



ECPAT International
Special consultative status

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ECPAT International is a global network of civil society organisations working for the eradication of all forms of sexual exploitation of children. For the past 26 years, ECPAT has acted as the international watchdog, monitoring States' response to sexual exploitation of children, and advocating for robust international measures to protect children from sexual exploitation. ECPAT International currently has 95 network members operating in 86 countries.

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for the Universal Periodic Review of the human rights situation in Serbia

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Justification for Submission

1. In September 2015, the Government of the Republic of Serbia (GoS) adopted the 2030 agenda for Sustainable Development. This framework of action commits the GoS to eliminate all forms of violence against children, including sexual abuse and exploitation.¹ The GoS also joined the Global Alliance, a joint initiative by the European Union and the United States, and thus pledging to combat OCSE by rescuing victims, prosecuting offenders, and reducing the overall amount of ‘child pornography’² available online.³
2. The present submission is an update on one particular manifestation of child sexual exploitation⁴ (CSE) in Serbia, namely online child sexual exploitation (OCSE). This report is a review of the national legal framework to address OCSE in Serbia and provides recommendations to end OCSE in Serbia to ensure they keep the promises made with the adoption of the Sustainable Development Goals and the Global Alliance.

Methodology and Scope

3. The present submission is based on recent research conducted by ECPAT International on OCSE in Serbia.⁵ Due to practical constraints, including the fact that ECPAT International does not have a member in Serbia, the scope of this submission is limited to OCSE. The report does not include other child sexual exploitation manifestations such as exploitation of children in prostitution,⁶ child pornography⁷, child trafficking for sexual purposes, sexual exploitation of children in the context of travel and tourism⁸ (SECTT) and child marriage.

Online child sexual exploitation in Serbia

4. Children comprise approximately 1/5 of Serbia’s total population of almost 9 million.⁹ The population of Serbia is well connected through mobile phones – with 122 mobile phones for every 100 people - and 54% of the population uses the Internet.¹⁰
5. The vulnerability of children varies, with some discernible groups being most at risk, particularly among asylum-seeking and refugee children.
6. As in all countries over the world, OCSE is an issue. From 2010 to 2013 a total of 69 criminal charges have been filed against 69 persons on the grounds of ‘child pornography.’ In the same period over 15 terabytes of material have been seized by law enforcement containing ‘child pornography’ materials. Most of the offences relate to obtaining the materials via peer-to-peer networks and possession of the materials in their computer systems.¹¹

Legal Framework and National Laws

7. The GoS has committed itself to the key international instruments to combat OCSE:
 - a. 2003: International Labour Organization Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (ILO Convention No.182);
 - b. 2002: United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000 (OPSC);
 - c. 2009: Council of Europe Convention on Cybercrime, CETS No. 185, 2001 (Budapest Convention); and
 - d. 2010: Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, CETS No. 201, 2007 (Lanzarote Convention);As mentioned under para. 1 the GoS has also committed to combat OCSE through joining the Global Alliance.¹²

8. In general, Serbian national law reflects the international standards on child protection from OCSE well. Substantive national legislation protecting children from OCSE are:
 - a. Law on Special Measures for the Prevention of Crime against Sexual Freedom Involving Minors, Official Gazette RS, No.32/2013;
 - b. Criminal Code, Official Gazette RS, Nos 85/2005, 88/2005 and 107/2005 with added amendments from 31 August and 29 December 2009 and 24 December 2012; and
 - c. Law on Electronic Commerce, Official Gazette RS, Nos 41/2009 and 95/2013.

However, the present report identifies some gaps in national legislation.

