



Convention on the Rights of the Child

Committee on the Rights of the Child

Fifty-sixth session

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Written replies by the Government of Ukraine concerning the list of issues (CRC/C/OPAC/UKR/Q/1) related to the consideration of the initial report of Ukraine under article 8, paragraph 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/UKR/1) *

[26 August 2010]

Replies to requests for additional or updated information related to the consideration of the initial report of Ukraine (CRC/C/OPAC/UKR/1)

Reply to questions raised in paragraph 1 of the list of issues (CRC/C/OPAC/UKR/Q/1)

1. The principles and provisions of the Protocol are widely covered in the national and regional media. The Convention on the Rights of the Child and the Optional Protocol, which have been ratified by Ukraine, are studied by pupils in grades 5 to 9 under such elective subjects as children's rights, "Play by the rules", practical law and civic education, and by pupils in grade 9 as part of the compulsory subject "The foundations of the law". In general-education schools and vocational and technical institutes, the 2006/07 and the 2007/08 school years began with the taster sessions, "Justice and Law Day" and "Legal Education Week". The Nationwide Competition for Young Lawyers is being held for its sixth year.

2. Such extra-curricular activity groups as the Young Lawyers' Club are being run successfully: there are a total of 500 clubs in Ukraine. Student conferences, debates and round tables are held, as are meetings with representatives of law enforcement agencies, the justice system, figures from the arts world and well-known public figures. Attention is drawn to issues of children's rights, in particular to the Convention on the Rights of the Child and its Optional Protocols, during educational activities and as part of the further training of teachers and professionals working for health institutions, child-welfare services and social service centres and assisting families, children and young people.

3. Representatives from the Government, local authorities and non-governmental organizations dealing with children's issues and children themselves take part in the work of press clubs, press conferences and live children's rights broadcasts on television and radio. With a view to creating an environment conducive to the realization of children's rights and improving their legal education, "Solidarity for Children" days are held.

Reply to questions raised in paragraph 2 of the list of issues

4. List of institutions of higher education which carry out military training

State Flight Academy of Ukraine

Donetsk National Technical University

Zaporizhzhya National Technical University

Zaporizhzhya State Medical University

Ivano-Frankivsk National Technical University of Oil and Gas

Taras Shevchenko National University, Kyiv

Mykolayiv National University

National University of the State Tax Service of Ukraine

National Aviation University

National Mining University of Ukraine

National Technical University of Ukraine, Kyiv Polytechnic Institute

National University of Water Management and Nature Resources Use (Rivne)

National University of Life and Environmental Sciences of Ukraine

Odesa National Maritime Academy

Odesa National Law Academy

Odesa State Environmental University

Odesa National Polytechnic University

Sumy State University

Volodymyr Dahl East Ukrainian National University

Ternopil State Medical University

Kharkiv National Medical University

Yuriy Fedkovich National University, Chernivtsi

List of institutions of higher education, military units, law enforcement agencies and military studies departments of institutions of higher education

Ministry of Defence

Air Force University, Kharkiv

P.S. Nakhimov Naval Academy, Sevastopol

Military Institute of Radioelectronics, National Aviation University, Zhytomyr

Military Institute of Odesa National Polytechnic University

Military Institute of Taras Shevchenko National University, Kyiv

Military Institute for Telecommunication and Informatics of the National Technical University of Ukraine, Kyiv Polytechnic Institute

Sahaidachny Land Forces Academy

Ministry of Internal Affairs

Internal Affairs Troops Academy (Kharkiv)

Security Service of Ukraine

National Academy of the Security Service of Ukraine

State Border Guard Service of Ukraine

Bogdan Khmelnytsky National Academy of the State Border Guard Service of Ukraine

5. At the present time, there are no students under 17 years of age studying at military institutions of higher education. The following schools are also in operation: the Ivan Bohun Military Secondary School in Kyiv; the National Secondary School with intensified military and physical training in Lviv; the Prykarpattia military and sports boarding school; and 13 provincial secondary schools with intensified military and physical training (in Volynka, Zaporizhzhya, Donetsk, Kamyanets-Podilsky, Luhansk, Mukacheve, Poltava, Kharkiv, Chernihiv, Odesa, Ostroh and Kryvyi Rih). The pupils study at such secondary schools for four years once they have completed grade 7 at a general-educational school, or for two years if they have completed grade 9. The main objective of such institutions is to provide for:

