



RECEPTION OF CHILDREN ON THE MOVE IN UKRAINE

Dentons Ukraine

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***NOTE: Short titles used in the questionnaire**

- Childhood Law – Law of Ukraine “On Protection of Childhood” dated 26 April 2001;
- Decree – Decree of Ministry of Health of Ukraine, Ministry of Education and Science, Youth and Sports of Ukraine, Ministry of Social Policy of Ukraine “On carrying out a survey to establish age of a child deprived of parental care and in need for social protection” dated October 23, 2013;
- DMS – State Migration Service of Ukraine;
- Instruction – Order of the Ministry of Internal Affairs of Ukraine, the Ministry of social policy of Ukraine, the Ministry of Education and Science, Youth and Sports of Ukraine, the Ministry of Health of Ukraine, Administration of the State Border Service of Ukraine “On approval of the Instruction about interaction of executive bodies in work with children separated from the family who are not citizens of Ukraine and addressed in competent authorities with the statement for recognition by the refugee or the person needing additional protection” dated July 7, 2012;
- Refugees Law – Law of Ukraine “On Refugees and Persons in Need of Additional or Temporary Protection” dated July 08, 2011;
- Social Protection Decree – Resolution of Cabinet of Ministers of Ukraine “On peculiarities of social protection of children separated from the family who are not citizens of Ukraine”;
- Trafficking Law – Law of Ukraine “On Counteracting Human Trafficking” dated 20 September, 2011;

1. Application of international law in domestic law of the host/transit country

1.1. Status of international treaties in domestic law

Pursuant to Article 9 of the Constitution of Ukraine and part 1 of Article 19 of the Law of Ukraine “On International Treaties of Ukraine” dated July 20, 2014, the international treaties that are in force and agreed by the Verkhovna Rada of Ukraine (*Ukrainian parliament*) as binding are a part of the national legislation of Ukraine. Pursuant to part 2 of Article 19 of the Law of Ukraine “On International Treaties of Ukraine”, in case of conflict between domestic law and international treaties, which are properly entered into force in Ukraine, the rules of international treaties shall prevail. Ukrainian courts do apply international law in their rulings, although judicial practice indicates that referencing to international treaties is not a common practice.

1.2. Ratified international treaties

Ukraine has ratified a number of international treaties, relevant to children in migration, including:

- 1951 Convention relating to the Status of Refugees and the 1967 Protocol;
- 1990 Convention on the Rights of the Child;
- 1996 European Convention on the Exercise of Children's Rights; and
- 1996 Agreement between the United Nations High Commissioner for refugees and the Government of Ukraine.

No reservations to the abovementioned treaties have been introduced. Ukraine has not ratified 2003 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

1.3. “Best interest of the child” interpretation in domestic law

Pursuant to Article 1 of the Law of Ukraine “On Protection of Childhood” dated 26 April 2001 (the “*Childhood Law*”), the principle of “best interest of the child” is interpreted in Ukrainian law as an obligation of all public authorities or accredited institutions to take all actions and decisions aimed at meeting the individual needs of a child according to age, gender, health, special needs, life experience, family, cultural and ethnic origin and take into account the views of the child if he/she has reached an age and development level sufficient to express them.

1.4. Separated and unaccompanied children

The definition of “child separated from the family” in Ukrainian legislation is similar to the definition of “unaccompanied children” provided by the Committee on the Rights of the Child. Pursuant to Article 1 of the Childhood Law and Article 1 of the Law of Ukraine “On Refugees and Persons in Need of Additional or Temporary Protection” dated July 08, 2011 (the “*Refugees Law*”), under the definition of “child separated from the family” shall be understood a person under eighteen years of age, who is arriving or has arrived on the territory of Ukraine not accompanied by both parents or any of them, a grandparent, an adult brother or sister, a tutor or guardian appointed in accordance with the legislation of the country of origin, or other adult persons, who have assumed the responsibility for bringing up the child before the arrival at Ukraine either voluntarily, or by custom of the country of origin.

Definition of “separated child” is not provided in Ukrainian legislation.

2. Reception of children in the host/transit country

2.1. Initial evaluation

Accounts of unaccompanied (separated) children are examined individually. Accounts of accompanied children are examined integrally with the accounts of adults travelling with them. Ukrainian legislation is generally silent on the possibility of an accompanied child to make claims that are independent from the claims of adults travelling with them. In practice, as confirmed in a conversation with an officer of local DMS unit responsible for problems of migrant children, accompanied children do have a separate interview where they are able to make independent claims.

At present, Ukrainian legislation does not impose any requirements regarding the qualification of interviewers of migrant children. Neither are there special trainings provided for the respective specialists regarding the protection of rights of migrant children.

Interviewers of migrant children are not obliged to comply to a specific code of conduct. However, certain peculiarities of interview conduction are stipulated in the Refugees Law. Pursuant to paragraphs 3 and 4 of Article 9 of the Refugees Law:

- interview with the child separated from the family shall be held with the child's legal representative and the child in question, if the age and the development level of the child are sufficient for conducting such an interview;
- interview with a child separated from his/her family shall be conducted in the presence of his legal representative, who has submitted an application for refugee status or that of a person in need of additional protection on behalf of the child, as well as a psychologist and a pedagogue; and
- participation of an attorney shall be obligatory in case of the review of an application for the recognition of a child separated from the family as a refugee or a person in need of additional protection. An attorney shall be appointed for the provision of the

legal aid to such a child in accordance with the established procedure.

