

UNIVERSAL PERIODIC REVIEW REPUBLIC OF SERBIA

15th UPR session (2013)

Submission prepared by:



ECPAT International (End Child Prostitution, Child Pornography and Trafficking of Children for sexual purposes) is the leading global network working to end the commercial sexual exploitation of children (child prostitution, child pornography and child trafficking and child sex tourism). It represents 82 member organizations from 75 countries. ECPAT International holds Consultative status with ECOSOC.

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Executive summary

This contribution aims to provide a review of the status of implementation of international obligations and commitments regarding the commercial sexual exploitation of children (CSEC) in Serbia.

Internationally and regionally, the country has ratified the core legal international and regional legal standards addressing CSEC. Although the Serbian legislation covers several forms of violence against children, the national legal framework needs further strengthening in order to better protect children against sexual exploitation and trafficking. Several gaps in the legislation can be identified, leaving children (partly) unprotected. Definitions of child prostitution and child pornography need to be better clarified and brought in line with international legal standards. A provision should be included in national legislation explicitly prohibiting child prostitution. Moreover, the offence of “knowingly obtaining access, through information and communication technologies, to child pornography” (Article 20.1 of the Council of Europe’s *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*) should be included in the national legislation. The Serbian government has not acknowledged the issue of child sex tourism, nor is there any information available regarding the prevalence of child sex tourism in Serbia. It is strongly recommended to prioritize child sex tourism in research initiatives, in order to get a clearer picture of the situation regarding child sex tourism in Serbia.

Furthermore, the government of Serbia should develop a National Plan of Action addressing the sexual exploitation of children. Comprehensive data collection and research initiatives into CSEC issues should be undertaken as well as awareness raising campaigns addressing a broad spectrum of CSEC issues. Adequate assistance and support services should be provided to child victims of CSEC and law enforcement officials should be properly trained on CSEC and child friendly procedures.

The following findings are drawn from relevant literature from international experts including the Committee on the Rights of the Child and key players in the field of children’s rights.

I. Current normative and institutional framework for the promotion and protection of human rights

1.1 Legal Framework

1.1.1 International Legal Standards

Serbia ratified the *Convention on the Rights of the Child* (CRC 1989) in 2001, the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (OPSC, 2000) in 2002, the *UN Convention against Transnational organized Crime* in 2001, the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (2000) in 2001, the *ILO Convention on the Worst Forms of Child Labour* (No. 182, 1999) in 2003 and the *ILO Minimum Age Convention* (1973) in 2000.

Serbia has signed but not yet ratified the *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure* (OPCRC, 2011).

Recommendations:

- **Ratify the *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*.**

1.1.2 Regional Legal Standards

Serbia has ratified the Council of Europe's *Convention on Cybercrime* (CETS 185, 2004) in 2009 and the Council of Europe's *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (CETS 201, 2007) in 2010.

1.1.3 Domestic Legal Framework

There is no specific child protection law in Serbia.¹ Most provisions protecting children against sexual exploitation are included in the *Criminal Code*. Although Serbian legislation covers several forms of violence against children, the legal framework needs further strengthening in order to better protect children. Several amendments have been made to the existing laws in 2009 to bring them in conformity with principles and provisions of the Convention on the Rights of the Child (CRC) and its optional protocols, the UN trafficking protocol and the CoE's *Convention against Cybercrime* and its *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*. However, gaps in the national legislation addressing the sexual exploitation of children can still be identified, leaving children (partly) unprotected.

Laws regarding Child Pornography

The national legislation addressing child pornography is not fully consistent with relevant international and regional standards. An important gap that can be identified is the lack of a clear definition of "child pornography" in Serbian legislation.

Article 185 of the *Criminal Code*, referring to child pornography, was last amended in 2009 in order to harmonize the provision with international standards. This article stipulates that whoever uses a minor to produce photographs, audio-visual materials or other items with pornographic content or for a pornographic show is sentenced to up to eight years' imprisonment. The sale, showing, public exhibition, procuring and possession of materials with pornographic content featuring a minor is prohibited and criminalized. The fact that mere possession of pornographic material featuring a minor is prohibited in Serbian legislation is in line with international standards. However, article 185 does not explicitly cover virtual child pornography. Therefore it should be prohibited, in line with Art. 20.3 of the Council of Europe's *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*. Although the virtual representations may not harm real children in a direct way, such images fuel the abuse of real children by reinforcing abusers' inappropriate feeling towards children.

