



Convention on the Rights of the Child

Distr.

GENERAL

CRC/C/OPAC/POL/Q/1/Add.1

17 September 2009

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD Fifty-second session 14 September-2 October 2009

WRITTEN REPLIES BY THE GOVERNMENT OF THE REPUBLIC OF POLAND CONCERNING THE LIST OF ISSUES (CRC/C/OPAC/ POL /Q/1) TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION OF THE INITIAL REPORT OF THE REPUBLIC OF POLAND 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/ POL /1) *

[Received on 24 August 2009]

OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

Replies to the list of issues to be taken up in connection with the consideration of the initial report of Poland (CRC/C/OPAC/POL/1)

Please provide information on the competent governmental departments or bodies responsible for the coordination and implementation of the Optional Protocol. Please also indicate if there is any mechanism available for monitoring and periodically evaluating its implementation.

The Ministry of National Education is the institution responsible for the coordination and implementation of the Optional Protocol.

Please provide information on budget allocations given to implementation of the Optional Protocol.

Please provide information on measures taken to disseminate information on the Optional Protocol, including, but not limited to, inclusion in school curricula as part of human rights education. Please also describe other measures taken to disseminate information on the Optional Protocol, particularly to the general public.

Taking into account the State party's Declaration upon ratification of the Optional Protocol regarding the minimum age for voluntary recruitment into the armed forces and paragraph 4 of the State party's report, please provide further clarification as to the minimum age for voluntary recruitment into the armed forces or other armed groups.

Under art. 10 , paragraph 2 , of the Optional Protocol, it started being applied to the Republic of Poland on 7 May 2005, ratified by the President of the Republic of Poland on 14 February 2005, on basis of the *law of 23 July 2004 on ratifying the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, adopted in New York on 25 May 2000 (Journal of Laws No. 194, it. 1982)*. In line with art. 3 , paragraph 2 , of the Optional Protocol, the Government of the Republic of Poland declares as follows:

for compulsory draft, the minimum age is 18 years;

for voluntary joining of the Armed Forces of the Republic of Poland, the minimum age is 17 years.

The above described principles of international law are reflected by the provisions of the *law of 21 November 1967 on the universal duty to defend the Republic of Poland (Journal of Laws 2004 No. 241, it. 2416, as amended)*.

Please provide information on whether the provisions of the Optional Protocol have been fully incorporated into domestic laws and if not, please provide information on the measures required to do so.

Please briefly provide information on legislation being prepared relating to recruitment into the armed forces. Please indicate the status and provide the Committee with copies of any such legislation.

The principles of international law are reflected by the provisions of the *law of 21 November 1967 on the universal duty to defend [the Republic of Poland (Journal of Laws 2004 No. 241, it. 2416 as amended)]*. In art. 58 it states that compulsory military service shall apply to the following Polish citizens:

- men, starting with 1 January of the calendar year in which they complete 18 years of age;
- women with qualifications useful for the service, starting with 1 January of the calendar year in which they complete 18 years of age.

Please provide information as to whether Poland 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 Polish courts can establish their jurisdiction in case of forced recruitment or involvement in hostilities of a person under 18 if committed outside Poland, by or against a Polish citizen.

Please also clarify whether, in the case that extraterritorial jurisdiction has been assumed, there is a requirement of double criminality for such offences.

As regards the issue of jurisdiction, it should be said that in Poland two basic guidelines rule in this regard, namely (1) the principle of territorial jurisdiction, i.e. offences committed in Polish territory are prosecuted, and (2) the principle of prosecuting Polish citizens for offences committed abroad (preserving the requirement of double criminality, with certain exceptions).

However, regardless of above rules, Poland also applies the principle of so-called universal jurisdiction. This principle is reflected in art. 113 of the Penal Code, that states that regardless of regulations valid at the site of offence committed, Polish penal law shall apply to the Polish citizen and foreigner who was decided not to be extradited, in event when he commits an offence abroad, that Poland is obliged to prosecute under international agreements.

In the light of current Polish penal regulations (art. 124 Pc) the forcing - against international law - of persons covered by international protection to join enemy armed forces, is considered a war crime. This provision does not determine the victim's age limit. In this case, the principle of universal jurisdiction should apply, because Poland is obliged to prosecute this crime by the Geneva Conventions of 1949. The provision in question would only apply to the cases of enlisting the children mentioned in the question, into enemy armed forces. It would not apply to recruitment of persons under 15 to own army. However, depending on the specific factual circumstances, such action could meet the prerequisites for other common offences, such as unlawful depriving of freedom (art. 189 Pc), forcing certain behaviour (191Pc) or exposing to direct threat to life (art.160 Pc).

Furthermore, the draft art. 124, paragraph 2, of the Penal Code included in the government's draft law amending the Penal Code act, the law Regulations Introducing the Penal Code, and the law Code of Penal Proceedings, provide for complementing the list of war crimes with, among other, penalising behaviour consisting in ... "whoever breaching international law ... enlists, recruits to armed forces persons under 18 years of age, or actually uses such persons to participate in hostilities." The draft amendment is currently in the process of agreements between ministries. Once it becomes valid, all forms of using children in armed conflicts will be penalised as war crimes.

Regarding the second part of the question, it should be said that the possibility of exercising jurisdiction by Polish judiciary organs over offences (offences stated in the question included) committed abroad by a Polish citizen or against him, results from the articles 1091 and 1102 Pc, and the principle of universal jurisdiction not subjected to the double criminality rule, expressed in art. 113 Pc3.

Art. 109. The Polish penal law shall apply to the Polish citizen who committed an offence abroad.

Art. 110, paragraph 1. The Polish penal law shall apply to the foreigner who committed abroad an offence against the interests of the Republic of Poland, the Polish citizen, Polish legal person or Polish organisational unit that is not a legal entity, and to the foreigner who committed abroad a terrorist offence.

Paragraph 2. The Polish penal law shall apply in case of committing by a foreigner abroad an offence other than set forth in paragraph 1, if the offence is penalised by Polish penal law with a penalty exceeding 2 years of imprisonment, and the perpetrator is staying in the territory of the Republic of Poland and was not decided to be extradited.

Art. 113. Regardless of the regulations valid at the site where the offence was committed, Polish penal law shall apply to the Polish citizen and the foreigner who was not decided to be extradited, in case he commits abroad an offence that the Republic of Poland is obliged to prosecute under international agreements.

Please provide information on the link between military schools in Poland and the Polish armed forces, particularly on steps taken to ensure that enrolment of children in military schools does not expose them in any way to situations of armed conflict or encourage their recruitment into the armed forces before the age of 18. Please also indicate whether the Ombudsman for children has access to military schools in the context of investigating claims of violations of children's rights.

In Poland, there are no military schools for minors.

Please provide information on physical and psychological recovery and social reintegration programmes for asylum-seeking and refugee children who may have been involved in armed conflicts.

Please indicate whether the State party is engaged in any activity of regional and/or international cooperation related to implementation of the Optional Protocol.

Has the State party provided financial support or any other assistance through multilateral, bilateral or other programmes or activities specifically to promote the implementation of the Optional Protocol and address the needs of children involved in situations of armed conflict?

N/A.
