

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

**64TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD
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Moldova ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) on 12 April 2007. On 18 September 2013, the Committee on the Rights of the Child (the Committee) examined the initial OPSC report of Moldova. Moldova has one overarching declaration that applies to the OPSC.

Opening Comments

The delegation was headed by Mr Eugeniu Moraru, Director of the Centre for Combatin Cyber Crimes of the General Inspectorate of Police within the Ministry of Internal Affairs. Mr Moraru was supported by a small delegation representing the Parliamentary Committee on Human Rights and Interethnic Relations, the Direction International Relations and Treaties of the Ministry of Interior and the Direction Protection and Child Rights of the Ministry of Labour, Social Protection and then Family.

Mr Moraru noted that periodic monitoring of treaty bodies set an important benchmark for the promotion and protection of human rights deriving from international treaties. He added that Moldova's 2011 – 2016 Justice Reform Strategy marked the State's commitment to achieve the full realisation of child rights. The Committee's 2009 concluding observations under the Convention on the Rights of the Child (CRC) had informed the drafting of the Strategy for the Protection of Child and Family, 2013-2020, a policy document that would inform the development of the family protection system and the State's response to children at risk.

Mr Moraru highlighted a range of achievements that had been made in law and in practice in

Moldova since the ratification of the OPSC, including the ratification of other regional and international treaties that had bolstered the implementation of the OPSC. Particular attention had been given to the development of protection systems for children without parental care and the importance of non-violence in the raising of children.

The Rapporteurs, Ms Renate Winter and Mr Peter Guran, welcomed the delegation and acknowledge the substantial work done to date to bring the law and practice in Moldova into line with the OPSC. The Rapporteurs noted that work remained to be done and posed a range of questions regarding next steps to further improve protection for children under the OPSC.

General Measures of Implementation

Definition of the Child

The Committee was concerned that the definition of the child as a person under the age of 18 was not consistent throughout the law. The age of criminal responsibility was seven years old, which was very low, while there were provisions for the punishment of crimes committed against children under 16 years or in some cases children under 14 years.

The delegation assured the Committee that the child was defined as a person under the age of 18 in internal laws; however, there were provisions which stated that if the crime was committed against a child under the age of 14 years, this would be treated as an aggravating circumstance and the punishment would thus be more severe. Grooming, for example, was only considered a crime if perpetrated against a child under 16 years of age because 16 was the age of sexual consent.

Coordination & monitoring

The Committee asked how implementation of the OPSC was coordinated, and specifically how the roles of the National Council for Child Rights Protection and the Inter-Institutional Working Group on OPSC differed. The Committee enquired about the competencies of the Working Group and which body would be responsible for taking forward the Committee's Concluding Observations.

The delegation explained that the Working Group had been set up under the National Commission for National and Periodic Reports under the Ministry of Foreign Affairs and European Integration. The Commission coordinated the preparation of periodic reports to regional and international bodies and brought together relevant ministries to form working groups when needed. The National Council had been created in 1998 and was a strategic body whose mandate was to lead the development and implementation of legislation and policy for the implementation of the CRC and its optional protocols.

The Committee asked whether the National Strategy on Child and Family Protection had been adopted and how it would be implemented. The delegation explained that the draft strategy had reached the promotion stage; it had been approved by the government but not yet adopted by the parliament. This was expected to happen in the near future. The delegation noted that the development of action plans for implementation of the different elements of the strategy had begun so that the relevant ministries could plan their financial resources accordingly.

Cooperation

The Committee asked for more information on the Memorandum of Understanding between the Police Inspectorate and the NGO, LaStrada. The delegation explained that the text of the memorandum was publicly available on the websites of both institutions. This document was a special agreement that set out the areas of cooperation between the two institutions, including for assistance to children in criminal proceedings. Furthermore, LaStrada administered the hotline where children could report sexual abuse and other violations. Cases were filtered and brought to the attention of the appropriate authorities and professionals. It was a detailed memorandum that listed many activities, including joint awareness-raising campaigns among others.

Budget allocation

The Committee noted that the State had undertaken a number of initiatives for the implementation of the OPSC and asked whether sufficient resources had been attributed to them that would ensure their sustainability.