¹ Committee on the Rights of the Child, Consideration of Reports submitted by State Parties under article 44 of the Convention. Concluding observation: Republic of Serbia (2008)

Moreover, there is a risk that these pornographic materials are used in the grooming process of real children.²

Although the mere possession of child pornography is prohibited, knowingly accessing child pornographic materials online without downloading is not explicitly prohibited. Considering the fast moving technical developments and the growth of internet, the Serbian government should consider expanding the reach of article 185 by including “knowingly obtaining access, through information and communication technology, to child pornography” as stipulated in the Council of Europe *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (article 2 (4)).

The penal law does not cover the offense of “knowingly obtaining access, through information and communication technology, to child pornography” (Art. 20.1 of the Council of Europe *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*). This is a major gap as there is a growing demand for real-time sexual exploitation of children (which does not require offenders to download any child pornography material) through the use of relevant technologies.

Recommendations:

- **Provide a clear definition of child pornography in the national legislation, in line with the definition provided in the Council of Europe *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*;**
- **Include ‘virtual child pornography’ in the national legislation and explicitly mention that there is no requirement to prove that a ‘real’ child is used;**
- **Include the offence of soliciting a child online for sexual purposes (“grooming”) and of “knowingly obtaining access, through information and communication technology, to child pornography” in the national legislation (in line with the Council of Europe *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*).**

1.1.4 Laws regarding Child Trafficking for sexual purposes

The trafficking of children for sexual purposes within, into and out of Serbia has been one of the major manifestations of CSEC in the country. In 2011, the Serbian government reported prosecuting 27 criminal cases for sex trafficking.³

The Serbian national legislation addressing child trafficking is in line with international and regional standards. The *Criminal Code* does not contain a specific provision prohibiting child trafficking, but contains a general provision against human trafficking specifically including children. According to article 388 of the *Criminal Code* the recruiting, transporting, transferring, sale, buying, acting as an intermediary in the sale, hiding or holding of a person for the purpose of exploitation, including prostitution and pornography, constitutes the offense of trafficking in children, regardless of the means used. The age of the victim of the trafficking is considered an

² ECPAT International (2008). Strengthening Laws addressing Child Sexual Exploitation.

³ U.S. Department of State (2012). Trafficking in Persons Report 2012: Serbia.

aggravating factor; if the victim is a minor, a sentence of five to twelve years' imprisonment is imposed on the perpetrator.

The Committee on the Rights of the Child has repeatedly expressed its concern that victims of trafficking for sexual purposes are often treated as offenders (and were prosecuted for prostitution offenses) instead of as victims in Serbia.^{4,5} In March 2012, the Serbian Ministry of Justice adopted a protocol on the treatment of trafficking victims, aiming to improve and institutionalize the government's treatment of victims and witnesses during judicial proceedings. In order to successfully improve the situation of child trafficking victims in Serbia, the protocol should be implemented and the impact should be monitored and evaluated.

Recommendations:

- **Implement the protocol on the treatment of trafficking victims (Ministry of Justice, 2012) and monitor and evaluate its impact.**

1.1.5 Laws regarding Child Prostitution

Although the *Criminal Code* prohibits several types of sexual offences, it does not specifically define and prohibit the prostitution of children. Article 180 of the *Criminal Code* prohibits sexual intercourse or an equal act with a child and imposes a sentence of three to twelve years' imprisonment. However, child prostitution or the use of a child in sexual activities for remuneration or any other form of consideration is not explicitly prohibited. The lack of a definition and prohibition of child prostitution leaves children unprotected and should urgently be included in the national legislation.

The *Criminal Code* contains provisions prohibiting the facilitation of prostitution. Article 183 stipulates that the pimping or procuring of a minor for sexual intercourse or another sexual act is prohibited and is punished with imprisonment of up to eight years. Article 184 exemplifies that causing or inducing another person to prostitution, or handing a person over to another for the purpose of prostitution is prohibited. If the victim of this offence is a minor, it is considered an aggravating factor and the offender is punished to up to ten years' imprisonment.

Recommendations:

- **Provide a clear definition of child prostitution in the national legislation, in line with the international obligations under the OPSC;**
- **Explicitly prohibit and criminalize conducts related to child prostitution.**

⁴ Committee on the Rights of the Child, Consideration of Reports submitted by State Parties under article 44 of the Convention. Concluding observation: Republic of Serbia (2008)

⁵ Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child on the OPSC: Serbia (2010)

1.1.6 Laws regarding Child Sex Tourism

The Serbian government has not identified child sex tourism as a problem.⁶ There is no information available regarding the prevalence of child sex tourism in Serbia. It is strongly recommended for the government to prioritize child sex tourism in research initiatives, in order to get a clearer picture of the situation regarding child sex tourism.