Compulsory general secondary education

A concentration on military science

A sense of respect for human rights and fundamental freedoms

Development of the personality, talents and intellectual and physical abilities of the child

Preparation for a conscious acceptance of life in society, tolerance and equality of rights

Reply to questions raised in paragraph 3 of the list of issues

6. Article 30 of the Child Protection Act sets forth the legal principles prohibiting the organization of child paramilitary groups and pro-war and pro-violence propaganda. It is forbidden to involve children in military operations or armed conflict, to set up paramilitary children's organizations or groups and to carry out propaganda among children promoting war or violence. No cases of children under the age of 18 being enlisted or forcibly recruited for use in armed conflict were recorded in the period from 2007 to 2009.

7. The establishment of illegal paramilitary or armed groups is punishable under article 260 of the Criminal Code, as follows:

1. The establishment of illegal paramilitary groups or participation in their activities is punishable by deprivation of liberty of 2 to 5 years.

2. The establishment of illegal armed groups or participation in their activities is punishable by deprivation of liberty of 3 to 8 years.

3. Leading, funding or supplying weapons, ammunition, explosives or military hardware to such groups is punishable by deprivation of liberty of 5 to 10 years.

4. Participation within such groups in attacks on enterprises, establishments, organizations or the public is punishable by deprivation of liberty of 7 to 12 years.

5. In the event that the acts set forth above cause fatalities or other serious consequences, they are punishable by deprivation of liberty of 10 to 15 years.

Article 447 of the Criminal Code, for its part, establishes criminal liability for the hiring of mercenaries, as follows:

1. The recruitment, financing, equipping or training of mercenaries for use in armed conflicts of other States or violent actions aimed at overthrowing State power or violating territorial integrity, as well as the use of mercenaries in armed conflicts and actions, are punishable by deprivation of liberty of 3 to 8 years.

2. Participation without the permission of the competent organs of State power in armed conflicts of other States for the purpose of obtaining material compensation is punishable by deprivation of liberty of 5 to 10 years.

8. Relations between the State and Ukrainian citizens in respect of fulfilment of their constitutional duty to defend the country are regulated by the Military (General Conscription and Service) Act. Article 2 defines military service as State service of a particular nature consisting in professional activity to defend the motherland by those citizens who are fit for service in terms of health and age. Time spent performing military service is credited in qualifying periods for insurance, work seniority, professional specialization and length of public service. Under article 15 of the Act, physically fit males are called up for a period of service during times of peace if they are between 18 and 25 years of age when conscripted (hereunder referred to as conscription age) provided they do not have the right to be exempt from or to defer their period of military service.

9. Citizens of conscription age may be accepted on a voluntary, contractual basis for military service under the conditions established in article 20, paragraph 1, of the Act and in accordance with the provisions relating to the performance of military service by citizens of Ukraine.

Reply to questions raised in paragraph 4 of the list of issues

10. Article 6 of the Criminal Code establishes the scope of the law in respect of criminal liability for offences committed in Ukraine, as follows:

1. A person who commits a crime in Ukraine is subject to liability under this Code.

2. A crime is considered to be committed in Ukraine if it is initiated, continued, concluded or stopped in Ukraine.

3. A crime is considered to be committed in Ukraine if the perpetrator or at least one person complicit in the crime has acted in Ukraine.

4. If a crime is committed in Ukraine by a diplomatic representative of a foreign State or another citizen not subject to the jurisdiction of Ukrainian criminal courts under Ukrainian law and the international treaties to which the parliament (*Verkhovna Rada*) of Ukraine has consented, criminal liability is determined by diplomatic means.

11. The effect of the criminal liability law in respect of crimes committed outside the country by citizens of Ukraine or stateless persons residing permanently in Ukraine is set out in article 7 of the Criminal Code:

1. Nationals of Ukraine and stateless persons residing permanently in Ukraine who have committed offences beyond its borders are subject to criminal liability under the Criminal Code, unless otherwise provided by international agreements which the parliament has agreed to make binding.

