

Overview of guardianship systems for unaccompanied minor asylum-seekers in Central Europe



SYNTHESIS REPORT
2012





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ACRONYMS

AH	Asylum Home
CAUAM	Best Practices for a Coordinated Approach to Assist Unaccompanied Minor Asylum-Seekers (UAMAS) and former UAMAS in EU Member States
CM	Council of Ministers
CRC GC	Committee on the Rights of the Child – General Comments
CSW	Centre for Social Work
EMN	European Migration Network
ERF	European Refugee Fund
EU	European Union
fUAMAS	former unaccompanied minor asylum-seekers
FRA	Fundamental Rights Agency
GDSACP	General Directorate for Social Assistance and Child Protection
IOM	International Organization for Migration
IPA	International Protection Act
KIGYK	Károlyi István Child Centre
MLSA	Ministry of Labour and Social Affairs (Czech Republic)
MLSAF	Ministry of Labour, Social Affairs and Family (Slovakia)
MOI	Ministry of Interior
NGO	Non-governmental organization
OIN	Hungarian Office of Immigration and Nationality
PIC	Legal Information Centre for Non-governmental Organizations
RIO	Romanian Immigration Office
RRC	Registration and Reception Centre
SAR	State Agency for Refugees
SCEP	Separated Children in Europe Programme
SLPCH	Social and Legal Protection of Children
SP	Slovene Philanthropy
TCN	Third-country national
UAMAS	Unaccompanied minor asylum-seekers
UAM	Unaccompanied minors
UNCRC	United Nations Convention on the Rights of the Child
UNCHR	Office of the United Nations High Commissioner for Refugees

INTRODUCTION

This report has been prepared as part of a project entitled Improving the Quality of Unaccompanied Minor Asylum-Seekers' Guardianship and Care in Central European Countries, financed under the 2010 European Refugee Fund of the European Commission and jointly implemented, between September 2011 and August 2012, by the International Organization for Migration (IOM) and its partners in Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia.¹ As an important component of this project, the Synthesis Report provides an overview of the guardianship systems, concepts, practices and policies in the aforementioned seven countries. The main purpose of the report is to inform the development of a training manual and curriculum for guardians and caregivers in the project countries. Subsequently, the guardians and caregivers will be trained within the framework of the project, contributing to the harmonization and standardization of the overall assistance and care provided to unaccompanied minor asylum-seekers (UAMAS), while ensuring that the children's best interests are represented.

The report is primarily based on desk research of relevant legislation, previous studies, reports and projects, building on and complementing particularly the IOM project Best Practices for a Coordinated Approach to Assist Unaccompanied Minor Asylum-seekers (UAMAS) and former UAMAS in EU Member States (CAUAM).² In situations where the relevant information was not available, data were collected through semi-structured, individual interviews with experts. Occasionally, consultations³ were needed to clarify particular aspects or to get specific data. The methodology was agreed upon by the project partners at a coordination meeting held in Budapest in October 2011. The report is guided by international and European Union (EU) human rights standards – most importantly, the 1989 United Nations Convention on the Rights of the Child (UNCRC), ratified by all EU Member States, and the EU Charter of Fundamental Rights. All data were handled in accordance with IOM Data Protection Principles.⁴

The report defines the main concepts used (chapter 1), discusses the trends in UAMAS and guardians (chapter 2), and looks into the organizational structure of guardianship systems (chapter 3). It then explores the appointment, duration and termination of guardianship (chapter 4) and the frequency of contact between guardians and UAMAS (chapter 5). Staff development and competencies are discussed in chapter 6, and monitoring, supervision and evaluation of guardianship in chapter 7. Chapter 8 examines the process of determining

¹ For further information about the project, please visit: http://www.iom.hu/PDF/guardianship_brochure.pdf

² For further information about the project, please visit: http://www.iom.hu/index.php?option=com_content&view=article&id=10&Itemid=13&lang=en#unaccompanied_minors

³ The difference between an interview and a consultation is that there should be a formal record (interview transcript) of an interview, whereas no such record is required for a consultation. However, consultations should be properly referenced and their sources identified (for example, as a phone conversation with ... held on ..., or as an e-mail communication etc.).

⁴ IOM's Data Protection Manual can be accessed online at: http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=47&products_id=759

the best interests of the child, with other issues such as access to accommodation, education and health care, freedom to exercise one's religious beliefs, and leisure activities discussed in chapter 9. Conclusions and recommendations follow.

1. DEFINITION OF KEY TERMS

BULGARIA

The Law on Child Protection (LCP) defines a child as “any individual up to the age of 18 years”. This definition has been adopted by the Law on Asylum and Refugees and by all other laws effective in the State. Bulgarian law further distinguishes between two categories of children: minors – from 0 to 14 uncompleted years of age, and juveniles – from 14 to 18 completed years of age.⁵ In the case of minors, their legal representatives (parents or guardians) must perform any legal actions for them and on their behalf. Juveniles can perform legal actions with the consent of their parents or trustees, but may enter into petty-cash transactions to meet their daily needs, and may avail of the proceeds from their own labour. Hence, when a minor does not have a guardian, the law prescribes that a guardian be appointed, whereas a trustee is appointed for a juvenile.

The legal status of UAMAS is defined by several key principles in both general and specific legislation. According to Article 1 of the Law on Asylum and Refugees (LAR), third-country nationals are granted special protection within the territory of the Republic of Bulgaria. However, the term *UAMAS* is not fully defined in any one Bulgarian law; unaccompanied minors (UAM) are covered by the LCP and asylum-seekers are covered by LAR. Regardless of other conditions (including citizenship), unaccompanied minors seeking or granted protection fall within the scope of the general child protection regime under Bulgarian legislation.

Bulgaria has adopted a broader definition of the term *unaccompanied child*, which refers to a minor who is in the State territory, unaccompanied by a parent or other adult responsible for the child's care. By law,⁶ *relatives and kin* meet the definition of such caregivers and a child is therefore considered to be an unaccompanied child seeking protection only if he/she is not accompanied by his/her parents or by other relatives or kin. Consequently, a child who is accompanied by relatives or kin is registered as an accompanied child seeking protection. However, once an asylum-seeker is registered, his/her relatives or kin do not have the right to sign documents or to represent the child in the refugee status application process. In this case, the relative accompanying the child should be appointed as his/her guardian or trustee so that he/she can take action on behalf of the child.

The definition of the term *unaccompanied child* can be found only in the LAR. The LCP has adopted the term *child at risk*. According to the Law,⁷ a *child at risk* is a child: a) who has remained without parental care or whose parents are deceased, unknown, deprived of parental rights or have restricted parental rights; b) who is a victim of abuse, violence,

⁵ Law on Persons and Family, Articles 3 and 4

⁶ Article 29, § 7, item 1, Law on Asylum and Refugees

⁷ Article 4 (in relation to Article 25), item 1, and § 1, item 11 of the Additional Provisions of the Law on Child Protection

exploitation or any other kind of inhumane or degrading attitude or punishment within or outside his/her family; c) whose physical, mental, moral, intellectual or social development is at risk; d) who has been medically diagnosed with disabilities or diseases that are difficult to cure; and e) who is likely to drop out of school or has already dropped out of school. As far as unaccompanied children are concerned, they fully meet the criteria in the above-mentioned legal texts (namely, letters 'a', 'b' and 'e' from item 1, section 1 relating to the legal definition of *child at risk*), due to their specific circumstances: they are in a foreign country, separated from their parents, adult relatives or other kin, they usually do not speak the language of the host country and they find themselves in unfamiliar surroundings and society, and out of school.

Unaccompanied children are also included in the category of third-country nationals (TCNs) with special needs. This category also includes: pregnant women; persons above the age of 65; single parents, accompanied by their minor or juvenile children; families with three or more children; mothers of children up to the age of 3; persons with disabilities; persons who have survived severe forms of mental, physical or sexual violence; and chronically ill persons.⁸ According to the regulations, the Integration Centre of the State Agency for Refugees (SAR) with the Council of Ministers (CM) keeps registers of TCNs with special needs and provides consultations on education and health care. It also refers them to Bulgarian language courses and other specialized services, such as the provision of legal advice and psychological assistance.

