



Liga za ľudské práva
The Human Rights
League

Hurbanovo nám 5,
811 03 Bratislava
IČO: 31807968 / DIČ: 2022095471
tel: +421-2-544 35 437
fax: +421-2-546 42 439
e-mail: hrl@hrl.sk



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Unaccompanied Minors

The Situation in 2010

Brief Description of the Situation, Conclusions and Recommendations

In 2009, the Human Rights League (HRL) carried out research on the general situation, level of legal protection and setting up of integration measures for unaccompanied minor foreigners (hereinafter referred to only as “UAMs”) present in the Slovak Republic. The research resulted in the publication of “Legal Status and Integration Opportunities for Unaccompanied Minor Foreigners in the Slovak Republic: Analysis of Legal Status and Practices” (Fajnorová, Številová, 2009). A part of the analysis was also the identification of those problems minor foreigners face in the areas of protection and care as well as the proposal of appropriate improvement measures.

In 2010, we continued to provide legal and social assistance to unaccompanied minors and to communicate with competent public authorities in order to resolve identified problems and in a collective effort contribute to an improvement in the level of protection of one of the most vulnerable groups of foreigners present in our territory. Despite certain improvements which were made, certain problems still remain.

In December 2010, we organised a conference on the protection of unaccompanied minors, in which approximately 60 experts active in the given field participated. The aim of the conference was to show the remaining deficiencies and to identify measures which may be carried out in order to improve the level of protection of UAMs in the Slovak Republic. The description below of the situation and measures follow those which were in brief presented during the conference.

Today we consider **the most pressing fields** which have to be addressed as soon as possible:

- **Guardianship and custodianship**
- **Permanent solutions**
- **Legal aid** and legal counselling, including representation
- **Education**



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- **Protection from trafficking**
- **Replacement of UAMs during the asylum procedure**
- **Guardianship and custodianship in relation to unaccompanied minors**

Legal framework and internal regulations

The Act on the Socio-legal Protection of the Child¹ as well as the Act on Family² stipulate the appointment of a custodian for an UAM and before the appointed custodian takes charge of his/her post, urgent acts in the UAM's interest shall be done by the relevant authority of socio-legal protection of children appointed as guardian.

Under the Act on the Socio-legal Protection of the Child, urgent acts in the child's interest shall be done by an authority exercising socio-legal protection of children and social guardianship³, before a custodian is appointed to the child or before the appointed custodian takes charge of his/her post⁴.

The Act on Family stipulates that if none of the parents can carry out parental responsibility or if a court decided to restrict parental responsibility of the only living parent, it shall, in its ruling, appoint a custodian for a minor child⁵. If an individual cannot be appointed a custodian, the court shall appoint as custodian a municipality and in case of unaccompanied minors, it shall appoint as custodian an authority for the socio-legal protection of the child⁶. Before the custodian is appointed to the minor child or before the appointed custodian takes charge of his/her post, urgent acts in the minor child's interest shall be carried out by a guardian⁷.

Beside the legal provisions, the appointment of a custodian is stipulated by an Internal Rule issued by the Headquarters of Labour, Social Affairs and Family to regulate the exercise of measures of the socio-legal protection of children in relation to UAM's by relevant labour

¹ Act No. 305/2005 on the Socio-legal Protection of the Child and on Social Guardianship, as amended by later legislation

² Act No. 36/2005 on Family, as amended by later legislation

³ Relevant Office of Labour, Social Affairs and Family

⁴ Section 29 (1) of the Act on the Socio-legal Protection of the Child

⁵ Section 39 (2) of the Act on Family

⁶ Section 57 (3) of the Act on Family

⁷ Section 57(4) of the Act on Family



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offices in 2007. The Rule expressly states that given the fact that an UAM does not have a legal representative and it is necessary that he/she be represented by a custodian appointed by a court, the authority exercising socio-legal protection of children appointed by the court as guardian or the authority exercising such protection in the district in which the UAM resides shall, immediately upon it becoming necessary, file before the relevant court an application to appoint a custodian in accordance with Section 57 of the Act on Family. The proceeding for the appointment of a custodian may also be instituted by a court without a motion to do so. An early appointment of a custodian is important for the protection of UAM's rights⁸. However, the Rule does not specify further at what moment exactly it is necessary to appoint a custodian.

