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## **INTRODUCTION**

|                                  |   |
|----------------------------------|---|
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| Documents used of referred to:   | The Slovene Constitution<br>The Law w on Foreigners<br>The Law on Asylum<br>The Law on Temporary protection<br>The Law on Citizenship<br>The Family Law<br><br>The Law on Social Welfare<br><br>The Law on the Collision with Legislation of other<br>countries in Certain Relations (validity of the Laws<br>and entry into force- as in the text)                                       |

## **UNACCOMPANIED MINORS - DEFINITION OF THE TERM**

In Accordance with the provisions of the United Nations Declaration on the Rights of the Child, article 4, the society and the state authorities should provide particular concern to children without a family and without means of subsistence.

### ***I. a. The definition of the term »unaccompanied minor«***

In the Slovene legislation the expression “unaccompanied minor” is usually understood as a term referring to any asylum seeker under 18 years of age, separated from his parents and who is not taken care of by any adult guardian, responsible to do so by law or custom. For the purposes of this study the term unaccompanied minor will be used instead of the term of separated children, as it is also officially used in the Slovene legislation.

Upon arrival into another country unaccompanied minors are particularly vulnerable, as they are usually more affected by the separation from their home and family, by the voyage itself and arrival to a new country. Despite this fact only a small number of countries have introduced special provisions regarding the definition of the term “unaccompanied minor” and regarding the reception of unaccompanied minors, including the appointment of a guardian. In most of the countries unaccompanied minors do not benefit of special assistance or advice and this was also the case in Slovenia. The new Law on Asylum<sup>1</sup> which was adopted in Slovenia end of July 1999 rendered however, special attention to vulnerable groups of refugees, i.e. women and children. Taking into consideration the legal and moral obligations and its participation in the international community, The Republic of Slovenia formulated its asylum policy with the aim to protect the institute of asylum, by developing an overall asylum policy capable of receiving mass refugee intake as well as individual asylum seekers, with the consistent respect of the non-refoulment principle; to ensure efficient protection and assistance, including repatriation programmes, with a special emphasis to protection of children and women and other special vulnerable groups of refugees; to co-operate with other countries at mass refugee crisis according to the principle of burden sharing; to contribute to the solution of the refugee question and eliminating root causes of mass refugee fluxes through the use of political, economic and moral means.

In its first paragraph of article 14 the Law on Asylum explicitly states that “unaccompanied minors are foreigners, who are under the age of 18 years old and arrive to Slovenia or find themselves in Slovenia without the company of their parents or other lawful representatives”. In accordance with the provision of the second paragraph of article 14., the competent authority of The Republic of Slovenia appoints a lawful representative to the unaccompanied minor before the procedure begins. The Asylum applications that are filed by unaccompanied minors are handled with priority and are to be solved as quickly as possible. The competent authorities have to determine the identity of the unaccompanied minor as soon as possible and establish whether they are in fact unaccompanied. Unaccompanied minors should not be returned to their country of origin or any third country that is willing to receive them, until suitable reception conditions and care are ensured. Unaccompanied minors should not be returned in contradiction to the adopted international treaties.

In those cases it is very delicate to establish the existence of well founded fear of persecution and also of other reasons according to the 1951 Geneva Convention, therefore in all cases , if

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<sup>1</sup> Law on Asylum, Official journal of the Republic of Slovenia, nr. 61-2911/1999

possible, it is also necessary to establish factual circumstances in which the parents of the unaccompanied minors find themselves and their position in relation to the fact, that the unaccompanied minor finds itself outside its country of origin<sup>2</sup>.

***I. b. Are children with older siblings over 18 years of age considered to be unaccompanied minor?***

According to Annex II of UNHCR Guidelines 1997 when a child is accompanied by an adult guardian, the quality and durability of the relationship between the child and guardian must be evaluated to decide whether the presumption of "unaccompanied status" should be set aside. If on evaluation of the nature of the relationship between the child and the guardian, it is concluded that the child is not unaccompanied, then regarding to Annex II of UNHCR

Guidelines 1997 the child's case may be processed for refugee status under the regular status determination procedures with the adult guardian according to the principle of family unity. A child accompanied by an adult sibling should be processed with that siblings through the refugee status determination procedure on the presumption that: - they have a shared or common history and - the adult sibling is aware of and able to articulate the child's clam for refugee status, if not, then the child should be treated as an unaccompanied child for the purposes of the refugee status determination procedures. If the background is shared and leads to a determination that the child and the adult sibling are refugees, then the durable solution for both will be either local integration or resettlement in the third country.

A minor who is accompanied by his brother or sister older than 18 years of age is in Slovenia considered as an unaccompanied minor. In practice it is usual to appoint an adult relative as a guardian, given that by the judgement of the competent authority, one is capable of doing so and agrees to be a guardian.<sup>3</sup>

Some unaccompanied minors are entirely alone outside their country of origin, while others may be living with siblings or other extended family members. According to the law in Slovenia all such children are treated as unaccompanied minor.

***I. e. Conformity with the Statement of Good Practice (SGP)?***

Art. 14 of the Law on Asylum uses term "unaccompanied minor" to define "separated child". According to the Statement definition are unaccompanied minors those children under 18 years of age who are outside their country of origin and without parents or guardians to care for and protect them. The children who travel with a relative are in R Slovenia treated unaccompanied minors.

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<sup>2</sup> Rakočević, S. Regulations on foreigners and asylum with comments, Official journal, Ljubljana 1999

<sup>3</sup> With regard to the provision of article 182 of the Family law, if possible and if not in conflict with the benefits of the minor, a relative should be appointed as a guardian. When appointing a guardian the Centre for Social Work takes into consideration the wishes of the minor and the wishes of his relatives, if they are in the benefit of the minor.

***I. d. Are any changes needed?***

In order to ensure that the needs and rights of unaccompanied minors are fully recognised, it is necessary that states develop a common definition.

***1. ACCESS TO THE TERRITORY***

***1. a. Legislation, policy and practice***

Articles 7 and 8 of the Law on Asylum:

Article 7

**Entry into the Republic of Slovenia**

1. An alien who upon entry in the Republic of Slovenia declares his/her intention to submit an asylum application in the Republic of Slovenia shall be treated as an asylum applicant in accordance with this Law and he/she must be allowed to enter the State.

2. The Minister of the Interior shall prescribe in details the procedure and the treatment of persons mentioned in the paragraph above.

Article 8

**Illegal entry in the Republic of Slovenia**

1. The alien who will illegally enter into the Republic of Slovenia after this law enters into force shall lodge, without delay, her/his asylum applications with the competent authorities.

2. The person mentioned in the previous paragraph shall not be punished for illegal crossing of the state border.

By the information provided by the Head of the Asylum Sector, Department of the Ministry of Interior and social worker of the Asylum Home, there is still not much practice developed on the issue, since the new Law on Asylum entered into force at the end of 1999. The other reason is that Regulations regarding the implementation of the Law are not adopted yet. The official policy is not developed yet, but generally according to the Head of Asylum Sector, the priority will be given to the unaccompanied minors (UM) at the entry to the State. There are no special rules about the access to the territory for the unaccompanied minors. As all asylum applicants they have a right to enter Slovenia and are not penalised for the illegal entry but we could observe problems with enforcing the »non refoulement« principle in practice because there is still no competent body which would decide in the procedure for the acquisition of the permission to remain (Article 61 Law on Asylum), applied against the expulsion, therefor the right to remain can not be executed.

***1. b. Conformity to the Statement***

The Statement of good practice shows that with reference to the chapter on the access to the territory, unaccompanied minors should at all times have access to the territory, should never be detained or subjected to long and precise interrogations. The Slovene legislation is not familiar with any special provisions for unaccompanied minors that should participate from particular attention in this phase of the procedure. As all other applicants, in case they wish to submit an asylum application, they have the right to enter the country and submit the

application. Those applicants who enter Slovenia illegally are not subject to the procedure for minor offences on behalf of their illegal trespassing of the state border. There are also no special provisions in the Slovene legislation regarding the detention of unaccompanied minors. According to statements of competent officials, fortunately enough there have been no such cases in practice. However, not to be entirely dependant on such statements, it would be necessary to propose amendments to the Law on Asylum and enter the necessary provisions. To the unaccompanied minor detention represents a severe encroachment into ones freedom of movement, therefore this freedom should be particularly safeguarded. In practice unaccompanied minors are not subjected to detailed interrogations when entering the country and the same rules as for the other applicants apply to them, namely in this stage the officials perform just a short interview and produce a one page record approximately.

***1. c. Are any changes needed?***

In the Law on Asylum unaccompanied minors should be mentioned as a special and vulnerable group or at least the Regulations for the implementation of the law should include explicit provisions on the procedure regarding the access to the territory for unaccompanied children . Immigration officers should benefit from education and training on these issue. So far the situation is not so critical because Slovenia doesn't host a lot of unaccompanied minors and even those who enter in, they do leave the country soon and continue illegally further West . Usually they unite themselves with other family members living in other EU state. *In relation to the first principle* I can be concluded that the »best interests« rule is not always seen since the legislation does not place special attention to minors and does not differ between children and adults. Also the non-discrimination rule is violated because the considerations of the children's immigration status don't come first. There is not sufficient co-operation between the State authorities and non governmental organisations on this point and also the lack of staff training can be reported.

***1. d. Carrier liability legislation***

Legislation: Article 24 of the Aliens Act:

Article 24

Obligations of carriers

1. A carrier may bring an alien into the national territory of the Republic of Slovenia by land, air or sea only if this alien has the suitable travel documents and entry permits which they are required to have as citizens of a specific country.

2. If an alien is refused entry into the Republic of Slovenia, the carrier which brought this alien by air, sea or land to the state border in contravention to the preceding paragraph must immediately accept this alien and take him/her out of the country at its own expense.

Slovene legislation refers to one single Article regarding the carrier liability which applies to all aliens including unaccompanied minors. In practice unaccompanied minors arrive to Slovenia illegally usually within a large group, remain in the country for a short period only and continue illegally towards Italy or Austria. The article applies also to children and young people under the age of 18.

Trafficking

*1. e.*

We are familiar with such cases, namely one of the main problem in Slovenia is the illegal trafficking due to geographical position of the country . The act is incriminated as a criminal offence (Article 311 of the Criminal Code) for which there is a subscribed penalty up to five

years of imprisonment or even up to eight years if a criminal act is done by an organised group of people or if they gain a big profit. However, there are no known cases of trafficking of unaccompanied minors for purposes of exploitation in Slovenia since the trafficking route continues towards European countries.