9. Serbian law lacks a definition of ‘child pornography’. Article 185 of the Criminal Code criminalises the use of a child to create *pornographic content* or *pornographic show[s]* and penalises the possession, sale, exhibition and dissemination of such content. Penalties for using children to produce shall be punished with imprisonment up to five years, and up to eight years in cases with victims under 14 years old. Obtaining, possession, selling, showing, exhibiting and dissemination of pornographic content or shows with children shall be punished with imprisonment from three months to three years. Article 7 of the Law on Special Measures for the Prevention of Crime against Sexual Freedom Involving Minors imposes additional sanctions on child sex offenders, including: “(1) mandatory reporting to the police and the Department for the Execution of Criminal Sanctions, (2) a ban on visiting places where children are, such as kindergartens and schools, (3) mandatory professional treatment, (4) mandatory reporting of any change in residence, (5) mandatory reporting of any trips abroad”. Online grooming of children is prohibited with article 185b(1) of the Criminal Code and is punishable with imprisonment up to five years and a fine. The penalty is increased to imprisonment of up to eight years in case the victim is under 14 years of age in article 185b(2). Internet Service Providers (ISPs) are required by law to report to national authorities ‘child pornography’ cases.¹³
10. Serbian law does not define ‘virtual child pornography’. Article 185 (4) of the Criminal Code criminalises only the possession, sale, exhibition and dissemination of “*content resulting [from the] abuse of a juvenile*” by electronic or other means.
11. The Criminal Code extends Serbian jurisdiction to offences committed abroad by or against Serbian citizens.¹⁴ However, a foreign resident of Serbia committing a crime abroad can only be prosecuted in Serbia when the crime is punishable with minimally five years of imprisonment.¹⁵
12. Extradition is regulated by the Law on Mutual Legal Assistance in Criminal Matters for cases in which no ratified international treaty exists or certain subject matters are not regulated under it.¹⁶ Article 7 of the Law provides that extradition is subject to the doctrine of dual criminality, meaning Serbia will extradite an individual only when the act he/she committed is an offence under Serbian law, as well as under the law of the requesting state. Under Article 16 of the Law, Serbian nationals may not be extradited, unless an extradition treaty exists that provides for this. Serbia has concluded over 37 international bilateral agreements, including with Bosnia, Montenegro and Macedonia. Although there is no extradition agreement mentioning ‘child pornography’ offences specifically, extradition agreements do include the offense as all crimes proscribed in the Criminal Code are covered.
13. Serbian law enforcement has a special unit dedicated to cybercrimes. The Department for High Technology Crime was established in 2007 in the Ministry of the Interior as a part of the service for Combating Organised Crime of the Criminal Police Directorate. The Department consists of the Section for e-Crime Suppression and the Section for Intellectual Property Crime Suppression. It has jurisdiction over the entire territory of the Republic of Serbia. The Department started operation ‘Armageddon’ in 2010 to suppress the abuse of minors for pornography on the internet. The Department has been actively engaged in raising awareness among citizens (including minors and their parents) through roundtables, public debates, seminars and mass media coverage. It has also established cooperative partnerships with both public and private sector entities.

