Ljubljana, April 2020

**Questionnaire of the Special Rapporteur on the human rights of migrants: Ending immigration detention of children and seeking adequate reception and care for them - input by SLOVENIA**

**1. Please provide information on any legislation or policy that prohibits or restricts the use of immigration detention of children and their families in your country. Grateful if you could kindly submit the original text of the legislation or policy, accompanied by an English translation if it is in a language other than English, French or Spanish.**

Detention of migrant children is governed by the Slovenian **International Protection Act** and the **Foreigners Act**.

1. **Detention of minors seeking asylum under the International Protection Act**

According to **Article 84**(see Annex 1)of the **International Protection Act**, a minor seeking asylum can be ordered a measure of mandatory stay in the area of the Asylum Centre for certain reasons (e. g. to verify or establish his or her identity or citizenship in case there is obvious doubt about this), however, he or she cannot be ordered a measure of restriction of movement to the Centre for Foreigners.

We have no practice of detaining children in the context of international protection.

1. **Detention of minors under the Foreigners Act**

**Article 76** (see Annex 2) of the **Foreigners Act** states that a foreign minor who is at risk of absconding and for any reason cannot be removed immediately shall receive an order restricting his movement and obliging him to stay in the Centre for Foreigners. Restriction of movement for children and unaccompanied minors is provided separately, with a view to ensuring an appropriate degree of privacy.

Furthermore, **Article 82** (see Annex 2) of the **Foreigners Act** guarantees that in cases where unaccompanied foreign minor is to be removed the police shall immediately inform a Social Work Centre, which must immediately assign a special case guardian to the foreign minor. The police shall issue the foreign minor with a return decision where his/her special case guardian, having carefully considered all circumstances, establishes that this is in the best interests of the foreign minor.

A foreign minor and a family with a foreign minor shall be accommodated, in agreement with a special case guardian, in adequate accommodation facilities for minors. If this is not possible, an unaccompanied foreign minor and a family with a foreign minor shall be accommodated in the Centre.

Strict police supervision may be imposed on a foreigner minor only exceptionally whereby he or she is accompanied by both or at least by one of his/her parents. Under no circumstances, however, can stay under the strict police supervision be ordered for an unaccompanied foreigner minor.

**2. Please provide information on existing non-custodial alternatives to immigration detention of children in your country (e.g. community-based reception solutions) and elaborate how these alternatives effectively enhance the protection of the rights of migrant children and their families.**

* **Alternatives to immigration detention under the International Protection Act**

According to the **International Protection Act**, detention of children is not allowed. A possible alternative is the measure of mandatory stay in the area of the Asylum Centre. Since we have not dealt with many problems in this regard in practice, we have no other alternatives developed to ensure the non-detention or reduce the immigration detention of children.

Nevertheless, as stipulated in the **Article 15**, the best interests of the child are always the primary consideration when it comes to making decisions on children in the context of migration. According to this article, minors need to be ensured a standard of living adequate to their psychological, mental, spiritual, ethical and social development.

The assessment of a child's best interests shall in particular take due account of the following factors:

* the possibility of family reunification,
* the minor's well-being and social development, in particular taking into consideration the minor's background,
* safety and security considerations, especially when there is a risk of the minor being a victim of trafficking in human beings,
* the minor's views, in accordance with his or her age and maturity.

Minors shall be given access to leisure activities, including play and recreational activities appropriate to their age within the premises and accommodation centres and to open-air activities. Furthermore, minors identified as victims of abuse of any kind, neglect, exploitation, torture or cruelty, inhuman or degrading treatment or who have suffered from armed conflict shall be provided access to rehabilitation and, where necessary, appropriate psychological treatment and qualified counselling. Minor applicants shall be placed with their parents, their unmarried minor siblings or with the adult responsible for them whether by law or by practice, provided, that this is in their best interests.

**Article 4** of the International Protection Act also sets forward an obligation that every person subject to the international protection procedures pursuant to the act, including a minor, is guaranteed information sharing, interpreting and translation services, access to the UNHCR and organisations providing legal advice, as well as written decision on the procedure, including a translation of the essential parts into a language that the person understands.

Under the **Article 78**, applicants for international protection are also entitled to material support, emergency medical treatment, education, humanitarian aid, and allowance. In accordance with regulations on mandatory primary education, minors shall be guaranteed the right to primary education, following that specific permissions are provided to exit the reception centre for attending the school.