Bulgaria does not have a special system for the appointment of a guardian/trustee of unaccompanied children seeking protection or of unaccompanied children who have not been registered as asylum-seekers. The LAR refers to the Family Code, which governs the institution of guardianship and trusteeship.⁹ Article 26 of the LAR stipulates that if an unaccompanied child does not have a guardian/trustee appointed, he/she shall be represented in the refugee procedure by the authority under Article 15, section 7 of the LCP – the Social Assistance Directorate. In this case, the designated social worker (an employee of the Social Assistance Directorate) is not a guardian/trustee of the unaccompanied child. He/she does not have the rights or obligations of a guardian/trustee, the most important of which (for the purposes of the refugee application process) is the capacity to authorize a legal representative for the procedure and to sign documents on behalf of the child. Thus, nobody can appoint legitimate legal representatives for the unaccompanied asylum-seeking children in status-determination procedures, and their right to legal representation and qualified legal advice remain unattended. The social worker represents the child protection authority and supervises the observation of the child's rights, from the viewpoint of the LCP (although the functions of the social worker are purely advisory).

⁸ Regulations on the implementation of social protection measures for TCNs with special needs, seeking or granted protection (2011)

⁹ Article 25, § 1 stipulates that "Any unaccompanied minor or juvenile seeking protection on the territory of the Republic of Bulgaria shall have a guardian/trustee appointed, in compliance with the rules and procedures of the Family Code"; however, in practice, this seldom happens.

The main participants in the protection-granting process, following an application by an unaccompanied minor UAM), are: 1) the guardian/trustee; 2) a social worker; 3) a translator/interpreter; and 4) a legal representative. In practice, not every official listed above takes part in every step of the procedure, although the social worker and the translator/interpreter must always be present. If no guardian/trustee has been appointed, no legal representative can be authorized. Lawyers from NGOs regularly monitoring the refugee procedure attend proceedings involving unaccompanied children. However, they are not representatives of the children involved. In addition, unaccompanied children have full access (with interpretation/translation provided) to free legal advice made available by NGOs. The first such organization to be established was the Refugees and Migrants Legal Protection Programme of the Bulgarian Helsinki Committee, which has been operating in partnership with the Office of the United Nations High Commissioner for Refugees (UNHCR) since 1992.

CZECH REPUBLIC

In the Czech national legislation, the term *unaccompanied minor* was used quite loosely for a long time. It was defined in the legal system only in 2005 and had not been defined in everyday parlance, at that point. Amendments to the Law on Asylum no. 325/1999 and the Law on Residence of Aliens in the Czech Republic no.326/1999, however, brought about a significant change. These amendments were in reaction to EU measures relating to asylum and migration issues, and have resulted in the UAM being defined, for the first time, in accordance with the terminology used in European legislation. Under the current wording of section 2 of Article 11 of the Law on Asylum, a UAM is "a person under the age of 18 years who comes to the territory unaccompanied by any adult person who should be responsible for the minor, according to the legal system of the State in which the minor is a citizen or, if the minor is stateless, according to the legal system of the country in which the minor was most recently resident, for the period of time for which the minor's legal representative is unable to take responsibility for the child. An unaccompanied minor is also a person under the age of 18 years who was left unaccompanied after their arrival in the territory." An unaccompanied minor is similarly defined in section 180c of the Law on Residence of Aliens in the Czech Republic.¹⁰ It is important to note that the legal definition of an unaccompanied minor, which appears in the Law on Asylum and the Law on Residence of Aliens, works only for the purpose of these legal norms. When it comes to other legal norms that significantly influence the provision of protection and assistance to the unaccompanied minors in the territory of the Czech Republic (see the Law on Social and Legal Protection of Children, Family Act), there is no legal definition of a foreign unaccompanied minor (Kopuleťá, 2009).

¹⁰ The difference between the two definitions is that, with regard to section 180c of the Law on Residence of Aliens, an unaccompanied minor is considered to be 15–18 years old. The use of different age brackets to define UAMAS in different laws in the Czech Republic was one of the key issues identified by the CAUAM project. The lower limit of 15 could have been set to allow for the expulsion and detention of children over the age of 15.

In accordance with section 2 of Article 2 of the Law no. 359/1999 on Social and Legal Protection of Children (Law on SLPCH), social and legal protection is provided to the same degree for foreign unaccompanied minors as it is for Czech minors, provided that one of the following conditions is met:

- they have permanent residence in the Czech Republic;
- they have been registered for a stay of at least 90 days;
- they have been entrusted to a foster family in the Czech Republic by the responsible authority;
- they have applied for international protection in the Czech Republic;
- they reside in the territory with a parent who has applied for temporary protection in the Czech Republic;
- they reside in the territory because they have been granted temporary protection in the Czech Republic.

UAM irregularly residing in the territory are also provided with basic social and legal protection (as required under sections 37 and 42 of Article 2 of the Law on SLPCH, in connection with section 2 of Article of the Law on SLPCH).¹¹

The main measures that the responsible municipal authorities will take, if required, include: filing a motion on preliminary measures; filing a motion on the designation of a guardian or tutor; filing a motion on the institutional care to be provided; and filing a motion on the placement of a child in an asylum facility.¹²

The Czech legal system does not include a detailed definition of the term *guardian*. Section 87 of the Family Act no. 94/1963 (Family Act) stipulates the demonstrative listing of the cases for which it is necessary to appoint a guardian. A designated guardian must be a physical person who has the prerequisites defined by law, who agrees to being appointed guardian, and who is appropriate in terms of their personal attributes. It is usually someone close to the child who is in the Czech Republic and who is able to take care of the child, in the absence of the child's parents. If such a person is not available, the court appoints an appropriate institution – usually the authority responsible for the social and legal protection of children. In practice, the function of a guardian for unaccompanied minors is administered by the staff of the social and legal protection authority or of a designated NGO.

¹¹ Methodical Recommendation of the Ministry of Labour and Social Affairs No.1/2009 on the policy of municipal authorities responsible for social and legal protection of unaccompanied foreign minors

¹² See § 37 of the Law on SLPCH.

HUNGARY

Hungary has adopted the EU definition of UAM, as per the 2003/9/EC Council Directive on Minimum Standards for the Reception of Asylum-Seekers and the 2005/85/EC Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status. Although the term *unaccompanied minor* does not appear in the Child Protection Act, its definition with reference to the Asylum Act is included in full length. A UAMAS is a foreign national under the age of 18 who enters the territory of Hungary without the company of an adult responsible for this child by law or by custom, or who is left without supervision following entry, as long as she/he is not transferred to the care of such a person.¹³

A guardian is a person who is legally responsible for the care, property management and legal representation of a minor. If the person seeking recognition is an unaccompanied minor, the asylum authority shall forthwith provide for the appointment of a case guardian serving to represent the minor during the asylum application procedure.¹⁴

According to Hungary's Family Code, a minor child must be under either parental supervision or guardianship.¹⁵ All responsibilities linked to parental custody, such as care, property matters and legal representation, may also be exercised by a guardian if the child's parents are deceased or the parental rights of custody have been suspended or terminated. If the minor has no parents who can exercise their parental rights, the Guardianship Office appoints (ex officio or upon request) a guardian for the child. Adults who undertake the role of guardian must not have been disqualified from public affairs or have had their parental rights restricted or terminated under a court sentence. Restrictions also apply to adults whose children have been taken into temporary or long-term/permanent care and whose parental rights have been suspended by the Guardianship Office. Children taken into temporary or permanent care and placed with foster families or accommodated in residential care facilities will have a guardian appointed for them.

If a child lacks parental care, is at risk, or might suffer inevitable physical or psychological damage, he/she should be placed under interim care. The referring agencies can be the municipality, the Guardianship Office, the police, the immigration authority, the asylum authority, the court, or the Public Prosecutor's Office.¹⁶ Depending on the circumstances, a case guardian or a guardian is appointed by the Guardianship Office to children in interim care.

