

COMMITTEE ON THE RIGHTS OF THE CHILD

43rd Session (Geneva, 11 September – 29 September 2006)

Denmark (initial report on the Optional Protocol on the sale of children, child prostitution and child pornography)

Information submitted to the Committee

Denmark submitted its initial report on its implementation of the *Optional Protocol on the sale of children, child prostitution and child pornography* (OPSC). This report was due in 2004, along with the written replies to the Committee on the Rights of the Child's (the Committee) list of issues¹. The report addressed thematic issues such as jurisdiction, combating child pornography on the internet, criminal procedure, employment of persons working with children, and international aid. The report does not contain statistical data. However, some statistical data was provided in the replies of the Danish government, as requested in the Committee's list of issues.

The Child Helpline International and Save the Children Denmark submitted parallel reports to the committee.² These reports focus on issues such as, commercial exploitation of children, the need for a child helpline, dual criminality and sex tourism, and trafficking of children. Information from NGOs was examined during the 43rd pre-sessional working group.

Denmark has ratified the Convention on the Rights of the Child (the Convention), the Optional Protocol on sale of children, child prostitution and child pornography (OPSC) and the Optional Protocol on the involvement of children in armed conflict (OPAC). However, when ratifying the OPSC, Denmark territorially excluded the Faroe Islands and Greenland. Denmark has also made a declaration under Articles 2(c) and 3(c), which explains the Danish definition of the term "any representation" and states that consensual visual representation of a child aged fifteen or more shall not be covered by the binding provisions of the OPSC.

Themes and Issues

In her introduction, Country Rapporteur Ms Nevena Vuckovic-Sahovic praised Denmark's early ratification of OPSA and highlighted that Denmark could serve as an example for other countries to follow. She and other Committee members expressed their interest in the role of the OPSC in domestic law. They asked in particular whether the OPSC could be invoked in domestic courts and what measures the Danish government was taking to ensure the application of the OPSC to Danish citizens travelling abroad. The representative of the justice department explained that recently the criminal code had been amended to derogate from the principle of 'dual criminality'³ in cases of sexual abuse of children. This means that Danish nationals and residents can be punished under Danish criminal law for sexual abuse of children even if the abuse is committed in countries where it is not prohibited. Furthermore, the Danish government have established bilateral and multilateral

¹ The state report, list of issues, answers to the list of issues, General Comments, and the concluding observations of the Committee as well as the reservations, declarations and understanding of the State party are available at <http://www.ohchr.org/english/bodies/crc/crcs43.htm>

² NGO reports are available on the Child Rights Information Network at <http://www.crin.org/docs/resources/treaties/crc.25/annex-vi-crin.asp>

³ The principle of dual criminality provides that in order for a crime committed outside the territory of the State to be punishable it has to be criminalised both within the territory of the State and on the territory where the crime is committed.

agreements to ensure the effective application of the OPSC abroad. The delegation also noted that the OPSC can be invoked in Danish courts.

In its concluding observations, the Committee expressed its appreciation for the abolition of the principle of 'dual criminality' but regretted that more was not being done to enhance international cooperation in investigations of alleged cases of abuse abroad.

Another area of concern raised was the lack of a holistic approach to monitoring the OPSC. The Committee feared that the lack of central and local coordination could weaken the implementation of the OPSC, especially during the process of the upcoming local government reform. In its concluding observations the Committee specifically referred to a recent and exceptionally severe case of child prostitution where the lack of awareness amongst local officials, lack of resources and lack of coordination caused the abuse to continue longer than necessary.

Domestic legislation

Committee members commented on a number of specific provisions from the body of domestic legislation relating to the OPSC. Ms Vuckovic expressed concern that while domestic legislation effectively covered the issue of trafficking, the issue of sale of children might not be covered by these provisions, as these two problems are not necessarily interrelated. She encouraged the delegation to read the two definitions very carefully. Ms Lucy Smith enquired as to why the total prohibition of child pornography was only applicable until the age of 15 and not 18, as expressed in Denmark's declaration to Article 3(c). Another Committee member asked the delegation to elaborate further on the checks for people working with children. The representative of the Justice Department replied that in its view the sale of children was covered by the provision on trafficking and the inclusion was rooted in Danish drafting tradition. However, the Justice Department stated that it would consider changing the law in this area to satisfy the Committee. On the prohibition of child pornography, the delegation stated that it would not consider removing its declaration as the consensual exchange of pornographic pictures was viewed by Danish youth as a natural element of being in a relationship. To clarify, the delegation noted that bringing these pictures out of the private sphere would still be illegal. In answer to the questions about background checks for people working with children, the representative of the Justice Department explained that the government had recently created a specific criminal record called the 'child certificate'. This record only contained information relevant for determining whether a person is fit to work with children. The Committee appreciated the creation of the new child certificate but recommended that it should be given retroactive effect to apply to persons already employed with children. This would ensure the best possible protection of the child.