Interviews are carried out in a language the child can understand through the assistance of an interpreter (stipulated in paragraph 3 of Article 8 of the Refugees Law and a number of provisions of the Instruction). An interpreter is provided at the expense of the DMS or the Service for Children. Ukrainian legislation does not impose any requirements regarding the place, environment or any other details of the interview conduction.

Children do benefit from some accelerated timelines, although the process is equal for children and adults in general:

- according to paragraph 2 of Article 5 of the Refugees Law, a child, who has applied for refugee status or that of a person in need of additional protection, must be handed over by officers of the State Border Service of Ukraine to a representative of the DMS within 24 hours;
- according to paragraph 2.7 of the Instruction, the Service for Children appoints a legal representative for a child separated from the family within three working days;
- according to paragraph 3.1 of the Instruction, a legal representative of a child separated from the family within three days after his appointment submits an application to the DMS for refugee status or that of a person in need of additional protection; and
- according to paragraph 3.2 of the Instruction, the decision regarding the recognition of the status of a child separated from his/her family as a refugee or as a person in need of additional protection is adopted immediately by the DMS without any preliminary review of application.

Youth (18-25 year old individuals) cannot benefit from the child-sensitive measures established for children.

2.2. Establishment of identity /Age assessment

Age assessment is not undertaken as a measure of last resort. Pursuant to paragraph 5 of Article 9 of the Refugees Law, age assessment is undertaken in case DMS or guardianship system representatives have any doubts regarding the child's age. Also, paragraph 2.8 of the Instruction stipulates, that age assessment is conducted in case of obvious discrepancy between the child's claimed age on the basis of physical (related to his/her development), psychological and cultural factors. A guardian is appointed prior to undertaking a child's age assessment, pursuant to paragraph 2.8 of the Instruction.

Age assessment is not undertaken as a part of a comprehensive multi-disciplinary evaluation of the health of a child. It is a separate measure taken by the DMS. According to paragraph 9 of Article 9 of the Refugees Law, the migrant child shall also be sent for medical examination. Age assessment procedure is regulated by the Decree of Ministry of Health of Ukraine, Ministry of Education and Science, Youth and Sports of Ukraine, Ministry of Social Policy of Ukraine "On carrying out a survey to establish age of a child deprived of parental care and in need for social protection" (the "*Decree*") dated October 23, 2013.

According to subparagraph 7 of paragraph 1 of the Decree, the age assessment procedure is based on the following principles:

- respect for the rights and legitimate interest of the child by the officials of competent authorities involved in the age assessment procedure;
- non-discrimination;
- confidentiality; and
- children's right to participate in all issues regarding the age assessment, appeal of the results of such assessment and age assessment safety procedures.

It should also be noted that the Instruction also sets a number of general guarantees for age assessment procedure:

- age assessment is conducted in compliance with the cultural and ethical principles;
- age assessment is subject to the consent of the child or the consent of his legal representative; and
- the reasons for conducting an age assessment are explained to the child with the support of an interpreter.

According to subparagraph 4 of paragraph 1 of the Decree, the age assessment procedure consists of three parts – collection of information, psychological age assessment and physiological age assessment. Psychological age assessment is carried out by at least two professionals with a degree in “Social pedagogy”, “Child psychology” or “Social work” with the possible assistance of independent experts. Physiological age assessment is carried out by professionals with a degree in “Pediatrics”, “Children's endocrinology”, “Pediatric dentistry”, and by radiologists, if necessary.

The child is asked for his/her consent to undergo an age assessment. According to paragraph 5 of Article 9 of the Refugees Law, age assessment is subject to consent of the child or consent of his legal representative. Ukrainian legislation does not impose any negative consequences for the refusal to undergo an age assessment procedure. In the consequence of uncertain results, pursuant to paragraph 2.8 of the Instruction, all doubts are resolved in favour of a child.

All efforts are made to deliver an identity document to unaccompanied and separated children in a speedy manner. According to paragraph 3.2 of the Instruction, the decision regarding the recognition of a child separated from the family as a refugee or a person in need of additional protection has to be adopted immediately by the DMS without the preliminary review of application. If a positive decision is adopted, the unaccompanied (separated) child shall be issued a refugee identification card (certificate) or an identification card of a person in need of additional protection within fifteen business days.

2.3. Migrant children victims of trafficking

There are no safeguards established to protect migrant children victims of trafficking, specifically. However, the Law of Ukraine “On Counteracting Human Trafficking” dated 20 September, 2011 (the “*Trafficking Law*”) sets a number of guarantees to ensure general protection of children victims of trafficking, including:

- obligation to inform about child victims of trafficking;
- state obligation to provide assistance to child victims of trafficking from the moment when grounds to believe that such child is a victim of trafficking are discovered and until the full completion of the rehabilitation; and
- obligation for centers of social and psychological rehabilitation and shelters for children, with the involvement of educational and health care institutions, to develop and implement an individual program of assistance for children victim of trafficking.