The delegation explained that there was no one centre or body that had the sole responsibility to implement the activities related to the OPSC and that as such, it was difficult to provide concrete numbers. Resources were provided to the institutions and bodies that had been tasked with the various initiatives discussed to ensure they could be carried out effectively.

Training

The Committee asked whether training was available for law enforcement officials, including judges, prosecutors and police, to ensure that they handled OPSC-related cases appropriately. Furthermore, the Committee asked about training for teachers, social workers and other relevant professionals.

The delegation explained that the National Institute of Justice was responsible for developing training curricula based on adopted treaties. Prosecutors and judges throughout the country were regularly trained so that the provisions of the treaties could be applied in courts as they became national law. Training on child rights-related legislation included training on child protection and special assistance offered to children involved in criminal and administrative proceedings. Seminars were held to discuss the hearing of child victims of sexual abuse and other particularly sensitive cases. As such, there were specialised judges and prosecutors, as well as social workers and psychologists, who could be called on to facilitate the involvement of a child in the hearing of a case.

The delegation listed a large number of training workshops and seminars that had taken place. Since the creation of the Centre on Cyber Crime, many training activities had taken place in Moldova and relevant professionals had attended courses in Spain and the United States. As a demonstration of their capacity, the Centre on Cyber Crime was now working with Interpol and learning to cooperate internationally to investigate crimes and access the international database.

Data collection

The Committee was concerned by the increasing number of child pornography cases. It asked for more information on how the national data collection system worked, as well as what indicators were being used to measure the prevalence of these acts.

The delegation explained that in 2008 the State had criminalised possession, distribution, creation and related activities of child pornography. Only a small number of cases had come

to the attention of the authorities between 2008 and 2012 and these were private instances of one person filming another and posting it online; it was not linked to a child pornography network. Since 2012, the State had been more proactive in the area of child pornography and had reformed the Ministry of Interior, resulting in the creation of the Centre for Combating Cyber Crime. A unit to combat child sexual abuse and trafficking on the internet had also been created.

A data collection system had been put in place since the creation of these mechanisms and the delegation was confident that reliable, accurate data would continue to be registered and that the availability of information about the nature of these cases in Moldova would be better known. Data was being disaggregated by sex and type of exploitation, such as begging, forced labour, or sexual exploitation.

Prevention

Vulnerable children

The Committee asked whether activities had been undertaken to reduce the vulnerability of high risk groups of children. The Committee was particularly concerned about children living in poverty and in institutions that were poorly monitored.

Awareness-raising

The Committee asked what activities had been undertaken to disseminate the OPSC and asked if the government had evaluated whether these had been effective; if peoples' level of awareness of the OPSC, including children, had been assessed.

In 2011 and 2012, campaigns had been run throughout the country to raise awareness about crimes involving children, as well as to promote healthy lifestyles, including the need to address social vices and the right of children not to be exposed to violence. Various forms of media were used, including television, internet and radio. Police officers also conducted informational campaigns in high schools to tell children about crimes involving minors and where they could go to report instances of violations.

Anniversaries of international days dedicated to the protection of children had been regularly capitalised on to further raise awareness and create trusting relationships between children and police authorities, as well as how communicate with parents to report violations.

Hotline

The Committee asked whether children knew about the hotline and whether it was being used by children to report violations.

Online security for children

The Committee asked whether efforts had been made to improve online security for children such as cyber surveillance and the monitoring of internet cafés where grooming commonly took place.

Adoption

The Committee asked about the improper inducing of consent for adoption, including inter-country adoption, of children, especially to be used for child pornography, forced labour or sexual exploitation. The Committee welcomed the fact that the State had adopted the Hague Convention on Inter-Country Adoption. Although the Hague Convention did not oblige the State to conduct post-placement control, the Committee asked whether there were effective checks and guarantees in place at the national level that would ensure that an adoption was in the best interest of a given child and that the safety and wellbeing of adopted children could be guaranteed.

The delegation explained that in 2011, a new law on the legal process for adoption had entered into force and was subsequently updated in 2012 to include certain provisions on international adoptions. This legislation was in accordance with the Hague Convention and the OPSC. The Ministry of Labour, Social Protection and Family had a national database of organisations facilitating adoption processes in and outside Moldova. Accredited organisations were obligated to submit annual reports on individual cases they had handled, which could be verified by Moldovan embassies in the countries concerned. At the local level, authorities in Moldova were also mandated to follow up on any concerns related to particular cases, post-placement. If an organisation failed to submit its report, the accreditation would not be extended.