Practice

Despite the above provisions of the legislation in force and the Internal Rule of the Headquarters of Labour as an authority superior to local offices of labour, custodians are not appointed in practice.

Reasons why there is a need for the practice of custodianship in relation to UAM's

In accordance with the Internal Rule of the Headquarters of Labour, Social Affairs and Family, unlike a custodian who has exercised parental responsibility concerning the upbringing of a minor child, his/her representation and administration of his/her property instead of his/her parents for a long time, a guardian shall only perform certain concrete acts in law. (...)

Therefore, the custodian ensures the child's education and development to be compatible with his/her favourable psychological, social and physical development. He/she may also provide for a personal child's care.

Considering that minor foreigners remain in the Slovak Republic without their parents or any other adult relatives who could supervise their development, look after them and give them advice, it is necessary that in case of asylum, subsidiary protection being granted in the Slovak Republic to such a child, or the child has been in asylum procedure for more than three months, or should be granted tolerated residence and demonstrates interest to remain in the Slovak Republic, a court appoints a guardian for him/her, because the execution of

⁸ Internal Rule of the Headquarters of Labour, Social Affairs and Family, Section 4. Proceedings for the appointment of a custodian, p. 11



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custodian's duties serves to perform urgent acts and does not correspond to the child's needs, and therefore is not sufficient.

Concrete proposals of the Human Rights League for the guardianship and custodianship:

- to file an application for the appointment of a custodian in case of each UAM within three months following the appointment of a guardian
- to increase the amount of working hours dedicated to the work with UAM to an employee of the office of labour, social affairs and family in charge of exercising custodian's duties, or to authorise several employees trained for the specific work with UAM's to perform such duties
- if an employee performing custodian's duties who does not hold degree in law, to establish an obligation to be represented by an attorney-at-law or a lawyer in the asylum procedure of UAMs
- there should be an intensive cooperation between each employee in charge of exercising custodian's duties and a psychologist and a collaborating lawyer and other experts, e.g. for the identification of, and assistance to, victims of human trafficking

Many UAM's remain in Slovakia during a short period because the Slovak Republic was not their country of destination in Europe and they were only detained here by the Foreign Police. These children often leave a children's care home very soon after being discharged from a quarantining, isolating part of the children's care home. In such cases the process of appointing of custodians is not possible from the point of view of time. However, there are also UAM's in Slovakia who remain here for months or years until they become adults and even longer if they are allowed to, and many of them have been granted international protection. In case of these children we see the necessity of appointing custodians for them.

Permanent solutions

Under the Slovak legislation in force there are two possibilities available to solve the problem of UAM's if family reunification in the country of origin or in another country is not possible. The first possibility lies in granting a tolerated residence and in the possibility of staying in a



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children's care home for UAM's until adulthood and the second one lies in granting asylum in the event that the UAM decides to apply for asylum⁹.

Considering that UAM's are children who remain in the Slovak Republic without protection or care of parents or other adult members of their family, they have a vulnerable status and the Slovak Republic is obliged to provide them with care and assistance. In this sense Slovak legislation complies with international conventions and provisions of Slovak laws in certain aspects exceed the minimum compulsory standard that has to be ensured¹⁰ for UAM's which we consider very positively.

These provisions concern UAM's only until they become adults.

The Act on the Socio-legal protection enables UAM's to remain in a children's care home for UAM's only up to the age of 18 unlike children who stay in standard children's care homes who, upon consent with their home, may extend the stay at the home up until the age of 25¹¹. Nevertheless, the provisions of the Act are in this sense unclear and disagreement also exists among lawyers and we have also noticed different judges' interpretations whether an UAM is or is not entitled to remain in a children's care home after attaining adult age. In relation to this we suggest to amend the law so that it is clear and does not give judges the possibility to interpret it differently.

