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## **Child in exile**

### **Summary**

Migration, as a global phenomenon has a long history also in the Slovak Republic. Most of the migrants come, or are passing through its territory legally. There are still cases of illegal migration, too. The reasons for this form of state borders crossing are diverse. Part of illegal migrants are also people who are belonging to vulnerable groups, including unaccompanied minors. Since this is a specific and particularly vulnerable group of migrants, the European Union and subsequently the Slovak Republic adopted several legislative measures in the area of migration and asylum. Their aim is to adjust the status of unaccompanied minors and to contribute to finding lasting solutions to their current situation, taking into account their best interests.

**Keywords:** unaccompanied minors, legal protection, asylum

### **Introduction**

Although unaccompanied minors (hereafter UMs) form a particular group of migrants, they could be also divided into voluntary and forced migrants. On the basis of their motivation, a further subdivision could be performed in terms of pull and push factors. Onto the territory of the Slovak Republic UMs from politically unstable and economically weak countries come. In the case of voluntary migrants, with the exception of tourists and students coming from these countries, in the background of their migration is the motivation based on the pull factors. To such factors there belong particularly efforts to break away from a bad social and economic situation in the home country and efforts to improve one's own economic status and to feed on family in the country of origin. However, Slovakia is for most UMs only a transit country. This was confirmed also by our survey, according to which in another EU state there is a family member or friend awaiting their arrival.

The aim of the paper is to summarize the development and current state of legislation and the legislative status of unaccompanied minors in the Slovak Republic. Also, to discuss problems of this particular group and describe the durable solutions under current possibilities of the Slovak Republic conditions.

### **Taking into account of the specific position of unaccompanied minors**

Children can be secured in the reception centres, at the airports, or even in detention centres. During the asylum procedure, they may lack support from a guardian or lawyer, lack access to food, health or social care, education, and in some cases may be subjected to racial hatred and racially motivated attacks (Ruxton 2000).

This vulnerable position of UMs is reflected in the legislation of the Slovak Republic. Consideration of the vulnerability of UMs is enshrined in the adopted Convention on the Rights of the Child. In the area of migration and asylum, the Slovak Republic committed itself to take such measures that will ensure that every child seeking the refugee status will receive appropriate protection and humanitarian assistance. In the specific case of UMs it was furthermore decided that “if parents or other family members cannot be found, the child shall be entitled to the same protection as any other Slovak child for any reason by permanently or temporarily deprived of his/her family, as provided by Convention” (Notice no. 104 / 1991 Coll. Art. 22 paragraph. 2).

### **Entry procedures and practices for identifying unaccompanied minors**

Like most of the migrants, also unaccompanied minors are coming to Slovakia either by air or land. In the case of migrants from third countries, for a legal entry a valid visa or a valid residential permit is required.

In the case of illegal entry of UMs identified at the Slovak Republic territory without a valid travel documents, different procedures from those for adult migrants, taking into consideration their particular situation, are applied.

Upon appearance of UMs at the office of Border and Alien Police of the Ministry of Interior of the Slovak Republic a security check is performed and consequently a comprehensive examination, carried by a member of the Police, who is of the same sex as the detainee. Afterwards, an explanation is presented with a view to establishing the identity of the detained foreigner as well as the his/her reason for crossing the border. During the process of providing explanation the Constitution of the SR is observed, according to which *anyone who claims not to know the language in which proceedings are brought before the courts, other state bodies or public authorities has the right to an interpreter* (Law no. 460/1992 Coll. Art. 47 paragraph. 4). The self-identifying is then provided based on presentation of a proof of identity or UMs allegations about his/her age, with other basic information such as name, surname and country of origin also being verified.

If, when providing explanations, a foreigner confirms that he/she is UM, the procedure then follows in compliance with the current legislation in the area of residence of foreigners, which states that *a foreigner who declare themselves to be an unaccompanied minor is required to undergo a medical examination to determine his age; It does not apply when it is abundantly clear that this is an unaccompanied minor. If the alien refuses to undergo*

*a medical examination, it shall apply to proceedings under this Act for an adult person* (Law no. 222/2010 Coll. § 49. 5).