The Criminal Code legislation regarding the illegal crossing of the state border reads as follows:

Illegal crossing of the state border

Article 311

- (1) Whoever crosses or attempts to cross the border of the Republic of Slovenia without a prescribed permit, armed or by force, will be punished with imprisonment up to three years.
- (2) Whoever performs forbidden transfer of others across the border of the Republic of Slovenia or whoever, for reasons of gaining profit, transfers somebody across the border or transfers across the border several persons, will be punished with imprisonment up to five years.
- (3) Whoever performs an act mentioned in the previous paragraph as a member of an enterprise for performing such acts or if by performing this act a large profit has been gained, will be punished with imprisonment from one up to five years.

**1. f. *Have any measures been taken by the State to combat trafficking of any sort?***

As Slovenia is a heavy transit country and in the process of accession to the European Union, it introduced strict criminal legislation to combat illegal trafficking.

Extensive reports on successful combat actions of the police against illegal immigrants and traffickers are being published daily in all Slovene media.

**2. *IDENTIFICATON***

**2.a. *Legislation ,Policy and Practice in The Republic of Slovenia***

In Slovenia there are no special provisions regarding the identification of minors, as well as unaccompanied minors. In practice those individuals are defined as unaccompanied minors as soon as they submit an application for protection, as soon as they address the relevant authorities in Slovenia, or as soon as they have been stopped by a police officer. As soon as the child arrives at the border entry point it is possible to determine whether one is unaccompanied, more so if one applies for protection.

No particular searches or investigations for unaccompanied minors are performed. Some children may have been living in the country for a longer period, before the authorities become aware of them. It is necessary to advocate for a co-ordinated exchange between various agencies and individuals (including the educational and healthcare institutions and social work services) with the aim of reaching and assisting unaccompanied minors as soon as possible.

**2. b. *Conformity with the Statement***

According to the Statement immigration authorities should already at ports of entry put in place procedures to identify unaccompanied minors and young people. The law does not include any provisions, although in practice considerable conformity to the statement can be noticed.

**2. c. *Are any changes necessary? Possibly in relation to the first principle?***

Special procedures for the recognition of unaccompanied minors should be introduced, as there are none in Slovenia. The purpose of these procedures should serve two aims. Firstly, to determine whether a minor is indeed unaccompanied and secondly, to determine whether one is indeed an asylum seeker. Namely, if it is established, that a child is indeed an asylum seeker, maximal efforts should be invested to accelerate one's application procedure and to ensure that it is as suitable as possible for a minor. If on the other hand there are no reasons to believe that a minor is seeking protection or family reunion, the return of such a child should be facilitated.

**3. *APPOINTMENT OF A GUARDIAN OR ADVISOR***

**3. a. *Is a guardian of advisor appointed?***

Unaccompanied minors, i.e. without the company of their parents, guardians or persons, authorised for their care and representation, are an extremely vulnerable group of refugees, therefore they should be protected accordingly. The 1951 Geneva Convention on the Status of Refugees itself does not include any special provisions for unaccompanied minors, however the Resolution on Minimum Guaranties in the Asylum Procedure requests, that in the national legislation suitable assistance of legal or other representatives, who will represent their interests, is ensured to such individuals. To establish, if such a minor is indeed asking for asylum, will fore-mostly be depending from the maturity of an unaccompanied minor and his mental development, therefore these procedures should be handled as broad-mindedly as possible.

**3. b. *In case they are appointed, what is their role***

The Family Law in its article 201. explicitly prescribes, that a minor, who has no parents or who is not taken care of by his parents, should be given a guardian by the Social Work Centre. By the provision of article 202. the guardian is responsible to take care of the minor as a parent. A minor in guardianship who is over 15 years of age, handles his legal affairs by himself, although an approval of his guardian for the legal validity of these affairs and for the affairs, which may not be handled even by the guardian an approval of the Centre for Social Work is necessary (article 203. Of the Family Law).

Guardian or adviser should assure that an unaccompanied minor has suitable care, accommodation, education, language support and health provision. He should provide a link between the child and various organisations who may provide services to the child, and he should assure, that all decisions are taken in the child's best interests.

With reference to article 179. Of the Family Law the purpose of guardianship over minors is the protection of their personal integrity, which is implemented primarily through catering, medical care and training for a self-sufficient living and further on, through the protection of

the rights and benefits of proteges. The guardians responsibility is to take care of the personal integrity, rights and benefits of the minor with diligence and manage one's assets with care. With reference to the second paragraph of article 190 of the Family Law, the guardian has to consult his protege, if possible and if one is capable of understanding the issues. Article 204 of the Family Law further on prescribes that the guardian can take the minor out of school or change the sort of education, decide on the choice of profession for the minor or decide upon his profession and perform other more important acts regarding the minor, prescribed by the law only with the approval of the Social Work Centre.

The guardian should posses necessary knowledge and experience on the field of education and children care, for reasons of adequately protecting the benefits of a child and adequate coverage of legal, social, medical and psychological needs of the child while the procedure is pending, until a durable solution is found. The Centre for Social Work appoints a guardian with a decision in which it determines one's duties and the extent of his authorisations.

**3. c. *How soon after the arrival entering the state are they appointed?***

The Law on Asylum in its article 28 explicitly prescribes, that an unaccompanied minor should be provided with a legal representative even before the procedure for the recognition of Asylum in Slovenia commences.

In accordance with article 14. Of the Law on the Regulation of Collision with Legislation of Other Countries in Certain Relations, for the appointment into guardianship and cessation of guardianship and for the relations between the guardian and the subject of guardianship (the protege), the law of the country of origin of the protege is used, The guardian or counsellor, with regard to the guideline of the Ministry of Labour, Family and Social Welfare, is appointed by the Embassy of the country of origin, e.g. Bosnia and Herzegovina or by the Centres for Social Work in Slovenia (although the Centre for Social Work's competence is related to the Slovene citizenship of the client only, namely a few days after the social worker in the Asylum Home submits a proposal to the Centre For Social Work). The procedure of becoming a legal guardian which takes place at the Embassy of Bosnia and Herzegovina (mostly for those unaccompanied children from BIH, who have temporary protection status) is extremely bureaucratic (numerous documents which are sometimes impossible to obtain are needed). Guardians often do not have the financial means needed for related expenses. Children and their guardians are also poorly informed as regards the rights and possibilities, which they have (medical care, education, humanitarian aid, etc.).

**3. d. *What kind of background and expertise do guardians or advisors have ?***

According to the statements of the Social Services Department with the Asylum Home, as guardians mostly students or graduates from the Theological Faculty volunteer or NGO volunteers are appointed or adult individuals who are related to the minor or are in some kind of relationship with one, if they agree and are capable, by the judgement of the Social Services Department, of performing this task. According to the provision of article 179 of the Family Law, the duty of the guardian is voluntary and honourable .

According to the available data of the Association for the preventive and voluntary work, who established until the end of the year 1997 contacts with 150 children (at the end of the year

96 unaccompanied children were still living in Slovenia<sup>4</sup>) - the guardians of unaccompanied minors were mainly close relatives: grandparents (40), uncle/aunt (39), brother sister (35) and other (removed) relatives (37), friends of family (3), institutions (6). Despite the encouragement of the Association for the Preventive and Voluntary Work and some government regulations most guardians of *the children with temporary refugee status* did not have a status of legal guardian. This is due, according to most statements, to Bosnian traditions in which the close and removed family takes responsibility for the child in the absence of their parents. Most guardians were not aware of the legal applications a legal guardian.

#### Data for 1997:

|                                     |     |
|-------------------------------------|-----|
| Guardianship established            | 12  |
| Guardianship in process             | 15  |
| Children without legal guardianship | 123 |
| Total                               | 150 |

With regard to the provision of article 182 of the Family Law, if its possible and if does not oppose the interests of the protege, a relative of one's is appointed as guardian. Guardianship can be entrusted to a suitable social legal entity, which appoints an individual, responsible for guardianship. When appointing a guardian the Centre For Social Work takes into consideration the wishes of the protege, if one is capable of expressing them, and wishes of his relatives, if it's in the benefit of the protege (Article 183 of the Family Law).

An unaccompanied minor, which find itself in the Asylum Home, is provided with a guardian by the nearest municipal Centre For Social Work, on the proposal of the Asylum Home's Social Services Department. In accordance with article 185 of the Family Law, The Social Work Centre can decide, that an individual under guardianship will not be provided with a guardian, instead the task will be performed by the centre itself. For individuals that are hiding their true age and for which it is obvious that they are adult or that they intend to leave Slovenia shortly, a proposal can be issued, that a guardian is not appointed and instead this task is performed by a social worker from the Asylum Home's Social Services Department in Ljubljana. A considerable number of unaccompanied minors namely leaves Slovenia shortly.

Out of 569 unaccompanied minors, registered by the Asylum Home and Centre for Deportation of Foreigners, only 25 have applied for asylum and all of them have left the Asylum Home. According to the available data, only 10 unaccompanied minors are present in Slovenia, all of them originate from Bosnia and Herzegovina and have a revocable Temporary protection status. The guardians for the children from Bosnia and Herzegovina, who fled to Slovenia on behalf of the war situation in their country of origin, have been appointed by the Centres For Social Work (because of an urgent nature by guidelines of the Ministry for Labour, Family and Social Welfare in spite the fact that the centres are competent only for Slovene citizens) and the Embassy of Bosnia and Herzegovina in Slovenia.

#### 3. e. *Conformity to the Statement*

The obligations and the timeframe to appoint a guardian are in conformity with the Statement, however the guardians are given any training that would provide them with expertise

<sup>4</sup> This data was compared with the official data issued by the Office of Immigration and refugees and UNHCR.

necessary for the work with the vulnerable group of unaccompanied minors. According to Statement the guardian or the counsellor should have necessary knowledge and experience on the field of education and childcare. This would ensure that the benefits of the child will be safeguarded and that the legal, social, medical and psychological needs of the child will be adequately addressed while the procedure for the recognition of a refugee status is pending and until a durable solution for the child is found.

**3. f. Are any changes needed?**

Problems were noticed within the procedure of appointing a guardian, namely the competence of the Social Work Centres, who in most cases appoint guardians (at least to minor asylum seekers), according to Slovene legislation, is limited to proteges of Slovene citizenship, to foreign minors guardians are appointed according to the guidelines of the Ministry for Labour, Family and Social Welfare, on behalf of their urgent nature.

**4. REGISTRATION AND DOCUMENTATION**

**4. a. Legislation , policy and practice**

Legislation regarding registration and documentation can be found in Articles 25, 56, 57 and 58 of the Law on Asylum:

Article 25

**Lodging an asylum application**

Asylum applications shall be lodged with the Ministry of Interior. The alien as per Article 8 of this Law shall lodge the asylum application at the Ministry of Interior, at the Asylum Home or at the Police. Aliens who are not in the Republic of Slovenia may lodge their asylum application at the diplomatic or consular missions of the Republic of Slovenia.

An alien who desires or expresses an intention to lodge an asylum claim at the state or local authority which is not competent for the matter, shall be referred to the competent authority. The state or local authority (from the previous paragraph) to which an alien has addressed his desire or intention to lodge the asylum application shall put such a declaration on the record without delay. The record shall be signed by the asylum applicant as well as by the official of the state authority.