If an UAM does not fulfil conditions for the granting of asylum or subsidiary protection laid out by law, they may reside legally in the Slovak Republic up until the age of 18 on the basis of a granted tolerated residence¹². This residence granted to UAM's ceases to exist after attaining adult age. On the same day an UAM turns 18 years old, he/she is also considered as an unlawfully residing foreigner on the Slovak territory and may be subject to administrative expulsion and detention.

Under the valid Act on the Stay of Foreigners, UAM's, once they have attained 18 years of age, does not have any possibility to ask in the Slovak Republic for other types of residence which would smoothly follow their tolerated residence. When presenting their application for

⁹ The outcome of asylum procedure may of course result in granting of subsidiary protection, but it represents a temporary solution – subsidiary protection is granted only for one year, and therefore it can be compared to a tolerated residence during the stay at a children's care home.

¹⁰ That refers namely to provisions of the Act on the Stay of Aliens by virtue of which it is not possible to detain or deport UAM's.

¹¹ Section 50 (1) and 59 (2) letter d) of the Act on Socio-legal Protection of the Child

¹² Section 43 (1) letter d) of the Act on the Stay of Aliens



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a temporary residence permit in order to study, they need to submit a valid passport or other documents which they do not normally have and which are impossible for them to arrange; in the case of permanent residence, UAM's do not fulfil conditions concerning the long-term duration of residence, nor do they meet legal criteria necessary to grant them a residence permit, nor do they have the necessary documents.

Therefore, UAM's very often decide to ask for asylum even though they do not satisfy the conditions for granting asylum. If an UAM applies for asylum after being detained, it has to be noted that applying for asylum does not constitute the ground for releasing him/her from the detention cell.

The only and short-term possibility to legalise the residence of UAM's once they have attained 18 years, is to submit an application for a tolerated residence stating as justification the fact that the UAM cannot leave the territory and his/her detention is not meaningful¹³. However, it is the only type of residence that does not solve the foreigner's situation because it is intended to overcome the period until the foreigner succeeds in getting the documents necessary to leave the territory. During this period of residence the foreigner does not have the right to work, he/she cannot perform business activities and has to arrange for, and cover the costs related to, accommodation on their own. He/she also does not have medical insurance. In addition, the Foreign Police shall grant such residence for a short period and it happens very rarely.

The new law on the control at the borders and the stay of aliens being prepared by the Ministry of Interior of the Slovak Republic does not stipulate any more favourable conditions in terms of granting residence permit for UAM's in the Slovak Republic compared to the current Act on the Stay of Foreigners.

Our recommendations in relation to permanent solutions:

- Legal framework which would really enable UAM's, upon fulfilment of the laid out conditions, to acquire residence in the Slovak Republic after attaining 18 years – conditions, e.g.:
 - study, systematic vocational preparation
 - successful integration process
 - interruption of family and social ties in the country of origin, etc.

¹³ Section 43 (1) letter c) of the Act on the Stay of Aliens



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- The possibility to acquire residence after attaining 18 years without the need to leave the territory of the Slovak Republic and to enable the submission of an application for residence even when the UAM does not have the required documents
- Two possibilities:
 - To introduce a new concept, i.e. in the form of residence due to humanitarian reasons (as it is in the Czech Republic)
 - To use the existing concept (type of residence) introducing more favourable conditions for UAM's than for other groups of foreigners
- To use the provisions of the Citizenship Act – granting citizenship to an UAM whose legal representative or custodian is a citizen of the Slovak Republic or a legal entity designated by a Slovak court, and has an uninterrupted residence in the territory of the Slovak Republic at least two years prior to submitting the application for citizenship
- To consider the use of the concept of asylum for humanitarian reasons – after consideration of the circumstances of the case (abuse, lost family, missing parents, psychological or health problems, interruption of social and family ties in the country of origin, positive integration in the Slovak Republic, duration of previous residence in the Slovak Republic, etc.)
- As regards the draft of the new law on the control at the borders and the stay of aliens, its current wording does not unfortunately change the situation of UAM's, and we would therefore suggest to amend Section 45 (2)¹⁴ of the proposed law, which stipulates that “permanent residence shall be for a indefinite period of time”, as well as the possibility to grant a permanent residence permit without fulfilling the conditions laid down in the law on unaccompanied minors who **study in the territory of the**