¹³ Act II of 2007 on entry and stay of nationals from third countries, § 2e Act LXXX of 2007 on Asylum, § 2f

¹⁴ Act LXXX of 2007 on Asylum § 35 (6)

¹⁵ Act IV of 1952 on marriage, family and guardianship – § 70

¹⁶ Act XXXI from 1997 on child protection and guardianship administration, § 72

Due to recent changes in the asylum and child protection law, UAMAS have been incorporated into the personal scope of the Child Protection Act.¹⁷ Thus, all child protection regulations and procedures, including those relating to guardianship, apply to unaccompanied minors as well, with very few distinctions made between native and foreign children. Upon apprehension, UAMAS are placed under interim care in a centralized child protection residential unit. The decision on the care arrangements is taken by the asylum authority Office of Immigration and Nationality (OIN), which also requests from the Guardianship Office the appointment of a case guardian, whose main role would be to represent the UAM in the asylum procedure. Following a positive decision in the status determination process, UAMs are taken into permanent care. In parallel, the mandate of the case guardian is terminated and a new (professional) guardian is appointed. Significant improvements have been made in this area, due to changes in legislation. Previously, the appointed case guardians were lawyers with little or no asylum or child protection training, and their mandate only covered the asylum procedure. Currently, the appointed case guardian is a child protection practitioner with legal training, and his/her duties and responsibilities cover most aspects of a child's life.

POLAND

The 2003 Decree on the Protection of Foreigners in Poland (Government of Poland, 2003) defines asylum-seekers as persons who seek admission to Poland because their homeland cannot protect them against racially, religiously, nationally, politically or socially motivated persecution or they do not wish to receive such protection there (Article 13.1). The same decree defines a UAM as an underage person residing in Poland and not cared for by an adult (Article 2.9a). UAMs have the same rights as Polish children (see section 9 for more on rights and entitlements). The legal age in Poland, as set by the Civil Code, is 18 years old. If the authorities doubt the age of a presumed minor asylum-seeker, they can verify it through medical examination. If a UAM does not agree to undergo age verification, he/she will be assumed to be of age (Article 30.3) and thus ineligible for State-warranted legal and social guardianship, as outlined below.

UAMAS are cared for by two categories of guardians: (1) legal guardians and (2) social care workers. The social care workers can be further divided into those who take care of UAMAS on a regular, daily basis (foster home staff) and those who do it on an ad hoc basis (such as various NGO workers, school teachers and tutors). Given their more comprehensive de facto involvement, the social care workers employed by the foster home are considered to be social guardians and those representing other organizations are seen as social care workers.

¹⁷ Act XXXI from 1997 on child protection and guardianship administration, § 4 (1)c. The scope of this act, based on the Asylum Act, covers foreign asylum-seeker children under 18 years who entered the territory of the Republic of Hungary without the company of an adult responsible for said children by law or by custom, or who are left without supervision following entry, as long as they are not transferred to the care of such a person.

ROMANIA

In Romania, the definition of a UAM is as follows: "A minor, with a foreign citizenship or with no citizenship, who reached Romania without being accompanied by either his family or any close relatives or a legal representative, or whose care has not been entrusted to any adult person, according to the provisions of the law, as well as a minor who is left unaccompanied after he/she enters the territory of Romania." According to the legal provisions, a UAM is considered to belong to the category of vulnerable persons, together with aged persons without pensions, victims of torture, and mono-parental families with small children.

Law no. 272/2004 on the Protection and Promotion of Children's Rights regulates the legal framework for respecting, promoting and guaranteeing the rights of the child. Public authorities, private bodies and individuals and legal persons responsible for child protection are obliged to respect, promote and guarantee the rights of children, as established by the Constitution and the law, in accordance with the United Nations Convention on the Rights of the Child (ratified by Law no. 18/1990 – republished), and other international instruments to which Romania is party.

All regulations adopted, observing and promoting children's rights, and any legal instrument issued, are subordinated to the principle of respecting the best interests of the child.

Categories that benefit from this law:

- a) Romanian citizen children in Romania;
- b) Romanian citizen children abroad;
- c) stateless children in Romania;
- d) children who require or benefit from a form of protection provided for in the legal regulations on the status and treatment of refugees in Romania;
- e) children who are foreign citizens in Romania, in emergency situations, identified by the competent Romanian public authorities, in accordance with this law.

For the purposes of this Act, the term *legal representative* has the following meaning: parent or person designated by law to exercise rights and fulfil parental duties for a child.

Rights under this law are guaranteed to all children without discrimination, regardless of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, financial situation, degree and type of disability, birth status or acquired status, the difficulties of training and development or other of the child and child's parents or other legal representatives or any other distinction.

In order to properly support the child's interests, the General Directorate for Social Assistance and Child Protection (GDSACP) designates an educated and qualified person with legal or social assistance experience for the entire duration of the refugee status application process. A private body authorized to support children's rights may also be assigned. If it is found that the person appointed by the GDSACP does not meet the appropriate standards or fails to carry out his/her work, the Romanian Immigration Office may ask the GDSACP to replace this person.

SLOVAKIA

The Slovak legal system uses the definition of the child established by Article 1 of the Convention on the Rights of the Child, which defines children as human beings "below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier".¹⁸ The legislation determines that majority is attained at 18 years of age or through marriage. Majority attained through marriage does not cease to exist if the marriage ends in divorce or is proclaimed invalid.¹⁹ Minors are able to get married in exceptional circumstances – for example, if they are at least 16 years old and if the court gives consent.²⁰

Unaccompanied minor

According to Act no. 305/2005 Coll. on Socio-Legal Protection of Children and on Social Custody,²¹ UAM are "children who are not citizens of the Slovak Republic and are on the territory of the Slovak Republic unaccompanied by parents or other adult person into whose care the child could be entrusted." The term UAMAS is not separately defined in Slovak law.

Legal guardian

Every UAM must have a legal guardian appointed by the court, as minors are not considered legally competent. Provision of guardianship is regulated by Act no. 36/2005 Coll. on Family (further referred to as the Family Act) and by Act no. 305/2005 Coll. on Socio-Legal Protection of Children and on Social Custody (further referred to as the Act on Socio-Legal Protection). According to the Family Act²² and the Act on Socio-Legal Protection,²³ there are two types of legal guardian:

- A temporary guardian (opatrovník) is appointed for one or more specific purposes that cannot be fulfilled by the child's parents, as defined in the court's decision. The role of

¹⁸ The Slovak Republic ratified the UN Convention on the Rights of the Child in 1989 and it entered into force on 6 February 1991. The Convention forms a part of the Slovak Collection of Legal Acts under no. 104/1991.

¹⁹ Section 8 of Article 2 of Act no. 40/1964 Coll., the Civil Code, as amended.

²⁰ Section 11 of Act no. 36/2005 Coll. on Family, as amended.

²¹ Section 2 of Act no. 305/2005 Coll. on socio-legal protection and social custody, as amended.

²² Section 56–61 of the Family Act.

²³ Section 29 of the Act on Socio-Legal Protection.

the temporary guardian ends when the purposes defined by the court are fulfilled. This type of guardian is appointed if the parents are deceased or cannot perform their duties, but only temporarily until the parents or a long-term guardian are able to start performing the guardianship duties. In the case of UAM, the temporary guardian is appointed by the court as legal representation on behalf of the minor.

- A long-term guardian (poručník) is appointed to play the role of a parent, thereby bearing the responsibility of providing legal representation for the child as well as ensuring his/her well-being, education and adequate psycho-social and emotional development. The child can live with the guardian or separately – for instance, in a children's home; however, the guardian must remain in close contact with the child, providing advice on all decisions and aspects of the child's life (Chudžíková and Fajnorová, 2010: 29).

These two types of guardian are appointed to minors, in general, as required under the Family Act and the Act on Socio-Legal Protection. UAM, however, are usually only appointed a temporary guardian, even though section 57 of Article 4 of the Family Act²⁴ effectively prescribes the appointment of a long-term guardian. According to information provided by the Ministry of Labour, Social Affairs and Family (MLSAF), proposals for the appointment of long-term guardians are generally submitted to the court. However, the court procedure takes approximately three months or longer, by which time most minors have disappeared (Renáta Brennerová, verbal communication).

The guardian is a legal entity – the body of socio-legal protection, which is the territorially competent Office of Labour, Social Affairs and Family (hereinafter referred to as the labour office). The labour office in Trenčín is usually selected as the guardian for unaccompanied minors since almost all UAM found in Slovakia initially get placed in the specialized children's home in Horné Orechové, which is in the territorial competency of the Trenčín labour office. Once a guardian has been appointed by the court, a labour office employee is designated to pursue all activities and tasks in relation to the guardianship.

