

Legislative Framework on Care Provided to Unaccompanied Minors in Slovakia (situation in 2010)

The legal system of the Slovak Republic guarantees equal protection of their rights and legitimate interests to all children, regardless of gender, nationality, skin colour and citizenship. It means that all children, with or without Slovak citizenship, are provided the same level of social and legal protection, which complies with the constitutional principle guaranteeing equal status to all children who are in need of such protection.

The Slovak Republic has signed several international conventions that are important in the context of care provided to unaccompanied minors, including, *inter alia*:

- *Convention on the Rights of the Child* (ratified in 1989; in force in Slovakia since 1991)
- *Convention Relating to the Status of Refugees* (also known as the Geneva Convention, ratified in 1951; in force in Slovakia since 1991) and *Protocol Relating to the Status of Refugees* (also known as the New York Protocol, ratified in 1967; in force in Slovakia since 1991)¹
- *Universal Declaration of Human Rights* (ratified in 1948; in force in Slovakia since 1992)
- *European Convention on Human Rights* (ratified in 1991; in force in Slovakia since 1992)
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (ratified in 1984)

In addition to the aforementioned international documents, the rights of the child are generally governed by *Act No. 460/1992 Coll., the Constitution of the Slovak Republic, as amended* and *Act No. 36/2005 Coll. on family and on amendments to certain acts* (hereinafter referred to as “the Family Act”). The legal system of the Slovak Republic guarantees equal protection of their rights and legitimate interests to all children under 18 years of age, regardless of their gender, nationality, skin colour and citizenship. It means that all children, with or without Slovak citizenship, are provided the same level of social and legal protection, which complies with the constitutional principle guaranteeing equal status to all children who are in need of such protection.

In addition to the aforementioned laws, **the legislative framework on the provision of care to unaccompanied minors in the territory of the Slovak Republic** also comprises the following laws that govern activities of competent authorities in their relations to unaccompanied minors:

1. *Act No. 48/2002 Coll. on the stay of aliens and on amendments to certain acts, as amended* (hereinafter referred to as “the Act on the Stay of Aliens”)

The Act on the Stay of Aliens requires that an unaccompanied minor undergo, if necessary, a medical examination in order to determine his/her age; specifies a procedure to award a tolerated stay permit to the unaccompanied minor; prohibits his/her detention; and requires that a police department in whose district the child has been found forthwith turn the child over to the custody of an office of labour, social affairs and family.

¹ The independent Slovak Republic was established on 1 January 1993. After the dissolution of the Czech and Slovak Federal Republic, the Slovak Republic has acceded to all commitments under these international documents by way of succession. Slovakia’s accession to these documents was confirmed by Decree of the Ministry of Foreign Affairs of the Slovak Republic No. 319/1996 Coll.

2. *Act No. 305/2005 Coll. on social and legal protection of children and on social custody and on amendments to certain acts* (hereinafter referred to as “the Act on Social and Legal Protection of Children and Social Custody”).

Performance of **measures of social and legal protection of children and social custody** is governed by Act No. 305/2005 Coll. on social and legal protection of children and on social custody and on amendments to certain acts. The social and legal protection of children is a set of measures to provide (i) protection to the child which is essential to his/her well-being and respects his/her best interests pursuant to an international convention, (ii) education and ensure universal development of the child in his/her natural family environment, and (iii) substitute environment to a child who cannot be raised in his/her own family.

The measures of social and legal protection and social custody also apply to a child who is not a Slovak national but is present in the territory of the Slovak Republic unaccompanied by parents or another adult individual to whose personal care the child could be placed (hereinafter referred to as “unaccompanied minor”). Border and aliens police departments are usually first to come into contact with unaccompanied minors. When establishing the cause and purpose of the child having crossed the state borders, the competent border and aliens police department primarily tries to find out whether the child was forced to do so by another person (abduction), or whether the child is travelling to see his/her parents in Slovakia, or other country, as the case might be. At the same time, they immediately inform the nearest authority for the social and legal protection of children and social custody, even on weekends and state holidays.

Measures to ensure continuous protection of life, health and positive mental development, physical development and social development of the child applicable to unaccompanied minors are specified under §29. Permanent assistance to children in urgent cases is provided by employees of authorities for the social and legal protection of children and social custody who are on stand-by duty.