¹⁴ “The Ministry of Interior may grant a permanent residence permit for an indefinite period of time without fulfilling the conditions laid down in this law if it is necessary for the provision of protection and assistance to a witness in accordance with a specific law, 14) for exceptional reasons or on a proposal from the Slovak Security Intelligence Service due to security interests of the Slovak Republic”. We propose to amend the wording of this provision as follows:

“The Ministry of Interior may grant a permanent residence permit for an indefinite period of time without fulfilling the conditions laid down/set out in this law if it is necessary for the provision of protection and assistance to a witness in accordance with a specific law, 14) for exceptional reasons or on a proposal from the Slovak Security Intelligence Service due to security interests of the Slovak Republic, **or in case of an unaccompanied minor who studies in the Slovak Republic or prepares for employment and has been granted tolerated residence under this law for at least one year, or in case of a foreigner who has been granted subsidiary protection which has been consequently extended over at least four consecutive years and is employed or performs business activities.**



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Slovak Republic or prepare themselves for employment and have been granted a tolerated residence for at least one year.

- Legal counselling and legal aid

Article 47 (2) of the Constitution of the Slovak Republic states:

Everyone shall have the right to legal advice from the commencement of proceedings before courts, other public authorities or bodies of public administration (...).

The Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status in Article 15 stipulates the right of applicants for asylum to legal assistance and representation. Member States shall allow applicants for asylum the opportunity to consult in an effective manner a legal adviser or other counsellor on matters relating to their asylum applications. In addition, in the event of a negative decision by a determining authority, Member States shall ensure that free legal assistance and/or representation be granted on request in procedures before a court (i.e. in appellate proceedings).

The Act on Asylum gives applicants for asylum the right to lodge an appeal against first instance decisions and each applicant for asylum shall alone, or after consultation with a lawyer, decide whether he/she will lodge such an appeal or not. The Act on Asylum and the Act on the Provision of Legal Aid to Persons in Material Need stipulate as of December 2008 that besides from non-governmental organisations free legal assistance and representation for applicants for asylum, who have not been granted asylum nor subsidiary protection by the Migration Office of the Ministry of Interior of the Slovak Republic, is also provided by the Legal Aid Centre, an institution funded by the Ministry of Justice of the Slovak Republic.

The Committee on the Rights of the Child in its **interpretation of the application of the Convention on the Rights of the Child to UAM's** from 2005 states the following:

A minor applicant for asylum should be represented by an adult who is familiar with the story and background of the child, and who is competent and best capable of defending the child's interests. Unaccompanied minors or separated children should in all cases also have free access to a qualified legal representative, even when the application for asylum of an unaccompanied minor is considered in the same manner as it is in case of adult applicants.

According to **the Separated Children in Europe Programme of Save the Children and UNHCR**: "In all legal proceedings, including any appeals or reviews, separated children must have legal assistance and a legal representative who will assist them to make their claim for protection and the implementation of any ensuing durable solutions. Legal representatives must be available at no cost to the child and, in addition to possessing expertise on areas of migration law, the asylum process, and instruments to protect victims of trafficking. They should be skilled in representing children, be gender-sensitive and be aware of child-specific



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forms of persecution and the exploitation of children in an international context... Children who receive a negative first decision must have a right of appeal to a judicial authority. Children must be accompanied at each interview by their legal representative and where the child so desires, by other significant adults, for example, social worker, relative, guardian etc“.