* **Alternatives to immigration detention for minors who are not in the process of acquiring international protection**

As an alternative to detention for minors who are not in the process of acquiring international protection but are returning home voluntarily and in agreement with their parents and representative of the Social Work Centre (as the guardian for unaccompanied minors), facilities of the Social Work Centre may be used, which are normally used for minors who are citizens of the Republic of Slovenia. This is done in prior agreement with the Social Work Centre.

The procedures in cases of voluntary return of minors to the country of origin (we emphasize again that this is always voluntary and in agreement with the parents and the guardian) are so fast that a minor only spends a short period of time (a couple of days) at the Centre for Foreigners (where detention of foreigners in process of being returned takes place). At the Centre for Foreigners there is a special section reserved for the accommodation of minors. It is equipped to serve their needs; and social workers tare here to take special care of their welfare as well as a psychiatrist and a doctor if needed.

In 2019 there were four voluntary returns of unaccompanied minors to the country of origin.

**3. Please provide information on any existing good practices or measures taken in your country to protect the human rights of migrant children and their families while their migration status is being resolved, including *inter alia* their rights to liberty, family life, health and education (e.g. by ensuring effective access to inter alia adequate reception, healthcare, education, legal advice, family reunion).**

1. **Measures to protect the human rights of minors who are applicants for the international protection**

* Restriction of movement for children and unaccompanied minors is provided separately, with a view to ensuring an appropriate degree of privacy.
* Access to outdoor space is usually provided in a closed yard of the Asylum Centre. Families also have access to an additional outdoor space, which also includes a playground for children.
* Minors under the International Protection Act attend basic school, which is obligatory under Slovenian law. Specific permissions are provided to exit the Centre for attending the school.
* For detained applicants for international protection permission to leave the centre is not formally prescribed by law; however, in practice the asylum authority can give permission and inform the centre to let the person exit. All detainees can freely move within the area of their ward, which includes bedrooms and a common area. However, they cannot access other wards (the centre is usually separated into single male ward and families/unaccompanied minors/single women ward).
* All international protection applicants are entitled to free legal assistance by an NGO in the framework of the project "Legal aid for asylum seekers" (co-financed by the European Refugee Fund and the Ministry of the Interior of the Republic of Slovenia). They have also access to the refugee counsellors, who provide support and legal assistance before the Administrative Court of the Republic of Slovenia and the Supreme Court of the Republic of Slovenia.
* Detainees are entitled to language support in all official procedures free of charge.
* The best interests of the child are the primary consideration in the treatment of minors. Minors need to be ensured a standard of living adequate to their psychological, mental, spiritual, ethical and social development.
* Minors identified as victims of abuse of any kind, neglect, exploitation, torture or cruelty, inhuman or degrading treatment or who have suffered from armed conflict shall be provided access to rehabilitation and, where necessary, appropriate psychological treatment and qualified counselling.
* Minor applicants shall be placed with their parents, their unmarried minor siblings or with the adult responsible for them whether by law or by practice, provided, that this is in their best interests.
* Every person subject to the international protection procedures pursuant to International Protection Act is guaranteed information sharing, interpreting and translation services, access to the UNHCR and organisations providing legal advice, written decision on the procedure, including a translation of the essential parts into a language that the person understands.

1. **Measures to protect the human rights of minors who are not in the process of acquiring international protection**

* Each unaccompanied minor is immediately assigned a guardian for a specific case by the Social Work Centre; the guardian decides what are a minor’s best interests.
* An unaccompanied minor may, in agreement with the guardian for a specific case, be accommodated at a suitable institution for the accommodation of minors.
* As an alternative to detention foreigners may be allowed to stay at another location and may be required to report at the nearest police unit.
* Stricter police supervision may be imposed on a foreign minor only in exceptional cases and only if he or she is accompanied by both or one of his or her parents. Stricter police supervision may not be imposed on an unaccompanied foreign minor.
* When families with minors are accommodated at the Centre for Foreigners, minors go to a local primary school if this is practical given the duration of their stay at the Centre.
* A foreign minor accommodated in the Centre for Foreigners can participate in activities in his or her free time, including games and recreational activities appropriate to his or her age.

**Appointment of a guardian to a foreign minor to protect his/her human rights:** in addition to the provisions contained in the International Protection Act, the guardianship to an unaccompanied foreign minor or to a foreign minor without an adequate care by his/her parents or guardian is stipulated also by the Family Code (Article 270). The International Protection Act provides for appointment of a guardian in international protection procedures as well as in matters related to healthcare, education, protection of property rights and rights related to reception. In case the representation of a child is needed also in other matters, a guardian is appointed in accordance with the Family Code.

