



Convention on the Rights of the Child

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Committee on the Rights of the Child

Consideration of reports submitted by States parties 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

Reports of States parties due in 2012

Hungary*

[8 August 2012]

* The present document is being issued without formal editing.

I. Introduction

1. Hungary, as a State Party to the Convention on the Rights of the Child, ratified the Optional Protocol on 14 December 2009; the Act ratifying the Protocol entered into effect on 31 December 2009. This is the first Report on behalf of Hungary regarding the implementation of the Protocol.

II. General measures of implementation

2. The present Report has been drafted by the Ministry of Defence of Hungary, in close cooperation with the Hungarian Defence Forces, as the governmental organ with primary responsibility of the implementation of the Protocol. Other governmental organisations, such as the Ministry of National Resources and the Office of the Chief Military Prosecutor have been closely involved in the drafting of the Report. Due to the very limited open issues that were considered during the drafting period, civil organisations were not involved.

3. The Protocol has been ratified by the Parliament of Hungary and promulgated in an Act of Parliament (Act CLX of 2009) that is the highest act of legislation within the Hungarian legal system. The promulgating Act itself contains the Declaration made by Hungary to the Protocol. The Act also lists the governmental organisations responsible for the implementation of the Protocol. As stated above, the Ministry of Defence has the primary responsibility for the implementation; the Ministry of Justice and the Ministry of Interior share in the responsibility of implementing the Protocol. The organs responsible for the implementation are all part of the Government of Hungary, thus their inter-relationship enables the highest level of co-ordinated action, if necessary.

4. Hungary has made the following Declaration to the Protocol:

“With reference to Article 3 paragraph 2 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Republic of Hungary declares that under Hungarian law the minimum age for voluntary recruitment into the Hungarian national armed forces is eighteen (18) years. Pursuant to the Constitution of the Republic of Hungary all recruitments to the national armed forces are voluntary in peacetime, and the minimum age for mandatory military service during armed conflict is also eighteen (18) years.”

5. In accordance with the Declaration, Hungary has ensured that no children under eighteen years will be recruited into the Hungarian Defence Forces in peacetime or during the situation of an armed conflict.

6. The institution of the Representative of the Rights of Children has been established in 2003 in Hungary. Since 1 January 2011, the Department of Legal Protection of the National Office for Rehabilitation and Social Affairs operates the national system of the child’s legal representatives. There are 21 representatives in Hungary whose tasks also include the legal protection of foreign (migrant or refugee) children who might be affected by foreign armed conflicts.

7. The terms of the Protocol are generally disseminated in the Hungarian Defence Forces. Human rights and the principles of international humanitarian law form an essential part of the basic military training. The rights of children and the non-involvement of children into armed conflicts constitute an element of the basic and general human rights training of members of the armed forces. Human rights training of judges, teachers and law enforcement officials also include the topic of the rights of children. The overview of the

contents of the Protocol is also included into the Manual on the Application of the Convention of the Rights of the Child, published by the Ministry of National Resources.

III. Prevention (arts. 1, 2, 4, para. 2, and art. 6, para. 2)

8. The military service and the recruitment into the Hungarian Defence Forces are regulated by Act CXIII of 2011 on national defence and the Hungarian Defence Forces as well as on regulations that may be adopted in times of public emergency and armed conflicts; and by Act XCV of 2001 on the status of the members of the Hungarian Defence Forces.

9. In accordance with the Fundamental Law of Hungary and the Act on national defence, under general, peacetime circumstances, the recruitment into the Hungarian Defence Forces is done only through voluntary recruitment. A mandatory, conscripted military service may be adopted only in exceptional circumstances. In accordance with Article XXXI of the Fundamental Law:

“During a state of emergency, or if the Parliament so decides in a preventive defensive situation, all adult men of Hungarian citizenship residing in the territory of Hungary will perform national defence service. A super majority law will define the precise rules and forms of such military service.”

10. Based upon the regulation cited, it shall be noted that the protection of minors and children from being involved into an armed conflict, as well as their protection of being conscripted into the Hungarian Defence Forces stems from the Fundamental Law of Hungary.