The guardian's responsibilities do not include the provision of day-to-day care for UAM. The daily needs of unaccompanied minors are attended to by tutors at the specialized children's home or by social workers at the asylum facilities of the Migration Office of the Ministry of Interior (hereinafter Migration Office), to which UAM are moved once an asylum claim has been lodged on their behalf.²⁵

The children's home operates in the same manner as mainstream children's homes but must take into account the minor's previous upbringing and his/her specific needs in terms

²⁴ "Until the court appoints the long-term guardian to the child or until the appointed long-term guardian assumes his/her position, immediate actions on behalf of the child are executed by the temporary guardian."

²⁵ After an asylum claim is lodged, UAMAS are moved to asylum facilities run by the Migration Office. First, they are placed at the Reception Centre Humenné for a quarantine period of three to four weeks. After that, they are moved to the Asylum Centre Opatovská Nová Ves, where they stay until their asylum application process has been legally completed. If they are granted asylum, they are either moved to an ordinary children's home or to the specialized children's home in Horné Orechové.

of culture and religion. The children's home must also make provisions for Slovak language training, if deemed suitable and beneficial for the child's development. In addition, the children's home is obliged to ask the child's opinion (taking into account the minor's age and mental capabilities) on all matters pertaining to them, such as family reunification, return to the country of origin, his/her asylum application and so forth.²⁶

Within the Migration Office facilities, care is provided by NGO and Migration Office social workers and mainly involves provision of clothing, school utensils and sanitary necessities, the organization of leisure activities and assistance with school study. Social workers provide care to all asylum-seekers and are not specially assigned to individual cases. The social workers of the NGO Society of Goodwill received training focusing on the specifics of care for vulnerable groups including UAMAS.²⁷

Legal representatives

Based on the guardian's authorization, through the power of attorney, a legal representative may represent UAMAS in the asylum procedure.²⁸ The legal representative (usually from an NGO) has legal qualifications and experience with asylum law and guides the client through the asylum procedure. The guardian's role is to ensure that the rights of the child are respected.

While legal representation may be delegated to a lawyer, there is no legal duty for the guardian to do so. Research carried out as part of the CAUAM project (Best Practices for a Coordinated Approach to Assist Unaccompanied Minor Asylum-Seekers (UAMAS) and former UAMAS in EU Member States) revealed that, in practice, the majority of UAMAS were represented only by the guardian, who was a designated social worker from the labour office, without legal qualifications. Some interviewed government officials claimed that UAMAS did not need a qualified lawyer unless appealing against a negative first instance decision, as social workers are considered experts on asylum law as well as on the socio-legal protection of children (Chudžíková and Fajnorová, 2010: 27). According to the NGO Society of Goodwill, based on their personal contacts with the designated guardian, the situation changed in the second half of 2011. Since then, UAM entering the asylum procedure have generally been represented by an NGO lawyer from the beginning of the procedure. However, as mentioned, no legal duty binds the guardian to do so in every case.

²⁶ Act on Socio-Legal Protection, § 50 Art. 2–4.

²⁷ According to section 45 of the Asylum Act, the Migration Office cooperates with NGOs in the provision of care to asylum-seekers. NGO activities are funded predominantly by the European Refugee fund. The Slovak Goodwill Society operates in the Reception Centre Humenné (where UAMAS are placed first, for quarantine) and the Asylum Centre Opatovská Nová Ves (where UAMAS are subsequently placed, for the remainder of the asylum application procedure).

²⁸ Section 17a, Article 1 of the Asylum Act.

SLOVENIA

Four legal acts within Slovenian legislation prescribe guardianship for domestic and foreign minors: the Marriage and Family Relations Act, the Aliens Act, the International Protection Act, and the Temporary Protection of Displaced Persons Act, while the main regulation of the guardianship institution is regulated to the Marriage and Family Relations Act. The latter Act prescribes that the Centre for Social work should appoint a guardian for a minor who is without parents or whose parents are not taking care of him/her.²⁹ However, there is no separate legislative guardianship instrument in Slovenia that refers only to unaccompanied asylum-seeking children.

In Slovenia, different terms are used to describe a guardian, depending on the circumstances of the UAM – for example, unaccompanied minors who were not accompanied by their parents or other legal representatives and entered the State irregularly and cannot be returned to the country from which they came, or delivered to the representatives of the country of which they are nationals, are appointed *a guardian for special cases*.³⁰ UAM who apply for asylum³¹ are appointed *a legal guardian*, while children whose asylum application procedure has been completed and who are granted international protection (refugee status or subsidiary protection status) are appointed a guardian (in the usual sense of the word).

In addition to the legal guardian, the representative of the psychosocial service at the Asylum Home (AH) and the legal representative are also important actors in the context of UAMAS.

When unaccompanied minors apply for asylum, they are accommodated in the AH, which is the only institution that accommodates applicants for international protection in Slovenia. UAMAS are housed in a special department of the AH where a psychologist (who is also a representative of the psychosocial service at the AH) has direct daily contact with UAMAS.³² UAMAS can turn to the representative for assistance regarding the accommodation rules, schooling, clothes and footwear, acquisition of permits (for prolonged absences from AH) and bus passes, enrolment into Slovenian language lessons, etc.

²⁹ Article 201 of the Marriage and Family Relations Act.

³⁰ According to the Marriage and Family Relations Act, a guardian for special cases is a legal guardian.

³¹ In this report, the term asylum-seeker will be used instead of applicant for international protection as it is used in Slovenian legislation. The term international protection will be used only when referring to specific legal regulations and laws or to works by other authors.

³² The psychosocial service representative is at the AH every weekday from 8am to 4pm. The psychologist is present for two afternoons a week until 6pm. After hours, UAMAS can, in emergency situations (such as conflicts with other residents in the AH) turn to the official on duty until 10pm each day, or the security service that maintains a 24-hour presence. When the psychosocial service representative is absent from the AH, the service is on call and someone can return to the AH, if necessary.

In recent years, a new system has been established by the Slovene Philanthropy (SP)³³ and Legal Information Centre for Non-Governmental Organizations (PIC),³⁴ whereby every child interviewed by the migration authority has, in addition to a guardian, a legal representative who is responsible for providing UAMAS with information on the international protection procedure, the Dublin II Regulation, and their rights and obligations. Besides being present at every interview that the child has with the migration authority, the representative is also responsible for appealing any negative court decision regarding the child's status.

Information on the international protection procedure and on what happens if their application is approved/denied is usually provided to the child by the legal guardian and, sometimes, by the legal representative (Slovene Philanthropy, 2011: 13).

2. OVERVIEW OF BASIC FACTS ABOUT THE TARGET GROUPS

BULGARIA

The State Agency for Refugees (SAR) with the Council of Ministers (CM) of the Republic of Bulgaria collects, maintains and keeps within an automated information system regular data concerning applications and registration of unaccompanied children seeking protection, and provides this information annually to the State Agency for Child Protection, in the form of an information map. SAR also keeps information about the persons who have been granted refugee or humanitarian status, as well as about refusals to grant protection and suspended or ceased procedures for granting protection.

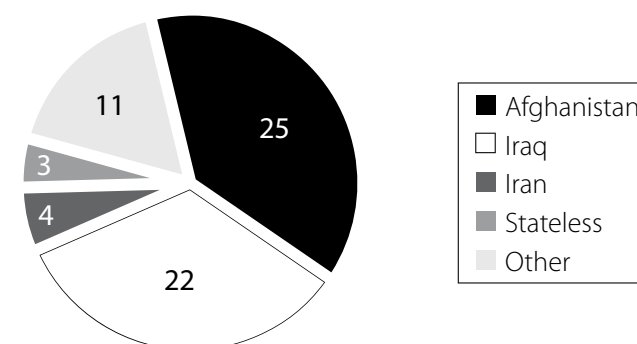
The number of unaccompanied children seeking protection in Bulgaria varies between 10 and 17 per year. The total number of unaccompanied children in 2010 was 19, while the total number of unaccompanied children seeking protection between January 2007 and September 2011 was 65 (see table 1). The main countries of origin of those unaccompanied minors were Afghanistan and Iraq (see figure 1).

Table 1: Total number of unaccompanied minors, aged 0–17, seeking protection in Bulgaria between January 2007 and September 2011

		Age group			
		0-13	14-15	16-17	Total
Gender	Boys	3	18	38	59
	Girls	1	2	3	6
Total		4	20	41	65

Source: SAR, 2011.

Figure 1: Countries of origin of unaccompanied minors, aged 0–17, seeking protection in Bulgaria between January 2007 and September 2011



Source: SAR, 2011.

