



**Convention on the
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COMMITTEE ON THE RIGHTS OF THE CHILD

Fifty-second session

SUMMARY RECORD OF THE 1437th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 22 September 2009, at 3 p.m.

Chairperson: Ms. LEE

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (continued)

Initial report of Poland under the Optional Protocol on the sale of children, child prostitution and child pornography (continued) (CRC/C/OPSC/POL/1, CRC/C/OPSC/POL/Q/1 and Add.1)

1. At the invitation of the Chairperson, the delegation of Poland resumed places at the Committee table.
2. Mr. GURÁN said the delegation should provide more information on illegal adoption. Specifically, it would be useful for the Committee to know who organized such adoptions, whether the children were generally hosted by Polish or foreign families, and, where the adopting families were foreign, what countries were receiving illegally adopted Polish children. He expressed interest in the delegation's statement that no Roma children had been found to be involved in the sale or sexual exploitation of children, and asked what statistical and demographic indicators were used to determine whether a child was a member of the Roma minority.
3. Ms. HERCZOG noted that sexual exploitation, trafficking and the sale of children were generally recognized as problems closely related to difficulties in early childhood and to family circumstances, and asked whether social workers, teachers, lawyers, doctors, judges and law enforcement officers were made aware during their training of such factors, so that they could more easily identify people at risk. What kind of follow-up mechanisms were in place to monitor the effectiveness of the Government's efforts to combat the sale, trafficking and sexual exploitation of children? Noting the excellent awareness campaign carried out a few years earlier by the Nobody's Children Foundation, she asked whether any new activities had been conducted in the mass media to raise public awareness.
4. Ms. VARMAH said that the Polish Penal Code should contain a clear definition of human trafficking. In the context of the National Programme of Combating and Preventing Trafficking in Persons, what results had been achieved specifically in terms of combating child trafficking, especially among street children and children in residential institutions? She had learned that judicial proceedings relating to trafficking cases could last up to two years. Noting that it was important to direct full attention to the rehabilitation and reintegration of the victims in the aftermath of a trafficking case, she asked whether any efforts were being made to accelerate those proceedings.
5. The CHAIRPERSON said that in its opening statement the delegation had mentioned draft legislation to amend the Penal Code aimed at penalizing persons who produced or processed child pornography. However, during the discussion, some members of the delegation had stated that the law would apply only to the pornographic use of children involved in acts of sexual intercourse. As that definition would be far narrower than the one in the Optional Protocol, she requested clarification. The delegation had also told the Committee that the legal basis for

extradition was provided by bilateral treaties. She drew attention to the fact that article 5, paragraph 2, of the Optional Protocol stated that the Optional Protocol itself could serve as the legal basis for extradition. Lastly, the delegation had said that in the draft legislation currently under consideration, the statute of limitations for crimes committed against minors applied for five years after the victim had reached the age of 18. The Government should consider extending that period, as victims of childhood exploitation often took longer to file complaints.

6. Ms. KHATTAB said that in the documentation provided by the delegation and during the discussion, trafficking had overshadowed the other crimes covered by the Optional Protocol as a subject of concern. The delegation should specify what measures were taken against other offences, such as child prostitution.

7. Ms. GÓRZYŃSKA (Poland) said that, in respect of double criminality, when offences were committed outside Poland the principle of sovereignty applied, so that each State exercised jurisdiction within its territory and over its citizens. The Convention on the Rights of the Child and the Optional Protocol, like other international treaties ratified by Poland, took precedence over domestic law and were directly applicable in Poland. Judges could thus directly apply the definitions of trafficking contained both in the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

8. Trafficking was a crime under Polish law. The Penal Code stipulated that anyone who sold a human being or engaged in trafficking, even with the victim's consent, was subject to deprivation of liberty of at least three years, and that persons who organized illegal adoptions were subject to deprivation of liberty of between three months and five years. Studies conducted by the Ministry of Justice had shown that Polish courts did indeed apply the definitions contained in international law, but the Government had decided to introduce its own definition of human trafficking in the Penal Code, which itself was consistent with the international definitions in question.

