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Convention on the Rights of the Child

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Written replies by the Government of Serbia concerning the list of issues (CRC/C/OPAC/SRB/Q/1) related to the consideration of the initial report of Serbia 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/SRB/1)

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RESPONSES

TO THE QUESTIONS RELATED TO

THE INITIAL REPORT ON PREPARATION OF THE OPTIONAL PROTOCOL ON PARTICIPATION OF CHILDREN IN ARMED CONFLICTS TO THE CONVENTION ON THE RIGHTS OF THE CHILD

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

1. The provisions of the Law on Military, Labour and Material Duty[1] have been fully complied with the Convention on the Rights of the Child.

2. Pursuant to Article 13 of the above mentioned law, recruitment duty shall start in the calendar year in which a person is 18 years old and shall last to the time for the military service, namely to the transfer to the reserve military forces, if the military service has been defined in some other way.

3. According to the provisions of Article 15 of the above mentioned law, a recruit is entered into military records at the beginning of calendar year in which he is going to be 18 years old as well as recruits of older age, who had not been registered earlier for some reasons.

4. Pursuant to Article 25 of the above mentioned law, a recruit is sent to the military service if assessed to be able for the military service in the calendar year he is going to be 19 years old.

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

5. Article 33 of the Law on Defence prohibits any paramilitary groups and associations to perform assignment in the defence of the country.

6. The Army of Serbia must not be used for party, ideological and religious purposes.

7. The Law on Military, Labour and Material Duty prohibits persons under the age of 18 from joining the aimed forces. There are no abuses of children in armed conflicts at the ministries of the Republic of Serbia and the Army of Serbia.

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

8. The provision of Article 9 paragraph 2 of the Criminal Code prescribes the conditions under which universal principles are applied. According to it, our criminal legislation is also valid for a foreigner who commits a criminal act against a foreign country or against another foreigner abroad, for which, according to the criminal legislation of the country where such a criminal act had been committed, a prison sentence of five years or a more severe sentence may be inflicted. In addition, the conditions to apply universal principles are that a foreigner finds to be in our territory, and not to be extradited to a foreign country. The presence of the offender in the territory of our country justifies the application of the domestic law (forum deprehensionis). The application of our law through the application of universal principles happens in cases when no country requires extradition of a foreigner, or if extradiction of a foreigner is rejected. In another case, there is need and justification to apply our criminal law. Moreover, the application of its own law may be considered an obligation of the state that had rejected extradition, which is explicitly prescribed in some international treaties (*aut dedere, aut judicare* principle). In

[1] The Official Gazette of the Republic of Serbia, no. 88/09, it entered into force on the 5th November of 2009.

case our law shall be applied, a more severe sanction than a sanction prescribed by criminal legislation of the country where the criminal act had been committed cannot be declared, neither in respect of its type nor measure.

9. If, according to the law of the country where the criminal act had been committed no sanction is declared for it, prosecution may nevertheless be undertaken on the grounds of approval by the Public Prosecutor of the Republic of Serbia, if such an act, at the time of its commitment, was considered a criminal act according to the general legal principles recognized in international law (Article 10 paragraph 3 of the Criminal Code).

10. If a criminal act had been committed outside the territory of the Republic of Serbia by or against its citizens, the active personal principle shall be valid. Namely, our criminal legislation shall be applied to our citizens who commit a criminal act abroad regardless of what criminal act is concerned. The reason of existence of this principle is that our citizens do not avoid the application of domestic criminal law once they come to Serbia because it would not be possible to apply it according to the principle of territorial jurisdiction, and the citizens cannot be extradited to a foreign state, either. Criminal legislation shall be also applied to the offender who had become a citizen of Serbia after the commitment of the criminal act (Article 8 paragraph 2 of the Criminal Code). The need for this provision resulted from the fact that they cannot be extradited, if they were foreigners at the time of commitment of the criminal act, so that our law could be applied under certain conditions and with difficulties if there was no such provision. Our criminal law shall be applied to our citizen who had committed a criminal law abroad only if foreign criminal law had not been applied.

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

11. The Ministry of Education, the Ministry of Human and Minority Rights and the Ministry of Labour and Social Policy are primarily in charge of education on human rights. The implementation of educational measures on human rights has been included in many strategies concerning the accomplishment of the rights of the child. The documents are public and available to all interested subjects (state and non-governmental organizations). These are some examples of such strategic documents: the National Action Plan for Children, the National Strategy for Youth, the National Strategy for Prevention and Protection of Children Against Violence. The text of the Optional protocol has been published on the Internet page of the Ministry of Human and Minority Rights www.ljudskaprava.gov.rs.