The Ministry of Labour, Family, Social Affairs and Equal Opportunities is responsible for the list of (legal) guardians. Candidates for guardians for unaccompanied minors are appointed to the list of legal guardians upon applying to the public tender and must meet specific conditions. Before being appointed candidates also have to attend a special training. Currently there are 33 guardians on the list.

**4. Please indicate any challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention of children and their families.**

A challenge in the implementation of non-custodial alternatives to immigration detentions for children are difficulties in determinating the age of unaccompanied minors who cross the border illegally during the registration of foreigners, since they only rarely have an identity document.

Another challenge is related to the fact that for a large part of migrants, including unaccompanied minors, Slovenia is a transit country on their way to Western European countries. The existing alternatives to detention are thus exploited by those migrants who wish to continue their journey to the neighbouring countries.

**5. What support could other stakeholders (other than your Government) provide to strengthen the development and/or implementation of non-custodial alternatives to immigration detention of children and their families that enhance the protection of their rights?**

In Slovenia NGOs are key partners for the Government with regard to assistance, care and integration of migrants, including of unaccompanied minors. However, additional assistance or activities of NGOs with regard to implementation of existing alternatives to immigration detention are not envisaged, also due to lack of effectiveness of such alternatives in Slovenia. As already mentioned Slovenia is a transit country for almost all the migrants who enter it, including unaccompanied minors. Even before arriving to Slovenia, migrants know that they want to leave it and continue on their way towards their destination as soon as possible. With a view to ensuring that human rights are respected and ensuring that minors are aware of the actual situation and the risks along the migration route, we try to provide them with all the necessary information before their arbitrary departure from our country.

**ANNEX 1**

|  |  |  |
| --- | --- | --- |
| Opozorilo: Neuradno prečiščeno besedilo predpisa predstavlja zgolj informativni delovni pripomoček, glede katerega organ ne jamči odškodninsko ali kako drugače. |  | Disclaimer: Unofficial consolidated version. Only the original Slovene texts of the laws and regulations have legal effect, and the translations are to be used solely as reference materials to aid in the understanding of Slovene laws and regulations. |