³³ Slovene Philanthropy is a non-governmental organization that deals with assistance and protection for UAM and regularly provides guardianships to unaccompanied minors.

³⁴ PIC is a non-governmental organization that provides free legal advice to individuals and non-governmental organizations – particularly foreigners, refugees and asylum-seekers.

CZECH REPUBLIC

Those serving as guardians for unaccompanied minors are usually members of staff at particular NGOs or within government entities responsible for the social and legal protection of children, such as the Ministry of Labour and Social Affairs, and the Office for International Legal Protection of Children. Regional and municipal offices perform such duties in the capacity of State administration and exercise due authority. At present, there is only one NGO that offers guardianship for UAM and that is the Organization for Aid to Refugees.

The qualifications required by the social and legal protection authorities are stipulated in the Law on SLPCH. According to section 49a of this Law, social and legal protection can be provided by staff members who have gained *expert capability* in the form of a university degree or a related college-level education. They must also have graduated from relevant courses lasting at least 100 hours, with a minimum of one year of practice. A graduation document is required as proof of one's qualifications, as is a certification of practice, issued by the appropriate authority.³⁵

The NGO staff members who serve as guardians are mostly lawyers or social workers, although a law degree is not an obligatory qualification for a guardian. Legal assistance is provided only in cases where the rights of UAM need to be legally defended and, due to insufficient funding within the non-governmental sector, such assistance is only given by the NGO. If there is no money for the NGO, no assistance will be provided.³⁶

The guardian can be appointed by the Immigration Police, Ministry of Interior or the court. The appointment of a specific social and legal protection body is determined by the locality – the place where the child is located or resident.³⁷ If an NGO staff member is appointed, it is usually someone working in the Organization for Aid to Refugees.

In recent years, the number of unaccompanied minors arriving in the Czech Republic has been decreasing, but it is now starting to rise. However, the Czech Republic is not a final destination country for UAMAS and the numbers of those who apply for asylum can be counted in the tens. There were four new applications for international protection lodged by UAMAS in 2010 and, as of the end of November 2011, there were nine new applications. UAMAS come from Afghanistan, Democratic Republic of the Congo, Ethiopia, Kyrgyzstan, Nigeria, the Occupied Palestinian Territories, Somalia and the Syrian Arab Republic, or they are stateless.³⁸

³⁵ Section 49a of Article 4 Law on SLPCH.

³⁶ IOM Project on Best Practices for a Coordinated Approach to Assist Unaccompanied Minor Asylum Seekers (UAMAS) and former UAMAS (fUAMAS) in EU MS, National Report, IOM and Organization for Aid to Refugees, forthcoming.

³⁷ Section 61 of the Law on SLPCH.

³⁸ Source: Statistics on International Protection, Ministry of Interior; and statistics provided by the Organization for Aid to Refugees.

HUNGARY

The number of UAMAS in Hungary is relatively low. Their accommodation and care are organized centrally in one institution. Prior to the previously mentioned law amendments relating to asylum and child protection, which came into effect on 1 May 2011, the body responsible for the care of UAMAS was the Office of Immigration and Nationality (OIN). In accordance with the Act on Asylum, OIN provided separate accommodation for all UAMAS and for the majority of former unaccompanied minor asylum-seekers (fUAMAS) in a refugee reception centre. In the period 2008–2010, the operation of the Shelter for Unaccompanied Minors was a project-based activity financed by the European Refugee Fund (ERF) and implemented by OIN's Bicske Reception Centre, in cooperation with Hungarian Interchurch Aid. The Shelter provided full board and 24-hour care and support to UAMAS and fUAMAS under the age of 18.

In the period 2008–2010, the number of staff involved locally in the care of UAMAS was 10–20 persons, with the numbers increasing as the Shelter developed. Social workers, psychologists, teachers and nurses were employed. In the same period, five case guardians were appointed in rotation to represent UAMAS in the asylum procedure. Following status determination, the head of the shelter was usually appointed as a temporary guardian. In addition to the guardian's usual responsibilities, the guardian had to ensure that certain documents (identity card, health insurance card, tax card) were obtained and that the child protection procedure was initiated. In accordance with the child protection procedure, fUAMAS were taken into permanent care and a so-called professional guardian was appointed. The legal guardian was an employee of the Regional Child Protection Service who had monthly contacts with her/his wards.³⁹

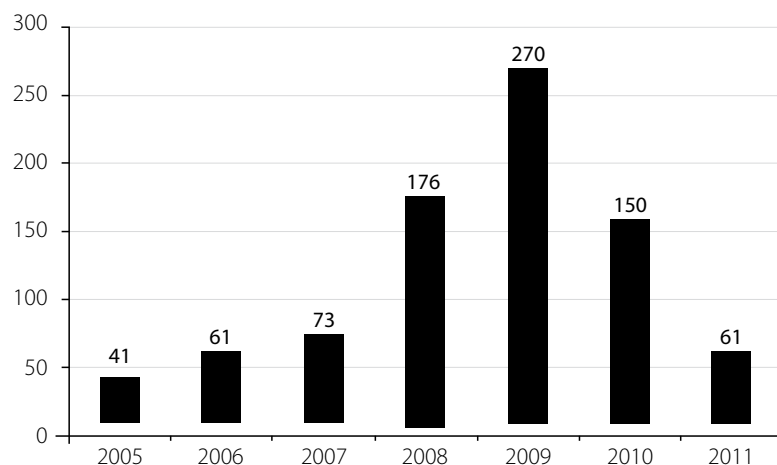
The most significant change induced by the law amendments is the inclusion of UAMAS within the scope of the Child Protection Act. As a result, UAMAS are accommodated and cared for within the mainstream child protection system. The Child Protection and Guardianship Department, under the State Secretariat for Social Affairs, Family and Youth of the Ministry of National Resources, is the body responsible for the accommodation and care of UAMAS and fUAMAS, through its budgetary institution, Károlyi István Child Centre in Fót. UAMAS and fUAMAS are cared for in special accommodation groups of 10–12 persons each, with the number of responsible carers regulated by law. Currently, in the institution, there are three special accommodation groups for UAMAS and minor fUAMAS and three groups providing aftercare support for fUAMAS over 18 years of age, with the number of accommodated UAMAS and fUAMAS varying from 60 to 72.

³⁹ Policies on reception, return and integration arrangements for, and numbers of, unaccompanied minors in Hungary, European Migration Network country reports on UAMAS. Available at: http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?sessionId=73BB5FD654B1AB9E789489C2EC93B175?entryTitle=06_Reception,%20Return%20and%20Integration%20Policies%20for,%20and%20numbers%20of,%20UNACCOMPANIED%20MINORS (accessed on 13 March 2012).

The main legal tool regulating the operation of the child protection residential care units is the 15/1998 (IV, 30) Welfare Ministry's Regulation on the professional responsibilities and operations of child welfare or child protection institutions and staff providing personal care. Based on the Regulation, approximately 27 professionals were involved in the care and representation of UAMAS and fUAMAS in 2011, with one of these professionals acting as case guardian, while the head of the residential unit acts as guardian for those minors whose status has been determined. The Regulation also specifies the qualification and entry requirements for employment. All positions require post-secondary qualifications or higher degrees in child protection, education, social work, health, psychology or law.

The number of UAMAS in Hungary was relatively low until 2007, after which the number increased steeply until 2009 (see figure 2). In 2010, the total number of asylum applications in Hungary decreased considerably, compared to the previous year, and this was matched by the number of newly arrived unaccompanied minor asylum-seekers (IOM, 2011). The figures dropped even more considerably in 2011.

Figure 2: Total number of UAMAS in Hungary between 2005 and 2011



Source: OIN, 2012.

