



ngo group for the crc

STATE PARTY EXAMINATION OF AUSTRIA'S INITIAL PERIODIC REPORT ON THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

49TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD
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Austria ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) on 6 May 2004. On 15 September 2008, the Committee on the Rights of the Child (the Committee) examined Austria's initial report on the implementation of the OPSC.

Opening Comments

Mr. Christian Manquet, the Head of Unit in the Federal Ministry of Justice noted that no country, including Austria, could rightfully claim to have achieved all the goals of the OPSC. He considered the meeting with the Committee as an opportunity to improve policies. He noted that Austria had ratified or signed many Council of Europe treaties, including the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. At the time of ratification of the OPSC, the legal standards concerning sexual and other exploitation of children and victims' rights in criminal and civil proceedings were high. Certain provisions of the OPSC had been transposed into domestic law.

Mr. Manquet remarked that the list of issues highlighted the Committee's focus on the implementation of the OPCS and the effectiveness of existing measures. He noted that the state did not have statistical data for all the aspects of the OPSC, although working groups had been established to improve the quality of statistics in criminal matters. He reassured the Committee that the up-coming elections would not interfere with the government's commitment to addressing child rights issues seriously. The package to improve the protection of children from sexual violence had been finalised and would hopefully be passed through parliament before the elections. Finally, he announced that the voting age for national elections had been lowered to 16, which was a major step towards improving child participation in political matters.

Ms. Moushira Khattab, the country rapporteur, thanked the delegation for the report and the expertise. She recalled that Vienna hosted the Organization for Security and Co-operation in Europe (OSCE) meetings on combating trafficking and worked with the United Nations Office on Drugs and Crime (UNODC) to fight trafficking. She hoped that the work of the UN Global Initiative to Fight Human Trafficking (UN GIFT) would be followed-up. She noted Austria's achievements, especially its competitive education system, which was of great importance to the Committee, as it was the first line of defence against violence and exploitation. She hoped that the dialogue would be fruitful and welcomed the lowering of the age to vote. She noted that questions would be asked about the implementation of the 2004 Criminal Law Amendment Act and follow-up relevant issues from the 2005 concluding observations of the CRC report.

General Measures of Implementation

The Committee noted that despite being informative, the State party report had not followed the guidelines. It focused on individual articles rather than following the clusters. The delegation apologised for not following the guidelines, but hoped that the necessary information was provided in the report. It promised to follow the guidelines for future reports.

The Committee enquired about the level of participation of civil society in the State party report, more specifically whether they participated from the beginning and were able to comment on the final report. It also asked about the level of cooperation with civil society. The delegation stated that civil society and children were involved in the programmes, but not in the preparation of the report, as it was the state's duty. NGOs were consulted in the implementation of the National Plan of Action and the government relied on them to prepare alternative reports.

The Committee noted that the 2004 Plan of Action did not cover all the areas under the OPSC and said that it had not received any information on the implementation of different plans (especially in relation to human trafficking and violence against children). The delegation stated that since the report in 2002, more than a hundred measures had been implemented. Moreover, there was a Plan of Action against Human Trafficking which had been adopted in 2007. In addition, funds were provided and they had raised awareness, notably through a new website on child rights. The website was, however, directed towards professionals and not children. With the Plan of Action, they were in the process of raising awareness within the government.

The Committee was surprised that all sexual offences against children were grouped together and not disaggregated according to age and gender. It also requested data on asylum seeking and refugee children. It also wanted more information on the budget allocations for the implementation of the OPSC. The Committee was also surprised by the lack of convictions in human trafficking and adoption since 2005, with only 1 case for the former. The delegation noted that a new data collection system was being developed, which would provide clearer information in future.