In regard to whether migrant children receive adequate information about potential risks and how/where to report and seek protection, there are no measures regarding the provision of information to migrant children specifically. However, the Trafficking Law stipulates that agents for counteracting human trafficking shall ensure a number of steps to provide information for children in general about potential trafficking risks, namely:

- implement, within their competence, the required social, legal, psychological, pedagogical and other measures aimed at the identification and elimination of causes and premises of children trafficking;
- develop and implement, within their competence, training and educational programs in educational institutions to combat children trafficking; and
- implement, within their competence, measures to raise awareness concerning children trafficking among parents, persons replacing them and persons having continuous contact with children in the domains of education, health care, culture, physical culture and sports, recreation and leisure, in judicial and law enforcement areas.

Ukrainian law remains silent as to the verification of the legal status of adults accompanying children. In practice, there is no automatic verification to ensure that adults accompanying a migrant child have parental responsibility over the child or are the legal guardians of the child. No DNA tests are performed and no reintegration programs are provided to migrant children victims of trafficking, specifically. However, according to Article 23 of the Trafficking Law, there are general programs of reintegration provided to children victims of trafficking, which are carried out by special centers of social and psychological rehabilitation and shelters for children, along with the involvement of educational and health care institutions, which develop and implement an individual program of assistance to children victims of trafficking.

1.4. Application for international protection

Article 9 of the Refugees Law applies to children claiming asylum and to children in need of additional protection. According to paragraph 13 of Article 1 of the Refugees Law, a person (child) in need of additional protection is a person who cannot qualify as a refugee in compliance with the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees and the current Law. It is a person (child in need of protection) whereas such person was forced to come in Ukraine or stay in Ukraine as a result of threat to his/her life, safety or freedom in his/her country of origin, such as fear of execution in relation to a death penalty sentence, torture or inhuman or degrading treatment or punishment.

Under Ukrainian legislation, the right for children to claim international protection is independent from their country of origin, even if when the country of origin is a so called “safe-country”. According to paragraph 23 of Article 1 of the Refugees Law, “third safe country” shall be understood as a country where a person has stayed prior to her/his the arrival in the Ukraine, except for the transit passage across the territory of such a country, and could have applied for refugee status or that of a person in need of additional protection, because the country in question:

- adheres to international human rights standards in the field of asylum specified by universal and regional acts of international law, including the provisions on the prohibition of torture, inhuman or degrading treatment or punishment;
- adheres to international refugee protection principles provided for by the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees and principles regarding persons in need of additional protection;
- has national legislation in the field of asylum and refugees, and its appropriate state authorities determine the status of a refugee and grant asylum;
- will provide the person in question with the efficient protection against deportation, and the ability to request asylum and make use thereof; and
- agrees to accept the person and grant him access to the refugee status ascertainment or additional protection provision procedure.

Pursuant to paragraph 1 of Article 6 of the Refugees Law, a person may not be recognized as a refugee or a person in need of additional protection, if he/she has stayed in a third safe country before the arrival at Ukraine with the intent to be recognized as a refugee or a person in need of additional protection. However, such a rule does not apply to children separated from the families, and persons, who were born or resided permanently within the territory of Ukraine, as well as their descendants (children and grandchildren).

Ukrainian legislation does not envision child-specific forms of persecution in its refugee status criteria. Pursuant to Article 1 of the Refugees Law, children can constitute only one group for refugee status – “child separated from the family”. To our knowledge, Ukrainian legislation is silent on whether it considers the capacity/willingness of the country of origin of a child claiming asylum is in the capacity or willing to protect the victim, when the agent of persecution is not the state itself.

In a child asylum claim, when the agent of persecution is not the state the child is originating from, is the capacity/willingness of the given state to protect the victim taken into consideration

Deprivation of economic, cultural or social rights (even deprivation of the right to work) is not viewed in Ukraine as a ground for conceding refugee status. According to Article 3 of the Refugees Law, a ground for conceding refugee status is a danger for life or freedom for reasons of race, religion, ethnic affiliation, citizenship (nationality), membership of a particular social group or political opinion.

1.5. Migrant children's access to justice

Migrant children claiming asylum or in need of additional protection are provided with free legal assistance. According to paragraph 4 of Article 9 of the Refugees Law, an attorney shall be appointed for the provision of the legal aid to a child separated from his/her family. Pursuant to paragraph 4 of Article 9 of the Refugees Law and paragraph 2.7 of the Instruction, migrant children, independently of their status (i.e. asylum seekers, illegal migrants) are provided with a legal counsel and a guardian as soon as the authorities detect them.