The Minister of Interior shall issue guidelines regarding acceptance, content and handling of an asylum application and a declaration on the record from the previous paragraph.

**Permits and documents**

Article 56

**Issuance of certificates, documents and visas**

- Asylum applicants shall be issued the following certificates, documents and visas:
- certificate of the submission of an asylum application and documents;
- asylum applicant identification card; and
- permit for border crossing;
- Refugees shall be issued the following documents and visas:
- refugee passport;
- refugee personal identification card; and

- entry or exit visa, and entry-exit visa.
- Persons with permission to remain in the Republic of Slovenia shall be issued a card certifying the permission to remain.
- Certificates and documents listed under paragraph 1 of this Article shall be issued by the Ministry of the Interior in compliance with the provisions of this Law. Documents and visas referred to in paragraph 2 of this Article shall be issued by the Ministry of the Interior and the competent administrative units authorised by the Ministry in compliance with the provisions of this Law. An entry visa or an entry-exit visa shall be issued by the authority authorised for consular affairs in the Republic of Slovenia.

#### Article 57

##### **Asylum applicant identification card**

An asylum applicant identification card shall function as an identification document and as a temporary residence permit in the Republic of Slovenia. An identification card shall also be issued to the close family members of the asylum applicant. The asylum card shall be valid until the asylum procedure ends.

#### Article 58

##### **Border crossing permit**

In the course of an asylum procedure, an asylum applicant shall not be allowed to leave the Republic of Slovenia. The competent asylum authority may exceptionally issue to the asylum applicant a special permit to exit and re-enter the Republic of Slovenia.

#### **4. a. Policy and practice**

According to the statements of the social worker in the Asylum Home they try to give unaccompanied minors a priority at this stage of the procedure. Apparently, as soon as information that an unaccompanied minor entered Slovenia is received, one is transferred to the special department in the Asylum Home. Immediately the Centre for Social Work, which has to appoint a guardian and issue a ruling, is notified. As described, there are some special rooms prepared for unaccompanied minors, although very small and not suitable for all minors. Regarding permits and documents there are no special provisions for unaccompanied minors. Police officers quite often don't even register asylum applications and they don't have any knowledge about the special needs of the unaccompanied minors. Regulations and Rules are still not issued therefore there are no new forms for refugee passports, nor new ID cards issued yet.

#### **4. b. Conformity to the statement**

The statement of good practice shows that it is very important, how and by whom the first consultation with the unaccompanied minors is performed. It is recommended that at this stage only the establishment of identity of an unaccompanied minor should be performed and all the rest should be performed by a specialised organisation competent for the rights of a child and also the interrogations of the unaccompanied minors should be performed by individuals with specialised expertise on the rights of a child and their special status. In Slovenia, unfortunately this is not the case, as the competent officials in the first and second instance have neither special knowledge from this area nor have they any possibilities of training. The fact that there is no considerable number of unaccompanied minors living in Slovenia yet, in itself is no acceptable argument for the lack of knowledge and interest for training of the competent authorities. Lack of knowledge can cause irreparable damage to the

unaccompanied minor, as was also the case in practice in Slovenia, since the procedure can be performed completely inadequately, if the competent official is not aware of the special provisions, that apply to unaccompanied minors.

#### **4. c. Changes**

Immigration officers should get a better knowledge on the issues related to the unaccompanied minors and act more in protecting their long-term interests. The whole procedure should be performed as quick as possible. Immediately at the entry to the State unaccompanied minors should be appointed by a legal counsellor who would communicate with a guardian and act together with her/him in the best interest of the child.

In relation to the first principle the best interest rule, non discrimination rule, inter-organisational co-operation, staff training and timeliness are not always foreseen. The co-operation between the organisations is weak the decisions regarding unaccompanied minors are not taken in a timely fashion.

### **5. AGE ASSESSMENT**

#### **5. a. Legislation**

Article 14/4 of the Law on Asylum:

The definition of an unaccompanied minor is contained in article 14 as follows:

1. Unaccompanied minors are aliens who are under eighteen years of age and arrive in Slovenia, or upon their arrival remain in Slovenia unaccompanied by parents or other legally responsible person.
2. Prior to the commencement of the procedure, an unaccompanied minor who applies for asylum shall be assigned a legal representative by the competent authority of the Republic of Slovenia.
3. Asylum applications submitted by unaccompanied minors shall have priority and shall be resolved in the shortest time possible.
4. **In the shortest time possible competent authorities shall establish the minor's identity and verify whether he is actually unaccompanied.**
5. Unaccompanied minors shall not be deported to their country of origin or to a third country willing to accept them unless adequate reception and basic living conditions are provided for them in such a country.
6. In no case shall unaccompanied minors be deported contrary to the adopted international instruments.

#### **5. b. Policy and practice**

Since the Rules and regulations on the Law on Asylum are not adopted yet, regarding this issue there is no practice developed so far. As also explained by the Head of Asylum sector no official policy on this issue has been developed, mostly also due to the reason that most of the unaccompanied minors who's age is not established yet leave the country before any such procedure would be opened.

### **5.b. Conformity to the Statement**

As per the Statement of good practices, every country should introduce a special procedure for unaccompanied minors age determination. In Slovenia there are no special procedures in place, there is no independent paediatrician with appropriate expertise and familiarity with the child/ethnic background. Partly this is also due to the fact that there was no major need to introduce separate procedures for age determination, since the majority unaccompanied minors left Slovenia before the age assessment procedure started.

### **5.c. Are any changes necessary**

Regardless the fact that Slovenia didn't face a large number of unaccompanied minors and that the issue is not so critical yet, proper procedure should be regulated for the future cases. At least doctors paediatricians who would know how to conduct such examinations should be appointed. In making the age determination unaccompanied minor must be given the benefit of doubt which should be legally regulated by the adoption of an additional regulations. And last but not least the officials should acquire sufficient knowledge on the issue.

## **6. DETENTION**

### **6. a. Legislation- general provisions including provisions regarding minors**

Article 27 of the Law on Asylum and Articles 56 and 60 of the Aliens Act:

Article 27

#### **Limitation of movement**

1. If necessary, the movement of an asylum applicant can be temporarily limited on the grounds of establishing the identity of the applicant; or preventing the spread of contagious diseases.
2. Movement can be limited by means of prohibition of movement beyond a certain area; or by means of prohibition of movement outside the asylum home; or by means of prohibition of movement outside a certain border crossing if accommodation is available there.
3. Limitation of movement shall be ordered by a decision issued by the Ministry of the Interior. Limitation of movement may stay in effect until the grounds for it subsist but in any event for no longer than three months. If the grounds for limitation of movement still exist after that period the limitation can be extended for a further period of one month. Limitation of movement on the grounds of preventing the spread of contagious diseases shall stay in effect until the grounds therefor subsist.
4. An asylum applicant has the right to appeal against a decision on limitation of movement at the Administrative Court within three days after a decision has been served on him/her. The Administrative Court shall within 3 days call for a hearing and decide on the appeal. The appeal does not prevent the execution of the decision.

Article 56

#### **Restriction of movement of aliens who are obliged to leave the country**

1. Until the time they are deported but for no longer than six months, aliens who do not leave the country by the specified deadline and whom it is not possible to deport immediately for any reason shall be ordered by the police to move to the Centre for the Deportation of

Aliens at the Ministry of the Interior (hereinafter: Centre), until their removal from the country, where special rules regarding accommodation and movement shall apply.

2. The provision of the preceding paragraph shall also be applied in cases where the identity of the alien is not known.
3. An alien specified in the first paragraph of this Article whom it is not possible to accommodate at the Centre due to special reasons or needs may, in agreement with the social security office and with the costs borne by the Centre, be accommodated at a social security facility or provided with other appropriate institutional care.

## Article 60

### **Measures relating to minors**

1. Alien minors who have entered the Republic of Slovenia illegally and who were not accompanied by their parents or other legal representatives, or who remained without the persons who accompanied them after they arrived in Slovenia, shall be temporarily accommodated by the police at the special department responsible for minors at the Centre if the body which apprehended them cannot return them immediately to the country from which they came or deliver them to representatives of the country of which they are citizens. The police shall notify the social work centre of this.
2. An alien minor specified in the preceding paragraph of this Article may not return to his/her country of origin or to a third country which is willing to accept him/her until suitable reception is provided; in no case may unaccompanied minors be returned in violation of the European Convention on Human Rights and Basic Freedoms, adopted with Protocols 3, 5 and 8 and supplemented with Protocol 2 and its protocols 1, 4, 6, 7, 9, 10 and 11 (OJ. I. RS-Int. treaties, 7/94), the European Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (OJ. I. RS-Int. Treaties, 1/94), or the Convention on the Rights of the Child (OJ. I. RS-MP, 9/92).
3. Alien minors shall, as a rule, be provided with accommodation at the Centre together with their parents or legal representatives, unless it is assessed that other solutions may be better for them.
4. In the case of minors under 16 years of age, stricter police supervision may be ordered only exceptionally, whereby they must be accompanied by both or at least one of their parents.

### **6. b. Policy and practice**

According to statement of the social workers in the Asylum home in practice unaccompanied minors are not detained and are treated differently than the adults. Even if they don't have documents or their age is not determined they are not detained. A guardian, who has the right to visit and help them with any problems they might have, is immediately appointed. On the other hand, since there are no special provisions in the Law on Asylum regarding detention of the unaccompanied minors, there are no guaranties that in practice they are actually not detained, nor the statements of the social worker can be verified.

### **6. c. Conformity to the Statement**

In the Slovene legal system there is no special provisions which would explicitly forbid the detention of unaccompanied minors. Since the detention measure is a severe act against a

persons freedom of movement and liberty it should be legally regulated with the amendments of the Law on Asylum.

**6. d. Are any changes necessary**

As mentioned above there is a need of a new legal provision regulating the issue of detention. In addition a monitoring mechanism regarding the practice should be established by the Slovene NGO-s.

**7. RIGHT TO PARTICIPATE**

**7. a. Legal framework, policy and practice**

Unaccompanied minors should be, taking into account their age and maturity, properly informed on the procedures and decisions that were adopted on their behalf and on the consequences in the case of granting asylum. A child that is capable to form its own opinion has the right to express one freely on all issues concerning him, the judgement of the legitimacy of those opinions is performed according to his maturity and age. Article 28 of The Law on Asylum prescribes, that an unaccompanied minor is appointed with a legal guardian before the beginning of the procedure. While examining an asylum application lodged by an unaccompanied minor, the competent authority has to take into consideration the level of his mental maturity, in co-operation with his legal representative. According to article 30 of The Law on Asylum, the hearing of an minor asylum applicant and other acts in the asylum procedure may be attended by his legal representative, a representative of UNHCR, and other counsellors, selected by the asylum applicant to assist and support him and the legal representative or custodian of an unaccompanied minor person. Interviews with unaccompanied minors should be performed by individuals who are specially trained and qualified for this purpose, with suitable knowledge of psychical, emotional and physical development and behaviour of a child, although in practice this is not the case. The interviewers are not specifically trained for work with unaccompanied minors.