|  |  |  |
| --- | --- | --- |
| ZAKON O MEDNARODNI ZAŠČITI (ZMZ – 1) |  | INTERNATIONAL PROTECTION ACT (ZMZ -1) |
| 84. člen |  | Article 84 |
| (omejitev gibanja) |  | (Restriction of movement) |
| (1) Če ni mogoče po določbah tega zakona zagotoviti doseganja ciljev po določbah tega odstavka, lahko prosilcu pristojni organ odredi ukrep obveznega zadrževanja na območje azilnega doma iz naslednjih razlogov: |  | (1) If the objectives under the provisions of this paragraph cannot be attained through the implementation of this Act, the competent authority may require an applicant to stay in the area of the Asylum Centre for the following reasons: |
| * da se v primeru obstoja očitnega dvoma preveri ali ugotovi njegova istovetnost ali državljanstvo, |  | * to verify or establish his or her identity or citizenship if there is obvious doubt about this, |
| * da se ugotovijo določena dejstva, na katerih temelji prošnja za mednarodno zaščito, ki jih brez izrečenega ukrepa ne bi bilo mogoče pridobiti, in obstaja utemeljena nevarnost, da bo prosilec pobegnil, |  | * to establish certain facts on which the application for international protection is based that could not be acquired without the imposed measure, and there is a danger that the applicant will abscond, |
| * kadar je prosilcu omejeno gibanje zaradi postopka vračanja v skladu z zakonom, ki ureja vstop, bivanje in zapustitev tujcev v Republiki Sloveniji, da bi se izvedel in izvršil postopek vrnitve ali postopek odstranitve ter je mogoče utemeljeno domnevati, da je prosilec prošnjo podal samo zato, da bi zadržal ali oviral izvedbo odstranitve, pri čemer je imel možnost zaprositi za mednarodno zaščito, |  | * when the applicant's movement is restricted due to the readmission procedure in accordance with the Act governing the entry into, departure from and residence of foreigners in the Republic of Slovenia in order to carry out the readmission or removal procedure and there are well-founded reasons to believe that the applicant has filed his or herapplication only to stay or impede removal, including the fact that he or she has already had an opportunity to apply for international protection, |
| * kadar se preprečuje ogrožanje varnosti države ali ustavne ureditve Republike Slovenije ali je to nujno potrebno zaradi varstva osebne varnosti, premoženjske varnosti in drugih primerljivih razlogov javnega reda. Za ogrožanje varnosti države ali ustavne ureditve Republike Slovenije se šteje ogrožanje notranje ali zunanje varnosti države, ki jo predstavlja ogrožanje delovanja institucij in temeljnih javnih služb ter preživetja prebivalstva, tveganje resnih motenj v mednarodnih odnosih ali mirnem sožitju med narodi in ogrožanje obrambnih interesov države. Drugi primerljivi razlogi javnega reda se razumejo kot tisti, ki predstavljajo resnično, sedanjo in dovolj resno grožnjo temeljnemu interesu države, |  | * when a threat to the security of the country or the constitutional order of the Republic of Slovenia will thereby be prevented, or when this is necessary in order to protect people and property or other comparable reasons related to public order. A threat to the security of the country or the constitutional order of the Republic of Slovenia is a threat to the internal or external security of the country, including a threat to the functioning of institutions and basic public services and the survival of the population, a risk of serious disturbances in international relations or peaceful coexistence among nations, and a threat to the defence interests of the country. Other comparable reasons related to public order are understood as reasons that indicate a realistic, current and sufficiently serious threat to the basic interests of the country, |
| * v skladu z 28. členom Uredbe 604/2013/EU. |  | * in accordance with Article 28 of Regulation 604/2013/EU. |
| (2) Če pristojni organ ugotovi, da v posameznem primeru ni mogoče učinkovito izvesti ukrepa iz prejšnjega odstavka ali prosilec samovoljno zapusti območje obveznega zadrževanja, se lahko prosilcu, ki ni mladoletnik ali mladoletnik brez spremstva, odredi ukrep omejitve gibanja na Center za tujce. |  | (2) If, in an individual case, the competent authority establishes that it is not possible to effectively implement the measure referred to in the preceding paragraph, or if an applicant arbitrarily leaves the area where he or she has been required to stay, the applicant shall be imposed the measure of having his or her movement restricted to the Centre for Foreigners if he or she is not a minor or an unaccompanied minor. |