There is no special requirement for appointed lawyers to have specialized knowledge in trafficking or in working with migrant children victims. However, as confirmed in a conversation with an officer of local DMS unit responsible for problems of migrant children, there is a certain pool of lawyers, who have a deep knowledge of the subject and are usually appointed in cases of children trafficking or working with migrant children victim. Migrant children and/or their guardians have access to legal remedies against decisions affecting them. Pursuant to Article 12 of the Refugees Law, DMS decision to refuse to grant the refugee status or that of a person in need of additional protection can be disputed by the migrant child or his legal representative within five business days from the date of the decision. All other decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers affecting migrant children or their guardians are subject to challenge in court. Migrant children have access to specialized victims services. Victims services in Ukraine are mostly funded and provided by foreign donors and NGOs.

Pursuant to Article 20 of the Refugees Law, migrant children have the right to obtain information about their rights and duties in their native language or a language understood by them. An interpreter is provided at the expense of the DMS or the Children Service . Also, pursuant to paragraph 5 of the Resolution of the Cabinet of Ministers of Ukraine “On peculiarities of social protection of children separated from family who are not citizens of Ukraine” (the “*Social Protection Decree*”) dated November 16, 2016 the use of remote translation is also possible.

3. Child Protection System

3.1. Guardianship system

Under Ukrainian legislation, was established as a system of guardianship and trusteeship. According to Article 11 of the Law of Ukraine “On Ensuring Organizational and Legal Conditions for Social Protection of Orphans and Children Deprived of Parental Care” dated January 13, 2005, guardianship and trusteeship agencies are state administrations of regions, districts of the cities of Kyiv and Sevastopol, executive bodies of municipal or district, village, and township councils.

Furthermore, paragraph 1.4 of the “Rules of guardianship and trusteeship”, issued by the State Committee of Ukraine for Family and Youth, the Ministry of Education of Ukraine, the Ministry of Health of Ukraine and Ministry of Labor policy of Ukraine (dated May 26, 1999), stipulates that the special guardianship and trusteeship agencies in Ukraine are educational agencies, agencies for family and youth, services for minors, authorities of social protection of population and healthcare authorities.

There exists an independent/external monitoring system of guardianship. According to Article 12 of the Law of Ukraine “On Ensuring Organizational and Legal Conditions for Social Protection of Orphans and Children Deprived of Parental Care”, the Service for

Children controls the conditions of placement and retention of orphans and children deprived of parental care and monitors practice of guardianship of orphans and children deprived of parental care.

According to Article 10 of the Childhood Law, a child is entitled to personally appeal to the guardianship and trusteeship agencies, social service centers for family, children and youth, other authorized bodies for protection of their rights, freedoms and legitimate interests. Yet, Ukrainian legislation establishes only the procedure to ensure that a child can effectively lodge a complaint regarding the abuse or threat of such. The detailed procedure is stipulated in the “Procedure of consideration of appeals and reports on child abuse or threat of such”, approved by the Decree of the Ministry of Social Policy of Ukraine, Ministry of Internal Affairs of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Health of Ukraine № 564/836/945/577 dated 19.08.2014.

3.2. Appointment of guardians for migrant children

There is no special procedure for recruitment, placement and supervision of guardians for migrant children. There is only general procedure for appointing guardians for all categories of children (orphans, homeless etc.).

General detailed procedure for recruitment, placement and supervision of guardians for all children is regulated by the “Rules of guardianship and trusteeship”.

According to Articles 60 and 61 of the Civil Code of Ukraine, paragraph 3 of Article 243 of the Family Code of Ukraine and paragraph 1.3 the Rules of the guardianship and trusteeship, the responsible bodies for accrediting and appointing guardians are (1) courts and (2) district state administrations, district in Kyiv and Sevastopol city state administrations, executive committees of city, settlement and village councils.

The procedure for appointing guardians is extremely detailed and is stipulated in Sections 2 and 3 of the Rules of the guardianship and trusteeship, as well as in the abovementioned Articles 60 and 61 of the Civil Code of Ukraine and Article 243 of the Family Code of Ukraine.

Pursuant to Article 63 of the Civil Code of Ukraine and paragraph 3.1 of the “Rules of guardianship and trusteeship”, as well as pursuant to the “best interest of the child” principle stipulated in Article 1 of the Childhood Law, a guardian is appointed only with the consent of the child. Although Ukrainian legislation is silent on means to verify the consent of the child, in practice, a child is usually heard by the decision making authority (court or guardianship and trusteeship body).

3.3. Other categories of persons/organs that may carry out guardianship functions

As already stated in this report, there is no separate guardianship system that applies to migrant children. The difference between guardians and trustees responsibilities lie in the scope of authority. For example, according to Article 67 of the Civil Code of Ukraine, a guardian is entitled to take legal actions on behalf and in the interests of the ward whereas according to Article 69 of the Civil Code of Ukraine, a trustee can only give his/her approval for legal actions taken by a ward.

Unaccompanied children who still have parents with parental responsibilities in their country of origin can be appointed a guardian/trustee, depending on particular circumstances. Their responsibilities are:

- to take care of the ward, to create everyday conditions as well as ensure the care and treatment thereof;
- to take care of his/her upbringing, education and habilitation;
- to demand the return of a child from the persons who keep him/her without any legal grounds therefor;
- to take legal actions on behalf and in the interests of the ward;
- to take measures on the protection of the ward’s legal rights and interests.