9. Mr. KOTRANE said that while he welcomed the fact that the definition was in line with the one given in the Optional Protocol, there were other definitions that had not been taken up in Polish law. For example, under the Optional Protocol, the engagement of children in forced labour should be covered by provisions prohibiting the sale of children. While in theory a judge could directly apply the provisions of the Optional Protocol, it would be unimaginable for a Polish judge to apply a penalty based on such a definition alone, as the Optional Protocol did not prescribe penalties, and Polish law did not consider forced labour to be equivalent to the sale of children. It was therefore necessary for the State party to adopt appropriate legislation to ensure that the provisions of the Optional Protocol would be implemented in the corresponding domestic criminal law. In respect of double criminality, the Optional Protocol called for States to go beyond the principle of sovereignty. That was crucial in order to suppress acts of sexual tourism that took place in countries lacking laws prohibiting such acts.

10. Mr. CITARELLA expressed concern that Polish law did not distinguish clearly between trafficking and the sale of children, and said that the State party should adopt specific provisions prohibiting the latter.

11. Ms. GÓRZYŃSKA (Poland) said that while the Penal Code contained no specific definition of forced labour for children, it did have provisions, such as those prohibiting slavery or coercion, that in effect penalized persons who subjected children to forced labour. The Penal Code prohibited trafficking in human beings, and in cases involving children, when courts issued sentences under those provisions, they referred to international treaties and thus took into consideration the fact that the victim was a child. The entry into force of the draft law defining human trafficking would further clarify that situation.

12. It was a criminal offence to have sex with a minor under 15 years of age. While Polish criminal law did not explicitly contain a definition of child prostitution, that did not mean that it was not punishable; child prostitution was in effect prohibited by the Penal Code. Persons who subjected others to sexual intercourse or another sexual act by abusing a relationship of dependence or by taking advantage of a critical situation were subject to deprivation of liberty of between three months and five years. The protection afforded by the Penal Code went far beyond that called for by the Optional Protocol, as it penalized even the promise of some material benefit, and not just remuneration, in exchange for sexual intercourse with a minor.

13. While Polish criminal law did not contain a specific definition of child pornography, all the relevant features of such acts were covered individually by the Penal Code. Any person who produced, recorded, stored, possessed, disseminated or publicly presented pornographic material involving minors or showing violent acts was subject to imprisonment of at least six months. The provisions of the Polish law were thus in keeping with the Optional Protocol.

14. The CHAIRPERSON said that while it was clear that the Polish Penal Code encompassed some aspects of the Optional Protocol, other aspects were not covered. For example, the wording used in the Optional Protocol to describe acts of sexual exploitation was by no means limited to sexual intercourse. What standards were applied by Polish judges in determining whether sexual exploitation was involved?

15. Mr. CITARELLA asked whether the use of persons between the ages of 15 and 18 in pornography was legal if the production was for personal use.

16. Ms. GÓRZYŃSKA (Poland) said that under the Penal Code, pornography recorded for personal use with the use of minors over the age of 15 was not prohibited. Under Polish law, children over the age of 15 were considered to be sufficiently mature to make decisions about their own sexual activities, so sexual intercourse with persons of that age was not prohibited. That legal provision had been adopted on the basis of a number of studies issued by experts in law, psychology and sexuality. The Polish law complied with the Optional Protocol, which did not address the act of intercourse or the production of pornography per se, but rather acts involving a transfer of pornography and the sale and prostitution of children.

17. A number of training courses were held every year for judges, law enforcement officers, prosecutors and border guards on the subject of trafficking in human beings, with special

emphasis on the prevention of child trafficking. The courses provided instruction in ways to protect victims and to avoid double victimization, and presented the relevant definitions from international treaties, including the Optional Protocol. Similar training courses were held addressing child pornography and the sale of children, primarily for judges, prosecutors and law enforcement officers. Many of those events specifically addressed cybercrime, such as the illicit use of the Internet.

18. Designated adoption was not possible under Polish law because family courts, not biological parents, were responsible for selecting adoptive parents. In that regard, there was therefore no risk of children being sold. Adoptive parents were carefully vetted by family courts to ensure that they met all the criteria set out in the relevant legislation, and the child's opinion was always taken into consideration. There had been no cases of illegal adoption since 2005.