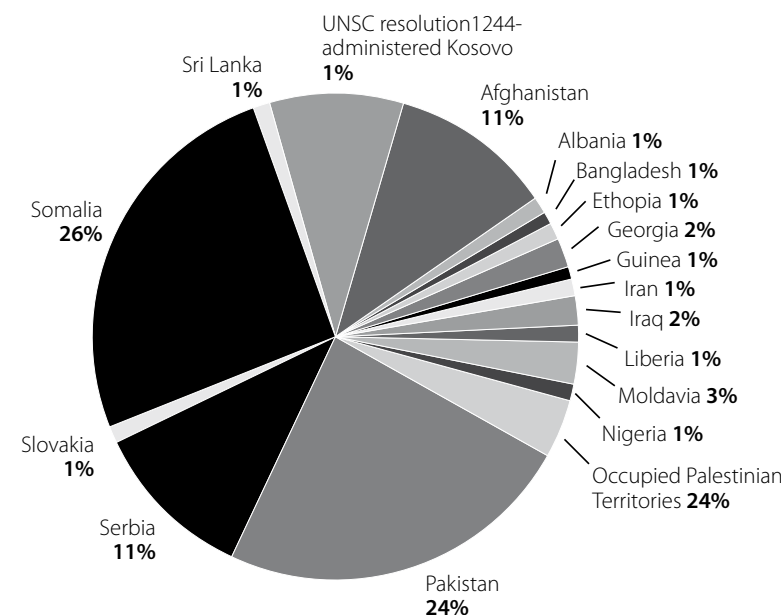
The data on the number of asylum applications submitted by UAM were provided by the OIN, which is the main institution responsible for data collection. According to the Asylum Act, data pertaining to the Act can be made available for statistical purposes, although personal information is not disclosed.⁴⁰

Fewer data are available on the unaccompanied minors' country of origin and motivation in seeking entry into Hungary. Research carried out in 2009 by the European Migration

⁴⁰ Act LXXX of 2007 on Asylum § 87 (3).

Network (EMN) regarding policies on reception, return and integration arrangements for, and numbers of, unaccompanied minors in Hungary presents the results of a questionnaire completed by staff involved in the care of UAMAS and fUAMAS. One of the main findings was that most UAMAS did not know which country they had arrived in. In this sense, Hungary cannot be clearly identified as a target destination country, since the minors were simply seeking a safe place within the EU – especially in the Schengen Area. The top three countries of origin were Afghanistan, Pakistan and Somalia. However, nearly all UAMAS originating from Pakistan disappeared. According to the care staff, these minors migrated further, as their ultimate destination countries were either Italy or Spain. Thus the two main countries of origin in 2008 remained Somalia and Afghanistan, as shown in figure 3. The research also indicated that almost all Somali and Afghan UAMAS received some form of protection.

Figure 3: Asylum applications submitted by unaccompanied minors (%) in Hungary in 2008, by country of origin



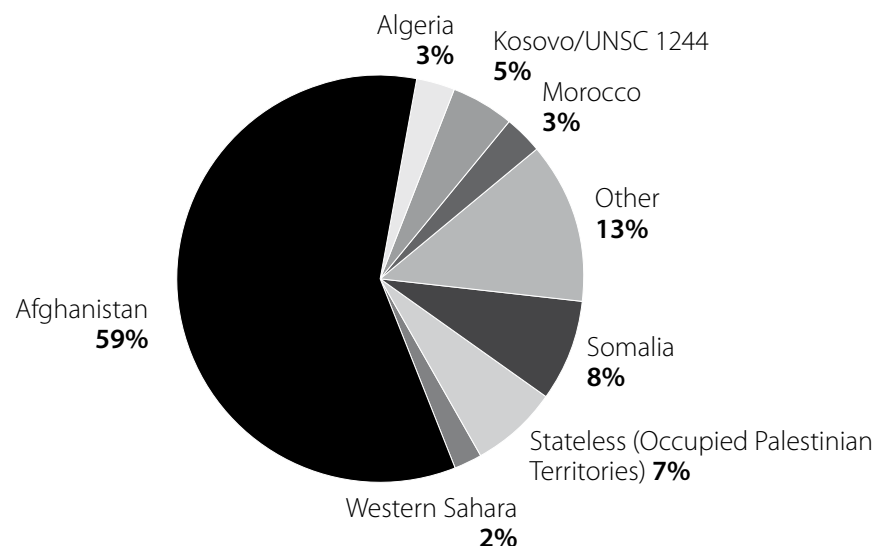
Source: Policies on Reception, Return and Integration Arrangements for, and Numbers of, Unaccompanied Minors in Hungary, European Migration Network country reports on UAMAS, 2009.

Note: UNSC resolution 1244-administered Kosovo will, hereinafter, be referred to as Kosovo/UNSC 1244.

A similar chart presenting the country of origin of UAMAS in 2010 (based on an internal report by the Shelter for Unaccompanied Minors) shows a clear change in trends (see figure 4).

The proportion of UAMAS originating from Afghanistan has increased more than fivefold, while the number of those coming from Somalia decreased by two thirds.

Figure 4: UAMAS in Hungary by country/region of origin (%), in 2010



Source: Statistical report from the Shelter for Unaccompanied Minors, 2010.

According to the same report, the number of disappearances was quite high: 51 UAMAS (29%) disappeared, having presumably travelled onward to Western European countries. Age assessment was a frequent practice, and nearly half of all UAMAS (83 persons, representing 47%) were found to be adults. In 2010, approximately a quarter of all UAMAS were granted some form of protection (18% were recognized as refugees; 62% were granted subsidiary protection; and 8% were granted a tolerated stay).

The legal representation of UAMAS in Hungary is a two-part procedure. Initially, a temporary legal representative (a case guardian) is appointed to represent the child during specific procedures, such as the asylum procedure. Following status determination, a permanent guardian is appointed to ensure the representation and well-being of the fUAMAS until they come of age.

POLAND

Between 1 September 2005 and 30 October 2011, 101 unaccompanied minor asylum-seekers (roughly 16 per year and mostly 16–18-year-old Chechen boys) arrived in Poland (see figure 5).

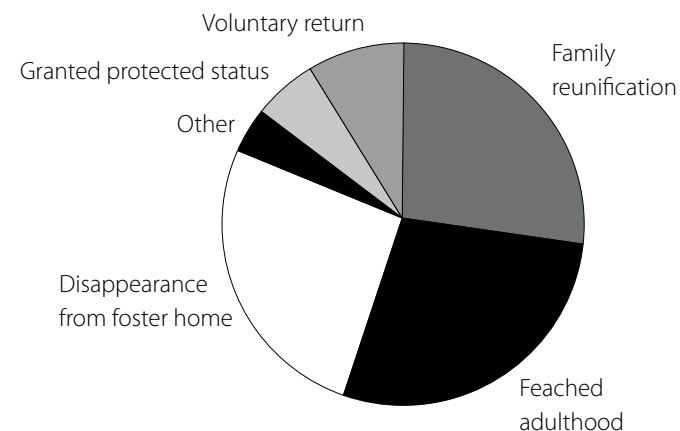
On average, these minors spent two months in a foster home. Some stayed for less than a day and others for as long as 21 months. They left the foster home for a variety of reasons, including: reaching adulthood, family reunification, granting of protected status, escape, and assisted voluntary return to their home country (see figure 6).

Over half (53) of the minors came from the Russian Federation (see table 2). Along with Georgia, *Kyrgyzstan*, Lithuania and Uzbekistan, the former USSR accounted for 64 of the 101 UAMAS. Afghanistan ranked highest as a non-Russian country of origin for UAMAS, with 12 unaccompanied children coming from that country.

In theory, no more than 10 UAMAS can be taken in by the foster home, since only 10 beds are available. However, the home takes in as many minors as necessary, since is the only place in Poland where they can be accommodated.

The number of legal guardians depends on the number of UAMAS needing their help. Normally, each UAMAS is entitled to one legal guardian, but there were three social guardians serving five UAMAS, as of February 2012, and a varying number (up to a dozen) of other social care workers. There is no legally defined ratio of social guardians/social care workers to UAMAS.

Figure 5: Total number of UAMAS in Poland, by age, from 1 September 2005 to 30 October 2011



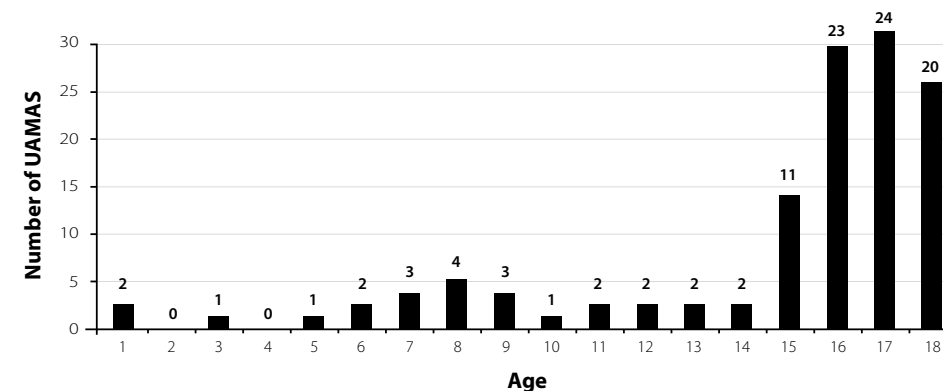
Source: Based on data provided by Foster Home no. 9 in Warsaw.