**7. b. To what extent is the stated in conformity with the Statement? Short description.**

The views and wishes of unaccompanied minors should be respected whenever decisions affecting them are being made. Measures must be put in place to facilitate their participation in line with age and maturity. In practice it can be observed that children are interviewed prudently in a child appropriate manner with respect to their maturity.

**7. c. Are any changes necessary? Possibly in relation to the first principle?**

From our observation regarding the Slovene practice it can be concluded that the asylum legislation regarding the right to participate is in conformity with the Statement yet, immigration and police officials as well as social workers and persons appointed as a custodians to the unaccompanied minor should benefit from special training and qualification..

## 8. FAMILY TRACING AND CONTACTS

### 8. a. Legislation , policy and practice

Regarding this specific issue there is no special legal regulations in force. The competent bodies ( The Slovene Red Cross ) explained that they do act in accordance with relevant International legislation of the Red Cross . At the moment there is no specific state authorities nor NGO responsible for the family tracing and contacts. The official data for unaccompanied minors were collected systematically only for unaccompanied minors from Bosnia and Herzegovina in 1996 from the Red Cross, which than transferred all the data to the Governmental Office for refugees and UNHCR in 1996. From that period on there is no systematic collection and evaluation of the data. According to the available data of the Association for the preventive and voluntary work, who established until the end of the year 1997 contacts with 150 children (at the end of the year 96 unaccompanied children were still living in Slovenia, at the present time only 10) – the majority of children had contact with one or both parents (121). The children who did not have any contact with their parents are the most vulnerable group of children (29).

Data for 1997

|                           |     |
|---------------------------|-----|
| Contact with both parents | 55  |
| Contact with one parent   | 66  |
| No contact with parents   | 29  |
| Total                     | 150 |

|        | Died before 1992 | Died during the war | Missing in the war | Abandoned | Total |
|--------|------------------|---------------------|--------------------|-----------|-------|
| Mother | 11               | 7                   | 5                  | 17        | 40    |
| Father | 9                | 8                   | 8                  | 15        | 40    |
| Total  | 20               | 15                  | 13                 | 32        | 80    |

As mentioned above there is no institutional mechanism in place for family tracing and contacts in the case of unaccompanied minor persons in Slovenia . Some particular cases of family tracing and contacts are performed trough Office of the UNHCR and NGO's. Informally local branches of Caritas and Red Cross offices are involved, according to the needs also the Slovene branch of ICRC is active.

According to the existing practice unaccompanied minors usually do not have any living relatives or they do not know where in the country of origin are they. In majority of cases contacts are established when the family members are staying in a third country, mostly western one , therefore family tracing even is not needed . In such cases unaccompanied minors are reunited with their family immediately after the contact is established.

### 8. b. Conformity with the Statement.

Family tracing and contacts are performed in conformity with the Statement in the manner that members of the child family in the country of origin are not endangered and with respect to the confidentiality of the data.

**8. c.     *Are any changes needed?***

The right to family unity should be a particular priority in all cases involving unaccompanied minors what is not the practice yet. Therefore for the future action a Governmental body or NGO should be authorised for the systematically monitoring , evaluation and action. At the moment for reasons of performing this study most documents regarding unaccompanied minors are collected at Foundation GEA 2000

**9.        *FAMILY REUNIFICATION IN EUROPEAN COUNTRIES***

**9. a.     *Relevant legislation***

Pursuant to the Law on Asylum the integrity of the family is protected by the following article:

Article 3

**Integrity of the family and rights of close family members**

1. Pursuant to this Law, the right to asylum shall be recognised to close family members as well. In this Law, close family members are considered to be the spouse and minor unmarried children and parents of minor refugees. A close family member of an unaccompanied minors shall be considered as the authorised custodian of the child.
2. According to the paragraph above, the right to asylum is recognised to a spouse of a refugee only if the marriage was entered into before arriving in the Republic of Slovenia.
3. In the asylum procedure, family members referred to in the first paragraph of this Article shall have the same legal status as the asylum applicant.

***Policy and practice*** – According to the information obtained at the UNHCR Office they do not have a specific policy on this issue, since no reunification of unaccompanied minor in the European country was proceeded so far. As well there is no state practice established.

**9. b.     *Conformity with the Statement***

As above, there is no practice on this issue therefore no evaluation on conformity with the Statement can be reported.

**9. c.     *Are any changes needed?***

Slovenia should positively facilitate family reunion in line with the child's best interest in accordance with the set out standards and safeguards.

**10.      *INTERIM CARE -MEDICAL CARE – EDUCATION AND TRAINING***

In 1992, at the beginning of the war in Bosnia Herzegovina Slovenia hosted more than 60.000 refugees , out of which they were mostly women and children. A huge number of children without parents fled to Slovenia, the refugee population was highly traumatised. According to official data in Slovenia there are still 10 unaccompanied Bosnian minors. For the others the

available statistics is as follows; 1992 in Slovenia there were 33 unaccompanied minors, in 1993: 54, in 1994: 36, in 1995: 70, in 1996: 25, in 1997: 86, in 1998, 223 in 1999: 596. The majority leave the country before the commencement of any official procedure.

#### **10. a. Legal arrangement, policy and practice**

Individuals, also unaccompanied minors, with a granted Temporary protection status in Slovenia are entitled, next to the rights determined by the Slovene constitution, to the right to reside and the right to care and maintenance in Slovenia for the period of their temporary protection in accordance to the possibilities of the State, the right to medical care, education, temporary and occasional employment in accordance to the provisions of the law, they have, however, no rights to permanent employment.

Assistance to implement the right according to The Law on Temporary Protection is organised by The office for Immigration and Refugees in co-operation with competent Ministries. Persons with a granted temporary protection status can be accommodated in Collective Centres or elsewhere and receive humanitarian assistance in accordance with the possibilities of the State. The amount of the received humanitarian assistance is determined by the Slovene Government.

The practice to date shows, that unaccompanied minors with a temporary protection status were mostly accommodated in Collective Centres, with relatives or other persons within Slovenia, who took them in custody. Collective Centres had no secluded departments for unaccompanied minors. According to the data of the Association for the preventive and voluntary work, the majority of children are living in over crowded conditions. Children living in private accommodation are at higher risk than children living in Collective Centres for Refugees. Children living in CCR have better access to the humanitarian assistance, health care and information. They belong to the community of refugees which is supported by local and international organisations (governmental and non-governmental). Host families are receiving minimal or none assistance therefore they often experience additional financial burden of supporting extra children within the family. The care they provide is often not sufficient and a degree of negligence is present. The children who are handicapped and children with severe health problems are placed in institutions.

Regarding to the statement of the Association for the preventive and voluntary work the overall situation of children in collective centres is better and is under permanent control. The situation of children in host families needs special attention (financial support and monitoring).

When the war and war alike conditions in the country of origin cease to exist, the Slovene government should determine a deadline to depart the country, the Office for Immigration and Refugees should organise return of individuals under temporary protection (article 26 of the Law on Temporary).

Unaccompanied minors, that are in the procedure for a recognition of a refugee status have apart from the right to temporary residence in the country until the determination of the procedure, also the right to receive basic care and maintenance, basic health care<sup>5</sup>, financial assistance or allowance, free legal aid for the assertion of the rights according to this law and to humanitarian assistance (article 45 of the Law on Asylum). Of the registered 569 unaccompanied minors who have entered Slovenia in 1999, only 25 have applied for asylum,

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<sup>5</sup> according to article 46 of The Law on Asylum the extent of medical services is equal to the extent, determined by The Law on Temporary protection

others have, after establishing contacts, joined their parents, who took shelter in the developed countries of EU.

The rights of an asylum seeker are not equal to the rights of a recognised refugee, namely the status of an asylum seeker is temporary and it last as long as the asylum determination procedure is legally finished. Unaccompanied minors are usually accommodated in a secluded department of the asylum home or in the special department of the Centre for deportation of Foreigners (unaccompanied minors are always accommodated in an open type department) or are displaced to another location with relatives, acquaintances or to a person, who takes one into custody. In case a minor takes refuge in Slovenia together with an adult brother or sister, or with other relatives, the child is not separated from his family, but is accommodated together with the family into the regular department.

In the Asylum Home the employment of a person is foreseen shortly, which will be competent for the integration of unaccompanied minors. In the Asylum Home, for minors who apply for asylum in Slovenia, tutelage and other activities are organised and NGO's and volunteers who perform suitable programs are allowed to visit.

**10. b. To what extent is the stated in conformity with the Statement? Short description**

According to the Statement, suitable accommodation facilities, responding to material, cultural, religious, linguistic and psychological needs in age –appropriate way should be provided by the host state for all unaccompanied children. In Slovenia there is no separate accommodation for unaccompanied minors with a Temporary Protection Status in Slovenia, mostly they have been accommodated with adults in the collective centres, who fled from the same area, with relatives in Slovenia or others who took them into custody.

On the other hand, asylum seekers under the 1951 Geneva Convention and other unaccompanied minors are accommodated in a secluded department of the asylum home or centre for deportation of foreigners or with relatives or others who have taken them into custody.

**MEDICAL CARE**

**10. d. Legal arrangement, policy and practice**

- Unaccompanied minors , who are in the refugee status determination procedure have next to the right of temporary residence in Slovenia, the right to basic care and basic medical care. According to article 46. of the Law on Asylum, the extent of medical services is equal to the extent of medical services determined in the Temporary protection Law.
- Unaccompanied minors with a recognised refugee status and their close family members are according to the Law on Asylum entitled to medical care in accordance to the law which regulates medical care and medical insurance (are on the same level as Slovene citizens).

Individuals under Temporary protection in Slovenia have the right to medical care. Medical care is guaranteed accordingly to the guidelines of the Minister of Health. . The Republic of Slovenia ensures the basic medical services (defined by the Ministry of health of the Republic of Slovenia) free of charge. Services which are not on the free of charge list may be excluded if the medical committee at the Office for Immigration and Refugees agrees with the proposal

of the doctor who is testing the patient. An important role in the field of prevention activities and in the field of strengthening mental health was taken over by non-government organisations, mainly by the Slovene Philanthropy.

**10. e. To what extent is the stated in conformity to the Statement? Short description**

According to the Statement unaccompanied minors should have access to health care on an equal basis with national children. However, unaccompanied minors, through the duration of the asylum procedure and individuals with a Temporary protection status have according to the Slovene Legislation access only to basic medical care. Only children with a recognised refugee status are equalised to Slovene citizen regarding medical care. Children are from the high medical risk group, especially at the time of arrival and until the basic living conditions are not arranged. Good medical care for children, systematic check-ups of pre-school children are therefore the basis for protecting refugee children. The Slovene practice is therefore only partly in conformity with the Statement.