2. If the persons indicated in part 1 of this article have incurred criminal liability outside Ukraine for committing offences, they may not be prosecuted for the same offences in Ukraine.

12. For its part, article 8 of the Criminal Code defines the effect of Ukrainian criminal law in respect of crimes committed outside of Ukraine by foreign nationals or stateless persons. Under this article, foreigners and stateless persons not permanently resident in Ukraine who have committed crimes beyond its borders incur liability under the Criminal Code in cases provided for in international

agreements or if, according to the Code, they have committed serious or particularly serious crimes against the rights and freedoms of Ukrainian citizens or against the interests of Ukraine.

Reply to questions raised in paragraph 5 of the list of issues

13. Under Ukrainian legislation, in particular article 30 of the Child Protection Act, children are prohibited from taking part in military operations or armed conflict. Children under the age of 18 are not subject to conscription in the armed forces. Children under the age of 18 years are not conscripted into the Ukrainian armed forces. Under article 15 of the Military (General Conscription and Service) Act, physically fit males who have attained the age of 18 by the day of their enlistment but are not yet 25 years of age and who do not have the right to be exempt from or to defer their period of national service are called up during times of peace. Unlawful conscription for national service is punishable under the Code of Administrative Offences. In accordance with Presidential Order No. 313/99-rp of 11 December 1999, on 20 January 2000 Ukraine signed the Rome Statute of the International Criminal Court. Ruling No. 3-v/2001 of 11 July 2001 of the Constitutional Court found that the Rome Statute is not in keeping with the Constitution in respect of the tenth preambular paragraph and article 1 of the Statute. According to article 9.2 of the Constitution, international agreements that contravene the Constitution can be entered into only once the relevant amendments to the Constitution have been made. Consequently, and to allow for the Government's recognition of the jurisdiction of the International Criminal Court in the conditions set out by the Rome Statute, the Ministry of Justice has drawn up a bill to amend article 124 of the Constitution.

Reply to questions raised in paragraph 6 of the list of issues

14. In accordance with article 31 of the Child Protection Act, the Government — through the designated authorities — is taking every step necessary to ensure the protection of refugee children in Ukrainian territory. The migration authorities help to search for the parents or other legal representatives of refugee children separated from their families and place those children in appropriate children's homes or families. The tutorship and guardianship agencies act to place refugee children separated from their families in children's homes or foster families on a temporary basis, and arrange tutorship or guardianship of those children. They also help refugee children separated from their families to realize their rights. The Refugee Act sets forth the legal status of refugees in Ukraine and the procedure for acquiring, losing and removing refugee status. If refugee children who have been involved in armed conflict in their country of residence are in Ukrainian territory, they are given, where appropriate, the necessary psychological and social assistance in family support centres or social and psychological rehabilitation centres. Without exception, the identification procedure for all persons benefiting from asylum is carried out by the Ministry of Internal Affairs.

15. As part of a project run by the Danish Refugee Council under the title "Legal and Social Protection of Asylum-seeking and Refugee Children in Ukraine", a 30-place temporary refugee accommodation centre for unaccompanied minors seeking asylum has been set up in Zakarpattia. It is staffed by qualified psychologists and social workers. Asylum-seeking minors are provided with legal assistance. The State's procedures for determining refugee status include no separate criteria for children who have taken part in armed conflict. All asylum-seekers are subject to a single procedure to determine refugee status; the determination is based on the definition of "refugee" (article 1, paragraph 2, of the Refugee Act and the Convention relating to the Status of Refugees, to which Ukraine acceded in 2002).

16. In Ukraine there is no single, generally accepted method to assess the age of children. Usually, when doubts arise as to the child's stated age, the tutorship and guardianship agencies or the migration agencies send the asylum-seeker to a State medical establishment for an expert medical examination. However, since such expert examinations are not regulated by law, human rights organizations and international organizations refuse to recognize them as legitimate. The State Committee on Ethnic and Religious Affairs is now drawing up an instruction for work with unaccompanied minors seeking asylum. This instruction is intended to regulate most questions arising in the consideration of refugee status applications (with the exception of the age assessment issue) and to clearly define the competence of State agencies from the moment such children are identified in Ukraine until their status is determined.