3.4. Responsibilities and duties of guardians for migrant children

Rights and duties of guardians of migrant children are stipulated in a number of Ukrainian laws and other acts, including: the Refugee Law, the Childhood Law, the Law of Ukraine “On Authorities and Juvenile Services and special facilities for children” dated January 24, 1995, the Law of Ukraine “On Ensuring Organizational and Legal Conditions for Social Protection of Orphans and Children Deprived of Parental Care” dated 13.01.2005, the Instruction, “Rules of the guardianship and trusteeship”, “Rules for application review and Documents Preparation Required for Decision-Making on Recognition as Refugee or Person Who Needs Complementary Protection, or for Decision-Making on Loss and Deprivation of the Refugee Status and Complementary Protection, and on Revocation of the Decision on Recognition as Refugee or Person Who Needs Complementary Protection” etc.

There is no unified list of the duties of guardians concerning the migrant child’s legal status in any of the abovementioned acts. However, it could be stated that the extent of responsibilities of guardians defined under Ukrainian legislation is generally (with some exceptions) compliant with the specific responsibilities stipulated in article 104 of the UN Guidelines for the Alternative Care of Children – ensuring the protection of migrant child’s rights and provision of appropriate accommodation, education, medical care, legal assistance etc.

Pursuant to article 18 of the Law of Ukraine “on Free Legal Aid”, the guardian is responsible to chose the child’s lawyer. The guardian and child’s lawyer closely interact during the process of the review of an application for the recognition of a child separated from his/her family as a refugee or a person in need of additional protection.

As mentioned above, the responsibilities of guardians defined under Ukrainian legislation are generally compliant with the specific responsibilities stipulated in article 104 of the UN Guidelines for the Alternative Care of Children. As an exception, guardians under Ukrainian law are not subject to carry out a child’s family tracing, which is conducted by the DMS, even though guardians can assist in this process through providing information and communicating with the child.

3.5. Profile of guardians

Guardians are individual volunteers. Pursuant to Article 63 of the Civil Code of Ukraine, only a natural person (individual) may be appointed as a guardian or a trustee. It should also be mentioned that prior to the establishment of guardianship or trusteeship and the appointment of a guardian and a trustee, the guardianship or trusteeship over a natural person shall be carried out by the appropriate guardianship and trusteeship body. Pursuant to Article 63 of the Civil Code of Ukraine, a guardian or a trustee is accredited by the Court.

Pursuant to Article 63 of the Civil Code of Ukraine, a guardian or a trustee shall be preferably appointed from among persons having family or blood relations with the ward having regard to personal relations between them and a person's capability to fulfil guardians or trustees obligations. There are no pre-qualification or continuing education trainings for guardians.

According to paragraph 2.4 of the "Rules of guardianship and trusteeship", a decision on guardianship has to be taken no later than within a one month period from the time when appropriate guardianship and trusteeship body becomes aware of the need for guardianship or trusteeship.

3.6. Child Bride

Pursuant to Article 22 of the Family Code of Ukraine, the legal marriage age for women and men is 18. Upon application of a person who is 16 years old, a court may grant him/her the right to marry if it is found that such a marriage satisfies his/her interests.

Ukrainian legislation does not provide for any specific regulations regarding the treatment of a child who arrives in the country accompanied by her adult spouse. Moreover, an officer of local DMS unit responsible for problems of migrant children has confirmed to us in a conversation that he is not aware of any such cases. Therefore, such a child will not be viewed as unaccompanied. In regard to a situation in which the child is considered the ward of the adult spouse in the jurisdiction where the marriage took place whether this status

would be recognized in the transit/host country, Ukrainian legislation is generally silent on the issue. However, based on paragraph 24 of Article 1 of the Refugees Law, it may be concluded that adult spouse will be viewed as an adult person who has responsibility for the child.

4. Family reunification

4.1. Family tracing

Pursuant to paragraph 11 of Article 7 of the Refugees Law, the DMS immediately takes all possible measures to search for parents or other legal representatives of unaccompanied children simultaneously with the filing of the claim of a child separated from his/her family as a refugee or as a person in need of additional protection.

Family tracing is carried out in compliance with the “Guidelines on organization of works to find parents, family members or other legal representatives of children separated from their families, who are not citizens of Ukraine, refugee children, and children in need for additional protection” dated September 9, 2013, developed and approved by the DMS. In general, the procedure is conducted through the mechanism of sending inquiries to competent state authorities of other states in respect of the presence of family members.

4.2. Reunification in host country or resettlement

Reunification in Ukraine is possible. According to paragraph 2 of Article 4 of the Refugees Law, members of the family of a person recognized in Ukraine as a refugee shall be entitled to enter the territory of Ukraine for the purposes of family reunification and be recognized as refugees. Ukrainian legislation is silent on the notion of resettlement of the family in a third country, though it stipulates that all refugees and persons in need of additional protection may leave the territory of Ukraine for family reunification purposes without obstacles.