**10. f. Are any changes necessary? Possibly in relation to the first principle?**

Harmonisation with the Statement, protection of the principle of non-discrimination. Medical and psychological services should be available to all unaccompanied minors on the same basis as for the Slovenian children, and not only to those with recognised asylum status.

**EDUCATION, LANGUAGE, TRAINING**

**10. g. Legal arrangement, policy and practice**

- Refugees and their close family members shall be accorded the same treatment as Slovene citizens in terms of their rights to primary, secondary and higher education ( Art. 53 of the Asylum Act).
- Ministry of Education is responsible for organising primary education for children subjected to mandatory primary education under temporary protection status as well as for secondary education of temporarily protected persons in accordance with the financial and other capabilities of Republic of Slovenia.

According to the available data of the Association for the preventive and voluntary work, for the year 1996/97 the Ministry of Education and Sport of the Republic of Slovenia (MES RS) issued primary and secondary schools, which have enrolled children - temporary refugees from BIH, with the guidelines for working with these children. In their guidelines for primary schools they state that MES RS covers all the costs of snacks and transport to and from school for enrolled pupils.

The percentage of school attendance is subject to permanent changes. Due to adjustment problems of the Slovene education system and/or due to insufficient financial and moral support a great number of children lost their motivation for further education. In addition there are also encountering the problem of enrolment into secondary education (children with Slovene citizenship have priority for enrolment).

Data about the school attendance of unaccompanied children until the end of 1997:

| Age              | Attending school | Not attending school | Total |
|------------------|------------------|----------------------|-------|
| 7-15             | 57               | 3                    | 60    |
| 15-18 (and over) | 45               | 37                   | 82    |
| Total            | 102              | 40                   | 142   |

The children not attending school are at risk (labour exploitation, delinquency, drug abuse etc.).

#### **10. h. Conformity with the Statement.**

In order to preserve their cultural identity unaccompanied minors have access to mother-tongue language lessons. In Slovenia the mother-tongue schooling was introduced immediately after the arrival of Bosnian Temporarily Protected children in Collective Centres, later, they were enrolled in the Slovene regular school system. e. Since they were accommodated with their country fellowmen it was considered that they adequately meet this need within the community. The issue thus is not completely in conformity with the Statement.

#### **10. i. Are any changes needed?**

Children should be provided with mother-tongue teaching in order to preserve cultural identity as well as vocational and professional training.

### **11. REFUGEE DETERMINATION PROCESS**

#### **ACCESS TO NORMAL PROCEDURES**

##### **11. a. Legislation, policy and practice**

Relevant legislation is included in the Article 7 of the Law on Asylum as follows:  
Article 7

##### **Entry into the Republic of Slovenia**

1. An alien who upon entry in the Republic of Slovenia declares his/her intention to submit an asylum application in the Republic of Slovenia shall be treated as an asylum applicant in accordance with this Law and he/she must be allowed to enter the State.
2. The Minister of the Interior shall prescribe in details the procedure and the treatment of persons mentioned in the paragraph above.

The asylum procedures begins when an asylum application is lodged. According to Art. 28 , to an unaccompanied minor a legal guardian shall be appointed before the start of the asylum procedure. While examining an asylum application lodged by an unaccompanied minor, the competent authority in co-operation with the legal guardian shall take into account the level of minor, s maturity.

In principle , in accordance to the statements by the competent officials in the Asylum Home , unaccompanied minors are not denied access to the asylum procedures, although those statements can not be verified. They enter the normal procedure since the Slovene Asylum

Law does not prescribes an accelerated procedure, but they are not excluded from procedures regarding the safe third country, manifestly unfounded claims and safe country of origin.

#### ***11. b. Conformity with the Statement***

The Slovene Law on asylum and practice is in line with the Statement in the part regarding the fact that they are not denied access to the procedure and that normal procedure for unaccompanied minors is held.

#### ***11. c. Changes***

For the procedure to be in conformity with the Statement, the safe third country and safe country of origin legal provisions should not be applicable for unaccompanied minors.

### **LEGAL REPRESENTATION**

#### ***11. d. Legislation***

Articles 9 and 16 of the Law on Asylum:

Article 9

##### **Assistance to asylum applicants**

Asylum applicants shall be given opportunities to lodge their asylum applications as soon as possible.

An asylum applicant shall be informed of the procedure for acquiring asylum status and his rights and duties in such a procedure as well as about the right to contact NGO's which are providing help to refugees, in a language he can understand.

An asylum applicant shall have the right to select his legal counsellor (representative) or refugee counsellor as per Article 16 of this Law to assist him during the procedure.

Persons mentioned above selected by the asylum applicant as well as representatives of the Office of the UNHCR shall have the right to contact the asylum applicant at any time and at all stages of the procedure for asylum.

An asylum applicant shall have the right to request contacts with persons and representatives mentioned in the previous paragraph at any time.

Article 16

##### **Refugee counsellors**

For providing support and legal assistance to aliens in asylum and procedural matters, the Minister of Justice shall appoint refugee counsellors.

Upon the aliens' request, refugee counsellors shall:

inform aliens of all issues concerning laws and other regulations as well as general legal acts in the field of asylum and asylum application;

provide assistance in lodging their asylum application;

provide general legal assistance;

represent them in the asylum procedure.

The Minister of Justice shall appoint counsellors from among lawyers who have passed the state legal exam and have adequate experience in asylum and refugee matters.

Refugee counsellors are entitled to be remunerated for the work they perform and be reimbursed for any expenses out of the budget of the Republic of Slovenia and according to criteria established by the Minister of Justice.

**Policy and practice-** At the hearings the asylum seekers are provided with the list of appointed Refugee Counsellors. The counsellors are available free of charge and some of them have also skills in representing children and are aware of their specific forms of persecution. Prior to the commencement of the procedure, an unaccompanied minor who applies for asylum shall be assigned a legal representative by the competent authority. In practice it can be observed that this provision is not entirely respected. The Minister of Justice has appointed 27 refugee counsellors mostly out of advocates. Counsellors are informing asylum seekers on all issues concerning laws and other regulations, providing assistance in lodging their asylum application, providing general legal assistance and representing through the entire asylum procedure. He noticed that even though in Asylum Home there is a list of counsellors hanging on the billboard a lot of asylum seekers are still not aware of the fact that they are entitled to the free of charge legal representation.

#### **11. e. Conformity to the Statement**

The Statement shows, that every unaccompanied minor should have the right to free legal aid. In Slovenia that should be provided by the appointed refugee counsellors, all lawyers with a degree and a state bar exam. The counsellors were appointed by the Minister of Justice and are mostly advocates, advocate candidates and some lawyers from the state administration and Non governmental organisations. The most experienced on this field are the lawyers of the Asylum Lawyers Network, a project of Foundation GEA 2000. The Asylum Lawyers network lawyers were active in representing refugees since 1992, at present they all became refugee counsellors.

#### **11. f. Are any changes needed?**

Unaccompanied minors should be informed sooner that they are entitled to a free of charge legal representation, Leaflets and information books for the asylum seeker's legal and social rights should be issued by the State. Foundation GEA 2000 has already printed a booklet in which the asylum seekers could get a basic information about the asylum procedure, their obligations and rights. Training of lawyers and state officials on child-specific forms of persecution would be needed.

### **MINIMAL PROCEDURAL GUARANTEES**

#### **11. g. Legislation, policy and practice**

Legislation on the minimal procedural guaranties is partly contained in Article 38 of the Law on Asylum as follows

Article 38

##### **Appealing against a decision of the first instance**

An asylum applicant has the right to appeal against a decision taken at the first instance to the Administrative Court. An appeal should be submitted within 15 days following the service of the decision. During these 15 days the decision is not enforceable. An asylum applicant who, for justified reasons, could not lodge the appeal in the prescribed deadline shall be granted

*restitution in integrum* upon his request. A petition for *restitution in integrum* should be submitted within three days upon termination of reason causing the delay. *Restitution in integrum* can be requested within 3 months from the prescribed deadline. The competent authority shall decide on a petition for *restitution in integrum* within three days upon its submission. During this period, the removal of an asylum applicant from the Republic of Slovenia cannot be enforced.

By the information given by the Head of the Asylum sector the competent authorities act in accordance with the Law and ratified Conventions. As all asylum seekers also UM have a right to appeal by the juridical authority. Deadlines on issuing decisions are still very long which is a general problem also with Slovene Courts.

#### **11. h. Conform to the statement**

Legislation does not prescribe any special provisions regarding unaccompanied minors. Although in practice the procedure is basically held in line with the ratified international Conventions which are considered as part of national legislation, special regulations concerning assessment of a child's ability to articulate a well founded fear of persecution should be adopted.

The Statement shows that the applications of unaccompanied minors should be decided upon by those responsible persons, that are familiar with refugee issues and know the special rights that the children are entitled too. Also the unaccompanied minors should have a possibility of an appeal, that should be solved as soon as possible. In the Slovene legislation there is, however, a provision that the competent bodies should treat the applications of minors with priority and in the shortest possible time, although in practice this is not the case. The problem lies primarily in the fact, that there is no separate record held, that would identify unaccompanied minors as a special category. Therefore they can not benefit from the advantages, that is foreseen by the law, as they can not be identified as a special group.

#### **11. i. Are any changes needed?**

It would be necessary to change the program of records and enter this special category and consequently monitor the preferential treatment, namely the hearing schedule appointment and also the issuing of decisions. At present only the statistical record for all minors is being kept and not especially for unaccompanied minors.

As all applicants, also unaccompanied minors have the right to appeal within 15 days of receiving the decision of the first instance, though a problem occurs, as it does in all phases of the procedure, that in Slovenia there are no individuals with special knowledge from this field and therefore training of competent officials would be necessary.

### **INDEPENDENT ASSESSMENT**

#### **11. j. Legislation, policy and practice**

As referred in the previous chapter in the Slovene Law on Asylum there is no special provisions regarding the independent assessment. At the Asylum Sector of the Ministry of Interior have no policy nor practice on the issue yet.

**11. k. Conformity to the Statement**

No conformity to the Statement can be mentioned.

**11. l. Are any changes needed?**

There is a need for an independent expert person, who would carry out an assessment of the child's ability to articulate a well-founded fear of persecution especially because the competent state interviewers don't have specialised training on the issue. Further more, interviewers lead the procedure for unaccompanied minors in the same way as for adults. Foundation GEA 2000 counsellors have knowledge about the special needs of unaccompanied minors and are changing the practice by informing the authorities about competent Laws, Conventions and Resolutions concerning unaccompanied minors as well as practice and guidelines of the UNHCR. There is an urgent need of training the interviewers on this issue.