Pursuant to §29 of the said Act, an authority for the social and legal protection of children and social custody in whose district the unaccompanied minor has been found proceeds in compliance with a separate regulation (the Code of Civil Procedure), if the unaccompanied minor cannot be placed in the custody of a relative or other individual with whom the child is closely related; or petitions a court to issue an interim measure pursuant to a separate regulation (the Code of Civil Procedure) and takes necessary actions in the interest of the child up to the time when a guardian is appointed for the unaccompanied minor pursuant to a separate regulation (the Family Act) or the appointed guardian assumes his/her function. The issuance of an interim measure does not require the child to be represented by a guardian. If the minor has no litigation friend or if the litigation friend cannot represent the child in the respective proceedings, the court will designate a caregiver to the child immediately after the interim measure has been exercised.

If the minor is left without any care, or if the child’s life, health or proper development is put at serious risk or disrupted, a court will, without or on a proposal by an authority for the social and legal protection of children and social custody, issue an interim measure to temporarily place the child in the custody of a natural or legal person designated by the court in its resolution. The issuance of an interim measure requires a proposal as to where the child should be placed. The proposal submitted by the authority for the social and legal protection of children and social custody must identify a facility in which the unaccompanied minor will be placed.

Pursuant to §56 et seq. of Act No. 36/2005 Coll. on family, if both parents of the minor are deceased, or have been deprived of their parental rights and obligations, or their parental rights and obligations have been suspended, or they have no full legal capacity, a court will appoint a guardian to the child, who will be responsible for the child's upbringing, represent the child and administer the child's property. If no natural person could be appointed as a guardian, the court will appoint a municipal authority to assume this function and, in the case of unaccompanied minors, an authority for the social and legal protection pursuant to a separate regulation (Act No. 305/2005 Coll.) Until the time a guardian is appointed to the minor or the appointed guardian assumes his/her function, all actions necessary in the interest of the child are taken by a caregiver (§60 caregiver – the court will also designate a caregiver to the child in cases when it is necessary on other grounds and, at the same time, it is in the interest of the child). The court will also define the scope of caregiver's rights and obligations necessary in order to meet the purpose for which the caregiver has been designated and to ensure sufficient protection of the child's interests. For example, the caregiver is designated by the court when the child is not represented in preliminary ruling proceedings concerning the submission of petitions under §75 and §75a, where the court designates the caregiver without undue delay.

The guardian is obliged to perform his/her duties properly and in the best interest of the minor. The guardian is held liable by the court for the proper performance of his/her duties. Any decision made by the guardian on any substantial matter concerning the minor is subject to approval by the court. All children in the territory of the Slovak Republic are guaranteed the right to the protection of their rights and legitimate interests, necessary assistance in searching for their parents or relatives or for family reunion purposes, or assistance with a lawful entry to an asylum procedure.

The authority for the social and legal protection of children and social custody takes measures concerning the unaccompanied minor during his/her stay in the territory of the Slovak Republic to provide the child with the care appropriate to culture, language, religion and traditions of the country of the child's origin.

The authority for the social and legal protection of children and social custody is involved in searching for the child's parents or other family members for the purposes of reuniting the unaccompanied minor with his/her family.

The authority for the social and legal protection of children and social custody notifies an embassy/diplomatic mission of the country of the unaccompanied minor's habitual residence of the measures taken in order to return or relocate the unaccompanied minor and requests the return or relocation of the child to the country of his/her habitual residence if it is evident that the country of the child's habitual residence is deemed a safe country and no international convention (e.g., the Hague Convention on the Civil Aspects of International Child Abduction) applies to the child, or suggests to a diplomatic mission of the country which is not a country of the unaccompanied minor's habitual residence but in which his/her parent or a person taking personal care of that child is located that the minor be reunited with them, and notifies it of the measures taken for the purposes of such reunion.

Measures of social and legal protection of children and social custody are performed in an environment designed for their performance – in a designated facility. Special provisions are in place with respect to the measures of social and legal protection of children and social

custody performed in a children's home for unaccompanied minors.

For this purpose, the Ministry of Labour, Social Affairs and Family of the Slovak Republic approved funding from the *Transformation of Institutional Custody Provided in Children's Homes* component under the programme budgeting in 2004 for the following purposes:

- establishment of a children's home for unaccompanied minors as part of the Detské mestečko children's home Trenčín, Zlatovce;
- establishment of a children's home for unaccompanied minors in Čelovce (Košice region) by the Spoločnosť ľudí dobrej vôle NGO.