Reply to questions raised in paragraph 7 of the list of issues

17. The Refugee Act establishes the legal status of refugees in Ukraine and the procedure for acquiring, losing and removing refugee status. If refugee children who have been involved in armed conflict in their country of residence are in Ukraine, they are given, where appropriate, the necessary psychological and social assistance in family support centres or social and psychological rehabilitation centres. Ukraine and the European Union have signed an agreement on readmission under which Ukraine undertakes to readmit asylum-seekers and migrants who have entered the European Union from its territory. The State Committee on Ethnic and Religious Affairs is the principal body tasked with considering applications for asylum and refugee assistance. Ukraine helps keep refugee families together. With a view to family reunification, the family members of persons granted refugee status in Ukraine have the right to enter the country and either obtain refugee status or freely leave the territory of Ukraine (art. 4). In accordance with article 19 of the Refugee Act, persons who have been granted refugee status are guaranteed the same rights and freedoms as Ukrainian citizens. In reality, however, refugees and asylum-seekers face many problems which must be resolved before they can fully enjoy their rights in accordance with national and international standards. In most cases, they do not have access to free interpreting services when applying for refugee status, and issues in respect of social services, everyday life and other problems remain unresolved for long periods.

18. Information on applications for refugee status from unaccompanied minors in Ukraine, 2007–2009

	Sex	
	<i>Masculine</i>	<i>Feminine</i>
Afghanistan	91	1
Palestine	2	
Pakistan	5	

Iraq	1	
Guinea	1	
Nigeria	1	
Kenya		1
Ethiopia	1	
Democratic Republic of the Congo	1	
Côte d'Ivoire	1	
Somalia	12	4
Total	116	6

Note: These statistics record the number of refugee children under the age of 15, i.e., below working age. There are no official statistics on refugee children under the age of 18.

Reply to questions raised in paragraph 8 of the list of issues

19. The Act on State control over international transfers of military and dual-use goods regulates State control of the international transfer of such goods. Its aim is to defend the interests of Ukraine and to ensure its observance of its international obligations regarding the non-proliferation of weapons of mass destruction and their means of delivery, to limit transfers of conventional weapons and to take steps to prevent the use of such items for terrorist or other illegal purposes. Article 1, paragraph 16, of the Act defines military items as weapons, ammunition, specialized military equipment, special components for their production and explosive substances, and material and equipment specifically intended for the development, production or use of such items.

20. The Act contains a specific section, section IV, devoted to the prevention of offences and responsibility for State export controls. To prevent offences in the area of State export controls, article 23 of the Act enables a designated export control authority and central Government agencies, within the scope of their mandates, to investigate State export control violations that serve as a basis for an international transfer of goods (including by verifying that the goods are delivered to end-users, that the documentation is legal and that the goods are actually used for the stated aim).

21. If it is ascertained that State export control violations have been committed as described in article 24 of the Act, the respective central Government agencies report them to the designated export control authority. If there is sufficient evidence that an identified or an unidentified person has intended to commit a crime or has committed one in respect of goods subject to State export controls, the designated export control authority reports this to the appropriate initial inquiry and pretrial investigation agencies.

22. Under article 24 of the Act, offences in the area of State export control include the following:

Activities associated with an international transfer of goods without a licence, a ruling or an international import certificate, obtained in accordance with established procedures

International transfers of goods using licences, rulings or documents obtained by submitting counterfeit documents or documents containing inaccurate information

The conclusion of foreign trade agreements (contracts) for the international transfer of any goods, or participation in the implementation of such agreements in any way other than as specified by the Act, if the exporter becomes aware that such goods may be used by a foreign State or foreign business for the purpose of producing weapons of mass destruction or their means of delivery

Carrying out the international transfer of goods even when the party engaged in international trade has become aware that the goods will be used for other purposes or by other end-users than those specified in the foreign trade agreement (contract) or related documents on the basis of which the licence, ruling or international import certificate was obtained