INTERVIEWS

**11. m. Legislation, policy and practice**

Article 29 of the Law on Asylum: reads as follows:

**Hearing of an asylum applicant**

1. The competent authority shall hear every asylum applicant in person and without delay. If necessary, an asylum applicant may be heard several times.

By virtue of a hearing, the asylum authorities shall in particular establish:

- the identity of the asylum applicant and family members accompanying him;
- grounds on which his asylum application is based;
- the applicant's itinerary and his stops en route to Slovenia and whether he has asked for asylum in any other country; and
- all other facts and circumstances relevant to the decision.

2..The asylum applicant shall state all facts and circumstances which justify his fear of persecution and all facts and circumstances speaking against his forced removal from the Republic of Slovenia or deportation to a particular country.

3. The asylum applicant shall submit to the competent authority all evidence available to substantiate his application and provide a credible and convincing explanation of all grounds which substantiate his application if there is no evidence.

4. An asylum applicant shall provide all personal data and data on his past experience relevant to the establishment of his identity or are in any other way relevant to the procedure.

5.The competent authority shall give an asylum applicant enough time to prepare for the hearing and enough time to seek the assistance and support of a legal representative or other counsellor which he deems necessary.

As described by the Head of the Asylum department the interviews are held in a small and unsuitable room, the equipment is very old and slow and they don't have enough secretaries, therefore the time limits for hearings are still too long. The UM are interviewed in the same way as adults by interviewers who don't have knowledge about their special needs. The interviews are not carried out in a child-friendly manner, no social workers or relatives are allowed to be present. An urgent training of the interviewers has to be provided quickly!

### **11. n. Conformity to the Statement**

There is no special provision about interviewing unaccompanied minors in the Legislation, and interviewers have no special knowledge about this issue.

The Statement shows that hearings of unaccompanied minors should be performed by individuals who possess special knowledge from this field and should be performed in an informal and pleasant atmosphere. Also have the unaccompanied minors the right to being represented by a legal counsellors as well as a social worker or relative. The Slovene legislation is in conformity with the above stated, although in practice every applicant is represented by a legal counsellor, the authorities do not prefer the presence of anyone else as they fear the influence of relatives or NGO's. This option should of course be given to the unaccompanied minors in the broad sense of the term, as by the wish of an unaccompanied minor, the authorities should allow the presence of a relative, guardian, social worker, psychiatrist as well as a representative of a NGO's, dealing with these issues. The legal councillors of Foundation GEA 2000 are advocating for some time already, that this should by all means become everyday practice.

### **11. o. Changes needed**

The interviewers should benefit from training and information about the methods of interviewing minors and about their special needs. Relatives should be to be present at the interviews also when it comes to the »aged out« children. *In relation to the first principle* the »best interest« rule is not always taken into the consideration, there is also a lack of staff training and a long-term interest principle such as welfare of the child is often not foreseen.

## **CRITERIA FOR MAKING A DECISION ON A CHILD'S ASYLUM APPLICATION**

### **11. p. Legislation, policy and practice**

Article 28/2 of the Law on Asylum only:

Article 28

#### **Unaccompanied minors in the asylum procedure**

1. To an unaccompanied minor a legal guardian shall be appointed before the start of the asylum procedure.

2. While examining an asylum application lodged by an unaccompanied minor, the competent authority in co-operation with the legal guardian shall take into account the level of minor's mental maturity.

From the interview with the Head of the Asylum sector derives, that the Asylum Sector didn't processed much unaccompanied minors therefore no special policy has been developed yet. In the decision making process the authority doesn't make any distinction between unaccompanied minors and adults therefor minors special position isn't taken into the account and are treated the same way as adults. This really is a big problem in Slovenia and we should change the legislation about these sensitive issue, while decision making officers should get a knowledge about that.

### **11. q. Conformity with the Statement**

As above there is no distinction made regarding the determination procedure for unaccompanied minors, therefore no conformity with the statement can be observed.

**11. r. Changes needed:**

The legislation and the implementing regulations should be amended in line with the International legislation and practice.

**YOUNG PEOPLE WHO BECOME ADULTS DURING THE ASYLUM PROCESS**

**11. s. Legislation, policy and practice**

No relevant Legislation nor policy on this issue can be observed, though in practice we can notice that the authorities make no difference between age-out people and adults. Even in case the person is one month over 18 he/she has to fulfil the same legal prerequisites as adults. The severe delays in the decision making process can be observed as well as numerous other problems. The authorities don't act in the unaccompanied minors best interest and don't act quicker in setting up the interviews for children who are just out nor they treat them in a generous fashion.

**11. t. Conformity to the Statement**

The Statement shows that the unaccompanied minors that gained maturity during the procedure, should be treated differently as other adults in the sense of greater benevolence. Apart to this it is necessary to eliminate unnecessary delays that should result in an unaccompanied minor gaining maturity in the course of the proceeding. In Slovenia the term "aged-out" children is non existent, nor in the legislation, neither in practice. As it was stated previously, the authorities keep no separated record of unaccompanied minors, therefore in practice they are not subject to special treatment or accelerated procedures. Only when the problem of correct identification of unaccompanied minors will be addressed, different and preferential treatment of their applications will be possible.

**11.u. Are any changes needed?**

Decision making officials should benefit from specialised knowledge and training on this issue, more NGO-s and experts should be involved. In one of our cases the authority didn't act in the best interest of the child and didn't scheduled the hearing for a year which resulted that minor gained maturity during the procedure. After he become age out , at the hearing we claimed that this fact should be considered and a young adult should be treated in a generous fashion but it occurred that the official in charge had no knowledge about that fact. We are still waiting for a decision but since the interview was not held in a proper way we are expecting a new one.

**12. DURABLE SOLUTIONS**

The plan for a long-term solution must be based on the individual child's best interests. Family reunion should be the first priority for the child. Should such reunion not be in the best interests of the child or not possible within an appropriate timeframe, other medium- and long-term options such as foster care, guardianship, etc. may be sought. Eventual family reunion or repatriation should be opened as long as possible.

## **REMAINING IN A HOST COUNTRY OF ASYLUM**

### **GROUNDNS FOR A CHILD REMAINING IN A HOST COUNTRY**

According to the conditions that one has to fulfil, Slovenia altogether recognises four forms of protection: 1951 Geneva Convention refugee status (A status), refugee status for humanitarian reasons (B status), Temporary protection status and permission to remain, in case the individual cannot be returned to his country of origin, although his application for a status has been rejected.

#### **12. a. Legal arrangement, policy and practice**

##### *i. Recognition of temporary protection status:*

Slovenia is one of the few countries, that with the Law on Temporary Protection, legalised the temporary protection status of individuals, fleeing from countries in war or war alike conditions, that are in occupation or mass violation of human rights occur. The Law on temporary protection dating from 10 April 1997 (Official Journal no. 20-1139/97), determines a category of individuals that will benefit from temporary protection, in case the Slovene Government decides, that in a given country the conditions have emerged, that call for such a solution, procedures of reception, rights and obligations of beneficiaries to accommodation, medical care and employment.

These provisions were actually enforced in favour of the refugees from the endangered areas of Bosnia and Herzegovina, that took shelter on the Slovene territory and were also enforced for the refugees of Albanian origin from the area of FRY- Kosho. For these refugees, who arrived in masses, Slovenia provided care and maintenance and accommodation in Collective centres, medical care, education and psycho-social assistance.

- The Law on Temporary protection in its article 8 prescribes, that individuals who are granted Temporary protection status can apply for a temporary residence permit in accordance to the Law on Foreigners. However, the new Law on Foreigners from 1999 dismissed the possibility of acquiring the first residence permit with the administrative bodies on the territory of Slovenia, according to the provision of article 28, the individual has to submit the application to acquire the first residence permit (foreigner status) with a diplomatic-consular mission of Slovenia abroad, the first permit for temporary residence is acquired by a foreigner before entering the state. Hence it follows, that also a refugee, of which a temporary protection is coming to an end and actually fulfils the conditions to acquire temporary residence, cannot settle the application in Slovenia but in a diplomatic-consular mission of Slovenia abroad and has (after the cessation of a refugee status, at least while the procedure lasts) to leave the country.

##### *ii. The implementation of the Geneva Convention on the Status of Refugees from 1951, the recognition of refugee status, thus permanent protection:*

The legal provisions on permanent protection according to the Refugee Convention, were primarily in Slovenia contained merely in ten articles, from article 34 to 43 of the Law on Foreigners dated 25 June 1991 (Official Journal of Slovenia, no. 1/91). The stated articles have (even before the adoption of the Slovene constitution) determined the individuals, that would have the right to asylum status, the extent and duration of benefits, that they are entitled to, the status of refugee children, bodies competent for the registration of the asylum applications, where the obligation of lodging an asylum application within the three days after

entering the country deadline was in force. Further on the articles prescribed the bodies competent for the recognition of a refugee status and bodies competent for the revision of negative decisions.

Slovenia adopted a new Law on Asylum on the 6<sup>th</sup> of September 1999 (Official Journal of Slovenia, no.61-2911/1999) that replaced the above mentioned provisions of the Law on Foreigners. The Law on asylum prescribes more extensively and more in detail the procedures for asylum recognition, dismissed the three days deadline for the application, determines the rights and obligations of the eligible individuals, further on it introduced all the terms of resolutions and conclusions adopted by the EU member states. The Law on asylum prescribes special attention to unaccompanied minors and mentally disabled individuals, to which it is not possible to deny access to Slovenia, to the principle of family reunion, to the right of the asylum applicant to legal assistance and contacts with the representatives of UNHCR. The Asylum applicants are entitled to basic provision in the sense of ensuring material and social assistance. A special emphasis is given to integration assistance, where integration enables individuals with a recognised status to integrate into the Slovene economic, cultural and social life and ensures those with the asylum status an equal starting-point as to Slovene citizens.

- The Law on Asylum enables the acquisition of asylum for humanitarian reasons to foreigners that apply for protection if the return to their country of origin could endanger their security or physical integrity in the sense of article 3 of the ECHR, changed with the protocols no. 3, 5 and 8 and updated with the protocol no. 2 and its protocols no. 1, 4, 6, 7, 9, 10 and 11 (Official Journal of Slovenia – International Treaties, no. 7/94) in circumstances, which the 1951 Geneva Convention on refugees does not prescribe, but nonetheless represent a sufficient reason for not returning such individuals to their country of origin (asylum for humanitarian reasons).
- Regarding the Law on Asylum, Slovenia did not adopt any implementation regulations yet. In accordance with article 71, The Decree on asserting the rights of foreigners, which are granted a refugee status (Official Journal of Slovenia, no. 44/96) and the Regulations on the modes of solving applications for the recognition of asylum and their basic provision ( Official Journal of Slovenia, no. 25/91) are being used until the new regulations will be issued. Asylum procedures are being implemented under the special regulations of the Law on Asylum and only a subsidiary use of the provisions of the Law on Administrative procedures.

