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Rights of the Child

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COMMITTEE ON THE RIGHTS OF THE CHILD

Fourteenth session

SUMMARY RECORD OF THE 346th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 7 January 1997, at 3 p.m.

Chairperson: Mrs. BELEMBAOGO

CONTENTS

CONSIDERATION OF REPORTS OF STATES PARTIES (continued)

Initial report of Bulgaria (continued)

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial report of Bulgaria (continued) (CRC/C/8/Add.29; CRC/C/Q/BUL.1 (list of issues); written replies by the Government of Bulgaria with no document symbol, in English)

1. At the invitation of the Chairperson, the Bulgarian delegation resumed its place at the Committee table.
2. The CHAIRPERSON invited the Bulgarian delegation to reply to the questions not answered at the previous meeting.
3. Mr. KOLAROV (Bulgaria) said, with reference to the legal status of the Convention on the Rights of the Child, that all the international instruments ratified by Bulgaria became part of national legislation and took precedence over the laws enacted by Bulgaria itself. The Convention had entered into force before the promulgation of Bulgaria's new Constitution in 1991. During the procedure of adopting the Constitution, an analysis had been made of existing national legislation with a view to preventing conflicts with international instruments. He was unaware of any laws which conflicted with the Convention. If any such conflict emerged, the national legislation would be amended.
4. However, there was no doubt about the need for specific legislation and mechanisms to implement the provisions of the Convention. A start had been made on the drafting of specific child-protection laws, and some of the legislation enacted was described in paragraphs 4 and 5 of the initial report (CRC/C/8/Add.29). The whole question was still under discussion.
5. The Committee for Young People and Children was a governmental body and represented a first attempt to respond to the deterioration in the situation of children during the period of economic transition. Its main aims were to coordinate policies for children, mobilize non-governmental organizations (NGOs) and raise funds for activities connected with children. It was too early to make a realistic assessment of the Committee's performance, but it was expected to become an effective tool in the provision of aid to children.
6. With regard to children's allowances, Bulgaria had tried to maintain the existing universal system but inflation and the worsening economic situation had taken their toll. The Government was considering a new approach, in which allowances would be concentrated on the more disadvantaged groups of children.
7. The Constitution made no provision for an ombudsman, and it would be for the Government to establish such an office. The matter was still under discussion in parliament and by the general public.
8. In reply to the question on the use of the mass media, and more specifically on Bulgaria's accession to the Convention on Transfrontier Television of the Council of Europe, he could confirm that Bulgaria was a party to about 40 of the Council's instruments. The process of ratifying the remaining instruments had been started, but it was a lengthy one.

9. With regard to social workers, he was able to report that 1997 would see the graduation of the first group of such workers, with master's degrees in children's affairs. Furthermore, the Convention was included in the curricula at all levels of the education system, in particular in all training courses for such public officials as judges and teachers. No specific action had so far been taken to educate parents regarding the Convention.

10. Mrs. BOJKOVA (Bulgaria) said, in reply to Mrs. Eufemio's question about the role of the Ministry of Foreign Affairs, that the Ministry's main function was to coordinate foreign policy, and the Convention was regarded in Bulgaria as part of foreign policy. The fact that there were no members of other ministries in the Bulgarian delegation was exceptional and coincidental. The Ministry's Department of Human Rights and Social and Humanitarian Affairs was mainly responsible for the coordination of matters relating to the Convention. It had already made many recommendations to parliament and other ministries for the amendment of legislation and it had initiated a number of investigations on the basis, for example, of NGO reports of human rights violations. She realized that it was unusual for such matters to be a responsibility of the Ministry of Foreign Affairs, but the purpose of establishing the Department had been to promote human rights and fundamental freedoms in general and those of children in particular.

11. Mrs. EUFEMIO said that it was indeed unusual for a ministry of foreign affairs to be so actively involved in the coordination of matters relating to children. It must be made clear that the submission of periodic reports was not the end of a country's obligation but only part of the cycle of implementation of the Convention. A country must have a monitoring and coordinating mechanism for focusing on matters identified by the Committee as needing attention.

12. She would welcome more information about the Committee for Young People and Children and its relationship with the Ministry of Foreign Affairs. In particular, she would like to know whether the 34 members of the Committee made policy, proposed legislation and conducted performance evaluations.

