



STATE PARTY EXAMINATION OF SERBIA'S INITIAL REPORT ON THE OPSC

54TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

25 MAY – 11 JUNE 2010

Topics covered in this report: General measures of implementation; Prevention; Protection of the rights of Victims and Legal provisions.

Serbia ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) on 10 October 2002. On 26 May 2010, the Committee on the Rights of the Child (the Committee) examined Serbia's initial report under the OPSC.

Opening Comments

Ms Jasarevic-Kuzic, Assistant Minister, Ministry for Human and Minority Rights, headed the delegation. She began by affirming Serbia's commitment to democracy and human rights. She explained the report did not address Kosovo because this region was under the administration of the United Nations. She highlighted many positive steps that Serbia had recently taken to address the problems covered in the OPSC, such as a law against violence, exploitation, slavery, internet pornography and adoption, making sure to target especially vulnerable groups such as minorities and immigrants. Meanwhile, the State party had also amended its criminal code to include harsher penalties for violators of the OPSC.

Mrs Aidoo, the Country Rapporteur, noted Serbia's significant steps to develop policies and institutions to prevent sexual exploitation, sale and trafficking of children, such as appointing a deputy Ombudsman specifically to handle children's rights. However, she noted the State party did not follow the guidelines for drafting the report, as the report mostly covered existing legislation, it provided no situation analysis and NGOs had not been consulted. Furthermore, the new National Plan of Action did not quite cover all the areas of the OPSC. She also pointed out that 21 out of 144 municipalities had local plans of action. She asked for clarification on the monitoring of the implementation of the OPSC and how the implementation was funded and carried out. She enquired about the relationship between the Ministry for Human and Minority Rights and the National Council for Children. She also noted problems in data collection, as the data focused on trafficking rather than sale. She asked about the measures taken to safeguard vulnerable children in preventing the crimes of the OPSC. She noted that displaced, refugee, minority and non-registered children were particularly at risk and asked what was being done to reach out to them. Mrs Aidoo asked about the recovery and re-integration of child victims and the process to repatriate foreign child victims.

General Measures of Implementation

Co-ordination

The Committee asked if there was an independent monitoring mechanism in place to ensure the OPSC was being fully implemented. The delegation replied that the Council for the Rights of the

Child, which consisted of relevant government and NGO representatives, was responsible for monitoring the implementation of the OPSC. In addition, the Deputy Ombudsman for Human Rights, who worked specifically on children's rights, had a mandate to perform independent monitoring. The delegation also explained that the Ministry for Human and Minority Rights was responsible for the coordination of the reports, but other Ministries were responsible for self evaluation. However, the Ministry of Human and Minority Rights was short staffed, with only 38 members on payroll and only 6 staff members working on the implementation of conventions. The government intended to fulfil all the recommendations on improving the reporting process to ensure that future reports have more data and less legislative information.

The Committee asked how the Ministry of Human and Minority Rights was carrying out its mandate to ensure children's rights, given that much of the substantive work was done in other Ministries. The delegation replied that there were monthly meetings to address what needed to be done to fulfil the National Plan of Action and pass decisions on those issues.

Data Collection

The Committee enquired about Serbia's data collection procedures. The delegation replied that data was stored in each relevant ministry, but in the future they hoped to develop a centralised database. The delegation reported that recent surveys had been conducted to evaluate the situation of children in high risk situations such as foster or residential care, and the children were given an opportunity to talk about any abuse. The State party anticipated more funding for research in the future.

NGO Participation

In response to the Committee's question about the lack of NGO participation in the drafting of the report, the delegation acknowledged that it was problematic and mentioned new reforms for the reporting process. In July 2008, the Ministry of Community Affairs was established to look at ways of reporting to the UN and including NGOs in this process. In light of these reforms, NGOs played an active role in reporting to CEDAW and other conventions. The delegation stated, "Serbia has made major headway with NGOs, and civil society now plays a much bigger role in drafting domestic laws". The delegation reported it was currently cooperating with and regularly sharing information with 150 NGOs.