Pursuant to the **UNHCR Guideline** on minor asylum-seekers from 1997: *“The minimum procedural guarantees should include...the possibility to lodge an appeal against the decision... UAM’s should have access to a qualified legal representative.”*

Proposals of the Human Rights League in relation to legal counselling and legal aid to UAM’s:

To adopt legal provisions that will stipulate:

- Compulsory and free legal representation for any UAM in asylum procedure by a lawyer experienced in the field of immigration and asylum law and children’s rights¹⁵
- To give to any UAM, not only to an asylum seeker, access to free legal counselling¹⁶
- To ensure UAM’s access (by a guardian or a children’s care home) to institutions and organisations (including non-governmental organisations) which provide assistance and services to children, migrants or victims of trafficking, and to ensure UAM’s have the provision of sufficient information on these institutions and organisations¹⁷
- The obligation of an guardian to collaborate in solving legal issues with a lawyer experienced in the field of asylum and refugee law

¹⁵ There are three non-governmental organisations in Slovakia (two are based in Western and one in Eastern Slovakia) which provide free legal assistance and representation for asylum seekers from the beginning of the asylum procedure (Human Rights League, Slovak Humanitarian Council, Goodwill).

¹⁶ That means that any UAM should have Access to legal counselling/advice immediately after being placed in a children’s care home, or once they have undergone a quarantine in order to be sufficiently and well informed on their legal possibilities and so that the lawyer, after an individual evaluation of their case and following consultation with a guardian, could advise them which alternative is the most appropriate for them and could explain to them individual legal steps to solve the situation.

¹⁷ We refer to organisations that may provide assistance or services to UAM’s as children (e.g. UNICEF) or as migrants (e.g. UNHCR, non-governmental organisations) or as (potential) victims of trafficking (e.g. IOM).



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Education

The right of children, including UAM's to education derives from Article 28 of the Convention on the Rights of the Child and is established in Article 42 of the Constitution of the Slovak Republic under which every child has the right to education.

According to the Committee on the Rights of the Child, any UAM's, irrespective of his/her legal status, should have full access to education in the host country. UAM's should be placed in an appropriate school as soon as possible and should receive assistance necessary for the best completion of educational process. All UAM's at the age of adolescence should be enabled to participate in vocational training or education and small children should have access to educational programmes for small children. States should ensure that UAM's get their diplomas or other certificates attesting the completion of studies, namely prior to their potential replacement, resettlement or return.¹⁸

The Slovak Constitution in its Article 35 states that everyone shall have the right to choose his or her profession and appropriate training freely and stipulates one of the basic principles for education and training in the Slovak Republic, namely the principle of free choice of education taking into account the expectations and capacities of children and pupils in accordance with the possibilities of the educational system¹⁹.

These rights also apply to UAM's. The principle of equal treatment is also included in the School Act²⁰, which stipulates that all UAM's, irrespective of their legal status, shall be provided with education, training, accommodation, food in schools under the same conditions that apply to the citizens of the Slovak Republic²¹.

¹⁸ Commission on Human Rights. General Comment No. 6 (2005). Treatment of unaccompanied and separated children outside their country of origin. 2005 (Thirty-ninth session 17 May-3 June 2005). 2005-06-03. (online). CRC/GC/2005/6. Section V. Response to general and specific protection needs. f) Full access to education (quotations 2009-10-31). Available on the Internet in English: <http://www.asyl.at/umf/ber/General_Comment_6_1.pdf>

¹⁹ Act No. 245/2008 on Education and Training (School Act), as amended by later legislation, Section 3 letter h)

²⁰ Section 3 letter c) – principle of equality in access to education and taking into account the educational needs of an individual, and letter d) – prohibition of all forms of discrimination, especially segregation

²¹ Section 146 (2) (in conjunction with paragraphs 1 and 8) of the School Act



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That means that the compulsory school attendance²² and the principle of free education at nursery²³, primary, public secondary schools in the Slovak Republic²⁴, as well as other principles laid down in the School Act²⁵ also apply to UAM's.

Moreover, the act stipulates the organisation of basic and advanced course of the Slovak language for children who are foreigners, in order to remove language barriers²⁶.

UAM's should be placed into the appropriate grade of a primary or secondary school after establishing the level of their acquired education and their knowledge of the official language within three months of their placement in a children's care home for UAM's²⁷. In addition, the principle of admission of minor asylum seekers into the educational system within three months following the filing of the application for asylum is also set out in the Council Directive laying down minimum standards for the reception of asylum seekers²⁸.