13. Mrs. BOJKOVA said that the Committee was responsible, under the authority of the Council of Ministers, for formulating national policies and recommending the enactment or amendment of legislation. Its 34 members were not delegated from other ministries or institutions, although it did have a Consultative Council whose membership included representatives from other government departments, NGOs, etc. The Committee had some monitoring functions but it needed specific authorization to carry out such activities. The Constitution vested the main responsibility for monitoring human rights in the Public Prosecutor. However, the Committee could make recommendations to him and report violations of human rights.

14. In reply to Mr. Kolosov's question about an office of ombudsman, she could confirm that Bulgaria's judicial system was entirely independent. The 75 cases of administrative disciplinary action taken against law-enforcement officials had related to misconduct not covered by the Penal Code. Any violations of the Penal Code were punished by the law.

15. Reverting to the question of the role of the Ministry of Foreign Affairs, she said that she realized that Bulgaria's arrangements were different from those of most other countries. However, the situation was as she had described it.

16. The CHAIRPERSON said that the Committee never tried to impose any particular system on a country and merely wanted to understand how Bulgaria's system operated, in order to judge its effectiveness. It was therefore important for the Committee to have a full picture of the relationship between the Ministry, the Committee for Young People and Children and other relevant bodies.

17. She invited the members of the Committee to ask questions about the sections of the list of issues entitled "Definition of the child" and "General principles".

18. Mrs. KARP said that she had not received answers to two of the questions which she had put at the preceding meeting: on the philosophy underlying the division of the budget of the Committee for Young People and Children between children as such and young adults over the age of 18; and on the participation of children in implementation of the Convention.

19. With regard to the definition of the child, the reports made no mention of the minimum age of consent to medical treatment. She would like to know in particular whether children could consult a doctor without parental consent. Still on the question of minimum ages, she would like to know whether the Roma people applied in practice a different minimum age of marriage.

20. She would also like to know whether questions of non-discrimination were dealt with in television broadcasts for children, in an effort to change the attitude of children and the public at large to minorities. Furthermore, there appeared to be inherent discrimination in the segregated education of Roma children; research had shown the danger of de facto discrimination in such segregation. Were Roma leaders asked their opinions of the attempts to change the school curricula for Roma children?

21. With regard to paragraph 45 of the report, she did not understand what was being done to prevent children being stigmatized by the protection measures applied to them. Was there any prohibition on the publication of information about such children?

22. Turning to the best interests of the child, she said that it appeared that problems were sometimes settled in the best interests of the parents rather than of the child. On the related topic of respect for the views of the child, she understood that the recent amendments to legislation did not impose the obligation for a court to hear the views of the child concerned in an appeal against a decision by a local authority. It would seem, therefore, that the appeal procedure favoured the local authority. She would also like to know whether children could apply to the courts for redress of grievances without their parents' permission, particularly in cases of a conflict with the parents.

23. Lastly, she would welcome more information about the participation of children in the administration of the education system, particularly in matters of discipline.

24. Mr. KOLOSOV said, to clear up any misunderstanding, that it had not been his intention to make comparisons between different judicial systems. The point he had been trying to make was closely related to the definition of the child and to the remarks subsequently made by Mrs. Karp. There could be no doubt that children were far more likely to address their complaints to an ombudsman or similar institution rather than to a court of law. Furthermore, on the basis of the information received, an ombudsman might recommend the necessary amendments to legislation, administrative procedures or practices. He asked at what age children could initiate proceedings, on their own behalf, against their parents or other authorities or individuals.

25. According to paragraph 39 of the written replies, there was no explicit definition of the notion of "child" in Bulgarian legislation, which, however, made a distinction between minors and adolescents. It might, perhaps, be a translation problem, but a variety of terms were used elsewhere in the documentation submitted. To avoid confusion, Bulgaria might consider unifying its terminology and bringing it into line with that used in the Covenant, particularly if the latter was to be invoked in Bulgarian courts of law.

26. Mrs. SANTOS PAIS, reverting to the issue of an appropriate legal framework and mechanism for children, stressed the need for all ministries and government departments to take account of the interests of children and for the integration of national policies, with a view to a concerted approach to protecting the rights enshrined in the Covenant.

