



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

Forty-first session

SUMMARY RECORD OF THE 1095th MEETING (Chamber A)

Held at the Palais Wilson, Geneva,
on Monday, 16 January 2006, at 10 a.m.

Chairperson: Mr. DOEK

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (continued)

Initial report of Andorra under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/AND/1; CRC/C/OPAC/AND/Q/1 and Add.1)

Initial report of Andorra under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSA/AND/1; CRC/C/OPSA/AND/Q/1 and Add.1)

1. At the invitation of the Chairperson, Mr. Bonet, Ms. Carpa, Ms. Font, Ms. Gil, Mr. Julià, Ms. Orobitg and Ms. Tomàs (Andorra) took places at the Committee table.
2. Ms. GIL (Andorra) said that the Optional Protocol on the involvement of children in armed conflict had come into force in January 2002 and the Optional Protocol on the sale of children, child prostitution and child pornography in February 2002. Since submission of the two initial reports (CRC/C/OPAC/AND/1 and CRC/C/OPSA/AND/1), a new Government had been installed in April 2005 and changes made to several ministries. The former Ministry of Health and Welfare had been replaced by the Ministry of Health, Social Welfare and Family, thus raising family issues to the ministerial level. A new Department for Social Welfare and Family had taken the place of the former Secretariat of State for the Family and the Secretariat for Welfare. The Department was responsible for promoting and protecting the family, and contained divisions focusing on areas such as adoption, host families, children at risk and family mediation.
3. Since submission of the initial reports, the European Social Charter had entered into force in Andorra, and the Government had withdrawn Andorra's declarations on articles 7 and 8 of the Convention. A new Criminal Code had been introduced in September 2005. The fundamental differences in the new Code were the raising of the age of criminal responsibility from 16 to 18, the inclusion of several new offences to bring the Code into line with the provisions of the Optional Protocols, and more specific classification of those offences.
4. The CHAIRPERSON invited the Committee to put questions regarding the State party's implementation of the Optional Protocol on the involvement of children in armed conflict.
5. Mr. KOTRANE noted with satisfaction that 0.5 per cent of the national budget had been allocated to international cooperation in 2004. The Committee urged the Government to ensure it achieved its stated aim of increasing that to 0.7 per cent. He also commended the reporting State on the budgetary assistance it gave to non-governmental organizations (NGOs) that worked with children who had been involved in armed conflict. Andorra's contribution to the work of the Office of the Special Representative of the Secretary-General for children and armed conflict was also appreciated.
6. He asked whether the Government intended to introduce legal and administrative measures to prevent the enlisting and use of children in armed conflict. Such measures should be introduced to enable the State to take action against anyone with links to Andorra, for example those who resided in the Principality and engaged in those practices, and to sanction such exploitation of any Andorran child.

7. Ms. Yanghee LEE asked whether persons of Andorran nationality could be recruited into the French or Spanish armed forces. If so, the reporting State should indicate whether there were any guidelines on such recruitment, in accordance with the provisions of the Optional Protocol.

8. Mr. KRAPPMANN asked whether any victims in Andorran territory of armed conflict, of Andorran or any other nationality, had ever required rehabilitation or repatriation. In such a case, would the Government be prepared to offer those services?

9. Ms. ORTIZ asked what lessons the reporting State had drawn from its work to assist children who had been involved in armed conflict. It would be useful to learn whether any Andorran NGOs worked in that field.

10. The CHAIRPERSON asked whether, in the case of an Andorran citizen who was found guilty of involving children in armed conflict abroad, the Andorran judiciary had the power to issue an international warrant to extradite the perpetrator to Andorra. Could such a person be sentenced to prison in absentia?

11. He wished to know whether Andorra assumed jurisdiction in the case of an Andorran child under the age of 15 who had been involved in armed conflict abroad. Was the situation the same if the child was under 18? Would Andorran jurisdiction extend to a foreign child under the age of 15 who had been recruited for armed conflict abroad, if such a case was brought before an Andorran court?

The meeting was suspended at 10.35 a.m. and resumed at 10.50 a.m.

12. Ms. GIL (Andorra) said that the Government acknowledged the lack of legal and administrative measures to prevent the enlisting and use of children in armed conflict. It would consider appropriate legislative amendments to remedy that situation.