Legislation

The Committee enquired about the criminalisation of people involved in illegal adoption. It noted that according to the report, the body that organised the adoption would be criminalized, while people who adopted a child illegally were not criminalized. The Committee also asked if people could be extradited in cases of illegal international adoption. It further enquired if there was a central authority responsible for controlling and following-up cases of adoption. In response to a question about legislation, the delegation responded that the legislation was in line with the OPSC. However, it depended on whether the person was

Austrian, if there was double criminality, and if extradition was possible. All the issues related to article 3 of the OPSC were criminal offences according to Austrian law. They were in the process of drafting a bill to follow-up cases. There would be specific data collection on sexual offenders as well as on the offences under the OPSC. In addition, the police would be able to access the data on the offences. The Committee asked if they monitored people who were released from prison.

The Committee enquired about the status of legislation on the sale of children in Austria. More specifically, it asked if it was criminalized under the criminal court and what were the consequences. It noted that States parties had to introduce special rules of procedure to prosecute people responsible for the sale of children.

The Committee noted that according to the penal code, the judiciary was competent when Austrians were affected. However, it wanted to know what happened if someone committed a crime abroad on a non-Austrian. The delegation noted that to be tried under Austrian law, the person had either to be Austrian or to be a resident. It also noted that judges and prosecutors would be trained in these areas.

Coordination and monitoring

The 2005 concluding observations referred to the need to establish a body responsible for the implementation of the CRC (which was also applicable to the OPSC). The Committee enquires if such a mechanism existed, and if so, how it was coordinated and funded. The Committee noted that there appeared to be a lack of coordination in relation to trafficking.

The Committee asked if the 9 children's Ombudspersons had a role in monitoring the state's compliance with the CRC and the OPSC. In addition, it enquired if there was a federal counterpart to these Ombudspersons. The delegation noted that there was a federal Ombudsperson and that they had different competencies. However, they all had the duty to take up complaints and raise awareness, but this did not involve accompanying children to court. The Ombudspersons met twice a year to discuss key issues and get common positions on key areas of concern. The delegation noted that some provinces received more financial and human resources for the Ombudsperson's activities. The Committee asked how the different allocations of resources affected the children. In response to the question about the role of the Ombudsperson in relation to the OPSC, the delegation noted that the Ombudspersons took part in the reporting and monitoring process, but did not have jurisdiction on the implementation of the OPSC. The delegation further explained that the Ombudsperson had the duty to take up all child rights violations.

Dissemination and training

In response to a question about the dissemination of the OPSC (especially in a federal state), the delegation stated that it took place through their website and through the distribution of brochures to schools and annual drawing competition for children. Austria had spent 70'000 Euros for administrative programmes to raise awareness about child rights. In addition, there were guidelines for medical staff working with children, especially on the assessment of cases of violence. The Committee noted that efforts had been made on sexual exploitation and child trafficking, but that it did not cover sale and child pornography. It wanted information on the measures taken at federal and state level to train the relevant professionals, including prosecutors, the police, social workers, families and children.

The Committee enquired if they also disseminated information and provided training on issues related to child pornography. The delegation explained that there was a sub-unit for processing reports on child pornography and that criminal investigators were trained on all sexual offences, especially the detection and investigation of cases of child pornography. The

delegation highlighted the important role of the mass media in raising awareness on ways to react if members of the general public came across child pornography. In 2007, they had received 9000 reports from Internet users and the police.

Sale and Prostitution

The Committee noted that despite the many measures to address child trafficking, it remained a serious concern. The Committee felt that there was no strategy to address the issue in a comprehensive manner in terms of prevention, recovery and reintegration. The delegation responded that they worked in close cooperation with NGOs on the task force on trafficking. For instance, in relation to the up-coming congress in Rio, they were organising a national conference. In the western Balkans and South West Europe, they were organising projects with NGOs on anti-trafficking networks and trans-national cooperation. The delegation also noted that even if a victim had committed an offence (e.g. the violation of immigration laws or theft), they would still be treated as a victim of human trafficking and would receive the same treatment. The Committee asked if this would mean that the person would appear twice for two crimes, but the delegation did not respond.