**12. b. To what extent is the above stated in conformity to the Statement? Short description**

As above stated the legislation regarding the continuation of stay in Slovenia is in absolute conformity to the Statement.

**12. c. Are any changes needed?**

Not for the moment.

## FAMILY REUNION IN THE HOST COUNTRY

### **12. d. Legal arrangement, policy and practice**

According to the provision of article 3 of the Law on Asylum the right to asylum is recognised also to close family members of the refugee. As close relative members a spouse, minor unmarried children and parents of minor refugees can be considered. With unaccompanied minors also the person, which is authorised according to the regulations or customs of the country of origin, to take care of the child, can be considered as a close relative. In the procedure for asylum also close family members have the equal legal position as the asylum seeker. With the recognition of the right to asylum also to close family members of the refugee, the generally adopted principle of the integrity of the family is being implemented, which is included also in several international instruments. Although there are no separate provisions regarding family reunification of unaccompanied minors in force

### **12. e. To what extent is the above stated in conformity to the Statement? Short description**

Although there are no separate provisions regarding family reunification of unaccompanied minors in force a considerable conformity with the Statement can be observed in practice. Namely, the Convention on the Rights of the Child from 1989 demands, that a child is not separated from its parents against one's own will and further on defines benevolent, humane and fast proceedings of applications for a family reunion. ECHR in its article 8 determines the right of anyone to a private and family life. The Geneva Convention from 1951 with the definition of a refugee did not include the family members of a refugee, however in the concluding document of the conference, where the Convention was adopted, a Recommendation to the Governments of the signatory states to the Convention was made, that all necessary measures should be ensured to protect a refugees family and preserve the integrity of one's family. In accordance with the stated and with the Statement, the Slovene Law on Asylum prescribes, that asylum should be recognised or granted also to close family members of a refugee.

The principle of integrity can according to article 3 of the Law on Asylum be implemented at all times when the family is divided because of one of it's family members has taken refugee.

A close family member has in accordance with the above stated, the right to asylum only when this right was recognised to the family member refugee and if there are no reasons, that would for personal status of a family member, exclude the recognition of asylum, e.g. that there are no exclusion reasons (according to article 4 of the Law on Asylum). legal position of close family members of a refugee depends upon the legal position of a refugee. If the refugee has a status of an asylum applicant, the same status is being enjoyed by it's family members.<sup>6</sup> In practice in Slovenia there are so far no cases found, that for family reunion reasons, later on close relatives of an unaccompanied minor would join one. Usually it is just the opposite, namely that after the established contact, the parents take their children out of the country, usually in an illegal fashion. Slovenia namely is not very popular asylum destination, the

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<sup>6</sup> Rakočević, S. regulations on foreigners and Asylum with comments, The official journal, Ljubljana, 1999

application is later on submitted in another country, usually an EU member state or the USA, Canada, Australia and elsewhere. Hence often so also the minors, who actually apply for asylum in Slovenia, shortly after their arrival disappear without trace, presumably they join their parents and continue their journey towards the developed European countries. On the other hand several hundred cases of family reunion under the Law on Temporary Protection can be reported in Slovenia, mainly from Bosnia Herzegovina, but also from Kosovo. Most family reunion procedures took place during years 1993-1997.

## INTEGRATION

### **12. g. Legal arrangement, policy and practice**

Asylum applicants, to which the competent body has recognised the status of a refugee in accordance with the second (1951 Convention) and third paragraph (asylum for humanitarian reasons) of article 1 of the Law on Asylum, have the right to permanent residence in Slovenia, a legally valid decision, with which the asylum applicant was recognised as a refugee is valid as a permanent residence permit in Slovenia (article 50 of the Law on Asylum). This right is however of unlimited duration, but is bounded to the refugee status.

The Law on Asylum in article 47 further on determines the right to financial assistance, basic accommodation, medical care, education, assistance in integration into the environment, employment and engaging into other forms of active employment policies.

The refugee will most probably spend a considerable amount of time in Slovenia as a country of asylum, some of them will never return to their countries of origin. The duty of the state is therefore, to ensure certain conditions for the facilitation of their integration into the Slovene society. This means, that apart from a number of rights, that are given to the refugees by law, it is necessary to ensure also general conditions, that enable individuals integration into the environment in which they reside ( in some European countries the acquisition of citizenship through naturalisation is facilitated, the Slovene law does not prescribe milder conditions of this kind).<sup>7</sup>

With the purpose of ensuring integration, the law prescribes to asylum seekers a broad spectrum of rights, including the unlimited right of work, learning of Slovene language and access to financial assistance for a maximal period of three years. Integration enables the inclusion of asylum seekers into the Slovene economic, cultural and social life and ensures to asylum seekers equal starting point on these area, as for the Slovene citizens.

The Law on Foreigners (from 1989) dedicates it's paragraph 10 to integration of foreigners. The chapter on integration of foreigners is a novelty in our legislation on foreigners, as well as the concretely determined obligations of Slovenia related to this. Article 82 of the Law on Foreigners obliges Slovenia, to ensure the conditions for the inclusion of foreigners, who hold a residence permit into the economic, social and cultural life of Slovenia. Particularly it should organise Slovene language courses for foreigners, organise courses and other forms of education and vocational training for foreigners, provide information that are necessary for their integration into the society, above all about their rights and obligations, possibility of personal development and development in society, familiarise foreigners with the Slovene

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<sup>7</sup> Rakočević, S. regulations on foreigners and Asylum with comments, The official journal, Ljubljana, 1999

history, culture and constitutional set up and to organise common events with Slovene citizens to stimulate interaction and mutual understanding. According to the provisions of the Law on Foreigners the state and other authorities, organisations and associations should first of all cooperate with the competent bodies to accelerate the integration of foreigners into the economic, cultural and social life of Slovenia and with international organisations regarding issues of migration and integration of foreigners. Governmental and other bodies, organisations and associations should further on, with all it's activities, ensure protection against any form of discrimination on grounds of racial, religious, national, ethnic or other distinguishing of foreigners.

Apart to the obligations of Slovenia, governmental and other bodies, organisations and associations, as determined by article 82 of the Law on Foreigners, for the integration processes of foreigners, a deciding factor is the Resolution on Migration Policy, that has to be adopted by the Slovene parliament on the proposal of the Slovene government every two years.

- Asylum for humanitarian reasons

Asylum applicants and refugees, that were granted asylum for humanitarian reasons, are equalised with convention refugees regarding their rights and obligations. Practice was not formed yet as this status is a novelty, introduced by the Law on Asylum in 1999 and was not granted to any unaccompanied minors in Slovenia.

#### ***12. h. To what extent is the stated in conformity with the Statement? Short description***

According to the Statement all the children should gain access to appropriate services on a non discriminatory basis and facilities and program should be design to met their special needs. Although there are no specialised programmes for integration of unaccompanied minors anticipated in the normative arrangements, in generally the legislation is in conformity with the Statement. However, due to the absence of any Regulations in practice a significant discrepancy in the implementation of the integration policy between normative legislative arrangements and practice can be reported.

#### ***12. i. Are any changes necessary? Possibly in relation to the first principle?***

As above, the Law with the stated obligations of the state, determined in article 82. of the Law on Foreigners, does not exhaust all forms and modes of assistance, that a state has to ensure to foreigners for their residence in Slovenia on equal terms. With the appropriate regulations it will be necessary to determine the alternatives of asserting the rights deriving form the Law on Foreigners. In practice all the provisions are not yet implemented.

#### **ADOPTION**

Most unaccompanied minors are not orphans, and what they need is therefore reunification with their parents, not adoption. It is UNHCR's policy that children in an emergency context are not available for adoption. Any adoption of an unaccompanied child of concern to the High Commissioner must be determined as being in the child's best interests and carried out keeping with applicable national and international law.

**12. j. Legal arrangement, policy and practice**

By the legislation only a child of whom the parents are unknown can be adopted, or their residence address is not known for over a year or, if they gave their consent in front of a competent body, to give their child into adoption. The consent of a parent is not necessary, if one's parental rights have been revoked or is permanently not able to articulate one's will. Adoption is possible after the lapse of one year from the fulfilment of the condition from the previous chapter. Adoption is

Adoption is exceptionally possible also before the lapse of this deadline, if the Centre For Social Work establishes, that it would be inn the benefit of the child. A child who has no living parents anymore, can also be adopted (article 141 of the Family Law).

According to article 140 of the Family Law the adopter can exceptionally be a foreign citizen, in case if the Centre For Social Work could not find an adopter amongst Slovene citizens. For a child adopted by a foreign citizen, an approval of the administrative authority, that is competent for social care is necessary, and the approval of the administrative body, competent for internal affairs. An approval is not necessary in case that the adopter is a spouse of the child's parent.

In practice there are no cases of adoption of unaccompanied minors, who seek asylum in Slovenia. Namely, according to article 44 of the Law on the regulation of collision with regulations of other countries in certain relations, the conditions of adoption and cessation of adoption are judged by the legislation of the country of origin of the adopter and adopted child. If the adopter and adopted child are citizens of different countries, for the conditions of adoption and it's cessation legislation of both countries are used cumulatively. If spouses adopt someone together, then next to the legislation of the country of origin of the adopted child, also legislation of the countries of origin of both spouses is used for the conditions and cessation of adoption. (For the form of adoption, the applicable law is the law in which the adoption takes place).

according to the stated, thus taking into consideration international private law, for the adoption of an unaccompanied minor, it is necessary to obtain approval of the competent bodies of the country of origin, which results in the endangering of personal security and possibly also for relatives in the country of origin. In Slovenia only cases of guardianship are known in practice.

**12. k. To what extent is the stated in conformity with the Statement? Short description**

According to the Statement, cases that unaccompanied minor is being adopted appear to be very rare.

**12. l. Are any changes needed?**

## IDENTITY AND NATIONALITY

### **12. m. Legal framework, policy and practice**

The citizenship of Slovenia can be obtained only through the fulfilment of strict conditions as are defined by the Slovene Law on Citizenship. Legislation in the republic of Slovenia does not enable acquisition of citizenship for reasons of statelessness of an unaccompanied minor.

Nationality of an individual is not necessarily identical to ones citizenship, namely the terms of nationality and citizenship do not overlap completely. In the internal legal system of Slovenia the area of acquiring Slovene citizenship developed in detail, however it is not possible to find equivalent provisions regarding nationality. From the mentioned reason the study is stating conditions, alternatives and possibilities of acquiring a citizenship, but not nationality, of Slovenia for unaccompanied minors.

The citizenship of Slovenia can be obtained through the fulfilment of rigorous conditions, as are determined by the Slovene Law on Citizenship, namely on grounds of application through regular naturalisation, also with extraordinary naturalisation, further on through birth on the Slovene territory or through circumstances determined by descent. The basic registry on citizenship is according to article 31 of the Law on Citizenship the register-office book of birth.

