is one of the technical provisions of the Basque Social Services System and is defined in Annex III of Decree 185/2015, of 6 October, regarding the portfolio of provisions and services as the “*most genuine and characteristic of the social services, pursuant to which the person participates, interacting with a qualified professional, in a supportive relationship that helps to improve their ability to manage on their own and social integration*”.

It means that the user has a contact person who, throughout a process, is able to offer the former support as follows: 1) instrumental (information, guidance and mediation to access resources and services); 2) emotional (mitigating the harm, containment, emotional support and guidance in crisis situations...); 3) educational (relationship and educational guidelines, changing attitudes...); 4) relationship (active listening...).

It can be more or less intense depending on the person's need for support. It is understood that pathways should be set up where the user can vary (preferably reducing) the intensity of the support required.

to the inadequate exercise of care responsibilities by the people to which they are entrusted, the provincial or municipal services shall proceed to assess the protection situation and the adoption of measures that they deemed appropriate pursuant to the established procedure. Once the guardianship has been assumed and the separation measures deemed the most appropriate adopted, the provincial social services shall carry out the duties of legal representation, support and care throughout the subsequent process. In a similar way to what is established for the municipal services in the above section, they shall guarantee the referral of the child or adolescent to the Specialist Treatment Unit to access treatment, which shall always be after the pretrial discovery if court proceedings are brought.

2.3.3.1.c) In the **cases of suspicion of sexual abuse or exploitation**, the intervention of the provincial and municipal social services shall be:

- The **municipal social services** shall provide a supplementary report to support the notifications sent to the assessment services of the provincial social services (both their own, and those issued by the healthcare or education services or by the Ertzaintza, as indicated in Section 2.1.3.2). That report shall contain more extensive information on the situation of the child or adolescent (physical and emotional state, cognitive development, social relations, care and attention by the family, and any other data related to the sexual abuse hypothesis), and always from indirect sources, i.e., without a direct interview. If the family does not cooperate with the social services in the process to gather the necessary information, that circumstance shall also be notified to the Provincial Council.
- The **provincial social services** shall attend to and investigate all the notifications of suspicion referred from the municipal social services, along with those detected in their own intervention, using professional teams with the required specialisation and training. Those teams can be located in the current At-risk Assessment Units of the Provincial Child Services (even though their intervention also occurs in cases of suspicion with protector family) or in the Specialist Treatment Units, which shall include, if necessary, a new "investigator" function.

Once the notification has been received by the provincial social services, they shall inform the Public Prosecutor in order to assess the criminal relevance of the known facts. If it is deemed that is not sufficient evidence to start an investigation or if, as the result of it, it is decided not to take the case further, the provincial social services shall guarantee the treatment of the symptoms of the children or adolescent, and promptly refer the case to the Comprehensive Treatment Unit. If during the treatment of the existing symptoms, the child or adolescent makes a direct and unprompted disclosure, the procedure for the cases of evidence of child sexual abuse or exploitation shall be followed from that moment onwards.

2.3.3.1.d) Organisational and surveillance measures.

In those cases where **the accused is a professional from a centre, service or programme of the social services** (municipal and provincial), organisational and surveillance measures shall be adopted to guarantee the protection of the child or adolescent victim, along with the other minors of the centre, throughout the duration of the assessment process by the social services in the cases of suspicion or the judicial process in case of evidence and allegation.

In the specific cases in which legal proceedings are initiated, the manager of the service, as a precautionary measure, may order the provisional suspension of the functions of the person under suspicion. The disciplinary proceedings underway will be halted until the end of the judicial process. The Public Prosecutor's Office shall inform the manager of the service of any significant decisions adopted in the case so that the relevant action can be taken.

2.3.3.2. Treatment.

The provincial social services shall assume responsibility for the **Specialist Treatment Unit**⁴⁶ which shall attend all the child and adolescent victims of child sexual abuse and exploitation or who have committed any form of abuse against another minor in its territory, regardless of whether the abuse is in a protective or at-risk context. The universal cover of the service shall thus be guaranteed in each territory, along with the necessary specialisation to implement it. Therefore, the unit may attend any professional who contacts it in search for specialist guidance and advice, in favour of the processes to detect and notifying suspicions of sexual abuse and exploitation.

The functions of the Specialist Treatment Unit shall be:

- Specialist treatment of ALL the child and adolescent victims of child sexual abuse residing in their territories, as well as of minors who have committed some other form of child sexual abuse to another child or adolescent.
- Advising professionals from other areas (educational, social, healthcare) when doubts occur in cases of suspicion of child sexual abuse, where there are behavioural indicators, but without disclosure or physical injuries, regarding the referral and intervention in the case.

⁴⁶ Even though the term Unit has been used in the document, the intention is not to indicate a specific administrative setup. What is important is the setting up of a team of professional with the due specialisation and appropriately size for the needs to be met, which can be easily accessed after the relevant referral. Thus, it can be set up as a unit, service, programme...

The following needs to be taken into account regarding the Unit:

- All the professionals of the Unit shall work from a focus on the rights of the child, attachment theory and trauma psychology. It shall therefore be guaranteed that they have had the necessary specialist training and the emphasis shall be on continuous training in that regard.
- Children and adolescents cannot be referred to this unit until the pretrial discovery has been conducted so as not to impair the evidence. The referral should be made as soon as possible after the pretrial discovery and, in any event, within three months. During that time, the municipal social services or the provincial social services, depending on the type of case in question, shall support the family in coordination, as applicable, with the Victim Support Service. They shall provide them with the basic guidelines for the action to be taken to protect the minor and the necessary information on the different judicial proceedings.
- The unit shall work in coordination with the child and youth mental health units, along with the Osakidetza referral hospitals in cases of child and adolescent sexual abuse, and, where appropriate, with other social stakeholders who are working in that regard.
- Any new disclosures that emerge in the therapeutic context shall be referred to the Public Prosecutor. Therefore, the professional shall establish an honest and rigorous framework with the child or adolescent of the intervention so that the latter is aware of that action. That is valid both for the treatment of the minors who have been victims of sexual abuse and for those who have sexually abused another child or adolescent.
- In the case of adolescents who, when they are being treated by the unit, have to comply with detention in young offenders' facilities, the treatments should be monitored by the detention centre in order to guarantee a certain degree of continuity of coherence of the actions. When the sentences are served in semi-open centre, as indicated in Section 2.2.6, the legal representatives of the adolescent shall request that the latter be allowed to attend the treatment sessions stipulated by the Unit.