The Committee noted that while section 215(a) of the criminal code covered issues such as prostitution, there appeared to be no prosecutions. It enquired if the lack of prosecutions was due to a lack of complaints and/or investigation of the police. The Committee further enquired if a child would be considered a victim or an offender if he/she were involved in prostitution.

The Committee enquired about the measures to combat sexual tourism by Austrian nationals. The Committee asked whether crimes committed abroad were only criminalized if there was double criminality. The Committee was concerned about the safeguards in place to deal with individuals committing crimes under the OPSC in countries that were more tolerant of certain of these crimes. The Committee emphasised that the OPSC aimed to prosecute such cases, as the double criminality requirement prevented the Protocol from fulfilling its goals. The Committee enquired about the extraterritorial applicability of the Protocol. Article 34 of the Penal Code states that the judiciary system was competent if Austrian interests were affected. The Committee thus wondered if, for instance, the offender was Austrian and lived in Austria but the victim was not, whether the offender would be prosecuted. The delegation explained that the nationality principle prevailed in Austria. As article 3 and 4 of the OPSC did not forbid the double criminality requirement, Austria fulfilled its obligations. If the act was a crime in the country where it was perpetrated, the nationality was sufficient. However, if it were not, nationality and residency would be required to criminalize the offender.

Age Assessment

According to General Comment 6, physical appearance did not constitute reliable grounds for determining a person's age. The Committee therefore asked if they had a multi-professional approach to assessing age. The delegation responded that they had a new strategy to assess the age of unaccompanied children. They stressed the importance of assessing the age of young people to respond to their needs, but also to avoid that young adults pretended to be children. The delegation noted that forensic doctors, radiologists, dentists, and other professionals were trained in age assessment.

Repatriation

The Committee enquired about the process of repatriation. It noted that there were bilateral agreements with certain Eastern European countries and requested information on the circumstances in which children were returned to their families. The delegation answered that

there were cooperation agreements with Bulgaria and Romania (the countries of origin of most trafficked children). A national institution ensured that the children were handed over to the relevant youth services and did not fall into the hands of traffickers. The children were either placed with their families or in alternative care and there was a follow-up process for the repatriation cases. The Committee asked if this programme would be extended to other countries. The delegation declared that there were no plans to extend it, as 95% of the children came from these two countries. The Committee was concerned by information it had received about the lack of human or financial resources to follow-up these cases. The delegation explained that there were resources and visits were carried out to the institutions in Bulgaria and Romania. The delegation also explained that the police worked with specialised institutions. Thus, if children were arrested for begging or prostituting, they were identified, and if repatriation was not possible they were referred to welfare institutions.

Adoption

The Committee recalled that there was a section on adoption in the criminal code, but there were no convictions. It asked what happened in cases of international adoption and for information on existing extradition agreements with certain states. It also enquired about the existence of a follow-up mechanism. The delegation stated that the legislation was in accordance with article 3 of the OPSC and all offences under the OPSC were punishable. Concerning international adoption, the delegation explained that it depended if an Austrian or a foreigner was involved, as this had implications on the need for double criminality. The Youth and Health authorities in the nine provinces were responsible for the follow-up. The delegation also confirmed that a draft bill on the matter was ready for adoption. It mentioned that the government cooperated with NGOs on child trafficking and prevention programmes.

Pornography

The Committee asked what happened if a child was caught 'participating' in pornography. The delegation answered that the involvement of children in pornography was a crime. However, a child could possess images of his/her self. The Committee asked if the importation and possession of child pornography was criminalized. It further enquired whether such activities were only criminalized if children were under 14 and wanted to know what happened to children between the ages of 14 and 18. The delegation noted that pornography involving all children under 18 was criminalized.