### **Possible solutions for unaccompanied minors**

If the authority of social-legal protection of children and social guardianship is looking for a permanent solution for UMs, it must act in the best interests of the children. The term “permanent solution” predominantly means family reunification. This is done either through a voluntary return of UM to his/her country and subsequent family reunification in the country of origin, or through family reunification in a third country. Other options of lasting solutions include embarking on the asylum procedure or granting a tolerated stay. The last option is the integration of UM in Slovakia.

### **Voluntary return and family reunification of UM in the country of origin**

One possible solution to the UM situation is his/her voluntary return to the country of habitual residence. The own return is realized with the help of the International Organization for Migration in the Slovak Republic, known as IOM, through a program of assisted voluntary returns. IOM Bratislava ensures his/her return and, in collaboration with IOM in the country of origin, forward him/her to the competent national authorities. Since the beginning of the procedure, through the acceptance of UM by his/her guardian to his/her submission to parents or authorities at the country of origin is entirely provided by IOM (including transfer of UMs in the country of origin, obtaining necessary travel documents for the UMs, the transfer of the relevant written documentation and processing an official protocol on the handover and takeover of the minor).

### **Reunification of the unaccompanied minor with his/her family in the third country**

Another permanent solution is a voluntary reunification of UM with his/her family in a third country. This option is chosen by the majority of UMs, who were detained during their illegal way to meet their family members, who generally legally reside in some of the EU member states. Reunification could be done:

- a) through the way of submitting of application for residence in another EU Member State for the purpose of family reunification;
- b) through the asylum procedure when to the appropriate EU Member State in which the family member or relative of UM is a lawfully resident, a request for asylum, lodged in the Slovak Republic, is forwarded for UM assessment (Fajnorová, Številová 2009).

In the first case the reunification is implemented in accordance with the law on social-legal protection of children and social guardianship. It obliges the local authority

of the office of labour, social affairs and family to inform the diplomatic mission of the country in which UM has no habitual residence, but where there is a parent or a person who personally cares for the UM. The office shall proceed to the embassy information on measures taken in the interest of the reunification. Through the Embassy it is established whether a third country adopts UM and whether the family member or relative has legal residence in the country, which is an essential condition for the reunification. The role of headquarters is also the provision of all the necessary documents required for completion of the process.

### **Granting of asylum to unaccompanied minor**

The procedure for granting asylum or subsidiary protection is governed by the Law on Asylum, while such proceedings shall be conducted in accordance with the Administrative Procedure (Law no. 414/2007 Coll.).

The actual asylum procedure in the case of UM initiates by his/her application for asylum being submitted to the competent local Police department of the Ministry of Interior, through a legal representative or by a court appointed guardian. Subsequently, the Ministry of Interior Police department ensures the withdrawal and introduction of fingerprints of UM to the Central Dactyloscopic Database EURODAC and withdraws UM's travel or identity document, and issues ID of an asylum seeker. A copy of the identity document with the application for asylum are subsequently sent to the Migration Office. Within 24 hours of the request, the UM must arrive at the reception centre in Humenné, while the transportation will provide the children's foster home in Horne Orechove. During this interview a survey is conducted with the aim to obtain most reliable facts. In addition to the information provided, Migration Office collects also other necessary information in order to fulfil all the provisions of the Administrative Code, which are related to evidence in the asylum procedure. The rights of a party throughout the asylum procedure are in the case of UM exercised by his/her guardian in its entirety, including the possibility to be represented by a lawyer in this proceedings. (Law no. 414/2007 Coll.)

A decision on the outcome of the asylum procedure shall be issued no later than 90 days from the beginning of the asylum procedure. The result of the decision may be:

- a) rejection of the application as inadmissible;
- b) rejecting of the application as manifestly unfounded;
- c) granting asylum;
- d) denial of asylum but granting subsidiary protection;
- e) denial of asylum and withholding subsidiary protection.