Prevention

Preventative measures for vulnerable groups

The Committee asked if there were any special protections measures for minority children, especially the Roma who have been historically marginalised. The delegation replied it had taken measures to facilitate late birth registration for children with two living parents. In addition, it had implemented a fairly successful mediator programme with the Roma community so that they could realise their rights and access social services. In addition, Serbia had acceded to the Regional Programme for the Improvement of the Roma in South Eastern Europe, and was pursuing comprehensive protection programmes to increase the rates of education, housing and health care while reducing poverty among the Roma community. The delegation also reported that children were able to enrol in school without immediately providing documentation and without proof of habitual residence, so that education could be more accessible to vulnerable groups. Roma children who were victims of sale could go to a 24 hour social centre equipped to deal with urgent situations. This centre was accessible to all children. There were also shelters for child victims. In cases where repatriation was necessary, the delegation reported that it tried to cooperate with other countries with the child's best interest in mind.

General awareness of the Optional Protocol

The Committee asked to what extent the general public, children and childcare professionals were aware of the OPSC. The delegation replied that it had recently increased funding substantially for prevention programmes and awareness raising measures, such as flyers and police officers in school, who could be approached or questioned by children. In addition, they had used popular media to inform the public about the dangers of trafficking.

Role of the media

The Committee asked about the measures to combat stigmatisation and victimisation of children in the media, as it had received reports of names of child victims being published. The delegation replied that such actions were punishable by up to two years in prison. The delegation acknowledged that stigmatisation in the media was a problem and had conducted training on sensitivity to children's rights. They reported increased cooperation from the media stating "we notice in Serbia now that the media are increasingly sensitive to children and the rights of the child".

Special preventative measures

The delegation reported that there were counselling and training programmes promoting children's rights in healthcare institutions for families and pregnant women to raise awareness and prevent future abuse, and later on, trafficking. The Committee asked if there were any special measures in place to protect children, especially girls, from prostitution and if child protection in general was sensitive to gender issues. The delegation replied that professionals working with victimised children had special certificates proving that they had received training on children's issues and that every precaution was taken to avoid further victimisation. There were no specialised programmes to deal with prostitution, however general support was provided.

The Ministry of the Interior also formed a facebook group to raise awareness about the dangers of pornography and trafficking online, although the Committee raised concerns about privacy. The delegation responded that children will be on facebook and it was necessary to use such a common medium to relay important information.

Preventative methods for sale of children for organs

The Committee asked about the rate of sale for organs and what was being done to prevent it. The State party replied that while there had been reports of organ sale during the NATO aggression and some cases in South East Europe, it was not a widespread problem, as there were very few institutions that were permitted to transplant organs. However the sale of organs was not explicitly criminalised, and there had been a case where a man had tried to sell his organs although there was nobody willing to purchase them. After this incident, the State party said it was making efforts to criminalise the sale of organs in addition to involuntary organ harvesting.

Protection of the Rights of Victims

Services for victims

The Committee asked about the services available to victims of sale and by whom they were provided. The delegation reported while NGOs currently provided most services, there had been a substantial increase in funding by the government and in the future a system was envisaged where both NGOs and the State party provided adequate support for victims. The delegation also mentioned it had recently received funding from the UN Gift project, although it hoped to sustain its own funding when circumstances were more favourable. NGOs would receive grants to continue their work, and two of them already operated shelters for victims of sale. The State party also planned to initiate more training programmes for professionals providing services to victims of sale. Victims of sale could participate in reintegration and educational programmes,

although it was not yet systematically in place for all victims. There was also a helpline available to children throughout Serbia, although it did not use the harmonised European helpline number 116 and instead had a 10 digit number. The delegation said that the State would try to make the number simpler for children.

Court sensitivity

The delegation stated it understood the need for court procedures to be sensitive to children's needs, and that there was a law stipulating that only specialised judges, prosecutors and police officers could handle legal proceedings with under-age parties in order to avoid victimisation. In addition, measures were in place to avoid the child being traumatised during a trial, such as exceptions to the right to confront one's accuser and questions being filtered through a judge rather than asked directly by an attorney. The delegation reported that the police were given special training in dealing with children.