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

12. The Military Grammar School is an educational institution providing general education required to continue education at the Military Academy and developing motivation for military schools.

13. The Military Grammar School is a secondary school of boarding type where pupils attend classes according to the curricula and syllabi of general grammar school of the Ministry of Education.

14. The general objective of education at the Military Grammar School is to prepare and motivate pupils to continue education at the Military Academy. In this sense, particular attention is paid to: gaining general knowledge of fundamental importance to continue education at the Military Academy; formation and development of motivation and intellectual, ethical and psycho-physical capabilities required for military service, fostering and development of ethical personality characteristics, patriotism, which are necessary prerequisites for the job of a professional military officer.

15. The pupils of the Military Grammar School have the status of persons who being educated at the Ministry of Defence and the Army of Serbia and the time spent at the school is not calculated as a part of military service.

16. The curricula and the programme in the field of military activities also includes military training as an optional subject, which provides to pupils information about the organization of the Army of Serbia and security challenges, risks and threats. For the purposes of this subject, pupils do not wear uniforms and do not have and carry weapons.

17. In case of mobilization or armed conflicts, minors are temporarily released from educatino and return home (where their status of pupils being educated at the Military Grammar School comes to a standstill), while adults are assigned to peacetime centres to training and professional advancement.

18. There is no legal option or practice on which grounds minors may be forced to military services or an option to participate in armed conflicts directly or indirectly.

19. Please note that the students of military academies and the pupils of the Military Grammar School were sent home during the aggression against FRY in 1999 and were not recruited in the Army units, either.

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

20. The Law on Foreign Trade with Arms, Military Equipment and Dual Purpose Goods[2], Article 1, prescribes the method and conditions to perform foreign trade, transport and transit of arms, military equipment and dual purpose goods (controlled goods), defines expressions, establishes the body in charge of issuance of permits for export, import, transport, transit, mediation and performance of services in foreign trade, prescribes the conditions to issue permits, powers-of-attorney by competent bodies in the implementation of this law, supervision and control and penalty provisions in case of any violation of this law.

21. According to Article 3 of the above-mentioned law, controlled goods are arms, military equipment and relevant technologies, coordinated with the Joint List of Military Equipment incorporated in the Code of Conduct of the European Union on how to act in export of arms; dual purpose goods, including software and technology, which may also have military purpose in addition to the civil one, are coordinated with the List of Dual Purpose Goods and Technologies of the European Union.

22. On the grounds of Article 1 paragraph 2 of the Law on Foreign Trade with Arms, Military Equipment and Dual Purpose Goods, the Decision on the Criteria for Issuance of Permits for Export of Arms, Military Equipment and Dual Purpose Goods[3] has been adopted, complying with the Code of Conduct of the European Union during export of arms.

23. This decision establishes the criteria to be applied by the ministry in charge of international economic relations for issuance of permits for export of arms and military equipment mentioned in the Decision on the establishment of the national control list of arms and military equipment and permits for export of dual purpose products mentioned in the Decision on the establishment of the national control list of dual purpose goods.

24. The criteria for issuance of permits for export of arms, military equipment and dual purpose goods are as follows:

[2] The Official Gazette of SCG, number 7/2005, 8/2005.
[3] The Official Gazette of SCG, no. 11/2005

(a) The first criterion

The ministry in charge of international economic relations shall not issue an export permit if its issuance would mean a violation of:

(i) the international obligation of the state union and its obligation to impose the UN military embargoes and the OEBS recommendations;

(ii) the international obligation of the state union in accordance with the Agreement on Non-spreading of Nuclear Weapons, the Convention on Biological and Toxin Weapons and the Convention on Chemical weapons;

(iii) the obligation of the state union not to export any type of mines.

(b) The second criterion

Regarding the respect for human rights in the country of final destination, after the assessment of the conduct of the importing country in respect of relevant principles set up by the international instruments for the protection of human rights, the ministry in charge of international economic relations shall:

(i) Reject to issue an export permit if there is clear risk that the exported goods might be used for internal repression;

(ii) Be especially careful on the occasion of issuance of permits, dealing with each case individually and taking into account the nature of equipment, for the countries where the competent bodies of the UN, the Council of Europe or the EU had established severe violations of human rights.