The Act on the Socio-legal Protection of Children imposes on a children's care home for UAM's an obligation to create conditions for the teaching of the Slovak language, if it is appropriate and meaningful for the child's development²⁹.

The teaching of the Slovak language prior to the admission of a minor into the relevant grade of a primary or a secondary school is ensured by a children's care home in the case of UAM's

²² Section 19 (2) of the School Act: *The compulsory school attendance takes ten years and lasts until the end of the school year in which the pupil attains the age of 16, unless otherwise provided by this Act; Section 3: Compulsory school attendance usually starts at the beginning of the school year which follows upon attaining by the child the age of six and school maturity, unless otherwise provided by this Act.*

²³ Section 3 letter a) of the School Act (stipulates the principle of free education at nursery schools one year prior to the fulfilment of compulsory school attendance).

²⁴ Section 3 letter b) of the School Act

²⁵ Section 3: Principles of education and training

²⁶ Section 146 (3) (in conjunction with paragraphs 1 and 8 of the School Act)

²⁷ Section 146 (4) of the School Act (paragraph 4 basically applies to children of asylum seekers, children of refugees, children of foreigners who have been granted subsidiary protection and children of displaced persons; however, we think that under paragraph 8 – which stipulates that paragraph 4 also applies adequately to UAM's – it is possible, by way of analogy, to apply paragraph 4, i.e. three-month period for the placement into a school, also to UAM's).

²⁸ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Article 10 (Schooling and education of minors) Section 2 stipulates: “2. Access to the education system shall not be postponed for more than three months from the date the application for asylum was lodged by the minor or the minor's parents. This period may be extended to one year where specific education is provided in order to facilitate access to the education system”.

²⁹ Section 50 (4) of the Act on the Socio-legal protection of Children



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who live in the children's care home and by the Migration Office of the Ministry of Interior of the Slovak Republic in the case of UAM's who are asylum seekers.

The children's care home for UAM's normally does not have sufficient funds in its budget to finance a qualified and intensive teaching of the Slovak language, and therefore, the teaching is ensured by non-governmental organisations, currently it is the Slovak Catholic Charity.

If an UAM becomes an asylum seeker, the Migration Office of the Ministry of Interior of the Slovak Republic³⁰ shall support financially and ensure the professional level of the basic course of the Slovak language in asylum seekers centres. The Act on Asylum further stipulates that if compulsory school attendance applies to a minor asylum seeker, he/she shall be obliged to attend a Slovak language course³¹.

In case of a minor over 16 years of age, provided that compulsory school attendance does not apply to him/her, the act gives him/her the possibility to attend a course of the Slovak language which he/she can but does not have to accept³².

We know from our own experience that the process of placement of UAM's into a primary or a secondary school is complicated. The reason for this lies in the fact that schools are not prepared and willing to receive a minor foreigner for studies. The major obstacles which can be dissuasive for schools to take this step are without any doubt the lack of knowledge or insufficient knowledge of the Slovak language and complications related to the admission of UAM's to the appropriate grade of a primary or a secondary school.

Problems which arise when an UAM is admitted to the appropriate grade are namely caused by the following:

- Children do not have documents attesting acquired level of education or certificates,
- Children do not master the Slovak language sufficiently at a level which would enable them to take an exam in relevant subjects,
- The syllabus in their countries of origin may substantially differ from the syllabus established in the Slovak Republic, or school attendance in the country of origin is not compulsory or available, and children are illiterate,
- Children do not master the Slovak language at a level which would enable them to cope with the subject matter content of the grade to which they would be placed on the basis of their age,

³⁰ Section 146 (5) (under paragraph 8) of the Act on Asylum

³¹ Section 23 (3) letter f) of the Act on Asylum

³² Section 22 (7) of the Act on Asylum



Liga za ľudské práva
The Human Rights
League

Hurbanovo nám 5,
811 03 Bratislava
IČO: 31807968 / DIČ: 2022095471
tel: +421-2-544 35 437
fax: +421-2-546 42 439
e-mail: hrl@hrl.sk



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- Secondary schools tend to request a certificate on the completion of studies at a primary school and ask them to pass an entrance examination in the Slovak language which UAM's still do not master.