19. Legislation provided that children who were interviewed by the police and the judiciary enjoyed special protection. Guidelines stipulated that a child could be interviewed once only, using audio-visual equipment to record the interview, in child-friendly rooms. There were some 30 such rooms nationwide in courthouses, prosecutors' offices and the premises of non-governmental organizations (NGOs), which were inspected periodically by psychologists from the Ministry of Justice. Interviewers were trained in techniques appropriate for questioning children.

20. Turning to the issue of collective responsibility, she said that groups of people could be held criminally responsible for crimes involving the sexual exploitation of children.

21. Mr. KOTRANE asked whether criminal responsibility could be attributed to legal persons, such as companies, for offences involving the sexual exploitation of children.

22. Ms. GÓRZYŃSKA (Poland) said that, under the Penal Code, only a natural person could be held responsible for criminal acts. It was only if a natural person who acted on behalf of a legal person could be brought to justice that a company, for example, could be punished.

23. Mr. KOTRANE said that it would therefore appear that the State party's legislation did not provide for holding moral persons criminally responsible. He suggested that effective measures to fill that void would be to introduce fines or the closure of companies, independently of punishments handed down to the company directors as natural persons. That would bring domestic legislation into line with article 3, paragraph 4, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

24. The CHAIRPERSON asked how young persons between the ages of 15 and 18 were protected from child prostitution and child pornography.

25. Ms. GÓRZYŃSKA (Poland) said that under Polish criminal law, any means of transfer of pornography was an offence, including material containing images of children under the age of 18. Domestic legislation was therefore in line with article 3, paragraph 1 (c), of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

26. Mr. KOŃCZYK (Poland) said that law enforcement agencies were working increasingly closely with NGOs to prevent the sale of children, child prostitution and child pornography. “La Strada” Foundation, for example, provided legal, medical and social assistance to victims of human trafficking, including children. The Foundation received funding from the Government under the terms of an agreement it had signed with the Ministry of the Interior and Administration.

27. Special units within the police force and the border guard were responsible for tackling human trafficking, child prostitution and child pornography. Several amendments were being prepared to introduce new crimes in the Penal Code, such as making preparations to traffic human beings, for which perpetrators would be punished with up to three years’ imprisonment. Similarly, the crime of “grooming” children over the Internet or other channels for the purpose of sexual abuse would be introduced into the Penal Code, as would the rape of a child. The powers of the police to monitor Internet activity would be increased in an attempt to enable them to identify paedophile behaviour. The police currently used specialist software to detect the downloading of child pornography, and had launched a nationwide operation to apprehend offenders in September 2009.

28. According to police information, relatively few children were trafficked from Poland for the purposes of sexual exploitation. The law enforcement agencies monitored trafficking in children on a permanent basis. The police were currently taking steps to prevent children from being forced into begging. Police officers would be given specific training on the provisions of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography under a new training module to be introduced on human trafficking.

29. Mr. KOŃCZYK (Poland) said that the National Plan of Action against Human Trafficking for 2009-2010 was aimed at creating a model of support and protection for child victims of trafficking. He highlighted three aspects of the plan. First, a network of secure institutions would provide victims with shelter and ensure their speedy recovery from the trauma they had undergone. Unaccompanied minors, especially foreign children without a permanent place of residence or relatives who could take care of them, would particularly benefit from such facilities. Usually, they were sent to emergency care centres where adequate care and security were not guaranteed. A pilot programme was being run by the Ministry of Internal Affairs and Administration and the Warsaw Municipal Government with a view to implementing that objective and, if successful, would be extended nationwide.

30. Second, the plan would include the development of guidelines for law enforcement officers enabling the quick detection of child victims of trafficking. Similar guidelines would be envisaged for use in other Polish institutions.

31. Third, a comprehensive analysis would be undertaken of trafficking in children based on legal solutions, past experience and statistical data.

