



## Convention on the Rights of the Child

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### WRITTEN REPLIES BY THE GOVERNMENT OF CROATIA CONCERNING THE LIST OF ISSUES (CRC/C/OPAC/HRV/Q/1) TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION OF THE INITIAL REPORT OF CROATIA UNDER ARTICLE 8 (1) OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT (CRC/C/OPAC/HRV/1)

[Replies received on 2 August 2007]

#### Written replies by the Government of Croatia to the list of questions relating to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Question 1. With reference to paragraphs 43 to 46 of the State party's report; please clarify which authority is in charge of the implementation of the Optional Protocol. Please also indicate whether there is any specific mechanism available for monitoring and periodically evaluating its implementation.

1. The Ministry of Defence and the Ministry of Health and Social Welfare are the responsible authorities in Croatia for the implementation of the Optional Protocol on the involvement of children in Armed Conflict to the Convention on the Rights of the Child (Protocol) at the national level. The Ministry of Family, Veterans Affairs and Intergenerational Solidarity, the Ministry for Foreign Affairs and European Integration as well as the Office of the Government of Croatia for Human Rights are responsible for certain aspects of its implementation at the national level.

2. There is no special mechanism for monitoring and periodically evaluating the implementation of the Protocol. The main reason lies in the fact that the substance of the Protocol is regulated by the Defence Law (Official Gazette no. 33/02), which, specifically prohibits the enlistment of minors as a *lex specialis* in this field (see answer to question 2 below).

3. However, under the jurisdiction of the Ministry of Defence, there is a possibility to control the responsibility of its staff in the case of breach or abuse of their duties which implies criminal responsibility for criminal offences according to the Criminal Code, and according to other laws, such as the Act on Service in the Armed Forces of the Republic of Croatia (OG 33/02). Article 52 of this Act stipulates that: "For criminal offences, members of the armed forces are subject to the provisions of the Criminal Code and other legal acts".

4. On the other hand, all human rights in Croatia are protected by the Constitution, by international treaties to which Croatia is a party to and by the law. In this respect the possibility to protect the rights of the child as stipulated in the Protocol may exist in practice through the overall framework which we would like to explain here:

(a) The implementation of national legislation and international treaties to which Croatia is party with respect to the protection and promotion of human rights is the responsibility of the State administration. This includes:

- The Vice - President of the Croatian Government (also the Minister in charge of family, veterans and intergeneration solidarity) who is especially committed to the protection and promotion of human rights in Croatia and is responsible for different interdepartmental government bodies in this field:

- Ministries;

- Government offices such as for example the Government Office for Human Rights;

- Interdepartmental government bodies such as for example the Government's Commission for Human Rights, the Children Council and the Council for Development of Civil Society, etc.;

(b) In the course of its work and in accordance with its competences, the Office of the President of can receive written complaints (petitions) from citizens regarding violations of their human rights, including children's rights which derive from the Protocol;

(c) In the Croatian Parliament, several parliamentary committees deal with the protection of human rights, such as the Committee on the Constitution, Standing Orders and Political System or the Committee on Human and National Minority Rights;

(d) According to article 5 of the Law on Courts "Courts rule in conformity with the Constitution and the law. Courts also rule in conformity with international agreements that are part of the legal system of Croatia. Courts also apply other regulations established in accordance with the Constitution or the law". It means that the Protocol is also included as an international agreement which is a part of the legal system;

(e) The main task of the Constitutional Court, which is not part of the tripartite system of separation of powers, is not only to decide on the conformity of laws with the Constitution and other regulations with the Constitution and laws, but also on constitutional complaints against individual decisions of governmental bodies, bodies of local and regional self-government and legal entities with public authority, when these decisions violate human rights and fundamental freedoms, as well as the right to local and regional self-government. It is clear that in both situations, in the procedure of deciding on the conformity of laws and in cases of constitutional complaints, the Protocol's provisions could be included;

(f) In Croatia there are also several independent institutions for the protection of human rights, the two most important of which are the Office of the Ombudsperson and the Office of the Ombudsperson for Children;

(g) It is also important to point out that there is a large number of non-governmental organizations (NGO's) specialized in the protection and promotion of human rights, which actively contribute to the effective and non-discriminatory realization of all human rights in Croatia, including children's rights. A number of them deal specifically with the advocacy for children's rights.