11. The Act on national defence reinforces this limitation, applicable both in times of emergency and armed conflict, by stating in its Article 5 paragraph (4) that no person may be conscripted for military service before his 18th birthday.

12. The Fundamental Law and the Act on national defence ensure that neither in peacetime nor during times of emergency or armed conflict will any person under 18 years be obliged to perform military service. Based upon the Hungarian Declaration made to the Protocol and upon the regulation of the Fundamental Law, the threshold of the minimum age will not be lowered in the future. These essential regulations provide a comprehensive legal protection for children from being involved into armed duties.

13. Article 35 of the Act on national defence reinforces the complex system of voluntary recruitment as follows:

“The Hungarian Defence Forces is an organ of the State under civilian control, operating in a strictly hierarchical order, based upon voluntary recruitment during peacetime and upon both voluntary recruitment and compulsory military service in times of emergency and preventive defensive situations.”

14. Article 41 of the Act on the status of the members of the Hungarian Defence Forces states that “admittance to military service can only be granted, through voluntary recruitment, to a person above the 18th years of age [...]”

15. The Act on the status of the members of the Hungarian Defence Forces ensures that members of the Hungarian Defence Forces shall be voluntarily recruited, and be above 18 years of age. The implementation of this legal requirement rests with the Hungarian Defence Forces Central Recruitment and Registry Command (hereinafter referred to as: HDF CRRC). The HDF CRRC has the primary responsibility to ensure that any person admitted to military service with the Hungarian Defence Forces fulfils the legal requirements set out by the Act referred to above.

16. Any person, who is interested in serving with the Hungarian Defence Forces, can obtain detailed information about the service in any open recruitment office operated by the Hungarian Defence Forces. There are also incentives for encouraging volunteers offered by the Hungarian Defence Forces. The recruitment offices provide information concerning the possible salaries, career prospects and further benefits. The data and information provided by the office is in strict compliance with the Acts referred to above.

17. Any official document that is approved by law to validly verify the age of the volunteers, i.e. personal identification card, passport, driving licence can be accepted by the offices. These documents shall be accepted by the national authorities as valid; hence, the documents are applied with special security markings. The offices of the Hungarian Defence Forces are able to verify the validity of the documents.

18. During the application procedure, the incumbent shall pass a series of detailed medical examinations conducted by medical experts of the Hungarian Defence Forces.

19. If the incumbent has fulfilled the legal and medical requirements, he/she will be offered a fixed contract with detailed information concerning the duration and the content of the service, duties and salaries as well as other benefits. In accordance with the Act on the status of members of the Hungarian Defence Forces, officers sign up for five years of service, non-commissioned officers and men sign up for three years of service. There are several legal possibilities to terminate the contract before its expiration, without any sanctions.

20. In Hungary, currently there are no primary, secondary or grammar schools operated by or under the control of the Hungarian Defence Forces. Military officers are trained and educated at the Military Faculty of the National University of Public Service.

21. Officers of the HDF CRRC regularly visit the classes of many secondary grammar schools and universities and provide information about the Hungarian Defence Forces. In parallel to that, the Ministry of Defence has an accredited teaching program for pupils and students called "Katonasuli" (Lessons on Military Issues). Through this program the students may receive special knowledge of the matters of national defence and the military. 28 secondary grammar schools with about 1000 students joined that training. The subject of "Katonai alapismeretek" (Introduction to the Military) is optional for the students at the school leaving exam as well.

IV. Prohibition and related matters (arts. 1, 2, 4, paras. 1 and 2)

22. The Criminal Code of Hungary (Act IV of 1978) contains general criminal regulations concerning the prohibition of illegal recruitment and concerning the obligations related to the protection of persons with special status (e.g., children).

23. Article 154 states as follows:

"(1) Any attempt to recruit personnel in the territory of the Republic of Hungary for military service – other than for any allied forces –, paramilitary service in a foreign armed body, or any mediation of volunteers for such service shall be construed a felony and punishable by imprisonment between one to five years.