The Committee remarked that there were statistics about complaints, and enquired about the reasons for the low number of prosecutions. The delegation deplored the lack of data on child pornography, but explained that more cases were being reported. However, it noted that convictions for child pornography did not exist in the statistics, as it would be labelled as rape. They also tried to trace images from other countries, and acted if it was within their jurisdiction. If the perpetrator was Austrian, he/she was always responsible provided there was double criminality. The delegation noted that using double criminality was not in contradiction with the OPSC. However, according to the criminal code, some offences did not require double criminality if an Austrian committed them abroad. The delegation noted that if there was a lower age of sexual consent in another country, an Austrian citizen or resident could not be prosecuted if they came back to Austria. The Committee emphasised that the OPSC aimed to prosecute such cases, as this could lead to sex tourism in countries with lax laws. Finally, the Committee asked how they considered cartoons which depicted child pornography. The delegation explained that cartoons were considered to be pornography if they looked like real images.

Complaints Procedures

The Committee asked if the number of interrogations of child victims were limited in order to avoid double victimisation. It also wanted to verify if a child could refuse to be present in court. The delegation explained that in criminal proceedings children only had to appear once before the court (usually during the preliminary proceedings). Though it was possible for them to be asked to testify again, they were not obliged to do so. When they appeared in court, they were separated from the offender and questioned by a psychologist or psychiatrist. In addition, video conferencing could be used. The Committee also noted that there was a good programme for training judges. It asked about the status of child victims and witnesses and enquired whether the guidelines on justice for witnesses was applied.

The Committee asked if the existing helpline was national. It specifically wanted to know what happened if a child called to make a complaint and who would be the interlocutor (the police or an NGO). The delegation responded that the children received psychosocial assistance from specialised NGOs that employ specialised staff. The Committee also enquired about damages and how claims could be made in cases of civil proceedings (assistance would also be provided). The Committee asked if there was a national referral system whether it was an NGO or the police that received a case. The delegation responded that there was a youth welfare system. While they were different in each province, they all followed the same principles. In response to the Committee's question about the age of children eligible to assistance from the youth referral system, the delegation responded that it covered all children from 0 to 18.

Rehabilitation

The Committee enquired if professionals were trained to provide psychosocial reintegration to child victims and if there were programmes for their rehabilitation. The delegation responded that they had measures in place that were in line with the national plan of action. In addition, free psychosocial assistance was provided before the criminal procedures started. Experienced NGOs also provide assistance. The delegation declared that a draft Bill, which would include assistance in civil procedure, was in the process of being developed. Finally the Committee enquired if children had a right to reparation. The delegation confirmed that children had the full right to reparation in front of Austrian courts. They noted that the free legal and psychosocial assistance was provided during the proceedings (they were also extended to civil procedures). The Committee asked what happened to asylum seeking children between the ages of 16 and 17 in the alien police proceedings. The delegation responded that asylum seekers had the right to legal advice until the age of 18. Thus the Committee's information was incorrect, as all children up to the age of 18 were eligible.

The Committee also asked about the rehabilitation of sex offenders. The delegation remarked that there was rehabilitation, especially for cases of sexual violence in the family. The rehabilitation of offenders usually took place during their detention and set the conditions for release. The Committee asked about the follow-up with previous offenders after their release and whether recorders were kept on these people.

Closing Remarks

The Country Rapporteur, Mrs. Khattab noted that Austria was making a lot of effort to implement the OPSC. She stated that the level of dialogue was high, as it was an advanced country that cared about child rights. She hoped that the coming elections would not change the spirit and dedication of the government towards fully conforming to the OPSC and the

CRC. The concluding observations would reflect the dialogue, acknowledging the positive steps and highlighting the concerns of the Committee.

Mr. Manquet thanked the Committee for the fruitful dialogue and for having the opportunity to provide information on the situation in Austria. He stated that they would start working on the issues discussed straight away, without waiting for concluding observations. He hoped that they would be able to report further progress in the next periodic report.