Recommendations in relation to UAM's education:

- To ensure a qualified teaching of the Slovak language to every UAM by the state, immediately after their arrival on the Slovak territory and their placement in the relevant children's care home³³
- To place UAM's in the schooling system within three months after being placed in a children's care home³⁴
- To draw up curricula and methodology for the admission of UAM's in schools and for the education of UAM's
- To draw up and apply a unified system to ascertain the educational level of minor foreigners, namely when they lack certificates of education

Protection from trafficking

Human trafficking³⁵, or the trafficking of children is very underestimated in Slovakia and victims in human trafficking among UAM's are not being identified. If it was due to the fact that among UAM's are not children who are victims of trafficking, it would be ideal. However, it is very unlikely that Slovakia would be an isolated place within the EU, where trafficking does not take place. It is rather the opposite, as very small attention is given in Slovakia to the issue of trafficking in children. Even if UAM's were not still victims of abuse or exploitation on the Slovak territory, there are reasonable grounds for suspecting that the Slovak Republic serves in many cases as a transit country further to the west. Even in such a case more attention has to be given to this issue and attempt to identify "potential victims"

³³ Under the Convention on the Rights of the Child, the Constitution of the Slovak Republic, and also under the mentioned School Act, it is the responsibility of the state to ensure education, including the teaching/instruction of the Slovak language to UAM's; this obligation cannot be substituted by activities of non-governmental organisations; moreover, projects of non-governmental institutions are of temporary and partial character.

³⁴ As it is required by the mentioned Council Directive and the School Act

³⁵ Human trafficking is the transportation and receipt of persons most frequently by means of deception, of abduction or by means of the threat of force, for the purpose of exploitation. Exploitation shall include the prostitution or other forms of sexual exploitation, forced labour, slavery, or the removal of organs for illegal purposes. (the abbreviated Palermo Protocol).



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among children even on the “transit” to prevent their abuse. Several elements may indicate that there is a potential victim (the country of origin, the country of destination of the child, the reason for which the child wants to travel to this country, the way of leaving the country of origin, etc.). The IOM held several training sessions aimed at the identification of victims of human trafficking, but nevertheless these were of no effect and even though there were calls for the need of cooperation with experts as well as their potential invitation to debates with children in case of suspicion (e.g. a minor girl from Moldavia³⁶), none of such cooperation takes place and the children’s care home and the guardian are not aware of this problem or underestimate it.

Our recommendations in relation to trafficking in children:

- To draw up, in cooperation with experts in trafficking, an instruction guide for authorities in charge of the socio-legal protection of children and for children’s care homes, in which UAM’s are placed (in the first place it is the Children’s Care Home of Horné Orechové) which would explain to them how to identify victims of trafficking among unaccompanied minors, what kind of questions to ask during an interview with a child in order to verify whether he/she is not a victim or a potential victim of trafficking, and what to do in case of suspicion, that an UAM could be a victim of trafficking
- To establish the obligation for a guardian, i.e. the relevant authority in charge of the socio-legal protection of children, to have the first interview with the UAM as soon as possible, the best would be on the day following the discharge of the UAM from quarantine of a children’s care home, to prevent cases that a child escapes from the home before an interview is held with him/her in order to determine the grounds for which the UAM not only entered the Slovak territory, but all the grounds for which he/she left the country of origin and migrates through Europe³⁷

³⁶ We were informed about this case by the IOM. They came into contact with the minor girl in a camp for asylum seekers and had the suspicion that she could have been trafficked further to the west. We informed the guardian (Office of Labour, Social Affairs and Family of Trenčín) and we also asked to be granted the power of attorney for the representation in the proceedings, stating that we would cooperate with the Department of the IOM in charge of human trafficking to ensure the girl early identification and assistance; granting the power of attorney was refused; to our written request sent to the Director of the Office of Labour of Trenčín we received an answer after one month which stated that the minor girl “had escaped” from the camp, is reported as missing, and therefore our request for granting the power of attorney was unjustified.