**Question 2. Please indicate whether there is any legal provision in the Defence Law or in any other piece of legislation which criminalizes compulsory recruitment or involving in hostilities of a person under 18.**

5. In Croatia, minors are protected by a law which prohibits the enlistment of minors (persons who have not reached the age of 18). Measures taken by Croatia to ensure that persons who have not reached the age of 18 do not participate in hostilities by prohibiting them to become members of the armed forces are contained in various articles of the Defence Law.

6. In article 24, the Defence Law defines the term "military service" as follows: "Military service is the duty to prepare, qualify and organize all capable Croatian citizens for performing duties within the armed forces and participating in military defence". Article 25 stipulates that the institution of military service consists of compulsory recruitment, compulsory military service and compulsory service in the reserve forces of the armed forces.

7. Pursuant to article 30 of the Defence Law, compulsory recruitment begins in the calendar year in which the person (only male) reaches the age of 18 and ends at the start of the military or civilian service, i.e. with the inactivation or lapse of service obligation in accordance with the provisions of the Defence Law. In accordance with the article 34, the recruitment is regularly conducted in the calendar year in which the person reaches the age of 18.

8. In accordance with article 42, persons who are declared able to perform military service are appointed for military service after they come of age, regularly in the calendar year in which the person reaches the age of 19.

**Question 3. Please provide detailed information as to whether Croatia assumes extraterritorial jurisdiction over the war crime of conscripting or enlisting children under the age of 15 into the armed forces or using them to participate actively in hostilities.**

**Also in relation to extraterritorial jurisdiction, please indicate whether Croatian courts have jurisdiction in case of compulsory recruitment or involvement in hostilities of a person under 18 if committed outside Croatia, by or against a Croatian citizen.**

9. The Croatian criminal law system does not have any special provisions applicable to such cases, because there is no legal possibility of recruiting children on Croatian territory and the criminal justice authorities have never encountered criminal recruitment or other such acts by armed groups or foreign States.

10. In accordance with article 10 of the Criminal Code, the criminal legislation shall not apply to a child who, at the time of committing a criminal offence, has not reached 14 years of age. (In accordance with article 89, paragraph 9 of the Criminal Code, a child is defined as a person who has not reached 14 years of age. This means that a child (a person under 14), who committed such an offence cannot be subjected to criminal proceedings or sentencing, in accordance with the principle of the exclusion of applying criminal legislation to children, and is always out of the scope of criminal legislation. When a child commits a criminal offence, the bodies responsible for the investigation and criminal prosecution are obliged to inform the competent social service centre to take appropriate measures.

11. Apart from this category, it is necessary to recognize a category of young perpetrators which is regulated by the Juvenile Courts Act (OG no. 111/97, 27/98, 12/02) as a *lex specialis* and the Criminal Procedure Act (OG no. 62/03) and the Criminal Code (OG no. 110/97, 27/98, 129/00, 51/01, 111/03, 105/05) as *leges generalis*:

- In accordance with article 2 of the Juvenile Courts Act, a minor perpetrator of a criminal offence is a person, who has reached 14 but has not reached 18 years of age at the time of committing a criminal offence.

- In accordance with article 4 of this Act, a junior minor is a person, who has reached 14 but has not reached 16 years of age at the time of committing a criminal offence. Such person cannot be sentenced to juvenile prison, but can be a subject to correctional measures.

-A senior minor is a person who has reached 16 but has not reached 18 years of age at the time of committing a criminal offence. Apart from correctional measures, such a person can be sentenced to juvenile prison under certain conditions.

-A young adult is a person who has reached 18 and not has reached 21 years of age at the time of committing a criminal offence.