14. The prosecutor's office has a Special Department for High Technology Crime, established as a part of the Higher Public Prosecutor's Office of Belgrade, with jurisdiction over the entire territory of Serbia. The Special Prosecutor's Office is managed by a Special Prosecutor for Suppression of Cybercrime. The Public Prosecutor may request that courts, other public authorities, local self-government and autonomous province authorities provide explanations and data relevant to a prosecution.
15. 'Child pornography' is an offence prosecutable *ex officio*, meaning that a victim's report is not necessary to prosecute. The public prosecutor is required to conduct a criminal prosecution where there are grounds to suspect a criminal offence has been committed. According to article 280 of the Criminal Procedure Code, state and other bodies, as well as legal and natural persons, must report crimes that are prosecutable *ex officio* about which they were informed or of which they learn. According to article 5 of the Law on Special Measures for the Prevention of Crime against Sexual Freedom Involving Minors, there is no statute of limitations for the crimes outlined under article 3 of the law, which includes crimes related to 'child pornography'.¹⁷
16. Law enforcement has the authority to seize computer systems and storage mediums that may serve as evidence in criminal proceedings and secure their safekeeping for the collecting of evidence in case of a 'child pornography' crime.¹⁸ Operators within the electronic communications sector,¹⁹ such as ISPs, must retain data necessary for the investigation, detection and prosecution of crimes.²⁰ The Criminal Procedure Code does not include an explicit provision that ISPs have the obligation to provide subscriber information for criminal investigations.²¹
17. Computer searches are considered a 'special evidentiary action' and only a court may order computer searches in case there are grounds for suspicion that a person has committed the crime of *inter alia* the use of a child to produce photographs, audiovisual or other items of pornographic content or selling, showing, publicly exhibiting or electronically or otherwise making available this child abusive material.²² Perhaps it could be argued that the laws concerning general evidence collection²³ could apply to computer data and computer systems, and thus allowing greater investigative powers for the police. However, given that computer searches are expressly described a 'special evidentiary action' under the Criminal Procedure Code and are an intrusive method of evidence collection, it may be difficult to argue that a search of a computer system or storage medium should fall under provisions for general evidence collection. Special evidentiary actions, such as computer searches, require a judge to carefully balance a suspect's right to privacy against the need to fully investigate allegations of serious criminal conduct.
18. The GoS has a child sex offenders' registry.²⁴ The register includes the following information: offender's name, identification number, address, employment information, descriptive information and a photograph, criminal offence committed and penalty, as well as their DNA profile and the enforcement of special measures under the law. While the law does not provide for disclosure to a community of a registered offender's place of residence, the law does allow access to an authority of the state or other organisations or companies upon a reasonable request and where there is a "*reasonable interest based on the law*". There are no guidelines in the law as to what constitutes a "*reasonable request*" nor what constitutes a "*justifiable interest based on the law*". Without such guidelines, very sensitive information could become public knowledge and could result in the endangerment of the security of the offender and thus not in compliance with article 7 of the EU Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, which requires that appropriate security measures are in place to protect against accidental or unauthorised access, alteration or dissemination of personal data. The data in the register may also be provided to foreign state authorities under international agreements.²⁵ While the law requires that offenders provide their address and employment information to the register, there does not appear to be a requirement that changes of address or employment be reported or that they be reported within a specified period. There is also no requirement that, should an offender leave the country, this should be reported.

Recommendations

Definition of ‘child pornography’ (para. 9)

Define and criminalise ‘child pornography’ in line with the definitions contained in the international and regional legal instruments.

Definition of ‘virtual child pornography’ (para. 10)

Define and criminalise ‘virtual child pornography.’

Extraterritorial jurisdiction for habitual residents of Serbia (para. 11)

Establish extraterritorial jurisdiction also in those cases where the alleged offender is a habitual resident in Serbia and have allegedly committed an offence abroad.

Extradition (para. 12)

Ensure that whenever an alleged offender is not extradited, his/her case is submitted to the domestic courts.

Provide subscriber information (para. 16)

The Criminal Procedure Code should include a provision that service providers have an obligation, pursuant to a court order, to provide subscriber information. Currently, there is no such clear provision.

Broader authority for searches of computer systems and storage mediums (para. 17)

The wording of relevant provisions of the Criminal Procedure Code should be revised to explicitly include the ability of an investigating body to conduct searches of computer systems and storage mediums. While the provisions can currently be read to include those searches, it would be preferable if the law was clearly worded.

Child sex offenders’ registry (para. 18)

The Law on Special Measures for the Prevention of Crimes against Sexual Freedoms Involving Minors requiring those who have committed crimes involving ‘child pornography’ to be included on a sex offender register, should be amended to place greater restrictions on access to data in the register, putting safeguards in place for access by organisations, companies and foreign governments to prevent data from falling into the hands of unauthorised persons or from being abused or altered.

Include a procedure for the reporting of changes of address or employment or leaving the country.

¹ Sustainable Development Goal Targets 5.2, 8.7, and 16.2.

² ECPAT prefers the term ‘*child sexual exploitation material*’ or ‘*child sexual abuse material*’, but in a legal context still uses ‘*child pornography*’ in line with the recently widely adopted Terminology Guidelines. The inverted comma’s in ‘*child pornography*’ indicate that the term is used in a legal context. ECPAT International (2016), “*Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, adopted by the Interagency Working Group in Luxembourg, 28 January 2016*”, Bangkok: ECPAT, 39, accessed on 1 May 2017, <http://luxembourgguidelines.org/>.