Protection of children in the legal procedure

The Committee asked the delegation to elaborate on the procedures in place regarding video interviews and indicated that it was especially interested in what kind of training was given to people participating in the interview of child victims. On a related question, Mr Jean Zermatten said that in his opinion court hearings should be held in closed session to protect the children. Mr Zermatten also enquired about compensation given to child victims. The representative of the justice department outlined at great length the measures in place regarding the video interviewing of children. He noted that training was a great area of focus. Both a social worker with specific expertise in children and a legal advisor are present throughout the interview. Provided that the parent or guardian is not involved in the case, one of these can be present in the room next door.

The delegation elaborated further on initiatives taken by the police to make the experience easier for the child. Regarding compensation and the procedure of court hearings, the delegation stated that

while hearings must in principle be held in public in accordance with Denmark's European human rights obligations, in practice these cases are often heard in closed hearings. The Government pays compensation to victims immediately upon the conclusion of criminal proceedings.

The Committee welcomed the practice of video interviewing and reminded the government to take guidance from the UN Guidelines on Justice involving Child Victims and Witnesses of Crime.⁴

Implementation of the OPSC

Regarding the implementation of the OPSC, the Committee focused mainly on problems related to asylum seeking children, the lack of nation wide support mechanism for victimised children, and a survey showing that around 2500 children between the age of 15 and 17 had been sexually exploited for money. The Committee was particularly concerned by reports of disappearances of asylum seeking children. The delegation replied that the disappearance of asylum seeking children was of great concern and the Government is currently working with the Danish Red Cross and the police to address the problem. The Government is currently considering establishing more teams to deal with victimised children around the country, building on the model of the one already established in Copenhagen. With regards to the reported 2500 sexually abused children, the delegation had no explanation for the high number. It noted that the numbers were approximately the same in Norway and Sweden, but the Government was still investigating this very serious issue.

The Committee was specifically concerned about what would happen to child victims residing illegally in Denmark. The delegation responded that these children are allowed to seek asylum like any other person. Furthermore, measures are in place to ensure fast administration of these cases and a more favourable consideration of the application. Special measures are also in place to give residence permits to those who were not given asylum and those too young to be submitted to an asylum seeking examination. The Committee remained concerned about the preference given to repatriation of these children with undue regard to risks faced by the child upon return, and recommended that these children should be given residence permits and protection.

The Committee also briefly addressed issues such as training of government officials, internet filters, monitoring of the OPSC, the role of the media, differentiated treatment of Danish children and children from other ethnic groups, and child help lines. Regarding child help lines, the Danish delegation welcomed the recommendation of the Committee to set up a free, 24 hour help line with a three or four digit phone number and noted that the recommendations would be relayed to the capital. On the question of differentiated treatment of Danish and other ethnic children, the delegation limited its answer to a statement explaining that it takes very seriously its obligation under the *International Convention on the Elimination of All Forms of Racial Discrimination*.

Conclusions and next steps

In a very constructive dialogue with the Danish delegation, Committee members posed a large number of questions on a wide range of issues. The delegation gave detailed replies, and the Committee and the delegation established common understanding on most issues. As Denmark did not seem to have any major problems, most of the discussion was focused on detailed scrutiny of particular legal provisions and practices.

In its concluding observations, the Committee followed up on unresolved issues from the discussion. Most of the recommendations were given in a positive spirit and focused on improving already well functioning practices in Denmark. However, in some cases the Committee felt that a

⁴ ECOSOC Resolution 2005/20

more serious approach was required, particularly on the issue of international cooperation in relation to sex tourism. The Committee also highlighted a serious case of child prostitution, which had not been mentioned in the discussion. This was unfortunate as this case could have served as a strong basis for discussion of the importance of awareness raising amongst public officials and coordination of monitoring at both the local and national level.

Towards the end of the meeting, Ms Vuckovic congratulated Denmark on its excellent human rights record and its work regarding children's rights. She praised Denmark's substantial contributions in international development assistance, and suggested that Denmark could also provide direct professional assistance in addition to funding.