12. The applicability of criminal legislation to criminal offences committed outside the territory of Croatia as stipulated in article 14 of the Criminal Code is based on the following:

(a) The protection principle: Croatia can extend its criminal jurisdiction to criminal offences which endanger certain significant Croatian legal values;

(b) The active personality principle: the criminal legislation of Croatia shall apply to a Croatian citizen who, outside the territory of Croatia, commits a criminal offence other than those included in the protection principle;

(c) The passive personality principle: the criminal legislation of Croatia shall apply to an alien who, outside the territory of Croatia, commits a criminal offence against a Croatian citizen;

(d) The universal principle: the criminal legislation of Croatia shall apply to an alien who commits a criminal offence against a foreign State or another alien outside the territory of Croatia, for which, under the Croatian law a punishment of five years of imprisonment or a more severe penalty may be applied, but only if the perpetrator is found within the territory of Croatia and is not extradited to another State;

(e) The universal principle *stricto sensu*: the criminal legislation of Croatia shall apply to any person, who commits a criminal offence outside its territory, which Croatia is bound to punish according to the provisions of international law and international treaties or intergovernmental agreements. In this regard, Croatia has a duty to undertake the criminal prosecution for international crimes only if the perpetrator of a criminal offence is found within its territory and is not extradited to another State which has a duty to trial him, under the condition that he/she has not served a whole sentence to which he/she was sentenced in the foreign State.

13. In relation to the criminal offence of the compulsory recruitment of children, we would also like to stress that in accordance with article 31 of the Criminal Code, use of force or threat could exclude the criminal offence or have other legal effects depending on the concrete case of *vis absoluta* (there is no criminal offence) or *vis compulsiva*. Application of force or threat excludes the unlawfulness if the harm done is lesser than the harm threatened, or it can be the reason for the remission of punishment if the harm done was equal to the harm threatened.

14. According to the Constitution of Croatia, international treaties are part of the internal legal order and are above the law. Moreover, according to the article 5 of the Law on Courts, courts may directly apply international treaties which are part of Croatian legal order. Besides the Protocol, Croatia is a party to other international instruments which regulate this field.

15. According to the Rome Statute of the International Criminal Court of 17 July 1998, the notion of "war crimes" means:

- Grave breaches of the Geneva Conventions of 12 August 1949 as well as other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, and

- In the case of non-international armed conflict serious violation of article 3 common to the four Geneva Conventions of 12 August 1949.

In both cases (international and non-international armed conflict), the conscripting or enlisting of children under the age of 15 into the national armed forces or using them to participate actively in hostilities are included within the definition of war crimes.

16. War crimes against the civilian population are incriminated by the article 158 of the Criminal Code. Paragraph 1 of the Criminal Code stipulates that whoever in violation of the rules of international law, in time of war, armed conflict or occupation recruits children under the age of 18 into national armed forces or uses them in direct hostilities shall be punished by imprisonment for not less than five years or by long-term imprisonment. Croatia has raised the age limit for recruitment into the armed forces from 15 to 18.

17. Measures to secure the prohibition and elimination of the worst forms of child labour including forced or compulsory recruitment of children for use in armed conflict, are implemented in Croatia in accordance with ILO Convention 1999, (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. (Forced and compulsory recruitment of children does not exist in Croatia.

18. Upon ratification of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, Croatia amended its Criminal Code by introducing the following provisions (art. 167 b – Recruitment of Mercenaries):

- Persons who, in violation of international law, recruit, use, finance or train mercenaries for the purpose of their taking part in armed conflicts or joint acts of violence aimed at overthrowing a Government, undermining territorial integrity of a State or threatening its constitutional order, shall be punished by imprisonment from one to eight years.

- Persons who, for the purpose of gaining proceeds, in the capacity of mercenaries, directly participate in armed conflicts or joint acts of violence, shall be punished by imprisonment from one to five years.