Table 2: Number of UAMAS in Poland, by country/region of origin, from 1 September 2005 to 30 October 2011

COUNTRY	NUMBER
Russian Federation	53
Afghanistan	12
Georgia	8
Somalia	4
Viet Nam	3
Bangladesh	2
Burundi	2
Nigeria	2
Sudan	2
Belarus	1
Ghana	1
India	1
Kyrgyzstan	1
Lithuania	1
Morocco	1
Occupied Palestinian Territories	1
Pakistan	1
Sri Lanka	1
Uzbekistan	1
Serbia	1
Syria	1
The Congo	1
Total	101

Source: Based on data provided by Foster Home no. 9 in Warsaw.

Forty-four per cent of the UAMAS who arrived in Poland between 1 September 2005 and 30 October 2011 were 17–18 years old. Due to the high proportion of children approaching adulthood, some asylum applications cannot be adjudicated before the minors become adults.

Figure 6: Reasons for UAMAS in Poland discontinuing foster home care between 1 September 2005 and 30 October 2011

Source: Based on data provided by Foster Home no. 9 in Warsaw.

ROMANIA

Legal representatives are employees of county offices for child protection, whose job description specifies that they act as legal representatives, when appropriate. The number of legal guardians depends on the number of UAMAS needing their help.

The Romanian Office for Immigration is responsible for collecting UAMAS-related data, such as number, country of origin, development over time, etc.

Tables 3–5 present the number of asylum applications by UAM, according to their country of origin.

Table 3: Unaccompanied minors in Romania, by country of origin, January–December 2009

Country	Jan	Feb	March	April	May	June	July	Aug	Sep	Oct	Nov	Dec	Total
Afghanistan	3	6	0	5	0	0	0	0	1	0	1	2	18
Bangladesh	0	0	0	0	0	0	0	0	0	0	2	0	2
Georgia	0	0	0	0	0	1	0	0	0	0	0	0	1
India	0	0	0	0	0	1	0	1	1	0	0	0	3
Iraq	0	2	0	0	0	0	1	0	0	0	0	0	3
Pakistan	2	0	0	0	0	0	0	0	0	0	2	0	4
Republic of Moldova	0	0	0	0	0	2	0	0	1	0	1	0	4
Serbia	0	0	0	0	0	0	0	1	0	0	0	0	1
Sudan	0	0	0	0	0	1	0	0	0	0	0	0	1
Turkey	0	0	0	0	0	0	0	0	1	0	0	0	1
Total	5	8	0	5	0	5	1	2	4	0	6	2	38

Source: Romanian Office of Immigration.

Table 4: Unaccompanied minors in Romania, by country of origin, January–December 2010

Country	Jan	Feb	March	April	May	June	July	Aug	Sep	Oct	Nov	Dec	Total
Afghanistan	6	2	4	0	1	0	4	2	2	1	0	2	24
Bangladesh	0	0	0	0	0	0	0	1	0	0	0	0	1
Iraq	0	0	0	0	0	0	0	2	0	0	1	0	3
Morocco	0	0	0	0	0	0	0	1	0	0	3	0	4
Republic of Moldova	0	0	0	0	0	0	0	1	0	1	0	0	2
Russian Fed.	0	0	0	0	0	1	0	0	0	0	0	0	1
Syrian Arab Republic	0	0	0	0	0	0	0	1	0	0	0	0	1
Somalia	0	0	0	0	0	0	0	0	0	0	1	0	1
Turkey	1	0	0	0	0	0	0	0	0	0	0	0	1
Stateless	0	0	0	0	0	0	0	1	0	0	0	0	1
Total	7	2	4	0	1	1	4	9	2	2	5	2	39

Source: Romanian Office of Immigration.

Table 5: Unaccompanied minors in Romania, by country of origin, January–December 2011

Country	Jan	Feb	March	April	May	June	July	Aug	Sep	Oct	Nov	Dec	Total
Afghanistan	0	0	0	0	0	7	3	0	2	0	0	4	16
Algeria	0	0	0	0	0	0	1	0	0	1	0	0	2
China	0	0	1	0	0	0	0	0	0	0	0	0	1
Iraq	0	0	0	0	0	0	0	0	1	0	1	0	2
Iran	0	0	1	0	0	0	0	0	0	0	0	0	1
Morocco	0	0	0	0	0	0	0	0	0	1	0	0	1
Libya	0	0	0	0	0	0	0	1	0	0	0	0	1
Occupied Palestinian Territories	0	0	0	0	0	0	0	2	0	0	0	0	2
Pakistan	0	0	0	0	0	2	0	0	0	4	0	0	6
Republic of Moldova	0	0	0	0	0	0	0	1	0	0	0	0	1
Somalia	1	0	0	0	0	0	0	0	0	1	1	0	3
Total	1	0	2	0	0	9	4	4	3	7	2	4	36

Source: Romanian Office of Immigration.

SLOVAKIA

In recent years, the number of unaccompanied minors found in Slovakia has generally been low, with the proportion of those seeking international protection significantly decreasing in 2009 and 2010.

In 2010, Afghanistan, Moldova and Somalia were the top three countries of origin for the UAM who entered the Slovak Republic. (This was also true for adult asylum-seekers arriving in Slovakia from third countries.) Most UAM are males between the age of 16 and 17, with very few female unaccompanied minors surfacing in Slovakia. According to the Bureau of Border and Alien Police, UAM cross the borders of the Slovak Republic either on their own or with other unaccompanied minors; very few of them arrive with adults. However, all UAM arrive exclusively through Slovakia's Eastern border with Ukraine (Chudžíková and Fajnorová, 2010: 5).

The overall number of UAMAS has dropped by approximately 96 per cent since 2007 (see table 6), with only 7 applications for asylum lodged by UAM in 2010 (approximately 18% of the total number of UAM), as shown in table 7.

Table 6: Total number of unaccompanied minors in Slovakia between 2005 and 2010

Year	Total number of UAM found in the territory of the Slovak Republic
2005	237
2006	343
2007	532
2008	176
2009	119
2010	259

Source: The Central Labour Office and Bureau of Border and Alien Police.

Notes: Statistics for 2005 and 2006 are unofficial estimates. Official statistics are only available from 2007 onwards.

Table 7: Total number of asylum applications submitted by unaccompanied minors in Slovakia, 2002–2010

Year	Total number of asylum applications lodged by UAM
2002	1371
2003	707
2004	196
2005	101
2006	138
2007	157
2008	72
2009	28
2010	7

Source: Migration Office of the Slovak Republic and Grethe Guličová, 2009, p. 34.

The government and civil society experts interviewed as part of the CAUAM study attributed the low number of UAM asylum applications to the minors' desire to settle in economically more developed EU countries. This is partly confirmed by the high disappearance rate of UAM: according to the experts, the large majority of children placed in the children's home in Horné Orechové disappear immediately after leaving the quarantine part of the facility; they travel onward to Austria, France, Germany, Italy, the United Kingdom of Great Britain and Northern Ireland or Scandinavian countries in search of work or to join relatives who have already settled there. However, civil society experts also cite the lack of durable solutions and integration opportunities in Slovakia as another reason for UAM not remaining in the country (Chudžíková and Fajnorová, 2010: 8).

Statistics on UAM and UAMAS fall within the competency of two institutions: the Ministry of Labour, Social Affairs and Family (MLSAF) (which is responsible for the socio-legal protection of children and collects data on all unaccompanied minors), and the Migration Office (an administrative unit of the Ministry of Interior, which gathers data on unaccompanied minor asylum-seekers exclusively).

Tables 8–11 provide an overview of the available data on UAMAS according to age, gender and country of origin for the years 2007, 2008, 2009, and 2010. Between January and September 2011 only 3 UAMs, aged 16-17, all male, have lodged an asylum application in Slovakia according to the data received from the Migration Office of the Slovak Republic.