### **Granting tolerated stay to unaccompanied minor**

Since and according to current legislation it is not possible to detain and even expel UM, his/her presence on the territory of Slovakia is adjusted by providing of tolerated stay.

The purpose of tolerated stay is in accordance with the Aliens Act to allow legally remain of UM in Slovakia, for a period of 180 days, with the possibility of repeated extensions. Tolerated stay is to UM extended until such time, as he/she is aged 18 years, on repeated requests made by his guardian. Tolerated stay may be cancelled by withdrawn, by the expiration of its date, or by login of legal representative of UM in Slovakia.

### **The integration of an unaccompanied minor in Slovakia**

Integration of UMs in Slovakia is largely provided in foster care homes, where UMs generally stays until coming of age. Integration is in line with the Convention on the Rights of the Child, according to which the UM whose family is staying at an undisclosed location has to be provided with the same care as the children who are citizens of the Slovak Republic. Special care is paid to their cultural, religious and linguistic diversity.

The aim of integration is to help UMs in overcoming negative consequences of the separation from family and a cultural shock in the context of his/her arrival into Slovakia. Proper integration process should include:

- Assigning a suitable caregiver.
- Creating positive social ties.
- Entry into education system of SR.
- Positive intercultural interaction.
- A return to the traditional way of life of UM (Fajnorová, Številová 2009).

### **Survey**

For the survey also minors were selected who have been caught illegally crossing the border and who, following a decision of the competent district court, were placed into the foster home for unaccompanied minors. Overall, the research was attended by 658 respondents, of whom 654 were boys and 4 were girls.

### **The initial question**

Identification of reasons for the arrival of unaccompanied minors to the territory of the Slovak Republic and the possibility of a permanent solution to their situation.

### **Research questions**

VO1 Are reasons of minors mainly economic (livelihood).

VO2 During the years when the research was conducted, the Slovak Republic was for minors only a transit country.

**Results** were processed into the summary table and the first instance sorting was carried out. By means of internal functions MS Excel 7.0 a chart was created of frequencies of observed features, including graphic dependencies (Rimančík, 2006). From one-dimensional descriptive statistics we used the following methodology: we calculated the arithmetical

average, median and modus. The arithmetical average is a basic statistical indicator with high sensitivity to extreme values. The results were presented graphically and mathematically by column, pie and area graphs, with a 3D effect.

### Survey question no. 1. Are the reasons of migrating children mainly economic?

Table 1. to the question no. 1

No.	Question	Possibilities	Answer
7.	From what social conditions came Ums	Poor Good	573 (87.1%) 85 (12.9%)
8.	Parents of Ums	Are on life Orphan Motherless child Incomplete family Didn't say	295 (44.8%) 68 (10.3%) 154 (23.4%) 28 (4.3%) 113 (17.2)
9.	Employment of parents	Agriculture Worker Retired, unemployed Don't know	383 (58.2%) 32 (4.9%) 130 (19.8%) 113 (17.2%)
11.	What you would like to achieve in the new country	good job education I want to return home to meet with family I don't know	472 (71.7%) 41 (6.2%) 12 (1.8%) 33 (5.0%) 100 (15.2%)
23.	What were the reason for leaving your country	economic politic religion other	427 (64.9%) 104 (15.8%) 12 (1.8%) 115 (17.5%)

Up to 87.1% of respondents come from poor backgrounds. Most of respondents from this group expressed existence of problems of their families in their home country. We found that most of their parents, 58.2%, are working in agriculture. The minors reported that they live only of what they grow. When the crop fails, they have existential problems. Another group are minors whose parents are retired or unemployed, 19.8%. The pension system of their country creates very bad financial conditions for the elderly, or does not provide pensions. To construction work is devoted 4.9% of parents, who are dependent on job creation of their country. Only 12.9% of minors said that they come from a good family background. We assume that in this group of minors their motivation is not economic and the probable initiator for escaping from their home country was their family relatives living in the EU. From two-parent families 44.8% of minors come. 23.4% of them indicated to be motherless children (the father mostly died). In these families the financial situation is the worst and probably this sample of respondents replied about the poor economic circumstances of the family. 10.3% of respondents said that they are orphans and

are dependent on social assistance in the country of origin, if any social system works, but most of them are dependent on the help of family or friends, or the country of their origin is unable to care for them. 4.3% of minors come from single-parent families. 17.2% of the minors did not want to comment on this question.