19. Pursuant to the provisions of the Act on the Liability of Legal Persons for Criminal Activity, persons held responsible for perpetrating these criminal offences, besides natural persons, are also legal persons that are being used for the commission of the incriminated activities.

20. We would like to particularly stress that Croatia has integrated the provisions of the Convention against the Recruitment of

Mercenaries into its legal system, but no criminal activity related to article 167 of the Criminal Code has been detected or processed.

**Question 4. Please provide disaggregated data (including by sex, age and country of origin) covering the years 2004, 2005 and 2006 on the number of unaccompanied asylum-seeking, refugee and migrant children coming to Croatia from areas affected by armed conflict. In this respect, please provide information on measures adopted with regard to physical and psychological recovery and social reintegration of refugee, asylum-seeking and migrant children entering Croatia who may have been recruited or used in hostilities abroad.**

21. Please see below the requested information on unaccompanied asylum-seeking children in Croatia for the period of 2004 – 2006 and 2007.

22. In compliance with the Croatian legal provisions, all asylum-seeking children were assigned a guardian from the responsible Social Services Centre. In the Aliens Reception Centre, the Croatian Red Cross social workers as well as a social worker from the Ministry of Interior, in cooperation with the Social Services Centres, provided for their physical and psychological recovery and social reintegration through psychosocial-care programmes.

CSS – Social Services Centre

**Question 5. Please provide information on the measures taken to implement the Committee's recommendation to the State party upon consideration of the second periodic report and related to children in armed conflict. In particular, the State party should provide more information on:**

- The programmes implemented both at national and at local level for children recruited or used in the hostilities and the type of assistance provided;

- The number of children who have benefited from these programmes and any assessment/evaluation on their effectiveness and results.

23. In accordance with Croatian regulations and experiences, there were no cases of children recruited or used in hostilities.

**Question 6. Please explain how the access to arms is regulated within the State party. Also, please inform on what are the rules regulating the production, sale and distribution of small arms and other weaponry.**

24. In Croatia, the acquisition, possession, production, sale and transport of weapons are regulated by the provisions of the Law on Arms (OG 46/97, 122/01, 19/02). The substance of this Law does not relate to the arms used by the armed forces, police and other state institutions. Arms can be obtained upon approval, unless stated otherwise in this Law, which strictly proscribes that permissions are only to be granted to a citizen if he/she has reached 18 years of age.

25. To illustrate the issue raised in the question concerning access to arms, the Croatian NGO Anti-War Campaign has recently carried out a nationwide survey on the perception and attitude of schoolchildren regarding the armed forces as well as on their opinion concerning access to arms.

- About 20 per cent of the respondents strongly agreed when asked about whether or not they could agree to the sentence "I would like to have a gun at home". Moreover, over 31 per cent also strongly agreed with the statement "I like to shoot with guns" (51 per cent of male school children strongly agreed, compared to 14 per cent of girls). However, about 47 per cent agreed with the statement "I do not want to be near guns"; while 38 per cent disagreed with this statement.

26. In Croatia, the export of arms is regulated by the Trade Act (OG 11/96, 101/98, 30/99, 75/99, 62/01, 109/01, 49/03 – revised text, 96/03, 103/03, 170/03, 55/04) and the Act on the Production, Overhaul and Trade of Arms and Military Equipment (OG 33/02 and 173/03). On the basis of the Trade Act, the Regulation on goods subject to export and import licensing (OG 67/03, 121/03, 198/03 and 127/06) has been adopted, prescribing the manner of export and import of armament goods. It also includes the list of military equipment which is aligned with the EU common list of military equipment.

27. In a decision of 9 May 2002, the Government of Croatia adopted the principles of the EU Code of Conduct on Arms Exports. In the course of arms exports, Croatia follows the guidelines of the Code of Conduct.

28. Croatia is a State party to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies of 29 June 2005. Regarding illegal arms trade and arms brokering, Croatia is a State party to the Protocol against the illicit manufacturing of and trafficking in firearms, their component parts and ammunition, supplementing the United Nations Convention against Transnational Organized Crime.

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