| (3) O izreku ukrepov po prvem in drugem odstavku pristojni organ odloči s sklepom. |  | (3) The imposition of the measures pursuant to paragraphs one and two shall be decided on by the competent authority by an order. |
| (4) Prosilcu se ukrep iz prvega in drugega odstavka tega člena izreče ustno. Prosilec o izrečenem ukrepu nemudoma prejme zapisnik, ki vsebuje razloge za izrek ukrepa. Zapisnik je prosilcu prebran v njem razumljivem jeziku. Pisni odpravek sklepa pristojni organ izda najpozneje v 48 urah od ustnega izreka sklepa, prosilcu pa ga vroči v treh delovnih dneh od izdaje sklepa. |  | (4) The measure referred to in paragraphs one and two of this Article shall be imposed on the applicant orally. The applicant shall immediately receive a record of the imposed measure stating the reasons for the measure. The record shall be read to the applicant in a language he or she understands. A written copy of the decision shall be issued by the competent authority no later than 48 hours after the decision was delivered orally and must be served on the applicant within three working days. |
| (5) Ukrep iz prvega in drugega odstavka tega člena, razen v primerih iz pete alineje prvega odstavka tega člena, lahko traja do prenehanja razlogov, vendar največ tri mesece. Če razlogi po tem času še obstajajo, se ukrep s sklepom lahko podaljša še za en mesec. Ukrepa iz prvega ali drugega odstavka tega člena se odpravita po uradni dolžnosti, če prenehajo razlogi, ki so jih narekovali. Predsednik upravnega sodišča lahko odloči, da je treba opraviti neposredni nadzor nad izvajanjem ukrepa iz prvega ali drugega odstavka tega člena in določi sodnika ali sodnike upravnega sodišča, da ga opravijo v rokih, na krajih, katere določi ali glede morebitnih določenih prosilcev ter da mu o tem poročajo. Če sodnik upravnega sodišča v okviru opravljenega nadzora ugotovi, da razlogi za omejitev gibanja za določenega prosilca niso več podani, odredi odpravo ukrepa. |  | (5) The measures referred to in paragraphs one and two of this Article may continue until the grounds for such cease, but no longer than three months, except in the cases referred to in indent five of paragraph one of this Article. If, after this period, the reasons for the restriction of movement still exist, the measure may be extended for another month based on a decision. The measures referred to in paragraphs one or two of this Article shall terminate ex officio if the underlying grounds cease to exist. The president of the Administrative Court may decide that the implementation of the measure referred to in paragraph one or two of this Article be supervised, and may appoint a judge or judges of the Administrative Court to carry out such review within the time limits and at locations determined by the president thereof or regarding certain applicants, and to report thereon. If as part of the review a judge of the Administrative Court establishes that the reasons for the restriction of the movement of a certain applicant no longer exist, he or she shall order the measure to be eliminated. |
| (6) Zoper sklep iz tretjega odstavka tega člena ima prosilec v treh dneh po njegovi vročitvi pravico do vložitve tožbe na upravno sodišče. Sodišče po predhodnem ustnem zaslišanju prosilca o tožbi odloči v treh delovnih dneh. |  | (6) An action may be brought by an applicant against the order referred to in paragraph three of this Article before the Administrative Court. The court shall decide on the case within three working days after a preliminary oral hearing. |
| (7) Zoper sklep iz petega odstavka tega člena ima prosilec v treh dneh po njegovi vročitvi pravico do vložitve tožbe na upravno sodišče, ki o tožbi odloči v treh delovnih dneh. |  | (7) An applicant has the right to bring an action against the order referred to in paragraph five of this Article with the Administrative Court within three days of service. The court shall decide on the case within three working days. |
| (8) V primeru izreka ukrepa omejitve gibanja na Center za tujce ranljivi osebi s posebnimi potrebami pristojni organ prednostno poskrbi za varovanje njenega zdravja, vključno z duševnim zdravjem, ter zagotovi redno spremljanje in ustrezno pomoč, pri čemer upošteva poseben položaj te osebe. |  | (8) If the measure of the restriction of movement to the Centre for Foreigners has been imposed on a vulnerable person with special needs, the competent authority shall as a priority ensure that his or her health, including mental health, is protected and shall ensure regular monitoring and adequate assistance, while taking into account the specific situation of that person. |