One children's home for unaccompanied minors is currently in operation, in Trenčín – Horné Orechové.

The unaccompanied minors are provided care in a children's home for unaccompanied minors, where account needs be taken of their previous upbringing, and children's cultural and religious specifics need be respected. The children's home ensures medical examination of the minor and provides conditions for the child to learn Slovak, if appropriate and useful for his/her development. The children's home for unaccompanied minors is required to learn of the child's opinion, if possible (given his/her age and mental development), on all matters concerning the child, in particular to learn of his/her opinion on relocation, family reunion, return to the country of his/her origin, and asylum, prior to taking any efforts towards such relocation, family reunion, return to the country of origin or applying for asylum. In order to find out the child's opinion as described in the foregoing sentence, the children's home for unaccompanied minors provides the child with interpreting services in the language that the child understands.

Children's home for unaccompanied children in Horné Orechové

This facility provides care to the unaccompanied minors in the same scope and quality as that provided in children's homes for children who are Slovak nationals, complying with the principles of equal treatment and taking into account their age and mental abilities.

In order to ensure as smooth social integration of unaccompanied minors as possible, the children are planned to be taught Slovak directly in the children's home. Pre-preparatory works on a language training course are currently underway and talks are held, in cooperation with an elementary school in Trenčín, on the inclusion of the unaccompanied minors in the SOKRATES project with the aim of exchanging information and experience, as part of twinning activities between foreign nationals and Slovak children, in order to facilitate their social integration.

In order to enable the children to preserve their religion and culture, the facility endeavours to create conditions for their religious education and participation in religious ceremonies typical of the minors' religion, as well as for the observance of religious customs and traditions respecting their previous upbringing in the family, but the facility has no adequate premises available at this moment.

If the unaccompanied minor decides to stay and socially integrate in Slovakia, he/she is provided assistance and consultancy with respect to applying for a tolerated stay permit based on which the child, after he/she attains 18 years of age and meets all statutory requirements, may apply for a temporary, and subsequently permanent, residence permit, which will round off his/her integration process.

An individual personality development plan pursuant to §55(1) and §60(1)(l) of Act No. 305/2005 Coll. on social and legal protection of children and on social custody examines a life situation of the unaccompanied minor, defines short and long-term objectives, seeks the best methods to meet these objectives, and describes activities to be attended by the

unaccompanied minor, along with their time schedule, final assessment of success or failure, and definition of new objectives.

3. *Act No. 480/2002 Coll. on asylum and on amendments to certain acts, as amended* (hereinafter referred to as “the Asylum Act”)

The Asylum Act stipulates that the unaccompanied minor must be represented by a court-designated caregiver in all actions pertaining to the asylum procedure. The Act defines the practices for the submission of an asylum application by the unaccompanied minor and for conducting asylum interviews. It stipulates that an asylum application must not be dismissed as manifestly unfounded. The unaccompanied minor must be duly prepared by the caregiver for all actions in the language which the applicant can communicate in. The Act also defines practices to be applied in order to determine the age of the unaccompanied minor (§32(7)), if there are any doubts on his/her age. In addition, the Act specifies that accommodation provided to unaccompanied minors must take into account their specific needs (§39). The Ministry of the Interior of the Slovak Republic and its Migration Office are the central competent institutions in this area.

Once the unaccompanied minors entered the asylum procedure, they have been placed in Ministry of the Interior Migration Office facilities. During the asylum procedure, the caregiver’s tasks were performed by an authority for the social and legal protection, representing the unaccompanied minors in all legal and other proceedings, pursuant to §56 and §60 of Act No. 36/2005 on family, §29(2) and (3) of Act No. 305/2005 Coll. on social and legal protection of children and social custody, and §16 of Act No. 480/2002 Coll. on asylum.

During the whole process of providing care and support to unaccompanied children, the caregiver has ensured that all decisions made pursue the best interest of the unaccompanied minor, through the following:

- consulting the situation with the unaccompanied minor
- ensuring communication among all parties involved
- accompanying the minor at asylum interviews and ensuring that the interviews are conducted in an acceptable way
- enabling contacts between the unaccompanied minor and organisations that may help him/her
- seeking sustainable solutions in the best interest of the unaccompanied minor