13. Mr. JULIÀ (Andorra) said that Andorran citizens could not be recruited into the French or Spanish armed forces. To date, there had been no reported cases of victims in Andorran territory of armed conflict requiring rehabilitation or repatriation. In the case of a child victim, the Government would offer the same protection offered to any homeless child.

14. Ms. CARPA (Andorra) said that Andorra had participated in the development of rehabilitation campaigns for children involved in armed conflict through public authorities and by funding domestic and foreign NGOs.

15. Mr. JULIÀ (Andorra) said that there was no specific provision in the Criminal Code prohibiting the involvement of children in armed conflict. The judiciary could assume jurisdiction in some cases under the provisions of the international treaties it had ratified. Under domestic legislation, Andorra would be competent to try a case where the victim or perpetrator was of Andorran nationality. Andorran jurisdiction would only extend to foreign victims or perpetrators if the offence was considered to threaten domestic security or the authority of the State.

16. The CHAIRPERSON requested clarification of whether the Andorran authorities were competent to try cases of recruitment of foreign children under the age of 15 in or outside Andorran territory, since that was an international crime under the Rome Statute of the International Criminal Court.

17. Mr. JULIÀ (Andorra) said that while he believed that Andorra would be competent in such a case, the lack of any specific provision in the Criminal Code prohibiting the involvement of children in armed conflict could pose difficulties.

18. Mr. KOTRANE suggested that the State party should specifically incorporate offences under the Optional Protocol in its national criminal law in order to enable its authorities to prosecute any persons with links to Andorra who had committed such crimes.

19. Mr. JULIÀ (Andorra) replied that article 8 of the Criminal Code gave Andorran courts jurisdiction to prosecute the type of cases to which Mr. Kotrane had referred if the offender was resident in Andorra.

20. The CHAIRPERSON observed that giving national courts universal jurisdiction to try offences under the Optional Protocol would undoubtedly enhance children's protection.

21. He invited the Committee to put questions regarding the State party's implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

22. Mr. KOTRANE said that the Committee welcomed the State party's adoption of a new Criminal Code which made the commission of an offence against a minor a circumstance aggravating criminal liability and which defined organ trafficking.

23. He commended the introduction by the Ministry of Health and Welfare of various services and programmes targeting children at risk and their families, and which would permit an adequate response in the event of any child falling victim to the crimes covered by the Optional Protocol. The Committee also appreciated the adoption of a protocol on action to protect children at risk.

24. The Committee would, however, like to know if the Optional Protocol and the Convention were directly applicable by Andorran courts and if any cases had arisen where national courts had relied on those instruments.

25. Similarly, the Committee was concerned that not all acts and activities constituting offences under the Optional Protocol were fully incorporated in the amended Criminal Code. Did the Government intend to carry out a detailed study to ensure that all such acts were covered in their entirety by its criminal law?

26. Yet another source of concern was the fact that the State party had not made express provision for the criminal, civil or administrative liability of corporate bodies for the offences mentioned in article 3, paragraph 1, of the Optional Protocol, although it should have done so in order to comply with paragraph 4 of the same article.

27. Had the State party considered extending the scope of article 8 of the new Criminal Code to include persons having close links with, or their centre of interest in, the Principality? Moreover he drew attention to the fact that the purpose of the Optional Protocol was to persuade States not to restrict their courts' jurisdiction by the dual criminality requirement, or the requirement that an action must have been brought by the public prosecutor. Did the State party intend to broaden its courts' jurisdiction to allow them to hear and try acts committed in other countries?

28. Ms. AL-THANI enquired about the existence of programmes to acquaint the police, the officers of youth courts and other professionals working with children with the Optional Protocol. Were children themselves aware of their rights under the Optional Protocol? Did they know how to protect themselves against the offences covered by it and how to recognize risky situations?

29. Ms. Yanghee LEE noted that the State party's report really said little about measures to prevent the sale of children, child pornography and the sexual exploitation of children. Did it have any victim rehabilitation programmes? Did the Technical Commission for Children and Young People take action with regard to matters under the Optional Protocol? Did the Criminal Code deal with the rape of boys?