27. Turning to the definition of the child, she wondered why there was a discrepancy between civil and penal law and expressed concern about its implications. Children under 18 could not bring a case before a court of law on their own behalf, yet there seemed to be no age limit for children to act as witnesses, which remained at the discretion of judges. That surely opened the way to arbitrariness. What guarantees were there that the best interests of the child would be taken into account in such circumstances?

28. Children could be held criminally responsible from the age of 14. Apparently those who were deemed to have understood the gravity of their offences were liable to penal sanctions; others who had not fully grasped their wrongdoing were placed in correctional institutions. However, by United Nations standards, that constituted a deprivation of liberty, and she was concerned that it occurred somewhat too frequently. The Bulgarian authorities might, perhaps, consider alternative solutions such as guidance, education and foster care for such children.

29. According to paragraph 27 of the report, the minimum age for signing a labour contract without parental consent was 16. It was likely, however, that there were instances of children being employed without a contract. What measures had been adopted or were envisaged to ensure that children under 16 did not have access to employment?

30. With respect to the general principles, the Bulgarian Constitution strongly condemned discrimination, but it failed to mention several of the grounds for discrimination listed in the Covenant, including disability and birth. She would like to know, therefore, how the rising numbers of children born out of wedlock were protected against discrimination.

31. Moreover, still on the subject of discrimination, the Constitution merely referred to "citizens" whereas the Convention contained a broader definition "each child within their jurisdiction" (art. 2), which covered stateless and refugee children and asylum seekers. Were there any plans to amend the Constitution to bring it into line with the concept enshrined in the Covenant?

32. Lastly, what action was being taken to prevent discriminatory attitudes towards and attacks on Roma children, not to mention their high drop-out rate from education and frequent institutionalization.

33. It was her understanding that, on account of the great importance attached in Bulgaria to preserving the privacy of family life, there was a reluctance to engage in research into violence and abuse. What assurance was there that the best interests of children were taken into account within the family? Similarly, how were the best interests of children promoted in institutions, where there was ample scope for abuse? Was there a trend in the country to encourage children to become more involved in making decisions which affected them, for instance on schools and leisure?

34. Mrs. BOJKOVA (Bulgaria) said that it was no easy task to respond to such detailed questions and comments, particularly since she had not had the opportunity to consult the other members of her delegation.

35. Responding to the query regarding medical treatment for children, she said that, according to the National Health Act, where surgery was recommended, parental consent was required for children under 18.

36. As for the use of television to combat discrimination against children of minority groups including the Roma people, she said that special programmes could be produced by the national broadcasting authorities if requested and funded by a particular institution or a ministry. Some programmes on human rights had already been made in cooperation with the Council of Europe and the European Union which were designed to educate children in a spirit of peace and tolerance. In any case, all programmes broadcast on national television must comply with Bulgarian legislation, which did not admit discrimination.

37. In answer to the question regarding the education of Roma children, she stressed that there were no special schools for that minority group. Roma children were educated in State general-education schools, free of charge, where attendance was compulsory up to the age of 16. Children in Bulgaria usually attended the local general-education school, although parents were entitled to send them to the school of their choice. It happened, particularly in the cities, that schools in districts with a large Roma community tended to have a high proportion of Roma children. That might be regarded as segregation, but it would surely be artificial to establish

minority quotas in State schools. If the parents of Bulgarian children decided to remove them from schools with a large proportion of Roma children, there was little that could be done about it.

38. Representatives of the Roma organizations had, in the past, requested that classes be taught in the Roma language, only to complain subsequently to the Council of Europe that such measures were segregational, since Bulgarian children tended to leave the schools in question. The government policy was, however, to integrate all children irrespective of their ethnic origin. Representatives of the Roma associations had been involved in the preparation of the national curriculum, which was standard in all general-education schools. In addition, teaching in the Roma language was provided in schools with large numbers of Roma children. There was thus no risk of Roma children being isolated from the general educational trends. It was very difficult, however, to decide how best to deal with the situation, in view of the very fine line between integration and assimilation.

