

Abstract in English – The Status of Child Soldiers in International Refugee Law

The main aim of this thesis is to investigate to what extent the international refugee law protects children who flee from armed forces recruitment. The chosen problem was solved using the question whether it is possible to grant a refugee status according to the 1951 Refugee Convention, or a status complementing the refugee status according to regional regulatory instruments, to a child who flees from armed forces recruitment. The conception of the refugee status was divided into constituent elements and it was considered whether children who flee from recruitment into armed forces and former child soldiers comply with attributes of these elements.

The first examined element is the inclusion clause. In this part, the thesis examined the following questions: Is recruitment of children into armed forces and their use in hostilities a form of persecution? Can such children be considered a particular social group? Can rejection of participation in armed forces by such children be considered holding a political opinion? Is there a causal link between persecution and membership to a particular social group or between persecution and holding a political opinion in the context of children who flee from recruitment into armed forces? The results of the analysis of these questions are the following: Recruitment of children into armed forces and their use in hostilities can be considered a form of persecution. Such children can be considered a particular social group. Rejection of participation in armed forces by such children can be considered holding a political opinion. The existence of causal link between persecution and membership to a particular social group or between persecution and holding a political opinion depends on the approach taken by the state in question. On the one hand the state can examine the real reasons of the perpetrator on the other hand the state can examine the predicament of the applicant. If the state examines the predicament of the applicant, the causal link exists, otherwise it is necessary to examine the real reasons of the perpetrator.

The second examined element is the exclusion clause. In this part the thesis examined the following question: Can the exclusive clause be applied to a child who, during their participation in the armed forces, committed crime against peace, a war crime, a crime against humanity, serious non-political crime or has been guilty of acts contrary to the purposes and principles of the United Nations? The results of the analysis of this question are the following:

The exclusive clause also applies to minors if they have reached the age of criminal responsibility and possess the mental capacity necessary to be held responsible for the crimes in question. If the child has reached the age of criminal responsibility, their emotional, mental and intellectual maturity should still be evaluated. It is necessary to take into account other circumstances which could exclude the criminal liability such as: duress, self-defence, involuntary intoxication, the age of the applicant at the time of becoming involved with the armed group or the reasons for joining. Besides, the consequences that the child can face upon return to his home country, such as serious human rights violations, should be considered.

Finally, this thesis examined regional instruments relating to the status of refugees, namely European, in the scope of the European Union and Council of Europe, and African. The regional regulatory instruments were compared to universal regulatory instruments. We arrived at a conclusion that regarding refugee status we can apply our findings related to global level also to regional level with minor differences. This thesis also examined the option of granting regional status which complements the refugee status. In the European Union it is possible to grant complementary protection to a child, who flees from recruitment into armed forces. According to African regulatory instrument, it is possible to grant regional refugee status to such child.