³⁷ Currently is such first and very often the last interview of a guardian with the UAM held several days, or even several weeks after the quarantine; before the interview is being held, the child does not have any information on where and why he/she is placed, who is his/her guardian, what are his/her legal possibilities of solving his/her situation. It is normal that the child does not know his/her possibilities in the Slovak Republic, and for instance owing to fear of deportation, leaves the Slovak territory with aid of traffickers or dealers, and continues in travelling to its originally country of destination. However, we think that after due explanation of risks of “travelling through Europe” and of the possibilities to remain in the Slovak Republic, children would in many cases decide differently.



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- To establish cooperation of a guardian and a children's care home employees with organisations as well as state authorities which deal with the issue of human trafficking and at the same time to ensure protection and the best interests of the child

UAM's replacement during the asylum procedure

The biggest reservations in the field of care for UAM's have to be expressed against the replacement of minor asylum seekers and their placement into a detention and reception centre, because such replacement does not take into account the UAM's best interest, it obstructs the process of integration, does not enable the minor to enter into relations with the guardian, or custodian and educators of the children's care home and trust them, it increases the risk of a secondary traumatising of the child and as a whole represents a risk factor for the child in such a vulnerable position as is the unaccompanied minor³⁸.

Moreover, the facilities of the Migration Office are certainly not appropriate for the placement of unaccompanied minors, namely due to the following reasons:

- A court does not decide on the placement of UAM's into the facilities of the Migration Office of the Ministry of Interior of the Slovak Republic;
- The facilities of the Migration Office of the Ministry of Interior of the Slovak Republic are not places where measures of the socio-legal protection of children and social guardianship take place;
- Conditions in the facilities of the Migration Office of the Ministry of Interior of the Slovak Republic are not appropriate for the stay of UAM's;
- During the placement of a child outside a children's care home, the minor asylum seeker is entitled only to the necessary medical assistance, which is covered by the Ministry of Interior of the Slovak Republic as well as adult asylum seekers³⁹ which is

³⁸ The UAM is first on the basis of a court's preliminary measure placed into the Children's Care Home for Unaccompanied Minors in Horné Orechové; after filing a statement – application for asylum – the child is placed in the Reception Centre in Humenné (where he/she undergoes quarantine medical examinations, which he has already undergone in the children's care home) and approximately during one month he/she is placed into the Reception Centre (which is normally) in Opatovská Nová Ves; following the termination of the asylum procedure the child returns to the Children's Care Home in Horné Orechové or (what happened very often in 2010) to another children's care home. This way it is possible that the UAM during the first year of his/her stay in Slovakia has to pass through four facilities that cannot have a positive effect nor aid his integration, especially not on the stabilisation of his psychological state (the stay in centres for asylum seekers together with adult applicants entails several risks, including physical threat of the UAM and a bad influence: cigarettes, alcohol, drugs).

³⁹ When an UAM is present in a children's care home, he/she is under Section 3 (3) letter e) of the Act No. 580/2004 on Health Insurance a person with compulsory health insurance (as "a minor foreigner who remains in the territory of the Slovak Republic without a legal representative or a natural person responsible for his/her education and is provided with care in a facility in which he/she is placed on the basis of a court's decision") and under Section 11 (8) letter g) "The state is a payer of insurance for a natural person who is provided with care in a facility in which he/she is placed on the basis of a court's decision."



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contrary to Article 24 of the Convention on the Rights of the Child which requests to ensure “the highest attainable standard of health”.

Therefore, we are of the opinion that minors are placed into the facilities of the Migration Office of the Ministry of Interior of the Slovak Republic contrary to valid legislation. UAM’s should throughout the whole procedure have the right to remain in the children’s care home where they should be provided with adequate protection and care because they are first and foremost children and only secondly they can be regarded as asylum seekers and foreigners. The best child’s interests have to be taken into account in any measures concerning UAM’s.

Our proposal:

- To amend the legal framework in that sense so that the UAM would, during the asylum procedure, be placed in a children’s care home on the basis of a court’s decision concerning institutional care.