30. Ms. ORTIZ wished to know if, under the new Criminal Code, child pornography was an offence only when pornographic material portraying children was disseminated to minors. How was it possible to know if a person was in possession of such material for the purpose of circulating or selling it? Was the mere possession of that material not punished? How could children be expected to recognize what constituted a pornographic offence? How could they protect themselves from such crimes? How could they lodge a complaint in connection with an offence of that kind? Had any campaigns been mounted to raise their awareness of the issue?

31. Mr. SIDDIQUI asked if the State party considered it necessary to have a plan of action to prevent the sale of children, child prostitution and child pornography. How much money was allocated in the national budget to the prevention of those offences? Was there any mechanism for the periodic evaluation of compliance with the Optional Protocol? Why had no provision been made for the criminal liability of corporate bodies in respect of offences under the Optional Protocol?

32. Mr. KRAPPMANN wished to know if there might not be undisclosed cases of Andorran children becoming victims of the offences referred to in the Optional Protocol.

33. The CHAIRPERSON asked whether child victims of prostitution or other forms of sexual exploitation were allowed to give videotaped testimony in court. What was the status of the Protocol on action to protect children at risk? Were the courts familiar with the Protocol? Was the latter really implemented? He believed that its contents ought to be incorporated in the Criminal Code. He also requested clarification of the apparent contradiction between the terms of articles 204 and 206 of the Criminal Code concerning the age of consent.

34. Mr. KOTRANE expressed the opinion that it was illogical to exclude spouses and direct ascendants, descendants and collateral relatives from the definition of an accomplice (encobridor) when the victim was a child, because offences under the Optional Protocol were often committed with the passive complicity of family members who could have done more to prevent the crimes in question.

35. Mr. JULIÀ (Andorra) explained that international treaties were directly applicable in Andorran courts and were incorporated in national law. In the sphere of criminal law, they were put into effect by means of a specific article in the Criminal Code. In other words, the articles of the Optional Protocol were reflected in the Criminal Code. Articles 154 and 136 of the Criminal Code were effective means of proscribing the sale of children.

36. Turning to the criminal liability of corporate bodies, he said that, in addition to the penalties mentioned in the initial report, the activities of a company, association or foundation could be suspended for up to six years for involvement in the sale of children, child prostitution or child pornography, a receiver could be appointed, the sentence could be published and legal or physical persons convicted of those offences could be barred from engaging in work for public authorities.

37. The new Criminal Code incorporated the principle of dual criminality, which required that the crime must be considered a criminal act in the State in which it had been committed, and that the crime must have been committed by or against an Andorran national. However, with respect to particularly serious crimes such as sexual offences against minors, trafficking in children and slavery, Andorran courts had universal jurisdiction.

38. The CHAIRPERSON said that quite a number of the provisions of the Criminal Code on sexual offences, such as that on recruitment to prostitution, limited the maximum penalty to less than six years' imprisonment, which implied that penalties of more than six years applied only to more serious forms of sexual abuse or exploitation, such as slavery, which were covered by the universal jurisdiction provision. Was that the case? It might be necessary to reconsider that situation in order to strengthen protection so that other, less serious cases could be prosecuted if offences were committed outside Andorra.

39. Mr. JULIÀ (Andorra) said that not all crimes defined in the Optional Protocol came under Andorran universal jurisdiction. However, the concept of the concurrence of offences might apply. For example, certain crimes related to prostitution could also be treated as sexual abuse, making it possible to extend the penalty to six years.

40. Ms. TOMÀS (Andorra) said that promotional and awareness-raising campaigns were not restricted to the Optional Protocols, but also dealt with the Convention. A Ministry of Health web page had been promoted which contained information on children's rights, the Optional Protocols, the Committee's recommendations and links to related sites. Each year on Universal Children's Day, materials on children's rights were distributed to all schoolchildren, and the most recent publication was aimed at children and their teachers and parents. A number of courses had also been organized, including a postgraduate course in collaboration with the United Nations Children's Fund (UNICEF) on training for professionals on children's rights. A police force juvenile unit had organized various conferences on the violation of children's rights and specific training on issues such as recognizing cases of sexual abuse and the credibility of testimonies. The Ministry of Health and Welfare had recently established a special programme on the promotion of children's rights on a continuous basis, which would be linked to activities by the Ministry of Education, Culture, Youth and Sport. An agreement had also been reached with the social services of neighbouring countries so that Andorra's social services professionals could benefit from their experience.