32. Ms. AIDOO noted that the Ministry of Internal Affairs and Administration was taking a responsive gender-sensitive approach to dealing with child victims of trafficking and that some

boys were victims of offences under the Protocol. She requested detailed information concerning the development of sex tourism on the western border with Germany and wished to know what steps had been taken to tackle the issue.

33. Mr. KOŃCZYK (Poland) said that the police and prosecution authorities did indeed take into consideration the victims' age and gender when dealing with such cases. Female victims, for example, were interviewed by female police officers or prosecution authorities.

34. Sex tourism did occur on the western border with Germany, but was not a significant problem compared with trafficking in women and was monitored closely.

35. Mr. PURAS (Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) commended the State party on its pilot programme, which appeared to fill the gaps regarding the protection of child victims of trafficking. He wished to know how it would be approved, funded, evaluated and monitored.

36. Mr. KOŃCZYK (Poland) said that the financing and operation of the pilot programme would be monitored by the Warsaw Municipal Government and the Ministry of Internal Affairs and Administration.

The meeting was suspended at 4.34 p.m. and resumed at 4.56 p.m.

37. Mr. KOŃCZYK (Poland) said the Government, NGOs and civil society organizations were partners in various prevention activities. The Ministry of Internal Affairs and Administration had launched an awareness-raising campaign on trafficking in human beings for students; a comic strip by La Strada Foundation entitled You Are Not for Sale had been distributed to youths at a major rock concert and training programmes had been set up for social workers in emergency care institutions and for childcare staff. A training session for directors involved in child education and care would be held by La Strada Foundation and the Ministry of Internal Affairs and Administration in Pomerania province in October 2009.

38. Ms. SKÓRKA (Poland) said that a government programme, Together Safer, aimed at preventing delinquency and antisocial behaviour, had been under way since 2006 and would run through 2015.

39. Ms. GÓRZYŃSKA (Poland) said that it was impossible legally to obtain data concerning the ethnic origin of victims of trafficking in human beings because that would violate the law on data protection.

40. Ms. SKÓRKA (Poland) said that the Roma accounted for 15,000 people out of a total population of 38 million. Poland had adopted a programme for the Roma in 2003 that would be in effect until 2013, at which time it could be extended. The Government and NGOs conducted a wide range of activities for the Roma aimed at improving living and social conditions, decreasing unemployment, promoting health, safety and their cultural identity, and raising public awareness about them. Thanks to the programme, the number of Roma children attending school had risen sharply.

41. Ms. GÓZYŃSKA (Poland) said that preparatory proceedings were very complex in some cases and required comprehensive and close cooperation between law enforcement agencies in different countries. Poland did its utmost to conclude preparatory proceedings quickly once a victim of human trafficking had been identified. Any undue delays were monitored by the Minister for Justice, who was not, however, able to influence the impartiality and independence of the judiciary.

42. The law on complaints, governing the right of a party to judicial proceedings without undue delay, had been amended so that if a court believed that a given complaint was substantiated, it could grant ex officio compensation to the plaintiff. The amount of compensation that could be awarded had also been increased.

43. All the crimes to which the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography referred were extraditable under Polish law.

44. Ms. VILLARÁN DE LA PUENTE said that, even in complex cases, the guarantee of due process was of fundamental importance, all the more so in cases involving children. She asked why there were delays in complex cases, and what procedural guarantees were in place to ensure due diligence in cases where children's rights had been violated.

45. Ms. GÓZYŃSKA (Poland) agreed that it was vital that her country make all necessary efforts to ensure that legal proceedings involving children be concluded as quickly as possible. The complexity of a given case was obviously not sufficient justification for unnecessarily prolonged proceedings, but the differing legal systems of the States involved in child trafficking cases had to be taken into consideration. Children could file a complaint with the courts when proceedings were prolonged unnecessarily, in which case they were represented by their statutory representatives, in the form of parents or a court-appointed guardian.