4.3. Reunification with other relatives

According to paragraph 24 of Article 1 of the Refugees Law, the following persons are understood as family members of an unaccompanied child and are subject to family reunification:

- the spouse;
- children under eighteen years of age, provided that they are not married and are being under their care;
- unemployable parents; and
- other persons being in their care or under their guardianship as determined by the national legislation and customs of the relevant country.

However, pursuant to the abovementioned paragraph 2 of Article 4 of the Refugees Law, even if the refugees are unable to furnish official documentary evidence of their family relationship with members of their family, other evidence shall be taken into account and evaluated in accordance with the legislation of Ukraine. Ukrainian law stipulates that the family reunification may not be denied solely on the grounds of the lack of documents confirming family relationships.

4.4. Grounds for refusal

Family reunification of a family member entering into Ukraine as a refugee can be refused if such a person is subject to committing:

- crimes against peace, military crimes, crimes against humanity as defined in the international law;
- offence of non-political nature outside Ukraine before arrival in Ukraine for the purpose of applying for refugee status or that of a person in need of additional protection, if the said act is categorized by the Criminal Code of Ukraine as a grave or especially grave offence; and

- actions that conflict with the objective and the principles of the United Nations Organization.

5. Placement of migrant children

5.1. Temporary shelter/1st reception centers

Under Ukrainian legislation, a number of specialized temporary shelters for refugees or asylum seekers in Ukraine are established. However, unaccompanied children asylum seekers are not provided with the abovementioned shelters. Pursuant to Article 31 of the Childhood Law and paragraph 2.9 of the Instruction, children asylum seekers are provided with a separate shelter (centers for social and psychological rehabilitation of children, Service for Children's shelters, children's homes of family type, foster homes etc.) for the period while their claim is pending.

It should be mentioned that in practice unaccompanied children asylum seekers are most commonly accommodated at the special centers for social and psychological rehabilitation of children. Children accompanied with family members are usually placed with their families in specialized temporary shelters for refugees and asylum seekers.

There are numerous standards of living in shelters regulating material and financial support of children. In general, children are provided with food, basic clothing, household and hygiene goods, pocket money (though the amount is extremely small, approximately 1 USD per year).

Detailed shelters standards of living are stipulated in a number of acts, including the Law of Ukraine "On Ensuring Organizational and Legal Conditions for Social Protection of Orphans and Children Deprived of Parental Care" dated January 13, 2005, the Decree of the Ministry of Education and Science, Youth and Sports of Ukraine, Ministry of Social Policy of Ukraine "On approval of the Provisions on orphanages and boarding secondary schools for orphans and children deprived of parental care" dated September 10, 2012 and the Decree of Ministry of Education and Science "On approval of material standards and financial security

of orphans and children deprived of parental care as well as boarding schools fosters” dated November 17, 2011.

In regular shelters, establishment of age and segregated spaces is not prescribed by law, whereas gender segregated water sanitation and hygiene facilities, as well as strict security measures are required and implemented.

According to Article 27 of the Law of Ukraine “On Ensuring Organizational and Legal Conditions for Social Protection of Orphans and Children Deprived of Parental Care” dated January 13, 2005, disabled children are accommodated at the specialized children’s homes of family type for the disabled. There are no specialized temporary shelters for unaccompanied children asylum seekers in Ukraine.

The following institutions and NGOs carry out the monitoring of placement of migrant children:

- International Organization for Migration;
- Human Rights Monitoring Mission in Ukraine;
- UN Children's Fund; and
- Commissioner of the President of Ukraine for Children's Rights.

5.2. Placement of migrant children

Measures are taken to prevent homelessness. Pursuant to paragraph 2.9 of the Instruction, the DMS and the Service for Children shall ensure all measures for accommodation of migrant children at special centers for social and psychological rehabilitation of children, Service for Children’s shelters, children’s homes, boarding schools or foster homes. As mentioned above, in practice migrant children are most commonly accommodated at the special centers for social and psychological rehabilitation of children.

The child’s view is taken into consideration when a placement is offered to him/her.

According to the “best interest of the child” principle stipulated in Article 1 of the Childhood Law, child’s view in case of a placement offered to him/her is taken into account if he/she has reached an age and development level sufficient to express it.

Pursuant to paragraph 2.9 of the Instruction, migrant children can be placed at:

- special centers for social and psychological rehabilitation of children;
- Service for Children’s shelters;
- children’s homes;
- boarding schools for orphans and children deprived of parental care; and
- foster homes.

Ukrainian legislation is silent on the criteria used for the different types of placement. However, as confirmed in a conversation with an officer of local DMS unit responsible for problems of migrant children, in practice the decision to choose a certain type of placement is adopted based on capacity and according to the principle of the “best interest of the child”.

According to paragraph 36 of the Resolution of Cabinet of Ministers of Ukraine “On activities of guardianship for the protection of children's rights” dated September 24, 2008, siblings cannot be separated when placed in care. If siblings cannot be placed together due to medical reasons, the responsible guardians, foster parents or heads of respective institutions have to ensure regular contact between these children, including regular meetings, correspondence and photo exchange, telephone conversations etc. The regularity of the meetings is set depending on the circumstances of the children’s illness, but not less than twice a year.