39. She was quite sure that there had been very few court cases in Bulgaria, involving a conflict of interest between parents and children, which had been settled in the latter's favour. The prevailing view of society, reflected in court practice, was that the best interests of the child should be protected by their parents; hence the reluctance to deprive parents of their rights in that connection.

40. Under Bulgarian legislation, children under the age of 14 were not permitted to bring proceedings before a court of law on their own behalf. Children over 14 could do so with parental consent. In the absence of the latter, they could address their complaint to a prosecutor, who would submit it to court.

41. Legislation stipulating the minimum age for marriage applied to all Bulgarian citizens, including the members of the Roma community. The minimum age for marriage was 18 years, although in exceptional circumstances it was permitted from 16 years onwards. Marriages were often contracted between children in the Roma community, in accordance with its customs and traditions, at a much earlier age, but were not officially recognized by the State. Bulgaria had no legislation to prevent such occurrences, and any moves in that direction might be regarded as a violation of human rights.

42. Children born in and out of wedlock enjoyed the same rights under Bulgarian legislation, and children of single parents received a double social allowance. As for the rights of children resident in Bulgaria who were not Bulgarian citizens, article 26, paragraph 2, of the new Constitution provided that foreigners residing in the Republic of Bulgaria should be vested with all rights and obligations proceeding from the Constitution, except those rights and obligations for which Bulgarian citizenship was required by the Constitution or by another law. The exceptions were few in number, and included the right to be a member of the national Parliament or President of the Republic.

43. On the question whether there was a need to unify the terminology relating to children used in the initial report of Bulgaria, she said that the Bulgarian language used only two terms, which referred to children under and

over the age of 14 respectively. However, as Bulgaria was a party to the Convention, all persons below the age of 18 were regarded as children within the meaning of the Convention. In drawing a distinction between children under and over the age of 14, the legislators had been guided by humane considerations; and it was felt that there was no urgent need to amend internal legislation in the light of the Convention, since, in the event of a conflict between the two, the provisions of the latter would prevail. However, any recommendations made by the Committee in that regard would, of course, be brought to the attention of the Bulgarian authorities.

44. As was explained in paragraph 27 of the report, with a very few exceptions - such as children employed in the world of entertainment, the minimum age at which a child was permitted to conclude a labour contract was 16. In the public sector, compliance with that age-limit was very strictly monitored. Particularly in view of the difficult economic climate that currently prevailed, she could not say with certainty that no cases existed of children under that age being employed without labour contracts in the private sector. However, there were procedures within the Ministry of Labour and Social Affairs and the Labour Court for monitoring compliance in that sector.

45. As previously stated, a special council on democratic issues and social affairs had been established within the Council of Ministers and entrusted with the task of formulating a policy programme with regard to the problems of the Roma and other minority ethnic groups. That programme had been submitted to the Council of Ministers for approval but had not yet been adopted, having been accorded lower priority than tasks such as the adoption of the 1997 budget and privatization schemes. Currently, then, no legislative measures existed providing for affirmative action *vis-à-vis* Roma children and those from other minority groups. Bulgarian public opinion continued to be very hostile to any form of "positive discrimination" in favour of specific groups, which brought unwelcome reminders of the privileges enjoyed by the few under the former Communist regime.

46. Mr. KOLOSOV said that a child could appear before a court in three capacities, namely, as a witness, a defendant or a claimant. The Bulgarian representative's replies had dealt with the first two of those categories; he particularly wished to know, however, from what age a child was entitled to appear before a court as a claimant.

47. Mrs. SANTOS PAIS said that, like many other societies, Bulgarian society traditionally tended to assume that parents were always the most effective guarantors of the best interests of the child. Accordingly, it upheld the right of the family to privacy. However, that right acted as a barrier to effective forms of intervention, such as counselling, in cases where the best interests of the child were not in fact guaranteed by the parents. What measures were taken to guarantee the best interests of children within the family and in children's institutions, and who was empowered to act on their behalf?

48. Mrs. KARP asked whether the Bulgarian authorities had considered appointing a child defender to act in cases where disputes between the parents revealed a need for the child to be given an independent hearing.

