



ngo group for the crc

## STATE PARTY EXAMINATION OF ANDORRA'S SECOND PERIODIC REPORT ON THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION, AND CHILD PORNOGRAPHY (OPSC)

41<sup>ST</sup> SESSION OF THE COMMITTEE ON THE RIGHTS OF THE  
CHILD  
9 - 27 January 2006

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*The principality of Andorra ratified the Convention on the Rights of the Child (CRC) in 1996. The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (OPSC) was ratified in 2002. On 16 January 2006, the Committee on the Rights of the Child (the Committee) examined Andorra's report on the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (OPSC).*

### Opening Comments

The delegation was headed by Ambassador Francesco Bonet, the Permanent Representative for Andorra to the United Nations (UN) in Geneva. He explained that since the ratification of the two OPs, the Government had adopted a new criminal code. In 1993, many international instruments were adopted in relation to the protection of children's rights. With the European Social Charter (2004), a new criminal code was adopted to reflect these new guidelines. One significant change was the criminal age of a minor which went from 16 to 18, with certain offences not criminalised. In addition, since the last general elections, there had been a change in Government and in the organisation of ministries. For example, the Ministry of Welfare had become the Ministry of Health and Welfare (MHW) and there was a new Department of Social Welfare in the Family (DSWF). This department worked in three principle areas, namely social care for children (e.g. adoption, care of minors and family mediation), primary social care and specialised social care.

Regarding the OPSC, Mr Kotrane congratulated the delegation on the very good report, which followed the Committee's guidelines. He found it noteworthy that an offence committed against a minor was considered an aggravated offence according to the 2005 criminal code, thus entailing a longer sentence. In addition, the sale of organs had been included in the criminal code since the last examination of the State Report.

### Legislation

The delegation confirmed that the OP entered into force in January 2002 with no incompatibility with domestic legislation. The Committee asked if there could be direct implementation of international provisions if there was any incompatibility. The delegation explained that a provision of the domestic criminal code would be added to the protocol if there was incompatibility.

### Forced Labour

The Committee commented that certain offences such as forced labour, which would normally be covered by the criminal code, were not actually covered. However it was punishable despite the lack of specific provisions. The Committee enquired whether the Government envisaged going through it point by point to ensure that all offences were fully dealt with in domestic legislation. The delegation replied that the sale of children was covered in the criminal code art. 247, which was in compliance with the requirements of the OPSC. The Committee noted that the heads of enterprises were usually prosecuted, but the OPSC also required that everyone involved in the crime to be prosecuted. The Committee asked if this improvement could be included in the domestic criminal code. The delegation explained that according to the law a company could be closed down and prevented from operating.

### ***Jurisdiction***

The Committee asked if there would be jurisdiction if a person closely linked to Andorra (without being a national) either committed a crime or was the victim of a crime. The delegation explained that universal jurisdiction under article 8 of the criminal code would be applied in such cases. In particularly serious crimes, universal jurisdiction would be applied. The penalties would be worse for offences that could be interpreted as child abuse or exploitation. The Committee recommended to further develop this area to encompass more cases by universal jurisdiction in order to strengthen the protection of children. In cases of the sale of children, pornography and prostitution, they had to be offences in both States, but the OP required broader jurisdiction and competence to avoid two-fold requirements. The Committee asserted that competence should be expanded in Andorra.

### ***Complicity in Crimes***

The Committee explained that someone who was aware of a crime but did not stop it or report it, could be prosecuted along with the perpetrator. It recommended that provisions existed for people who did not directly correspond to that definition but who had obstructed the law. In the case of child pornography, there should be more consideration of the provisions due to delicate family situations. The delegation noted that if a family member was concealing a crime because of family ties, the law punishing an accomplice would not apply because of the nature of the offence.

### ***Age of Consent***

The Committee requested clarifications regarding the age of consent for sexual relations. In one article of the code it was 14, but sexual relations with a girl between 14 and 16 was considered a crime according to another article. The delegation would send a written response on this issue.

### ***Awareness***

The Committee asked if there were concrete methods or campaigns to increase awareness of the OPSC. The Committee also asked if children were aware of their rights, knew how to protect themselves and register complaints. The delegation explained that children were made aware of the issues in school, and through a programme of the Ministry of Education to disseminate information. Every year, children received a book on their rights and materials were distributed during the annual Children's Day. Information on the report and pages of special interest concerning the rights of the child were also available on the internet.

### ***Training***

The Committee noted the need for targeted training programmes for people working with children. The delegation explained that programmes existed and courses were held jointly with UNICEF. The Children's unit of the police brigade received information on the rights of the child and how to avoid children feeling aggrieved. Specialised training was also provided to deal with child abuse and the credibility of testimony.

### ***Prevention Measures and Treatment***

The Committee asked if prevention measures existed for the sale of children, pornography, sexual exploitation and abuse. It enquired if rehabilitation programmes were provided and if the commission on sexual related problems still existed. The delegation explained that a programme for

'at risk' children provided care for minors who were victims of this type of aggression. If children reported abuse, the Government could intervene in domestic violence situations. A Technical Commission for children and young people, and working groups also ensured that the rights of minors were protected. There was an agreement with social welfare services in neighbouring countries to share information and work together. The Committee asked if a plan of action was needed to prevent these crimes. The delegation replied that the Government was already considering one. The Committee expressed concern that while procedures for victims of rape and abuse existed for girls, there were none for boys. The delegation responded that girls and boys were considered equally protected by law so separate procedures were not necessary.

### ***Pornography***

The delegation was asked whether pornography was only considered a crime if it was intended to be distributed to minors, and if so, how was this determined. In principle, the possession of material was punishable, but there were no previous problems of this kind. If it was an issue, the courts would decide whether or not the intention was to sell or distribute pornographic materials to children.

### ***Evaluation***

The Committee asked if mechanisms were in place for periodic evaluations of the OPSC. The delegation confirmed that a group followed-up its implementation.

### ***Juvenile Participation in Court Proceedings***

The Committee asked if specific provisions existed for the use of videotaped testimonies of a child. The delegation replied that there were no exact procedures for minors who were victims of sexual abuse. However, direct confrontation with the alleged perpetrator could be avoided, especially in cases of professional reports and proceedings. When a minor was making a declaration, a parent or counsellor could be present. During declarations in oral proceedings, there was a separation between the aggressor and the child. The Government was working on legal documents to protect minors who were victims or witnesses. The delegation cited an agreement that was reached on the need to use simple language for children to understand court proceedings. A person transmitted the prosecutor and defence lawyer's questions to the child in a simplified language. Work was also being done to coordinate proceedings to avoid unnecessary delays or repetitions in testimonies of a minor.

The Committee also asked if there was a debate on the term 'minor', and why it was still being used. The delegation replied that it was a language problem. In Catalan the word 'infant' was more generic. There was no real synonym for 'minor', but it was being used to mean a 'child'.

### ***Child Participation***

The Committee asked if youth organisations were consulted when changes were made in legislation or programmes. The delegation replied that a Youth Council existed on a national basis. Alumni Association also existed, but they were not officially recognised.

### ***Closing Remarks***

Kotrane discussed the need to train professionals for the early detection of abuse cases. If no victims were detected, it either meant excellent prevention measures were in place or there were hidden cases which needed to be dealt with.

Ambassador Bonet assured the Committee that his Government was determined to improve all actions in relation to children and to be prepared for any situations that might arise.