Deliberate concealment of information relevant to the decision on whether to grant a licence, ruling or international import certificates

International transfers of goods carried out in violation of the conditions specified in the licences, rulings or international import certificates, including after a foreign trade agreement (contract) is altered without the consent of the designated export control authority to change the names and identifying information of exporters, importers, intermediaries and end-users, or the descriptions of goods, end-use requirements and submission of the relevant safeguards documents

Negotiations to conclude foreign trade agreements (contracts) on the export of military goods, as well as dual-use goods, in respect of which a partial embargo has been imposed on the foreign State concerned, without obtaining authorization from the designated export control authority

Failure to submit reports and the relevant documents to the designated export control authority, or late submission thereof; such documentation provides information on the outcome of negotiations specified in subparagraph 8 of this article, on international transfers of military and dual-use goods transferred to other countries using the licences or rulings issued, and on the use of such goods for their declared purposes

Obstruction of the performance of the official duties of staff of the designated export control authority and other State bodies involved in State export control during the performance of their official functions, or failure to comply with legitimate requests by such persons

Unwarranted refusal to provide information and documents requested by the designated export control authority or other competent State agencies involved in State export control, or the deliberate falsification or concealment of such information and documents

Deliberate destruction of documents relating to the conclusion or execution of foreign trade agreements (contracts) on the

international transfer of goods on the basis of which licences, rulings or international import certificates have been received during the period in which such documents are required to be retained under article 22 of the Act

23. Under article 25 of the Act, the designated export control authority can impose fines on persons and legal entities involved in the international transfer of goods, as follows:

For violations covered by article 24, paragraphs 2, 3 and 4, of the Act, amounting to 150 per cent of the value of the goods respectively transferred

For violations covered by article 24, paragraphs 5, 6 and 7, of the Act, amounting to 100 per cent of the value of the goods respectively transferred

For violations covered by article 24, paragraphs 8 and 12, of the Act, amounting to 1,000 times the minimum wage, not subject to tax

For violations covered by article 24, paragraph 9, of the Act, amounting to 500 times the minimum wage, not subject to tax

For violations covered by article 24, paragraphs 10 and 11, of the Act, amounting to 100 times the minimum wage, not subject to tax

Over and above the aforementioned fines, the designated export control authority may revoke or suspend the licence, ruling or international import certificate issued to the entity involved in international trade, or revoke its registration as an entity authorized to carry out international transfers of goods.

24. In the event that offences covered by article 24, paragraphs 2 and 7, of the Act, are committed by those carrying out the international transfer of goods or by legal entities holding export and import rights for military goods or goods containing information that is a State secret, or if such offences do significant harm to the political or economic interests of the State, to national security or to the country's defence, the Cabinet of Ministers may, on the recommendation of the designated export control authority, revoke the powers previously granted to the entities in question.

25. When the designated export control authority imposes fines or revokes or suspends licences, rulings or international import certificates, or revokes the authority's registration of a foreign trade organization as a body that may carry out the foreign transfer of goods, the decision is subject to appeal in court. The State bears no responsibility for losses that may be incurred by legal entities engaged in the international transfer of goods as a result of the revocation or suspension of licences, rulings or international import certificates or for the revocation of authorization to export or import military goods or goods containing information that is a State secret when such entities have carried out offences falling under article 24 of the Act or when such actions result from a need to defend the national interests of Ukraine or to comply with its international obligations in respect of the non-proliferation of weapons of mass destruction, means for their delivery and limitations on the transfer of conventional military goods. A decision to impose a fine in cases involving offences covered by this Act is subject to appeal in court, and the execution of the decision to impose the fine is suspended until the respective court decision is issued.

26. In accordance with article 27 of the Act, physical persons engaged in international trade who violate State export control laws are subject to administrative, criminal and civil liability as stipulated by law. Article 28 of the Act provides a standard to regulate the liability of Government officials for violations of legal requirements relating to State export controls. If they commit offences in this field, officials of the designated export control authority and of other agencies involved in decisions relating to export controls are subject to disciplinary, administrative, criminal and civil liability, as established by law.