- According to the 1<sup>st</sup> paragraph of article 9 of the Law on Citizenship, a child born or found on the territory of Slovenia will obtain citizenship, in case one's mother or father are unknown or their citizenship is unknown or are without a citizenship. On the request of the parents, citizenship of such a child can be revoked or if it is established, before such a child fulfils 18 years of age, that the parents of such a child are foreigners. Parents have to enclose evidence to their request, that they have a foreign citizenship and evidence that same citizenship was also obtained by the child. The cessation in this case is subject to the hand-over of a decision to the parents, it never ceases ex lege.
- The 14<sup>th</sup> article of the Slovene Law on Citizenship explicitly excludes independent naturalisation of a minor individual or naturalisation on grounds of application of individuals that are not the parents of the child. The child thus cannot obtain citizenship on grounds of the application of the guardian. Although the application can be lodged by the guardian as one's lawful representative, the child cannot obtain Slovene citizenship. If also his parents do not have this citizenship or if the legal capability or their parental right has been revoked, a child can obtain citizenship on grounds of the application of the guardian only, if ones parents have obtained Slovene citizenship before their death or before the legal capability or before their parental rights have been revoked or if they have obtained one on grounds of their guardian in case of the legal capability. Although guardians are taking care of the children (e.g. for children of their relatives), in practice they are not prepared to adopt a child, as they would loose social financial assistance, fostering allowance, reimbursement of costs for the performance of guardianship tasks.
- In Slovenia there is no record of adoption of unaccompanied minors. In case the adoption of an unaccompanied minor would occur, such a child would, in accordance with the provision of article 7 of the Slovene Law on Citizenship, obtain citizenship with the act of adoption itself, thus it would not be necessary to apply for Slovene citizenship through naturalisation. According to article 7 of the Law on citizenship, namely, the adopted child

obtains citizenship under the same conditions as are valid for acquisition of citizenship through descent<sup>8</sup> (articles 4.,5. and 6.), namely in case, if at least one of the adoptive parents is a citizens of Slovenia and if according to the regulations of the country of origin of the adoptive child, with adoption a relation between the adoptive child and the adoptive parent is set up that is equivalent to a relationship of a parent and child (thus complete adoption). Application according to article 7 of the Slovene Law on Citizenship represents a partial state of will, which namely is of constructive nature and according to the explicit provision of the law is valid retroactively (*ex tunc*), therefore it can be considered that the child is a citizenship of Slovenia from his birth onwards.

- In case of adoption, where among the adopter and adopted the relationship established is not equal to the one between the parent and child, the Slovene citizenship can be acquired by an adopter, who is under 18 years of age and resides with his adopters in Slovenia permanently, on grounds of the specific request of the adopters, if they are citizens of Slovenia.
- Taking into consideration the Newly adopted policy, as determined by the conclusion no. 207-00/98-1(I) of the Slovene government, dated 19.02.1998, those individuals who in the procedure of regular naturalisation cannot provide proof of means of subsistence, and are residing in Slovenia from their youth onwards, originating from other parts of former Yugoslavia (and for various reasons have not applied for citizenship on grounds of article 40 of the Slovene Law on citizenship), have the possibility to apply for Slovene citizenship on grounds of *extraordinary naturalisation*.

**12. n. To what extent is the above stated in conformity with the Statement?**

According to the statement unaccompanied minors, who are found to be stateless, can acquire the nationality of the host country. The Slovene legislation does not directly enable this. It is true that the Slovene constitution in the third paragraph of article 56 prescribes special guardianship for children and minors, who are not attended to by parents and that the Family Law in it's provisions on guardianship in it's provisions defines the purpose of the guardianship and also, that the Convention on the rights of the child includes the principle, that it is necessary to take into consideration the child's maximal benefits, but these legal acts are not binding for the state to grant citizenship, if conditions that are prescribed by law are not met.

**12. o. Are any changes necessary? Possibly in relation to the first principle?**

At this point it is necessary to mention the provision of the second paragraph of article 8 of the Temporary Protection Law, which prescribes, that the period for which Temporary protection is granted to someone will not be considered as part of the period necessary for the acquisition of citizenship through regular naturalisation. This arrangement is completely inadequate and is not in conformity with the Slovene Law on citizenship, which conditions acquisition of citizenship with factual residence in Slovenia for a minimum of 10 years. Constitutionality and legality principles are being violated in this case and it would be necessary to follow the provisions of the Statement.

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<sup>8</sup> Acquisition of citizenship by descent (by origin, i.e. parents) is acquisition of citizenship *ex lege*. Citizenship is therefore acquired through birth itself, irrespective of whether a person is registered in the citizenship registry at birth or not.

## ***FAMILY REUNIFICATION AND RETURNS TO A COUNTRY OF ORIGIN***

### **VOLUNTARY RETURN**

#### ***12. p. Legal arrangement, policy and practice***

- Article 14/5<sup>th</sup> 6<sup>th</sup> paragraph of the Law on Asylum:

#### **Unaccompanied minors**

1. Unaccompanied minors are aliens who are under eighteen years of age and arrive in Slovenia, or upon their arrival remain in Slovenia unaccompanied by parents or other legally responsible person.

2. Prior to the commencement of the procedure, an unaccompanied minor who applies for asylum shall be assigned a legal representative by the competent authority of the Republic of Slovenia.

3. Asylum applications submitted by unaccompanied minors shall have priority and shall be resolved in the shortest time possible.

4. In the shortest time possible competent authorities shall establish the minor's identity and verify whether he is actually unaccompanied.

5. Unaccompanied minors shall not be deported to their country of origin or to a third country willing to accept them unless adequate reception and basic living conditions are provided for them in such a country.

6. In no case shall unaccompanied minors be deported contrary to the adopted international instruments.

According to statements of UNHCR officials, they do not have a special practice concerning unaccompanied minors who applied for asylum, since no such claims have arisen so far. On the other hand there is a policy concerning the return of the temporary protected refugees from Bosnia and Herzegovina (BIH) but only few of those were separated minors.

Association for preventive and voluntary work reported, that they performed reunification of unaccompanied minors in BIH first in April 1996. They reunified 43 minors with parents and 7 minors with other family members. The team helped at a number of reunification's, obtained the needed documents and financial means to cover travel expenses. The majority of the unaccompanied minors who fled to Slovenia stayed with relatives or others and have so far reached maturity, so only ten unaccompanied minors with a temporary protection status are staying in Slovenia at the moment. Apart from this no significant involvement can be reported nor from the Governmental nor NGO's.

#### ***12. q. Conformity to the Statement***

The Statement shows that the family reunification in the country of origin of the applicant should be performed on a voluntary basis and that the unaccompanied minors should be exactly informed on the proceeding of the reunification. In Slovenia there are no special provisions on family reunification and return of refugees to their country of origin, nor is there any extensive practice from this field apart from the one from 1996, when the Association for Preventive and Voluntary Work performed the return of 43 unaccompanied minors under Temporary Protection, back to Bosnia and Herzegovina. There the children

were assisted to find their relatives, accommodation, schooling, legal counselling and workshops and extracurricular activities were arranged.

### CONDITIONS THAT MUST BE FULFILLED PRIOR TO RETURN

#### **12. s. Relevant Legislation, policy and practice**

As above only article 14, 5<sup>th</sup> and 6<sup>th</sup> paragraph of the Law on Asylum can be applicable.

According to UNHCR, their offices in countries of origin are taking care of the returned unaccompanied minors. Once Slovenia is a member of the IOM it should be easier to deal with this issue.

#### **12. t. Does this conform to the statement?**

The Statement shows that before the return of unaccompanied minors a number of rules should be taken into consideration, namely to determine if it is at all safe to return an unaccompanied minor to one's country of origin, or if the unaccompanied minors guardian, after careful consideration, concurs with the return and that it is in one's interest, or if the unaccompanied minors parents agree with one's return. Apart to this a competent NGO should establish a suitable monitoring program and control the appropriate reintegration of a child. The Slovene legislation is not familiar with any specific provisions of who, how and in what manner a return to the country of origin of an unaccompanied minor or refugee should be performed. There are no individual return programs, however there is some practice by the UNHCR, namely with the return of the refugees from Bosnia and Herzegovina. The evaluation of conditions, prevailing in Bosnia and Herzegovina at that time was performed by UNHCR in Bosnia and Herzegovina

#### **12. u. Are any changes necessary?**

Slovenia should adopt a comprehensive policy.

### PROGRAMMES AND AID TO FACILITATE REINTEGRATION

#### **12. v. Relevant legislation , policy and practice**

There is no relevant legislation, nor policy and practice on this issue.

#### **12.w. Are any changes needed**

The Statement shows that the children who arrived to the host country and gained maturity there, should be treated as an extremely vulnerable group. All conditions and circumstances that are necessary for a successful reintegration into their country of origin should be established and judged carefully. In Slovenia there are no experiences and programs to assist

the return of unaccompanied minors, that gain maturity during the proceedings, nor is there any mention of this category in the Slovene legislation.

### **13. DATA COLLECTION**

#### **13. a. Who should be responsible for the collection of data on unaccompanied minors?**

For the purposes of this study Foundation GEA 2000 faced some problems with the data collection. Since there is no responsible body appointed by the law, the data collection is not gathered in a systematic way in Slovenia. Different State authorities had few data mostly on their activities regarding unaccompanied minors, some were collected at NGO's, some at UNHCR Office. At the moment all relevant data are kept at the Foundation GEA 2000. On the other hand, there is no significant number of unaccompanied minors in Slovenia at the moment, therefore authorities and civil society do not find themselves compelled by a situation, as it was the case during the war in Bosnia. At that period there were some activities taking place, regarding unaccompanied minors from GO and NGO sector, yet again, in a very non co-ordinated manner. For the future Foundation GEA 2000 strongly recommends that a responsible body, one within the Government and an NGO should be appointed to collect, keep and distribute data on unaccompanied minors in Slovenia in order that good practice and implementation is made possible. The issue regarding unaccompanied minors must be institutionalised systematically in order to be able to provide protection of unaccompanied minors according to the Statement.

At the governmental level the Asylum Department of the Ministry of Interior should be the responsible body, within the NGO sector, Foundation GEA 2000 ( for the legal part ) in co-operation with the Slovene Philanthropy ( for the social part). Good co-operation with UNHCR and ICRC should be established. Data should be followed in accordance with UNHCR Guidelines and Slovene Legislation on data collection in accordance with the Law on the Data Protection.

### **14. POLITICAL LEVEL – SUPPORT FOR CHANGE**

Level of contact between NGO's and government is of occasional nature, depending on the necessity of a particular case. There is no structural or systematic co-operation or funding and there are no contacts established with any of the European institutions. It would be necessary to establish concrete co-operation between NGO's in Slovenia and to prepare a project proposal that would be supported by international organisations, specialised in this field as to identify the necessary sources of support and begin co-ordinated action of lobbying and public awareness in order to improve the situation of unaccompanied minors in Slovenia.