**Comments of the Government of the Czech Republic**

to the DRAFT Guidelines on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

The Government of the Czech Republic wishes to submit the following comments:

***49. While sale and trafficking of children may overlap, their international legal definitions differ. The Committee underlines that, in accordance with the OPSC, States parties are under the obligation to criminalise, explicitly, the sale of children for all abovementioned purposes.***

We do not consider it necessary to explicitly criminalise sale of children as aseparate criminal offence word by word according to the OPSC. We are convinced that criminalising the acts of sale of children for all purposes set out by the OPSC under a broader criminal offence is sufficient and in compliance with the Protocol.

***87. Regarding legislation on extraterritorial jurisdiction, the Committee encourages the States parties to include cases in which a child victim is not a national but has her/his habitual residence in the territory of the State.***

We consider specifying extraterritorial jurisdiction in this manner as too wide. The Protocol itself does not set out such basis for jurisdiction (see Art. 4 (2)(b) of the Protocol) and theferore, States parties should not be obliged to establish such jurisdiction in their national legislation as such obligation would represent an extensive interpretation of the Protocol.

***88. Furthermore, States parties should abolish the requirement of double criminality, making it possible to exercise extraterritorial jurisdiction for crimes covered by the OPSC committed is another country even if the relevant offence is not criminalised in that country. The principle of double criminality creates a gap in the law which enables impunity, and should not be applied.***

In some cases, removal of the double criminality requirement shall be considered inadequate. In particular, the principle of passive personality shall require double criminality as in general it would seem too excessive to punish a person for an act which is not punishable in the territory where it was committed and the offender could possibly not have any knowledge that such act is criminalised in the victim’s state of nationality.