41. As to programmes for prevention and the rehabilitation of victims, the Protocol on action to protect children at risk specified working methods. Social services administered a specific programme for children at risk and provided assistance to victims. The police juvenile unit dealt with domestic violence cases; its staff included psychologists and forensic doctors who could attend to minors. The functions of the Technical Commission for Children and Young People remained the same, and there were plans to set up working groups within the Commission to follow up on the application of the Convention and the Protocols.

42. Mr. JULIÀ (Andorra) said that no gender distinction was made between victims of sexual crimes in the new Criminal Code.
43. The Criminal Code did not penalize the possession of child pornographic material if it was intended for personal use, but only if it was intended for sale or distribution. There had been no such cases to date in Andorra, but the criterion for the court's decision in any case would be the element of intent.
44. Ms. TOMÀS (Andorra) said that there were plans, once the Optional Protocol on the sale of children, child prostitution and child pornography was more established, to disseminate it in a more didactic fashion to raise awareness of risk situations and inform children of where they could seek help. As a result of awareness-raising, professionals could help children assess whether they were at risk.
45. Ms. GIL (Andorra) said that the Government would study whether it was necessary to draft a plan on the prevention of the sale of children and child pornography. Although there had been no reported cases, it would be helpful to have a plan in place should such a case arise.
46. Ms. TOMÀS (Andorra) said that approximately 800,000 euros, or 0.26 per cent of the total State budget, was allocated for programmes aimed at children. There were no reported cases of violations under the Optional Protocol, but since risk indicators had been agreed among the relevant professionals and were being disseminated among the population, it was possible that cases would come to light.
47. Mr. JULIÀ (Andorra) said that it was true that there were no legislative provisions which established expressly the exact procedures with relation to the statements made by children who were victims of or witnesses to sexual crimes. However, that did not imply that there was any impediment to the court protecting the victim or witness. Efforts were being made in that regard, and the Protocol on action to protect children at risk included a section on the protection of children who were victims and witnesses to such crimes, although the provisions were not legally binding. It was undertaken to use clear, simple language which could easily be understood by children and to attempt to avoid unnecessary questioning of the minor. Minors were to be accompanied by a psychologist, an educator or their parents, and screens could be used to separate the accused from the victims or witnesses. The next step was to draft legislation on the subject.
48. The delegation would provide information on the age of sexual consent, as the issue required some clarification.
49. As to the concern with regard to cases where family members were involved in sexual offences against minors, the exclusion of close family members from the definition of an accomplice would not apply.
50. Ms. ORTIZ asked whether the use of the term "minor" was the result of a debate in the country, as that term was no longer used in the Convention or the Protocols. She would be interested to hear whether there were any children's organizations, in schools or otherwise, which were consulted on legislative or policy changes.

51. Ms. TOMÀS (Andorra) said that the term “minor” was the result of a translation problem, as in Catalan the term used was the more generic “infant”, which had no direct equivalent in Spanish.

52. Ms. OROBITY (Andorra) said that the General Youth Council, which involved the participation of student representatives from all the schools in the country, drafted bills which were brought before Parliament, debated and published in the Official Gazette.

53. Mr. KOTRANE said that he was concerned that only the most serious offences were punished, and not all those covered by the Optional Protocol. For example, forced labour was considered sale of children under the Optional Protocol, but he doubted that was the case under the laws on slavery or kidnapping. The same applied to child pornography, which was punishable only if it was intended for sale or distribution. However, under the Optional Protocol the possession of child pornographic material for one’s own use was punishable. He welcomed the responses on dissemination and the training of professionals; there seemed to be adequate preventive measures if there really had been no reported cases.

54. Mr. JULIÀ (Andorra) said that the Criminal Code covered labour exploitation, referring to dangerous or degrading conditions, abuse, and the trafficking of persons for labour exploitation. When the latter occurred there was an aggravating circumstance if the victim was under the age of 18 or had a disability.

The meeting rose at 12.40 p.m.