46. The CHAIRPERSON enquired about the status of ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

47. Ms. EKLER (Poland) said that Poland had signed the Council of Europe Convention and, in December 2008, had hosted the third regional conference thereon. Council of Europe members and representatives from the private sector and NGOs had attended the conference, the aim of which had been to promote the Convention and its ratification. Polish legal regulations already ensured full compliance with the Convention, while Poland had improved its legislation on offences related to the dissemination of child pornography and had initiated consultations with a view to incorporating the offence of grooming in the country's Criminal Code. In line with the Convention, Poland had adopted a law to extend the statute of limitations for certain crimes related to sexual exploitation and abuse. Discussions on ratification of the Council of Europe Convention were still ongoing.

48. Problems had arisen with the ratification of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, because it required modifying domestic regulations for migrant workers. Nevertheless, Polish law fully guaranteed the basic rights of all migrant workers and their families.

49. Mr. SADOŚ (Poland) said that his Government cooperated with NGOs and civil society in preventing sex tourism and creating awareness among children. For example, he noted that the NGO's shadow report that had been submitted to the Committee would be very useful to the Government.

50. Social care of children was carried out by community and county-level social centres. Under the Social Welfare Assistance Act, the help provided to families by the centres included financial assistance for renovating housing, as well as heating fuel and school meals. Community workers could also inform parents regarding areas of care where they lacked expertise. In cases where a child needed to be cared for outside the family unit, the Social Welfare Assistance Act set out detailed provisions on how foster families should be chosen.

51. All currently available statistics on sex tourism in Poland had been given in the country's report (CRC/C/OPSC/POL/1) and in the introductory statement made to the Committee. New definitions of crimes were constantly being added to existing legislation in Poland. The sex tourism phenomenon was spreading in Central and Eastern Europe, but the police were closely monitoring developments. The relevant statistics would be included in the second periodic report submitted under the Optional Protocol.

52. Ms. EKLER (Poland) said that sex education was given to all students, unless parents stated in writing that their children should not take part in such lessons. Students over the age of 18 could also opt not to attend.

53. Ms. HERCZOG said that the issue of whether parents had the right to prevent their child from receiving certain kinds of education - where that education was in the child's best interests - was frequently raised in the Committee's discussions. She asked whether any effort had been made by the State party to convince reluctant parents to allow their children access to sex education.

54. Mr. KOTRANE noted that under the Convention and general comment No. 4 on adolescent health, sex education was a right of the child, even in opposition to a parent's wishes.

55. The CHAIRPERSON asked how sex education related to preventing children from being enticed into prostitution or pornography.

56. Ms. SKÓRKA (Poland) said that awareness-raising campaigns were run nationally and locally to guard children against being enticed into prostitution or pornography, while textbooks gave advice on how to react to cyber-violence. Information on related issues was also available on websites for teachers' use. Furthermore, specially trained tutors met with children in schools to raise awareness of potential problems, both in the classroom and on a direct personal basis, without the teacher being present.

57. Mr. POLLAR (Country Rapporteur for the Optional Protocol on the involvement of children in armed conflict) summing up said that compliance with the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict depended not only on the absence of conflict within a State party, but also on such issues as

international protection, peacekeeping missions, export of arms and participation in regional cooperation initiatives to promote the Optional Protocol. He welcomed the fact that apparent lacunae in Polish legislation relating to children and armed conflict would soon be filled by new legislation.

58. Mr. PURAS (Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) said that he hoped that the constructive dialogue that had taken place would help the State party to take specific measures for more effective implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Overall, while there had been progress in terms of prohibiting the crimes to which the Optional Protocol referred, it seemed that more needed to be done to fill existing gaps as regarded prevention, protection and rehabilitation of victims. Nevertheless, Poland's commitment to the Optional Protocol had been evident during the discussion.

59. Mr. RAPACKI (Poland) drew attention to his country's history in children's rights, and said that the discussions that had taken place and the Committee members' questions would be used to help improve not only legislation in Poland but also practice. He stressed the importance attached by Poland to improving protection of the rights of the child.

60. The CHAIRPERSON said that, in the light of its role in promoting the Convention on the Rights of the Child and other related instruments, the Committee had been convinced of the country's political will and determination to guarantee children's rights and was ready to assist the State party with implementation of the Optional Protocols.

The meeting rose at 5.50 p.m.