49. Miss MASON said that the Committee's written questions on discrimination against children had received somewhat perfunctory answers, to the effect that Bulgarian legislation did not provide for such a situation. However, paragraphs 44 and 45 of the initial report of Bulgaria acknowledged that children continued to be the victims of discrimination. Reference had indeed been made to an ongoing study on the situation of Roma children but the Committee would have liked to have heard of more practical measures to combat such discrimination. Legislation was a first step towards resolving problems, and also served to highlight the need for action, but there was no legislating against attitudes.

50. A start might be made in that regard by taking practical steps to inculcate the values of tolerance and understanding of other cultures and civilizations, to which attention was drawn in article 29, paragraph 1, subparagraph (d), of the Convention. Specifically, she wished to know who, in a society in which cultural minorities were not properly understood, would be in a position to "express an opinion or put forward proposals" (para. 53 of the initial report) on behalf of Roma students.

The meeting was suspended at 4.55 p.m. and resumed at 5.05 p.m.

51. Mrs. BOJKOVA (Bulgaria), replying to questions as to whether the privacy of the family was still upheld in Bulgarian society and by the practice of the courts, and on measures taken to ensure that the best interests of the child were protected, said that the philosophy underlying the Bulgarian Family Code predated the entry into force of the Convention, and reflected society's traditional assumption that parents were the most effective guarantors of the best interests of the child. However, the new child protection bill envisaged measures such as the establishment of special social services at the national and local levels to mediate between children and their families in cases where their interests conflicted.

52. Ms. TODOROVA (Bulgaria) said that the issue was one whose theoretical and practical ramifications were currently much debated by lawyers, in the light of the new agenda posed by the Convention on the Rights of the Child. The first question was how to ensure fuller public intervention in family life in order to protect children's best interests where they conflicted with those of the parents. The intention was to introduce western-style social services to act as mediators between children and the authorities. However, it was proving difficult to establish an effective process for reporting cases of violence within the family.

53. Another very important issue was how to ensure separate and fuller representation for the child in the various administrative and court proceedings. It was proposed to introduce a system modelled on the western institution of the guardian ad litem. Paragraphs 3 to 5 of the written replies by her Government described the new child protection bill in some detail.

54. Mrs. BOJKOVA (Bulgaria) explained that the minimum age at which a child could appear before the courts as a claimant was 18 years. Below that age, the child had to be represented by the office of the prosecutor. A child could appear in court as a witness at any age.

55. The best interests of the child in a boarding-school were protected by the director of the establishment. Other procedures were open to children to ensure that their best interests were served, as to all Bulgarian citizens. However, access to those channels were effectively limited in that the child would need extensive knowledge of his or her rights before recourse to such procedures would be feasible.
56. The child protection bill provided for the establishment of an office of the public defender which would deal with the relationship between children and their parents.
57. As for paragraph 45 of the initial report and the request for further information, studies had been made by the Committee for Young People and Children, on the basis of interviews with children, which examined the specific problems facing young people and children. There had unfortunately not been enough time to collate all the information and include it in the report. The studies had been very thorough however, and the children interviewed had been very frank with the investigators.
58. The right of children, particularly those belonging to vulnerable social groups such as the Roma minority, to express their views and air their problems was guaranteed. Roma children had the same rights as other children in the schools and were represented on school councils. They were also represented on the Consultative Council of the Committee for Young People and Children. Furthermore, Roma children could, if they preferred, turn to Roma organizations, including NGOs.
59. The CHAIRPERSON invited the Committee to ask questions about the sections of the list of issues entitled "Civil rights and freedoms" and "Family environment and alternative care".
60. Mrs. SANTOS PAIS said that the question of child labour had also to be looked at from the point of view of situations that fell outside contractual employment relationships. Legislation had a vital role to play in hammering home the message that child labour, whether contractual or otherwise, was unacceptable and that the employment of young persons should comply fully with the provisions of the Convention.
61. In its transition to a democratic system, Bulgaria should consider positive action to assist particularly disadvantaged groups and members of society.
62. Some countries' legislation expressly stipulated that parents had no right to inflict corporal punishment on their children. Research had shown that, in those countries, the incidence of such forms of punishment was on the decline. Bulgaria should, therefore, consider including similar provisions in its child protection bill. In educational institutions, where the director was responsible for the best interests of the child, external monitoring was the most effective way of enabling children, preferably on a confidential basis, to lodge complaints where necessary and discuss their problems.
63. The assertion in paragraph 89 of the report that "corporal punishment is non-existent in Bulgarian law" was somewhat idealistic. No Government could

possibly swear that corporal punishment did not exist in its country. Information on cases of alleged ill-treatment, torture or degrading treatment or punishment of children should be provided. Every effort should be made to ensure that all allegations of such treatment were investigated thoroughly and impartially, that any potential danger to children during the investigation was minimized and that justice was seen to be done.