Sex tourism

The Committee asked about measures to combat sex tourism. The State party responded that Serbia was no longer a destination of international trafficking but there was still internal trafficking, and that immigrants were particularly available. The delegation said that there were cases where humanitarian residence was granted to protect vulnerable immigrants.

Legal Provisions

Sanctions for perpetrators

The Committee asked whether possession of pornography was criminalised and about the measures being taken to stop the spread of child pornography, which the delegation referred to as "exploitation of children for pornographic purposes" to emphasise the fact that children did not want to participate in pornography, but rather were being exploited. The delegation replied that it had recently concluded an agreement with Save the Children to strengthen the institutional and technical capacity to fight the spread of internet pornography. The delegation said even possession was criminalised, and that cases of possession had already been prosecuted. In addition, the Ministry of the Interior was conducting a campaign against Cyber crime, and cases had been successfully prosecuted and sentences handed down.

The delegation reported that the failure to report a crime under the OPSC was a crime in itself, and the Ministry of the Interior had a phone line and address where people could report such offences. The delegation said this law applied to both private and public doctors and that a manual would be published in the future. In cases of suspected abuse, the child was kept at a healthcare institution and later sent to a shelter, rather than being returned to the family. The delegation announced that Serbia was reconsidering the definition of solicitation of child prostitutes as a non-aggravated crime and treating those who solicit child prostitutes as traffickers so that they could receive harsher penalties.

Victim compensation

The Committee asked if it was possible for victims to be compensated. The delegation replied that in the current practice of criminal law, no mechanism for compensation existed, but that they were considering introducing it. However, there were ways to pursue compensation in the civil system.

Further ratifications

The Committee asked whether the State party was considering ratifying the Hague Convention on Adoption, as it might be helpful in reforming the current adoption laws which only criminalised sale through adoption until the age of 16, rather than 18. The State party

acknowledge this discrepancy and announced its intention to raise the age to 18, and said that there were no obstacles to ratifying the Hague Convention on Adoption and that it would be passed in the near future. The delegation believed corrupt officials were the biggest problem, and said that all aspects of illegal adoption, including transport, concealment, fraud, abduction, and acting as an intermediary were criminalised, with harsher punishments for those who habitually engaged in such behaviour.

The Committee asked whether the State party had considered ratifying the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) to protect vulnerable immigrants. The State party replied that there was not yet a national consensus on the matter.

Legal Definitions

The Committee explained that the distinction between sale and trafficking was often a problem for countries implementing the OPSC, and said that at the time, not all instances of sale were criminalised, since the law was written on trafficking. For example, the Committee wondered if a child forced to engage in labour at home was considered to be sold. The delegation said this would be covered under labour exploitation, and that the Serbian definition of trafficking was much broader than that in the Palermo Treaty and that it comprehensively addressed all trade of children. The delegation believed the existing legislation was sufficient to cover all crimes in the OPSC, and had NGO support in the drafting of the legislation.

Universal Jurisdiction

The Committee noted that Serbia did not accept full universal jurisdiction in cases where the crime committed was not punishable by at least five years in the country where it was committed, although a judge could decide to allow cases where the act was criminalised in international law.

Concluding Remarks

The Country Rapporteur acknowledged that the Committee had raised many specific questions and affirmed this was all done to help vulnerable children and prevent their exploitation. She remarked that Serbia had made commendable progress in the last two years in legislative and institutional reform, as well as restructuring and enforcing higher standards. However, she reminded the delegation that the challenge remained of actually implementing all of the legal and administrative changes so that children would see concrete results. In addition, she emphasised the need for children and families to be aware of actions taken by the State party to implement the OPSC and be familiar with the details of the protocol. She thanked the delegation and wished the best to the children of Serbia.

The delegation thanked the Committee for the opportunity to discuss the implementation of the OPSC. The head of the delegation said they did the best they could to respond to the Committee's questions and tried to provide a better picture of the system of child protection in Serbia. She noted once again that while Serbia was committed to building new political and economic structures, resources were limited. She reaffirmed Serbia's commitment to legislative reforms and National Action Plans to improve the rights of children, especially the more vulnerable ones, and harmonising standards with the European Union. She said the dialogue was extremely useful, and that the State party was anticipating the Concluding Observations eagerly and looked forward to further cooperation.