Prohibition and Related Matters

Definition of Sale, Child Prostitution and Child Pornography

The Committee was concerned about the lack of clarity on the definition of sale in the State's legislation and was concerned that it was taken as synonymous with trafficking. In particular, it commented that para graph 114 of the criminal code mentioned "sale of children (trafficking of children)", which implied that the two crimes were treated as being the same thing. The Committee noted that of the three, only the definition of child pornography was in line with the OPSC. This was deemed to be a good law; however there were no statistics available that would demonstrated the nature and prevalence of such crimes and the implementation of the sentencing guidelines seemed to be problematic.

The Committee was aware that the criminal code was due to be amended so as to extend criminal responsibility to all people involved, no matter in which way, in child prostitution and pornography, including complicity. It asked whether the OPSC definition of sale would be included in this amendment, taking into account all the different instances such as sale of organs, engagement of a child in forced labour. All of these crimes needed to be incorporated explicitly into law in order for Moldova to be in line with its obligations under the OPSC.

The delegation explained that the common position among the law enforcement agencies, as well as the Law Society in Moldova which prepared commentaries on the criminal code, including articles 165 and 2006 on trafficking and trafficking in children, was that the criminal code did cover all aspects of the crime of the sale of a child, including sale of organs, forced child labour and adoption, as well as the role of intermediaries and beneficiaries. Grooming had been covered since the amendment to the criminal code in May 2012, in article 175.1. The article explicitly criminalised grooming of children and carried a sentence of up to five years' imprisonment. A further measure taken was that where medical officers could previously bring suspected abuse cases to the attention of the authorities, they are now

obligated to.

The delegation explained that there were currently several law reform projects underway on child trafficking, as well as provisions related to child pornography and grooming, particularly with regard to the extension of punishments from the current years to the possibility of up to seven years. The criminal proceedings code would also be amended to better facilitate the handing down of punitive measures for child pornography and cybercrime, as well as clear obligations for internet providers. La Strada was assisting the government to ensure that the internet was safer for – and more accessible to – children.

Child sex tourism

The Committee welcomed the fact that there was a substantial amount of information available on measures taken in the area of child sex tourism, but regretted the lack of statistics on the matter. It asked whether the State would take measures to combat the tourism industry's practices of recruiting children for sex tourism services, for example by enforcing codes of conduct for travel agencies, hotels and other tourist attractions in order to prevent cases of child sex tourism. The Committee asked whether there had been any cases of tourism agencies being prosecuted for using children in commercial sex tourism activities.

The delegation explained that some statistics had been generated in 2011 and 2012 when a large case was opened, which involved a number of criminals and children. There had been five or six criminal cases linked to this same group. These activities had been severely punished and there had been a noticeable decrease in information on child sex tourism and no further complaints had been received. Border guards, police authorities and foreign embassies had conducted a number of activities to raise awareness about the issue. There had been a recent case of a Moldovan citizen requesting visas for two Moldovan children at a foreign embassy. The embassy had alerted the authorities and a criminal trial was currently underway. The delegation confirmed that tourist firms were being monitored and that such mechanisms were functioning well and bringing cases to the attention of the State authorities.

Extraterritorial jurisdiction

The Committee asked whether extraterritorial jurisdiction had been written into national law and whether Moldova had signed bilateral or other international agreements with other countries for the execution of this law. The Committee asked whether the State would prosecute a Moldovan citizen for an OPSC-related crime committed overseas, or a non-citizen who committed such a crime in a foreign country but against a minor who was a Moldovan citizen.

The delegation noted that it was party to the EU agreement on mutual assistance in criminal proceedings and had signed numerous bilateral agreements with other countries in the region such as those belonging to the Commonwealth of Independent States, which set out the terms and conditions of that cooperation.

The delegation explained that the criminal code permitted domestic courts to prosecute Moldovan citizens for crimes committed overseas or to prosecute an individual for a crime committed overseas against a minor who was Moldovan citizen. If the person was being tried in the country where the crime was committed, the State would send materials to that State to assist in the criminal proceedings, by rogatory letters. The judge would not coordinate the investigation; however he or she would authorise the special measures necessary under

domestic law. Crimes committed on aircraft and shipping vessels were also included in these provisions. The delegation noted that all of these crimes tended to be of a transnational nature and that as such, the criminal code provided that the State could initiate an investigation even if Moldova was only a transit country in a relevant case.