(2) Any Hungarian citizen who voluntarily joins or offers to join any foreign armed body – other than the allied forces – that is involved in an armed conflict (national or international), or who participates in training in such an armed body shall be punishable in accordance with Subsection (1)."

24. Article 155 defines an element of genocide as follows:
- “(1) The person who – with the aim of the total or partial extermination of a national, ethnic, racial or religious group
- [...]
- (e) Displaces the children belonging to the group into another group commits a felony and shall be punishable with imprisonment from ten to fifteen years or life imprisonment.
- (2) The person who commits preparation for genocide shall be punishable for a felony with imprisonment from two years to eight years.”
25. The acts prohibited by the laws of armed conflict as determined by the 1949 Geneva Conventions and their 1977 Additional Protocols are all incorporated into the Criminal Code, e.g. the prohibition of attacking civilian population and civilian object, the prohibition of the destruction or unlawful seizure of civilian property. Currently there is no specific provision in the Criminal Code for the specific protection of children less than 18 years. In order to implement the regulations within the Protocol, the Ministry of Defence acted very actively during the drafting of the new Criminal Code of Hungary that will enter into effect in July 2013.
26. Article 152 of the draft of the new Criminal Code contains a provision stating that:
- “The person who:
- (a) Recruits or conscripts any person less than 18 years to serve in the armed forces or in an armed group; or
- (b) Induces or supports that person to take a direct part in the hostilities;
- or
- (c) Provides for the means for the direct participation of that person, commits a felony and shall be punishable with imprisonment from five to fifteen years.”
27. The new draft establishes a comprehensive ban and criminalization of the involvement of children into armed conflicts. It is the firm intention of the Government of Hungary to have the Act adopted by the Parliament in 2012 including the provisions giving effect to the Protocol.
28. The current Criminal Code has several forms of jurisdiction:
- “Section 3
- (1) Hungarian law shall be applied to crimes committed in Hungary, as well as to acts committed by Hungarian (citizens) abroad, which are crimes in accordance with Hungarian law.
- (2) The Hungarian law shall also be applied to criminal acts committed on board of Hungarian ships or Hungarian aircraft situated outside the borders of the Republic of Hungary.
- Section 4
- (1) Hungarian law shall also be applied to acts committed by non-Hungarian citizens abroad, if they are:
- (a) Criminal acts in accordance with Hungarian law and are also punishable in accordance with the law of the place of perpetration;

(b) It is a criminal act against the state (Chapter X), excluding espionage against allied armed forces (Section 148), regardless of whether it is punishable in accordance with the law of the country where committed;

(c) Crimes against humanity (Chapter XI) or any other crime, the prosecution of which is prescribed by an international treaty.

(2) Espionage (Section 148) against allied armed forces by a non-Hungarian citizen in a foreign country shall be punishable according to Hungarian penal law, provided that such offense is also punishable by the law of the country where committed.

(3) In the cases described in Subsections (1)-(2) the indictment shall be ordered by the Attorney General.”

29. As regards the criminal responsibility of superiors and commanders, the Criminal Code contains a separate provision on command responsibility that applies regardless of the age of the subordinates. In the Hungarian criminal law, acting on order is not a general reason excluding punishability. However, “a soldier may not be punishable for his act executed upon order, except for the case, if he knew that he commits a crime by the execution of that order. The person giving the order shall be liable for the crime committed upon order as perpetrator.”

30. As regards the criminal responsibility of organizations or legal persons, the Criminal Code is not aimed at establishing this form of criminal liability, taking into account its wide and comprehensive personal scope.

31. From the perspective of criminal proceedings, it can be stated that there is no available jurisprudence concerning the objectives of the Protocol in Hungary. There were not any prosecutions or criminal proceedings conducted in connection with the involvement of children into armed conflicts. There were no international criminal assistance procedures conducted in connection with the involvement of children into armed conflicts.

32. Beside the legal provisions detailed above, the Service Code of the Hungarian Defence Forces (adopted by the Decree 24/2005 of the Minister of Defence) contains an Annex regarding the basic rules of the laws of armed conflicts. The Annex contains a special provision stating the “children shall be accorded with special care and shall be protected under all circumstances”.