71.7% of minors stated that they left their country and went abroad for work and would like to financially support their families in their country of origin. They do not lay much emphasis on the education, lacking funds for it. Better education was the reason for leaving to 6.2%. 5% of the total number of respondents look forward to meeting with their family in one of the countries of the European Union.

64.9% of minors came to the territory of the Slovak Republic for economic reasons. 1.8% of minors left their country for religious reasons, or religious persecution and 15.8% for political reasons, or political unrest in the country. From the total number of surveyed respondents 17.5% of minors did not want to go back to the country of origin. They do see the opportunity to live better and in the future to financially support their families in their countries of origin.

### **Survey question no. 2. In years when the research was conducted, the Slovak Republic was for minors only a transit country.**

Table no. 2 to the question no. 2

No.	Question	Possibilities	Answer
5.	The reason for coming to Slovakia	Transiting through Slovakia	549 (83.4%)
		Do you want to stay in Slovakia	99 (15.1%)
		He/she doesn't have target country to stay in the EU	10 (1.5%)
20.	Do you have some relative or family in the EU?	Yes	552 (83.9%)
		No	106 (16.1%)
22.	Was Slovakia your final destination?	Yes	0
		No	405 (61.6%)
		I don't know	253 (38.4%)

Of the 658 respondents 83.4% of minors did through the Slovak Republic only transit and used as a transit country, which is also stated in their answers about the reasons for arrival into the territory of the Slovak Republic. Based on the evaluation of questionnaire it has been observed that 15% of minors want to keep living in the Slovak Republic and only 1.5% of the total respondents did not think about a target country where they would like to live. When we compare these answers with the real acting of minors, from the total of 939 children, who were illegally crossing the border, only 690 (73.5%) of them actually applied for asylum. Others, when placed in an foster house, fled. It was the total of 230 (24%) of minors. This could mean that minors may be abusing the asylum system of the Slovak Republic. Subsidiary protection was used only by 1 (0.1%) minor. Repatriation

or reunification with the family was carried out in 5 (0.5%) cases. Voluntary returns were carried out by 12 (1.3%) and in one case the Slovak Republic granted asylum. Another motive for fleeing and leaving the Slovak Republic was also that 83.9% of minors said that they have someone in the European Union. These is mainly the immediate family, friends and acquaintances. In 16.1% they stated that abroad they have no social ties.

From the total number of respondents the Slovak Republic was not a target country for 61.6% of minors, while 38.4% of minors was not sure about the issue. Most respondents did not even know of the existence of the Slovak Republic.

## Conclusion

Both, the European and World history, are the source of a number of examples where people, whether collectively or individually, were on the run. The aim of this article and survey was to map the current level of social care for unaccompanied minors. Based on the findings, out of 939 children illegally crossing the border only 690 (73.5%) of minors actually applied for asylum. Most of the children placed in a foster house fled. There were 230 (24%) of minors within the monitored period. Subsidiary protection was used only by 1 (0.1%) minor. Repatriation or family reunification was carried out in 5 (0.5%) cases. Voluntary returns were carried out in 12 (1.3%) cases and in one case the Slovak Republic granted asylum.

The problem of the high number of disappearances of unaccompanied minors who were enrolled into the program remains a cause for concern. Although the current information unofficially confirmed that part of unaccompanied minors could go back home, we have no information about the reasons for such disappearances. Disappearances of unaccompanied minors merit much a greater alarm, since these children have no one in the Slovak Republic, to whom they could turn to in case of difficulties. In addition, the disappearance of unaccompanied minors is not limited by Slovak borders. Disappearance also has an international dimension. Slovakia is a small country, and it is within a few hours that minors can be in Austria, the Czech Republic and Germany. Sadly, not all countries consider the disappearance as priority, and certainly do not consider a priority disappearances of unaccompanied minors.

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