64. The openness of the delegation's introductory statement regarding alleged cases of police brutality against street children, particularly those belonging to the Roma minority, was to be applauded. Did law-enforcement officials receive systematic training in human rights and, more particularly, the rights of children?

65. Mrs. KARP said that the best interests of the child could be protected most effectively through the establishment of a mechanism whereby children were helped to form their own opinions and given information on issues affecting them. Children should be dealt with in a way that was most favourable to them. That principle extended to the treatment of children when they were called on to appear as witnesses before a court. Judges should be instructed in the most sensitive way to deal with children who were victims of domestic violence or abuse, for example, and required to give evidence against a parent. Were there any theories in Bulgaria on the best way to ensure that the suffering of such children was minimized?

66. Although early marriage was prohibited by law, it apparently did exist. The delegation could, perhaps, provide information on what was being done to change attitudes to such marriages and on the risks involved.

67. Paragraph 4 of the written replies to the Committee's questions referred to police protection for children whose rights had not been respected. She was not sure that that was the best way of dealing with children who needed rehabilitation after suffering either physical or psychological abuse. She would like to know how the proposed legislation would deal with cases in which parents were responsible for such abuse. From the written replies, it appeared that sexual abuse was not listed as an offence under the Penal Code. Were there provisions in the new legislation to rectify that omission and provide for programmes to help the family and rehabilitate abused children?

68. Mr. KOLOSOV said that, when reporting States referred to their constitutional provisions and instruments, they often stated that the rights they contained were equally valid for children. Such recognition of the rights of children was, however, merely implicit. For society at large, it was necessary to spell out that legal subtlety by introducing a minors' code or amending existing legislation so that it explicitly stated that the rights therein extended to children.

69. The Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption (the Hague Convention) was an important international instrument and, given that the adoption of children from Eastern European countries was popular, he wondered whether Bulgaria intended to become a party thereto.

70. He asked whether any consideration had been given to campaigns to raise awareness or change attitudes with respect to corporal punishment both within the family and more particularly in correctional homes, where more serious problems might exist. Given the complexity of the system whereby children in such homes could take a case to court only through the office of the prosecutor, alternatives should be considered. One solution would be the establishment of an independent structure to monitor the situation of children in correctional homes and the kind of punishment being meted out there.

71. Since medical counselling was available only for persons of 18 years and over, if a girl child below 18 wished to terminate a pregnancy, would she have to seek her parents' consent? If so, that would violate the terms of the Convention regarding a child's right to privacy.

72. Mrs. EUFEMIO asked how children in rural areas who were victims of sexual or physical abuse could express themselves through media specifically designed for that purpose and what efforts were being taken to enable pre-school children to use other forms of media to express themselves. Information should be provided on indicators, or their development, to assess the effectiveness of the mass media in terms of children's issues. How was the State encouraging the mass media to comply with article 17 of the Convention, without interfering with the autonomy of the media? She also asked whether there was any self-evaluation or monitoring by the mass media and what was being done about the lack of a State policy on protecting children from violence and pornography promoted by sources among the media.

73. What was being done in the family and schools in terms of children's vulnerability and attraction to new religious movements and how were children being affected by such religions?

74. She also asked how the State ensured that prospective parents were in a position to assume their future responsibilities and inquired about the incidence of single-parent families, why they existed and what steps were being taken to reduce the number of one-parent families. Where there were two parents, she would like to know how complete equality between the mother and the father could be ensured in terms of caring for the child?

75. Finally, since Bulgaria was not a party to the Hague Convention, how did it deal with cases in which a child was abducted by one of the parents and taken to another country? Did Bulgaria intend to ratify the Hague Convention?

The meeting rose at 6 p.m.