33. The Service Code serves as the basic regulation for all members of the Hungarian Defence Forces and thus, the provisions therein shall be followed in all circumstances. The Ministry of Defence takes continuous efforts to update and extend the training of the members of the armed forces to include basic human rights with special regard to the rights of the child.

34. Hungary has signed and ratified the relevant conventions and treaties related to the protection of the victims of war and the prosecution of war criminals. These conventions include but not limited to:

(a) Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949;

(b) Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949;

(c) Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949;

(d) Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949;

- (e) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977;
- (f) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977;
- (g) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005;
- (h) Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954;
- (i) Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, 10 October 1980. – and its subsequent Amendment and Protocols I-V;
- (j) Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, 18 September 1997;
- (k) Convention on Cluster Munitions, 30 May 2008.

V. Protection, recovery and reintegration (art. 6, para. 3)

35. In the case of Hungary, children affected by armed conflicts are generally foreign children with or applying for refugee status. Hungary, as a State party to the Geneva Convention of 1951 on refugees, ensures the special protection of children in accordance with the relevant Convention and with the special legal provisions on child care. In the most critical case, that is unaccompanied children applying for refugee status, since May 2011 the Hungarian child care and protection institutions are strongly involved. As a result of the recent developments, unaccompanied children receive care and accommodation in one of the institutions operated by the national child care system. In accordance with the Hungarian laws and regulations on refugees, unaccompanied children receive special protection and a designated special status; their application for a refugee status is judged in a priority procedure, their legal protection is conducted by a trained and qualified person. The Hungarian educational system provides for equal opportunities for these children to attend the Hungarian educational institutions.

36. The Hungarian Interchurch Aid – supported by the European Refugee Fund – has launched several programmes for:

- (a) The training of personnel working with unaccompanied children;
- (b) Enhancing the quality of meals (with special regard to cultural and religious requirements);
- (c) Enhancing the cultural, religious and local knowledge and skills of children.

37. On 1 January 2008, at the Bicske Refugee Centre, a special Home for Unaccompanied Minors was opened, where the care and protection as well as the education of the children are performed by a staff of 10 trained personnel. In 2009 A Home for Young Refugees (mainly above 18 years) was established for the continuous support of young people with a refugee status who are not anymore eligible for the protection of the child care system. Since May 2011 The Hungarian Interchurch Aid has taken over the care, education and support of unaccompanied children who may be affected by armed conflicts.

38. It is primarily the task of the refugee care service to protect the identity of the child with special regard of the possible victims of armed conflicts. If the interests of the child require, the identity of the child will be kept confidential and relative persons will not be notified. In practice, the Search Service of the Red Cross is used for family reunification attempts.

39. In the recent years, the Hungarian refugee system and its special branch for child protection has gone through a massive development. Several projects have been successfully launched, separate homes and services have been established for children applying for a refugee status.

VI. International cooperation and assistance (art. 7, para. 1)

40. Hungary, as a member of the European Union and the Council of Europe, adopted the relevant legal and policy measures that enable a wide-ranging international cooperation with regard to the protection of children and the criminal prosecution of persons involved in the violation of the Protocol. All legislative and policy requirements are suitable for the international cooperation in this field.

41. The Hungarian Defence Forces participate in several international crisis response and peacekeeping operations in countries affected by armed conflicts.

42. In Afghanistan, the Hungarian Defence Forces lead a Provincial Reconstruction Team in Baghlan province. A part of their activities extend to the pacification and reintegration of the local population. The Hungarian team has launched several projects in order to achieve these goals with special regard to the protection of local children. Several local, safe and well-equipped schools and hospitals were established by the Hungarian team, aid and gender awareness was disseminated among the local population.

43. In Somalia and Uganda, Hungarian military legal advisors disseminate the basic principles of the law of armed conflicts, taking into account the special protection of children in times of war.

44. The Government of Hungary is committed to establish an overarching implementation of the Protocol and the necessary financial, legal and infrastructural requirements of this implementation. The finalized and on-going legislative and policy development ensure that the process has been started on a solid legal and political ground in order to provide a comprehensive protection of children from armed conflicts.