**ANNEX 2**

|  |  |  |
| --- | --- | --- |
| Opozorilo: Neuradno prečiščeno besedilo predpisa predstavlja zgolj informativni delovni pripomoček, glede katerega organ ne jamči odškodninsko ali kako drugače. |  | Disclaimer: Unofficial consolidated version. Only the original Slovene texts of the laws and regulations have legal effect, and the translations are to be used solely as reference materials to aid in the understanding of Slovene laws and regulations. |

|  |  |  |
| --- | --- | --- |
| ZAKON  O TUJCIH (ZTuj-2) |  | FOREIGNERS ACT  (ZTuj-2) |
|  |  |  |
| 76. člen |  | Article 76 |
| (omejitev gibanja tujca, ki nezakonito prebiva) | (Restriction of movement of illegally staying foreigners) |
| (1) Za tujca, pri katerem obstaja nevarnost pobega ali ni zapustil države v določenem roku in ga iz kakršnih koli razlogov ni mogoče takoj odstraniti, odredi policija do njegove odstranitve iz države omejitev gibanja in nastanitev v centru ali nastanitev izven centra največ za šest mesecev. | (1) A foreigner who poses a risk of absconding or has failed to leave the country by the set deadline and who for any reason cannot be removed immediately shall be ordered by the police to restrict his or her movement and be accommodated in the Centre or outside the Centre pending his or her removal from the country, but for not more than six months. |
| (2) Določba prejšnjega odstavka se uporablja tudi v primerih, ko ni znana istovetnost tujca. | (2) The provision of the preceding paragraph shall also apply in cases where a foreigner's identity is unknown. |
| (3) Omejitev gibanja žensk, družin, otrok, mladoletnikov brez spremstva, ostarelih, huje bolnih in drugih ranljivih oseb, se zagotovi ločeno, da je zagotovljena ustrezna zasebnost. Minister, pristojen za notranje zadeve, določi postopek za nastanitev tujcev v centru. | (3) Restriction of movement shall be provided separately for women, families, children, unaccompanied minors, the elderly, the seriously ill and other vulnerable persons with a view to ensuring adequate privacy. The minister responsible for the interior shall determine the procedure for the accommodation of foreigners in the Centre. |
| (4) Omejitev gibanja lahko traja le toliko časa, kolikor je potrebno, da se izvede odstranitev tujca iz države, vendar ne dlje kot za šest mesecev. | (4) Restriction of movement may only last for the period necessary to remove the foreigner from the country, but for not more than six months. |
| (5) Tujca iz prvega odstavka tega člena, ki ga zaradi posebnih razlogov ali potreb ni mogoče nastaniti v centru, se v soglasju s socialnovarstvenim zavodom, na stroške centra, nastani v socialnovarstvenem zavodu ali zagotovi drugo ustrezno institucionalno varstvo. | (5) In agreement with a social protection institution, a foreigner referred to in paragraph one of this Article who cannot be accommodated in the Centre due to special reasons or needs may be accommodated in a social protection institution or provided with other appropriate institutional care at the expense of the Centre. |
| (6) Tujec iz prvega in drugega odstavka tega člena ima enak obseg pravic kot tujec, ki mu je dovoljeno zadrževanje. Osnovna oskrba tujca se v tem primeru zagotavlja v centru in ne na način, kot je določeno v drugem odstavku 75. člena tega zakona. | (6) A foreigner referred to in paragraphs one and two of this Article shall have the same rights as a foreigner who has been permitted to stay. In such a case, he or she shall be provided basic care in the Centre and not in the manner specified in paragraph two of Article 75 of this Act. |
| (7) V času omejitve gibanja se tujca redno obvešča o pravilih bivanja v centru ter o njegovih pravicah in obveznostih. | (7) During a period of restricted movement, a foreigner shall be regularly informed of the house rules of the Centre and of his or her rights and obligations. |
| (8) Čas bivanja tujca izven centra brez dovoljenja za izhod iz centra in čas bivanja v priporu, zaporu ali v postopku mednarodne zaščite, se ne šteje v čas nastanitve v centru. | (8) The period of a foreigner's accommodation outside the Centre without permission to leave the Centre and the period of his or her stay in detention or prison or in an international protection procedure shall not be included in the period of accommodation in the Centre. |
| (9) Med bivanjem v centru je gibanje tujca omejeno na območje centra, kjer mora tujec upoštevati pravila bivanja v centru. Tujcu se izjemoma lahko dovoli gibanje zunaj območja centra. Pogoje in način dovolitve gibanja zunaj območja centra določajo pravila bivanja. | (9) During a foreigner's accommodation in the Centre, his or her movement shall be restricted to the Centre, where the house rules of the Centre must be observed. In exceptional cases, the foreigner may be allowed movement outside the Centre. The conditions and manner of allowing movement outside the Centre shall be specified in the house rules. |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| /…/ | |  | /…/ | |
|  | |  | |
| **82. člen** |  | | | **Article 82** |
| **(postopek z mladoletnimi tujci)** | **(Procedure for foreign minors)** |