The legal status of migrant children who reach the age of 18 changes from “child separated from the family” to “refugee”. Therefore, they have the right to apply for accommodation at one of Ukraine’s 3 refugees temporary accommodation centers.

No Informal Care system currently is in place in Ukraine. Foster homes in Ukraine are allowed only upon approval of the competent authority.

5.3. Detention/Retention

Ukrainian legislation stipulates that both accompanied and unaccompanied migrant children cannot be detained more than 24 hours. This is not a detention per se but rather a maximum period during which officers of the State Border Service of Ukraine must to transport and hand over a child from the place where he/she was detected to the nearest DMS representative. Any further detention of migrant children is not allowed under current Ukrainian legislation. Yet, according to information provided in 2012 by Global Detention Project information, Ukrainian authorities regularly use detention centers instead of special centers for social and psychological rehabilitation (which are prescribed by law) to accommodate migrant children. In practice, NGOs and other human rights organizations have recorded several cases of migrant children placement in detention centers together with adults. Children placed with their families in specialized temporary shelters for refugees and asylum seekers are commonly deprived of liberty.

The only remedy for children to challenge this deprivation of liberty is through the courts.

Pursuant to Ukrainian legislation, migrant children are not allowed to be detained (except for the first 24 hours necessary for officers of the State Border Service of Ukraine to hand over a child to a DMS representative) and have to be accommodated at special centers for social and psychological rehabilitation.

6. Access to fundamental rights

6.1. Education

According to Article 15 of the Refugees Law, migrant children shall enjoy the right for education on an equal basis with citizens of Ukraine. Migrant children whatever their

status (refugee, asylum seekers, irregular migrant...) have equal access to primary and secondary education. Moreover, according to the “Guidelines on special aspects of training in pre-school and secondary education institutions of refugee children and children who are recognized as persons in need of complementary protection, particularly those separated from their families” issued by the Ministry of Education and Science of Ukraine (dated June 18, 2013), special programs of integration of migrant children are developed. Such programs are focused on mutual exchange of national cultural environment of Ukraine and national and historical culture of a migrant child.

Pursuant to Article 15 of the Refugees Law and Article 19 of the Childhood Law, migrant children have the right to obtain free higher education on a competitive basis. Pursuant to Article 19 of the Childhood Law, minors entering the country at an age when education is no longer compulsory in Ukraine are provided an opportunity with pursuing an education if they wish to in order to support their path towards a successful integration in the country. Children with special needs benefit from measure adapted to their needs, pursuant to Articles 19, 26 and 27 of the Childhood Law.

Although, migrant children are not allowed to be detained, NGOs and other human rights organizations have recorded several cases of migrant children, both unaccompanied and with family members, placed in adults detention centers where they had limited or no access to education.

6.2. Health care

According to Article 15 of the Refugees Law, migrant children shall enjoy the right for the healthcare, the medical assistance and the medical insurance on an equal footing with citizens of Ukraine.

Migrant children with special needs benefit from specialized medical assistance whichever their status, pursuant to Articles 19, 26 and 27 of the Childhood Law.

In practice, Ukraine has significant problems with accommodation, skilled staff and medical support for children with special needs. Therefore, great amount of medical assistance for children with special needs is provided by NGOs (UNICEF, Mission to Ukraine, UWCF etc.)

7. Expulsion

7.1. Exclusion clauses

When applying exclusion clauses to asylum claim, the mental state (*mens rea*) enabling the child to understand his/her act, or the exclusion of his/her individual responsibility (duress, coercion...) is not taken into consideration. Although Ukrainian legislation is silent on this specific issue, pursuant to Articles 5 and 6 of the Refugees Law, any person falling under exclusion clauses will be excluded from the protection. Therefore, it can be assumed that mental state enabling the child to understand his/her act, or the exclusion of his/her individual responsibility is not taken into consideration. Seriousness of the act committed by migrant children is not evaluated.

In regard to the issue of whether exclusion clauses (as in art. 1F, 1951 convention) apply in the case of young children before having reached the age of criminal responsibility at the time the act was committed, Ukrainian legislation is silent on the above issue.

However, it should be noted that according to Article 22 of the Criminal Code of Ukraine persons committing crimes against peace, military crimes and crimes against humanity shall be criminally liable after they have reached the age of 16.

7.2. Internal relocation/expulsion to country of origin

According to paragraph 3.4 of the Instruction, a separated child may be relocated to his country of origin only in case of determination of residence of his/her parents or other legal representatives. A child may not be relocated back to his country of origin if such relocation would endanger his/her life or freedom for reasons of race, religion, ethnic affiliation, citizenship (nationality), membership of a particular social group or political opinion, and for other reasons recognized in international treaties or by international organizations, in which Ukraine is party to, as persons that may not be returned to the countries of origin.

Pursuant to our information, except for communication between Ukrainian and county of origin authorities, no other measures for arrangement for the child's reception are taken. A separated child may be relocated to his country of origin only in case of determination of residence of his/her parents or other legal representatives. However, Ukrainian legislation is silent on the issue of any assurance or monitoring policies.