Extraterritorial legislation can be used as a tool to combat child sex tourism, both in the sending and in the receiving country. In line with Article 4 of the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, the Serbian criminal legislation establishes national jurisdiction over crimes related to the commercial sexual exploitation of children. Moreover, Serbian citizens who sexually exploit children in a foreign country and who escape prosecution in the country where the alleged acts were committed can be prosecuted under Serbian law. Provisions regarding extraterritorial jurisdiction in Serbia are contained in article 8 of the *Criminal Code*. This article stipulates that Serbian citizens can only be prosecuted if the offence is considered a crime in the country in which the act took place (the requirement of double criminality). The requirement of double criminality and the fact that prosecution in Serbia of sexual exploitative offences committed abroad by Serbian nationals does not automatically occur, challenges the implementation and effectiveness of the extraterritorial legislation.

Recommendations:

- **Prioritize research into the prevalence of child sex tourism in Serbia;**
- **Remove the requirement of double criminality for extraterritorial jurisdiction from national legislation.**

2 Promotion and protection of Human Rights on the ground: implementation of international human rights standards

2.1 Key areas of concern with regard to the implementation of the children's right to protection against commercial sexual exploitation on the ground

2.1.1 Lack of a National Plan of Action (NPA) to combat the sexual exploitation of children

Considering the size of the commercial sexual exploitation of children in the country, it is worrying that the problem has not explicitly been addressed on a policy level. The National Plan for Action for prevention and protection of children from violence (2010-2015) does not include all forms of CSEC.⁷ The Serbian government is urged to develop a NPA specifically addressing the sexual exploitation of children in Serbia.

⁶ Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child on the OPSC: Serbia (2010)

⁷ Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child on the OPSC: Serbia (2010)

Recommendations:

- **Develop and implement a National Plan of Action specifically addressing the sexual exploitation of children.**

2.1.2 Lack of prevention efforts and awareness raising campaigns addressing a broad range of CSEC issues

Over the last decade, the government of Serbia has implemented several awareness raising campaigns addressing human trafficking, including child trafficking.⁸ Significantly less awareness raising initiatives have been undertaken addressing other forms of CSEC, such as child pornography, child prostitution, child sex tourism, the risks that children are exposed to when using the internet and awareness raising campaigns specifically addressing children who are particularly vulnerable to becoming the victims of sexual exploitation (including Roma children, refugees and unaccompanied minors, street children and trafficked children).

Recommendations:

- **Undertake awareness raising campaigns, in cooperation with other relevant stakeholders, addressing a broad range of CSEC issues.**

2.1.3 Lack of data collection, limited research and monitoring on CSEC cases

There is no comprehensive data available on child sexual exploitation in Serbia and no central body to monitor the investigation and prosecution of child sexual exploitation.⁹ In addition, research conducted in the area of CSEC has been very limited, making it very difficult to have a comparative understanding of the magnitude of the problem. A comprehensive study and data collection of the occurrence of CSEC is needed in order to identify and implement effective strategies and policies addressing these issues.

Recommendations:

- **Prioritize data collection, research and monitoring initiatives regarding CSEC**

2.1.4 Lack of adequate assistance and support services for child victims of CSEC

There is a lack of reintegration and rehabilitation programmes and support services exclusively for child victims of sexual exploitation. There are support services in place for trafficking victims in general, but not for child victims specifically. NGOs provide specialized and rehabilitative services to trafficking victims, but receive only limited funding from the government.¹⁰ In order to

⁸ U.S. Department of State (2012). Trafficking in Persons Report 2012: Serbia.

⁹ Committee on the Rights of the Child, Consideration of Reports submitted by State Parties under article 44 of the Convention. Concluding observation: Republic of Serbia (2008)

¹⁰ U.S. Department of State (2012). Trafficking in Persons Report 2012: Serbia.

avoid stigmatization, trauma and further victimization of child victims of CSEC, adequate assistance and support services should be provided. The support services should address child victims of all forms of sexual exploitation and not only focus on trafficking victims.

Recommendations:

- **Provide adequate assistance and support services for child victims of all forms of CSEC.**

2.1.5 Lack of training of law enforcement officials and other professionals on CSEC issues

The training of law enforcement officials on CSEC issues is minimal. The capacity building efforts that have been undertaken by the government (mostly in cooperation with NGOs) often focus on human trafficking in general, not specifically on child trafficking.¹¹ In order to ensure an effective implementation of the legal framework addressing CSEC issues, and a victim/child friendly approach of CSEC issues, it is strongly recommended to prioritize the training and capacity building of law enforcement officials and other professionals working with children and CSEC issues.

Recommendations:

- **Provide training and capacity building for law enforcement officials and other professionals on CSEC issues.**

¹¹ Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child on the OPSC: Serbia (2010)