(iii) In this sense, the equipment that might be used for internal repression shall include, *inter alia*, the equipment proved to be similar to the equipment already used by the end user for internal repression, or that is suspected to be used for repression and that shall not reach the end user or be used for the declared services.

(iv) The nature of equipment must be taken into account carefully, especially if it intended for provision of domestic security.

(v) Internal repression, *inter alia*, means torture and cruel, inhuman and humiliating treatment or sanctioning, arbitrary executions or execution in summary manner, disappearances, arbitrary imprisonment and other severe violations of human rights and fundamental freedoms specified in the relevant international instruments for the protection of human rights, also including the Universal Declaration on Human Rights and the International Treaty on Civil and Political Rights.

(vi) Within the meaning of this decision, the measures of internal repression shall not be internal measures prescribed by law, which are undertaken with the aim to combat terrorism or other crime, if they had been adopted in accordance with the international standards on protection of human rights described in this criterion.

(c) The third criterion

The ministry in charge of international economic relations shall not issue an export permit if it may cause, extend or worsen the existing tensions or conflicts in the country of final destination.

(d) The fourth criterion

The ministry in charge of international economic relations shall not issue an export permit if there is risk that the specified receiver is going to use the subject of export in an aggressive manner against some other country, or to accomplish some territorial aspiration by force.

For the assessment of such risk, the following shall be taken into account:

(i) Existence or possibility of armed conflicts between the receiver and some other country;

(ii) Claim the right to territory of some neighbouring country, which the receiver had tried to accomplish in the past by force or threatened to do so;

(iii) Whether it is probable that the subject of export shall be used for the purposes not related to legitimate and national security and defence of receiver;

(iv) Need not to make some serious unfavourable impact on regional stability.

(e) The fifth criterion

The ministry in charge of international economic relations shall take into account, *inter alia*, the conduct of the receiving country related to:

(i) Its support to terrorism and international organized crime and incitement of the same;

(ii) Its fulfilment of international obligations, especially in respect to non-use of force, including also those resulting from the international humanitarian law, which is applicable to international conflicts and those that are not such;

(iii) Its efforts not to spread and control armament and disarmament in other ways, especially signing, ratification and implementation of relevant conventions on control of armament and disarmament.

(f) The sixth criterion

Behaviour of the receiving country in relation to the international community, especially its attitude towards terrorism, nature of its allied association and respect for international law.

The ministry in charge of international economic relations shall, *inter alia*, take into account the conduct of the receiving country regarding:

(i) Its support to terrorism and international organized crime and incitement of the same;

(ii) Its fulfilment of international obligations, especially in respect to non-use of force, including also those resulting from the international humanitarian law, which is applicable to international conflicts and those that are not such;

(iii) Its efforts not to spread and control armament and disarmament in other ways, especially signing, ratification and implementation of relevant conventions on control of armament and disarmament.

(g) The seventh criterion

The existence of risk that the subject of export shall go to other receiving country or be exported again under unfavourable conditions.

When assessing the impact of proposed export to the importing country and risk that the subject of export shall go to unwanted end user, the ministry in charge of international economic relations:

(i) Legitimate defence and internal security interests of the receiving country, also including possible participation in peace-keeping missions of the United Nations or other;

(ii) Technical capacities of the receiving country to use the imported equipment;

(iii) Capacity of the receiving country to effectively control the import;

(iv) Risk that weapons shall be exported again or diverted to terrorist organizations (in this context special attention should be paid to anti-terrorist equipment).

(h) The eighth criterion

Compatibility of export of weapons with technical and economic capacity of the receiving country, taking into account necessity that countries shall implement their legitimate security and defence requirements with minimum possible use of human and economic resources for the procurement of weapons.

25. On the occasion of examination of the applications for the issuance of permits, the ministry in charge of international economic relations shall take into account, in the light of information contained in the reports prepared by the relevant sources such as UNDP, the World Bank, IMF and OECD, whether the mentioned export might seriously disturb sustainable development of the receiving country. In this context, the ministry in charge of international economic relations shall study the relative level of military and social expenditures of the receiving country, taking into account all aid by EU or bilateral aid.

26. The national legislation shall prohibit 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.