Although Ukrainian legislation is silent on the issue of whether country of origin information reports are available to decision makers, an officer of local DMS unit responsible for problems of migrant children has confirmed to us that special information reports in practice are taken into consideration upon making a decision regarding the relocation. Moreover, such reports are available on the DMS official webpage.

7.3. Resettlement to a third country

In regard to whether resettlement to a third country as a response to a child's asylum claim is guided by the best interest principle, Ukrainian legislation is silent on the issue.

However, it should be noted that pursuant to Article 1 of the Childhood Law, all public authorities or accredited institutions have to take actions and decisions only aimed at meeting the individual needs of a child according to his/her special circumstances.

The country does not accept refugees/asylum seekers under resettlement schemes. According to Article 6 of the Refugees Law, a person who has been recognized as a refugee or a person in need of additional protection before the arrival at Ukraine cannot be accepted as refugee/asylum seeker in Ukraine.

8. Data Collection

8.1. Data regarding migrant children on the move collected by the public authorities

Ukrainian legislation does not stipulate what specific information is collected regarding migrant children on the move by the public authorities. In practice, as confirmed in a conversation with an officer of local DMS unit responsible for problems of migrant children, information (regarding number of unaccompanied or separated minors that have attempted to enter the country, number that have filed claims for asylum, that were denied access, number of guardians appointed, placement, family reunification, children returned to the country of origin, children that have disappeared...) is collected by the DMS and the Service for Children representatives.

8.2. Data protection

Confidentiality of data regarding children is secured. According to paragraph 10 of Article 7 of the Refugees Law and paragraph 1.3 of the Instruction, data provided by children (and regarding children), as well as the information about asylum claim in Ukraine, shall be classified as confidential.

9. International relations

9.1. Foreign aid that addresses root causes of migration of minors (in particular of unaccompanied minors) in countries of origin and transit countries

Development/cooperation programs target awareness raising activities and training in origin and transit countries to improve identification and protection of potential victims of trafficking. The only effective program aiming at improving identification and protection of potential victims of trafficking (though not aimed specifically at migrant children) is the “Combat Human Trafficking” program launched and supported by the International Organization for Migration. The program provides a strategy to support government and civil society efforts to combat trafficking in human beings and to ensure victims’ access to assistance and justice, working in four interrelated areas: prevention and advocacy, prosecution and criminalization, protection and reintegration and partnership.

In regard to whether development/cooperation programs promote information programs to children and families about alternative possibilities of studying, training and working in country of origin and legal paths to study abroad: Unfortunately, despite the significant amount of publicly available information regarding different international assistance programs to refugees in Ukraine, we have been informed that there are currently no real and effective projects targeted at helping migrant children. As confirmed in a conversation with an officer of local DMS unit responsible for problems of migrant children, the last active and effective project has been carried by the Danish Refugee Council, which operated in Ukraine for 4 years and recently closed.

Therefore, as far as we know, as of today, all activities focused on migrant children are not systematic and are carried out exclusively by national authorities in cooperation with United Nations High Commissioner for Refugees.

9.2. Cooperation with civil society

A number of organizations conduct regular monitoring of the situation with migrant

children in Ukraine, while also occasionally providing social assistance: United Nations High Commissioner for Refugees, Red Cross, UNICEF, IOM and others.

9.3. Visa policies

Ukraine has not developed a system of humanitarian visa/parole. For the purposes of providing humanitarian aid in Ukraine, foreign citizens and stateless persons should apply for a short-term visa (C type visa), which is issued if the duration of their stay in Ukraine does not exceed 90 days in a given 180 day period from the date of first entry.

To apply for the short-term visa “C” (with the purposes of providing humanitarian aid), foreign citizens and stateless persons have to provide confirmation from the Ministry of Social Policy on the entry of the foreign citizen or stateless person for the purpose of providing humanitarian aid or charity.

Also, the following general documents have to be submitted:

- national passport, valid for at least three months after the expiration date of the requested visa and having at least 2 blank visa designated pages;
- visa application form;
- 2 photos;
- valid international medical insurance; and
- confirmation of sufficient financial means for the period of intended stay and return to the country of origin;

10. Additional Remarks

According to our information, the Instruction (Order of the Ministry of Internal Affairs of Ukraine, the Ministry of social policy of Ukraine, the Ministry of Education and Science, Youth and Sports of Ukraine, the Ministry of Health of Ukraine, Administration of the State Border Service of Ukraine “On approval of the Instruction about interaction of executive bodies in work with children separated from the family who are not citizens of Ukraine and addressed in competent authorities with the statement for recognition by the refugee or the person needing additional protection” dated July 7, 2012) should be cancelled in the first quarter of 2017. Afterwards, the instruction is recognized as invalid, issues concerning children on the move will be regulated by the Resolution of the Cabinet of Ministers of Ukraine “About features of social protection of the children separated from the family who are not citizens of Ukraine” dated November 16, 2016. This will not affect the issues of placement, age assessment, accelerated process which are regulated in the same manner in both the said Regulation and Instruction.

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