³ European Commission, “*A Global Alliance against Child Sexual Abuse Online*” (Last update: 15 May 2017), accessed on 15 May 2017, https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse_en.

⁴ The used term is in line with the recently widely adopted Terminology Guidelines. ECPAT International (2016), “*Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, adopted by the Interagency Working Group in Luxembourg, 28 January 2016*”, Bangkok: ECPAT, 24, accessed on 1 May 2017, <http://luxembourgguidelines.org/>.

⁵ ECPAT International (2017), “*Global Database National legal frameworks protecting children from sexual exploitation online*”, to be launched in the second half of 2017.

⁶ ECPAT prefers the term ‘*exploitation of children in prostitution*’ instead of ‘*child prostitution*’ in line with the recently widely adopted Terminology Guidelines. ECPAT International (2016). Terminology Guidelines. ECPAT International (2016), “*Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, adopted by the Interagency Working Group in Luxembourg, 28 January 2016*”, Bangkok: ECPAT, 29, accessed on 1 May 2017, <http://luxembourgguidelines.org/>.

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⁸ Ibid., 54.

⁹ United Nations Children’s Fund (UNICEF) (2016), “*The State of the World’s Children 2016; A Fair Chance for Every Child*”, 140, accessed on 15 May 2017, https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf.

¹⁰ Ibid., 136.

¹¹ GoS (2013), “*Global Alliance against Child Sexual Abuse Online Report of Republic of Serbia*”, accessed on 15 May 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse/docs/commitments/ga_commitment_serbia_en.pdf

¹² European Commission, “*A Global Alliance against Child Sexual Abuse Online*” (Last update: 15 May 2017), accessed on 15 May 2017, https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse_en.

¹³ Article 20(2) of the Law on Electronic Commerce states, “*Service provider shall be obligated to inform competent public authorities, on condition that there is a reasonable doubt that: 1) the recipient of the service [has] undertake[n] illegal activity by using the provided service; 2) the recipient of the service has provided inadmissible information*” Article 20 also states, “*Service provider shall be obliged to communicate to the competent authorities, on the basis of relevant court or administrative document, information enabling the identification or prosecution of criminal offenders or protection of third parties.*”

¹⁴ GoS, Criminal Code, articles 6, 8 and 9.

¹⁵ GoS, Criminal Code, article 9.

¹⁶ GoS, Law on Mutual Legal Assistance in Criminal Matters, Official Gazette RS, No. 20/2009.

¹⁷ According to the GoS, Office for Human and Minority Rights, in its response to the Questionnaire of the UN Special Rapporteur on the sale of children, child prostitution and child pornography article 108 of the Criminal Code also abolishes a limitation period for sexual acts against children, accessed 15 May 2017 from <http://www.ohchr.org/EN/Issues/Children/Pages/ResponsesCareAndRecovery.aspx>.

¹⁸ GoS, Criminal Procedure Code, article 147 and 148.

¹⁹ An operator is defined in article 4(30) of the Law on Electronic Communications as “*an entity which performs or is authorized to perform activities within the electronic communications sector*”.

²⁰ GoS, Law on Electronic Communications, articles 128 and 129.

²¹ It may be argued that the obligation exists on the grounds of 147 and 148 of the Criminal Procedure Code.

²² GoS, Criminal Procedure Code, articles 162 and 178 and Criminal Code, articles 185(2) and (3).

²³ GoS, Criminal Procedure Code, article 286: where there exist grounds to suspect the commission of an offence that is prosecutable ex officio, the police have a duty to detect and secure evidence of the criminal offence, as well as objects that may serve as evidence, and to collect “*all information which could be of benefit for the successful conduct of criminal proceedings*” (emphasis added).

²⁴ GoS, Law on Special Measures for the Prevention of Crimes against Sexual Freedoms Involving Minors, article 13.

²⁵ GoS, Law on Special Measures for the Prevention of Crimes against Sexual Freedoms Involving Minors, article 15.