



Convention on the Rights of the Child

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

[Replies received on 14 April 2009]

1. With reference to paragraph 13 of the State party's report, please indicate whether the proposed change to the Slovenian Armed Forces Act prohibiting persons under 18 years of age from joining the armed forces in all circumstances, including state of war and state of emergency, has entered into force.

The Service in the Slovene Army Act (Uradni list RS (Official Gazette of the Republic of Slovenia), No. 68/07), which entered into force on 14 August 2007, expressly stipulates in article 7 that a person below the age of 18 years may neither perform military service nor any other work in the Army. The provision, which is one of the basic principles of performing military service thus, at a time of peace and during a state of emergency or war, completely prevents any inclusion of citizens aged below 18 years in the national armed forces, i.e., in the Slovene Army, consequently excluding the possibility of their potential participation in armed activities or conflicts as members of the Slovene Army.

2. Please inform the Committee whether Slovenia assumes extra-territorial jurisdiction over war crimes which involve conscripting or enlisting children under the age of 15 into armed forces or using them to participate actively in hostilities. Please also indicate whether Slovenian courts have jurisdiction in case of compulsory recruitment or involvement in hostilities of a person under 18 if committed outside Slovenia or against a Slovenian citizen.

The aforementioned acts are defined as criminal acts in article 102 (war crimes) and in article 106 (recruitment of mercenaries and persons below the age of 18 years) of the new Penal Code (Uradni list RS (Official Gazette of the Republic of Slovenia), No. 55/08 and No. 66/08 - Corr.) Regarding the competence of the Slovenian courts for criminal prosecution of perpetrators of such acts committed outside the territory of the Republic of Slovenia, it is necessary to comply with articles 12 and 13 in particular of the referred to Code. The competence of Slovenia and thus the validity of the Penal Code is given for acts committed outside its territory in two cases; firstly, when an alien commits a criminal act against the Republic of Slovenia or one of its citizens outside the territory of the Republic of Slovenia, and secondly, when an alien commits a criminal act abroad against a foreign state or against an alien and is caught in the territory of the Republic of Slovenia and not extradited to a foreign State.

3. Please clarify whether the State party's legislation recognizes the criminal liability of legal persons for the acts and activities enumerated in the Protocol.

Our legislation, i.e., the Criminal Liability of Legal Entities Act (Ur.l. RS (Official Gazette of the Republic of Slovenia), No. 98/2004 and No. 65/2008) does not provide for criminal accountability of legal persons for criminal acts of war crimes referred to in article 102 of the Penal Code or the recruitment of mercenaries and persons aged below 18 years referred to in article 106 of the Penal Code, thus for the acts and activities indicated in the Protocol.

4. Please provide information on the role played by the Ombudsperson on the rights of the child in implementing the Optional Protocol and/or monitoring its implementation. Please indicate, in particular, whether the Ombudsperson or any other has the mandate to receive complaints from, or on behalf, of children on violations of the Optional Protocol.

Slovenia has no special ombudsman for children's rights, so all violations of children's rights are dealt with in accordance with the Constitution and the law on Human Rights Ombudsman of the Republic of Slovenia. The treatment of violations of children's rights

does not differ in terms of contents or form from the treatment of violations of human rights; the Ombudsman therefore also performs his or her task of control mechanism for all regulations governing children's rights. It should be stressed that ratified international legal acts apply directly and that they rank above domestic legislation in the hierarchy of legal acts and the Ombudsman also monitors their implementation.

In performing his tasks, the Ombudsman may also accept initiatives (complaints and denunciations) directly from children, although such direct initiatives from them are very rare.

5. Please provide disaggregated data (including by sex, age and country of origin) covering the years 2007 and 2008 on the number of asylum-seeking children coming to Slovenia from areas where children may have been recruited or used in hostilities. In this respect, please also provide information on measures adopted with regard to physical and psychological recovery and social reintegration of refugee, asylum-seeking and migrant children entering Slovenia who may have been recruited to armed forces in hostilities abroad.

In 2007, 27 minors applied for international protection unaccompanied by their parents. There were 24 male and 3 female applicants aged between 14 and 18 years. Applicants by country of origin:

Afghanistan 5

Albania 7

Bosnia and Herzegovina 1

Georgia 1

Cameroon 1

Nigeria 1

Sierra Leone 2

Turkey 2

Serbia 7

In 2008, 18 minors applied for international protection unaccompanied by their parents. All applicants were male and aged between 14 and 18 years. Applicants by country of origin:

Afghanistan 9

Albania 3

Serbia 2

Turkey 2

Ghana 1

Rwanda 1

To date, the Ministry of the Interior has not detected any case of a minor applying for international protection for whom there was reason to suspect that he had been enlisted in armed forces or used in hostilities. The Republic of Slovenia does not have a regulated legal solution for such a case. In the event of finding that a minor had been a victim of enlistment in armed forces or used in hostilities, such a minor would be considered within the framework of an interministerial working group established in 2007 for carrying out standard operating procedures for preventing and taking measures in cases of gender violence, in the context of which, bearing in mind the accompanying sexual violence against enlisted minors, the problem of enlistment of minors into armed forces and their use in hostilities certainly belongs. The parties to the Standard Operating Procedures (SOP) Agreement are the United Nations High Commissioner for Refugees regional office in Budapest, the Ministry of the Interior, the Ministry of Justice and five non-governmental organizations functioning in the area of protection of the rights of the child, the Society for Non-violent Communication, the Society "Ključ" - Centre for Combating Trafficking in Human Beings, the Jesuit Refugee Service, the Legal and Information Centre of Non-Governmental Organizations and Slovene Philanthropy. The working group is tasked with analysing trends, developing preventive strategies, studying and solving specific issues related to taking measures and prevention in cases of sexual and gender violence and, when required, with coordinating activities performed by the parties to the SOP as well as other institutions involved in individual cases. In such an event, the working group would ensure the implementation of relevant measures for the physical and mental recovery and social integration of the children of refugees, asylum-seekers and migrants, in accordance with the legislation, respecting the principle of the best interests of the child (articles 16 and 96 of the International Protection Act, (Ur. list RS (Official Gazette of the Republic of Slovenia), No. 111/2007).