Extradition

The Committee asked whether it was possible for a Moldovan citizen to be extradited to a foreign country for the commission of a crime under the OPSC in that country. If a Moldovan citizen committed an OPSC-related crime abroad and remained abroad, the Committee asked whether this person could be tried in the country where the crime was committed or if the person would be repatriated and tried in Moldova.

The delegation noted that the State would not extradite its citizens on any grounds, except where a bilateral agreement existed. The Committee noted that the OPSC should be considered a sufficient basis upon which another State could request a Moldovan citizen to be extradited.

Protection of the Rights of Victims

Confidentiality

The Committee asked how the child's right to privacy was accounted for in cases related to crimes under the OPSC. The delegation explained that the Ministry of Internal Affairs had organised a roundtable with all relevant ministries, development partners and NGOs to discuss justice for children and determine possible solutions for dealing with cases involving children, including how to exclude their names from documentation of OPSC-related cases. With the support of UNICEF, training workshops had been conducted for relevant professionals in order to implement the outcomes of the discussions.

Victim support

The Committee asked what support was provided by the State for child victims of crimes under the OPSC that had been perpetrated in other EU countries such as Greece, Belgium, or others. The Committee was aware of cases in which such child victims had received no support for rehabilitation or reintegration and asked whether appropriate services were in place and whether the State ensured that compensation was attributed to the child.

The delegation explained that there were conditions set out under which child victims could claim compensation from the State. The court could permit a child victim to make a civil complaint in order to claim the compensation; however, Moldova was often a source country and exploitation was taking place abroad. The State had attended the UNODC regional conference where compensation for victims had been discussed. A study had subsequently been conducted, *Rights, Compensation and Recovery*, which had led to the establishment of the civil proceedings.

During criminal and civil proceedings, special rooms were available to child victims in the prosecutor's office, which could be used for interviews with children under the age of 14 years. For children over 14 years, the use of such services was at the discretion of the prosecutor, depending on the facts of the case. All internal policies and practices applied to all children under 18, as defined in law. Cases involving child victims were handled directly

by the prosecutor's office, as set out in law; the police authorities were not involved. The interview rooms were equipped with audio and video tools to avoid multiple interviews, although the judge could authorise the prosecutor to speak to the child more than once if further information or clarification was required in the interests of the case. The voice of the child could be distorted in the interest of the privacy of the child. Furthermore, a psychologist accompanied the prosecutor in the interviews with children and would address the questions to the child in an appropriate manner. The perpetrator's lawyer could ask questions to the child, but only through the judge or prosecutor. The specially equipped interview rooms were now also available in the appeals court in the larger cities and LaStrada had an additional child-appropriate interview room- The legal representative of the child could also be present in the interview.

The delegation explained that the Ministry of Labour was responsible for coordinating the services provided to child victims, including medical services, counselling, and re-integration into society and school. A law had been adopted on social services, where local authorities could build on these services, depending on the needs of the child.

The Law on Protection of Children created in 2013 addressed the protection of children in risk situations and children separated from their parents. Under that law, children could be placed in emergency and planned placements. Emergency placements were available in a temporary centre, for example children removed from a situation of violence. When appropriate, children could be placed in family care where they would receive support services from their foster parents and specialists.

Finally, the delegation described a centre that had been established to prevent violence against children, where specialists worked with child victims, as well as aggressors. The law on education provided for psychologists to be placed in schools to provide services to children who had experienced violence, regardless of where, how, or by whom.

Concluding Remarks

Mr. Guran thanked the delegation for the frank and open discussion and expressed his wish that the concluding observations would be taken into account and fully implemented by the State.

The delegation assured the Committee that it was committed to fulfilling its obligations under the OPSC and was open to an active partnership with the Committee and other partners. The delegation noted that the reform of the justice, training of staff, increased capacity of key actors and general awareness raising, were all priorities for the State. The increase in the role of social workers and other relevant professionals would also be prioritised to ensure prevention of all forms of violence against children.