| (1) V primeru odstranitve mladoletnega tujca brez spremstva staršev ali drugih zakonitih zastopnikov, ki nezakonito prebiva v Republiki Sloveniji, policija takoj obvesti center za socialno delo, ki mora mladoletnemu tujcu nemudoma postaviti skrbnika za posebni primer. Policija izda odločbo o vrnitvi mladoletnemu tujcu brez spremstva, ko skrbnik za posebni primer po skrbni preučitvi vseh okoliščin ugotovi, da je to v najboljšem interesu mladoletnega tujca. | (1) In cases of the removal of a foreign minor who is not accompanied by his or her parents or other statutory representative and is illegally staying in the Republic of Slovenia, the police shall immediately inform a social work centre, which must immediately assign a special case guardian to the foreign minor. The police shall issue the unaccompanied foreign minor a return decision after his or her special case guardian, having carefully considered all of the circumstances, establishes that this is in the best interests of the foreign minor. |
| (2) Mladoletnega tujca iz prejšnjega odstavka se ne sme odstraniti v matično državo ali v tretjo državo, ki ga je pripravljena sprejeti, dokler mu tam ni zagotovljen sprejem. Pred odstranitvijo se je potrebno prepričati, da bo mladoletni tujec vrnjen članu družine, izbranemu skrbniku ali ustreznim sprejemnim centrom v državi vrnitve. V nobenem primeru pa se mladoletnega tujca brez spremstva ne sme odstraniti v nasprotju s Konvencijo o varstvu človekovih pravic in temeljnih svoboščin, spremenjeno s Protokoli št. 3, 5 in 8 ter dopolnjeno s Protokolom št. 2 ter njenimi protokoli št. 1, 4, 6, 7, 9, 10 in 11 (Uradni list RS – MP, št. 7/94), Evropsko konvencijo o preprečevanju mučenja in nečloveškega ali ponižujočega ravnanja ali kaznovanja (Uradni list RS – MP, št. 1/94) ali Konvencijo o otrokovih pravicah (Uradni list RS – MP, št. 9/92) in Evropsko konvencijo o uresničevanju otrokovih pravic (Uradni list RS – MP, št. 26/99). Do odstranitve se mladoletnemu tujcu dovoli zadrževanje v skladu z določbami tega zakona. | (2) A foreign minor referred to in the preceding paragraph may not be removed to his or her country of origin or to a third country that is willing to admit him or her until admission to the respective country is ensured for him or her. Prior to removing a foreign minor, it needs to be ensured that he or she will be returned to a member of his or her family, an appointed guardian or adequate reception facilities in the country of return. In no case may an unaccompanied foreign minor be removed contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms, amended with Protocols Nos 3, 5 and 8 and supplemented with Protocol No 2, and its Protocols Nos 1, 4, 6, 7, 9, 10 and 11 (Official Gazette of the Republic of Slovenia – International Treaties [*Uradni list RS – Mednarodne pogodbe*], No. 7/94), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Official Gazette of the Republic of Slovenia – International Treaties [*Uradni list RS – Mednarodne pogodbe*], No. 1/94), or the Convention on the Rights of the Child (Official Gazette of the Republic of Slovenia – International Treaties [*Uradni list RS – Mednarodne pogodbe*], No. 9/92) and the European Convention on the Exercise of Children's Rights” (Official Gazette of the Republic of Slovenia – International Treaties [*Uradni list RS – Mednarodne pogodbe*], No. 26/99). A foreign minor shall be permitted to stay in accordance with the provisions of this Act until his or her removal. |
| (3) Mladoletnega tujca in družino z mladoletnim tujcem se v dogovoru s skrbnikom za posebni primer nastani v primernih ustanovah za nastanitev mladoletnih oseb, kjer mu bodo zagotovljene pravice iz prejšnjega odstavka. Če to ni možno, se mladoletnega tujca brez spremstva in družino z mladoletnim tujcem nastani v center. | (3) A foreign minor and a family with a foreign minor shall be accommodated, in agreement with the special case guardian, in adequate accommodation facilities for minors, where he or she will be guaranteed the rights referred to in the preceding paragraph. If this is not possible, an unaccompanied foreign minor and a family with a foreign minor shall be accommodated in the Centre. |
| (4) Mladoletnemu tujcu, ki je nastanjen v centru, se v prostem času omogoči ukvarjanje z dejavnostmi, vključno z igrami in rekreacijskimi dejavnostmi, primernimi njegovi starosti. | (4) A foreign minor accommodated in the Centre shall be enabled to participate in activities in his or her free time, including games and recreational activities appropriate to his or her age. |
| (5) Kadar identiteta mladoletnega tujca ni potrjena in obstaja dvom, da gre za mladoletno osebo, lahko policija ugotavlja starost osebe s pomočjo izvedencev. Na podlagi mnenja izvedenca policija o starosti osebe izda ugotovitveno odločbo. Zoper ugotovitveno odločbo se lahko tujec pritoži v roku osmih dni od vročitve odločbe. O pritožbi odloča ministrstvo, pristojno za notranje zadeve. | (5) Where the identity of a foreign minor is not confirmed and there is a suspicion that he or she is not a minor, the police may establish the age of the person with the assistance of experts. Based on an expert opinion, the police shall issue a declaratory decision on the person's age. An appeal against the declaratory decision shall be allowed within eight days of the service of the decision. Appeals shall be decided by the ministry responsible for the interior. |
| (6) Strožji policijski nadzor se za mladoletnega tujca lahko odredi le izjemoma in to le skupaj s starši ali skupaj z enim izmed njih. Zoper mladoletnega tujca brez spremstva ni mogoče odrediti bivanja pod strožjim policijskim nadzorom. | (6) Stricter police supervision may be imposed on a foreign minor only in exceptional cases and only if he or she is accompanied by both or one of his or her parents. Stricter police supervision may not be imposed on an unaccompanied foreign minor. |