6. Please provide information on methods used to identify children who may have been recruited to armed forces or used in hostilities abroad among asylum-seekers from countries affected by armed conflict.

Recognizing child applicants for international protection who might have been enlisted in armed forces or used in hostilities abroad and are asylum-seekers arriving from countries affected by armed conflicts takes place in the Asylum Home. Insofar as the suspicion of such an abuse of the child is expressed at the time of submission of the application for international protection, in addition to the child's legal representative and the psycho-social service of the Asylum Home, the non-governmental organization Society "Ključ" - Centre for Combating Trafficking in Human Beings, which has wide experience in recognizing various forms of child abuse, and an expert in paedo-psychiatry, are included. The referred to non-governmental organization is the strongest organization in Slovenia in terms of preventive and curative activities for combating trafficking in human beings, including the provision of care and a programme of reintegration of victims of trafficking in human beings. In a case in which the suspicion of abuse is confirmed, the issue of the abused child will be further considered by the SOP working group. In this connection, it should be stressed that in particular the recognition of the vulnerability of applicants for international protection, to which such a child abuse is related, is one of the 2009 priorities of the Ministry of the Interior; this Ministry also carries out regular programmes of additional psycho-social support for recognition of various forms of vulnerable groups of applicants for international protection.

7. Please inform the Committee whether national legislation prohibits the sale of arms when the final destination is a country where children are known to be, or may potentially be, recruited or used in hostilities and if not, whether consideration is given to the possibility of adopting such legislation.

In the Republic of Slovenia, traffic in military weapons and equipment is based on a permit regime. In accordance with the provisions of the first paragraph of article 77 of the Defence Act (Uradni list RS (Official Gazette of the Republic of Slovenia), No. 103/04 - official consolidated text), only a company, institute or other organization that has obtained a permit from the Ministry of Defence may sell, export or import military weapons and equipment, or act as an arms broker. In accordance with the second paragraph of article 77 of the referred to Act, a prior permit from the Ministry of Defence is also required for each actual export, import or transit of military weapons and equipment across the national territory, unless otherwise provided by an international treaty. In connection with the latter, the Defence Act also states in the third paragraph of article 77 the reasons because of which the Ministry of Defence shall reject the issue of a permit for a specific export, import or transit of weapons or military equipment, namely:

- (a) If the fulfilment of the international obligations of the Republic of Slovenia is at risk;
- (b) If the security and defence interests of the Republic of Slovenia are at risk;
- (c) If armed conflicts would be stimulated or enabled in the State end user of the military weapons and equipment;
- (d) If there are reasonable grounds to suspect that the weapons and military equipment will be resold from the importing country to a third country and this would be in conflict with the defence and security interests of the State.

The Defence Act, therefore, does not specify the enlistment or use of children in hostilities in a particular State as a reason for prohibiting sale (export) of military weapons and equipment to such a State. In any case, such circumstances might be subsumed under the aforementioned reasons for which the Ministry of Defence shall reject the issue of a permit for the export of weapons and military equipment to such a State, in particular the reasons referred to under (a) and also under (c) of the third paragraph of article 77 of the referred to Act. Within the context of reasons referring to fulfilling international obligations, we would like to mention, in particular, the Council Common Position 2008/944/CFSP of December 2008 defining common rules governing the control of exports of military technology and equipment. Among the criteria that provide the basis for refusing the issue of a permit for the export of weapons and military equipment, the Common Position, in particular, pays great attention to observance of international obligations (point 1, article 2 - observance of sanctions imposed by the United Nations Security Council and the EU, to observance of treaties on the non-proliferation of weapons and similar, and to the observance of human rights in the State of destination and observance of international humanitarian law by the State of destination (point 2, article 2). In the latter case, an export permit is rejected if there is an obvious risk that in the State of destination, the military weapons might be used for internal repression, including, among other things, torture and other cruel acts, inhumane and degrading treatment or punishment and other significant violations of human rights and fundamental freedoms, as defined in the relevant instruments on human rights, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Common Position prohibits member States from selling weapons to States not meeting the referred to criteria.

Restrictions on the sale of weapons to the referred to States may also be based on the restrictive measures that the Republic of Slovenia introduces or implements in accordance with legal acts and decisions adopted within the framework of the international organisations Act (Uradni list RS (Official Gazette of the Republic of Slovenia), No. 127/06) and/or implementing regulations of the Government of the Republic of Slovenia issued on the basis thereof. In the part relating to so-called civil weapons, this area is regulated by the Weapons Act (Uradni list RS (Official Gazette of the Republic of Slovenia), No. 23/05 - official consolidated text).