Table 8: Asylum applications by UAMAS in Slovakia, according to their country of origin, age and gender, in 2007

Country of origin	2007 Asylum applications Age category and gender					
	0–13		14–15		16–17	
	M	F	M	F	M	F
Pakistan	-	-	14	-	48	-
India	-	-	4	-	44	-
Bangladesh	-	-	2	-	15	-
Republic of Moldova	-	-	2	-	8	-
Iraq	-	-	-	1	4	-
Viet Nam	-	-	2	-	3	-
Georgia	-	-	-	-	2	-
Russian Federation	1	-	-	-	1	-
Nepal	-	-	-	-	2	-
Liberia	-	-	-	-	1	-
China	-	-	-	-	1	-
Nigeria	-	-	-	-	1	-
Somalia	-	-	-	-	1	-
Total	157					

Source: Grethe Guličová, 2009, p. 54.

Table 9: Asylum applications by UAMAS in Slovakia, according to their country of origin, age and gender, in 2008

Country of origin	2008 Asylum applications Age category and gender					
	0–13		14–15		16–17	
	M	F	M	F	M	F
Republic of Moldova	1	-	13	1	27	-
Afghanistan	2	-	2	-	8	-
Bangladesh	-	-	-	-	6	-
Georgia	-	-	2	-	2	-
Iraq	-	-	-	-	4	-
Viet Nam	-	-	1	-	1	-
Pakistan	-	-	1	-	-	-
Sri Lanka	-	-	-	-	1	-
Total	72					

Source: Grethe Guličová, 2009, p. 53.

Table 10: Asylum applications by UAMAS in Slovakia, according to country of origin and age, in 2009

Country of origin	2009 Asylum applications Age category					
	0–13		14–15		16–17	
	M	F	M	F	M	F
Afghanistan	-	-	-	-	5	-
Bangladesh	-	-	-	-	1	-
Montenegro	-	-	-	-	1	-
Georgia	-	-	-	-	1	-
India	-	-	-	-	1	-
Iran	-	-	-	-	1	-
Pakistan	-	-	-	-	1	-
Serbia	-	-	-	-	-	1
Sri Lanka	-	-	-	-	1	14
Moldova	-	-	1	-	-	-
Total	28					

Source: Migration Office of the Slovak Republic.

Table 11: Asylum applications by UAMAS in Slovakia, according to country of origin and age, in 2010

Country of origin	2010 Asylum applications Age category					
	0–13		14–15		16–17	
	M	F	M	F	M	F
Afghanistan	-	-	-	-	5	-
Pakistan	-	-	-	-	1	-
Bangladesh	-	-	-	-	1	-
Republic of Moldova	-	-	-	-	1	-
Iraq	-	-	-	-	1	-
Stateless	-	-	-	-	-	1
Total	10					

Source: Migration Office of the Slovak Republic.

According to Slovakian legislation, a guardian must be a legal entity – in this case, the Office of Labour, Social Affairs and Family.⁴¹ Currently, there are 46 local labour offices and, as per the Act on Socio-Legal Protection, the territorially competent labour office is designated a guardian. In the vast majority of cases, it is the labour office in Trenčín, since almost all UAM

⁴¹ Section 73 of the Act on Socio-Legal Protection.

initially get placed in the specialized children's home in Horné Orechové, which falls under the territorial competence of that labour office.

In the case of female minors needing to be placed, and in the event that the centre is full, the minors may be placed in another children's home and a different labour office would therefore be designated as guardian. Female UAM are placed in a mainstream children's home in Medzilaborce, in which a group for children with special needs (female UAM) was created on 1 January 2011. In this case, the labour office in Stropkov (the organizational unit for Medzilaborce) is appointed as the guardian.

The Medzilaborce labour office delegates a dedicated employee to handle all activities and tasks relating to guardianship. In practice, one employee at the labour office in Trenčín is systematically delegated as a guardian and one of two employees in Medzilaborce may be delegated. The guardians are usually social workers.

SLOVENIA

The Social Security Act of 1992 changed the scope of guardianship in Slovenia by removing it from the exclusive domain of social service providers within the public services and allowing for it to be implemented by private non-profit organizations and individuals authorized by the responsible ministry (Kobal, 2006: 35).

As of early 2012, there were only two UAMAS guardians in Slovenia. One was a representative of the Slovene Philanthropy (SP), and the other was a representative of the Centre for Social Work (CSW).⁴²

Since 2001, SP has assumed a guardianship role for almost all UAMAS. However, in March 2011, the organization temporarily stopped implementing legal guardianships for these children.⁴³ This decision was taken by SP in order to (again) warn the State that the current system of care and treatment of UAMAS was inappropriate and that the area was in dire need of changes. SP was also faced with a lack of capacities due to an increased influx of UAMAS into Slovenia and [a lack of] financial support" (Slovene Philanthropy, 2011: 55). Following SP's decision, the responsibility for legal guardianships for UAMAS was taken up by the competent CSW.

According to the Marriage and Family Relations Act, a minor who has no parents or who is not taken care of by his/her parents is given a guardian appointed by the CSW. Prior to the commencement of the international protection procedure, UAMAS are appointed a legal guardian.

⁴² Currently, this is the Centre for Social Work Ljubljana Vič – Rudnik.

⁴³ Until March 2011, guardianship was mostly performed by SP representatives but also by SP volunteers.

According to the International Protection Act (IPA), the guardian can be a relative or a companion of the unaccompanied minor or a representative from an organization specialized in working with children and minors.⁴⁴

For most UAM, the Republic of Slovenia is a transit country; most minors leave soon after their arrival and continue on to the countries of Northern and Western Europe. Most of these UAM are boys aged 15–17, coming predominantly from Afghanistan, Albania, Serbia, Turkey and some African countries (see table 12). In the past, most of these children would have applied for asylum; recently, however, they have increasingly opted to return to their country of origin (Slovene Philanthropy and PIC, 2009: 5).

Table 12: Total number of UAMAS who applied for asylum, by country/region of origin and gender, 2006–March 2011

COUNTRY/ REGION OF ORIGIN	2006		2007		2008		2009		2010		January to March 2011		TOTAL
	M	F	M	F	M	F	M	F	M	F	M	F	
Afghanistan	1		5		9		11		20	2	18		66
Albania	8		7		3		3						21
Algeria									2		1		3
Bosnia and Herzegovina			1						1	1			3
Cameroon			1										1
Eritrea							1		1				2
Georgia	2		1										3
Ghana					1		2						3
Iran											2		2
Iraq							2						2
Kosovo/ UNSC 1244					1								1
Nigeria			1						3		1		5
Occupied Palestinian Territory	2								8		5		15
Pakistan							3						3
Republic of Moldova	2												2
Rwanda					1								1
Sierra Leone			1	1									2
Somalia										1	1		2
Sudan									1				1
Tunisia									2				2
Turkey	1		2		2		3						8
Serbia	5		6	1	1								13
Western Sahara											1		1
TOTAL	21	-	25	2	18	-	25	-	38	4	29	-	162

Source: Ministry of Interior and Slovene Philanthropy.

Statistical data on UAMAS are collected by the Ministry of Interior (the Asylum Home) and Slovene Philanthropy, with each organization keeping its own set of statistics – often on the same UAMAS. The statistics are not coordinated, since the type of collected data depends largely on the needs of the specific institution or the instruction they might have received.

⁴⁴ Article 96 of the IPA.

3. THE SYSTEM OF GUARDIANSHIP/ TRUSTEESHIP

BULGARIA

There is no separate system or budget for guardianship and trusteeship in the Republic of Bulgaria. They fall under the Family Code, which rules that guardians/trustees be established for minors and juveniles whose parents are unknown or deceased.⁴⁵ However, the role of guardian/trustee is honorary, with no remuneration given. The Family Code does not list the criteria that must be met by the guardian/trustee – only the impediments to his/her appointment, which include lack of capacity, deprivation of parental rights and conviction for criminal offences. The overall objective of guardianship/trusteeship in Bulgaria is to provide a substitute for parental care, such that the relationship between the guardian/trustee and his/her ward is effectively that of family. Therefore, the rights and obligations of the guardian/trustee are similar or identical to those of parents.

CZECH REPUBLIC

Unaccompanied minors in the Czech Republic can have four different types of guardian: 1) a guardian for administrative proceedings; 2) a residence guardian; 3) a guardian for detention; and 4) a guardian for administrative expulsion.

The **guardian for administrative proceedings** serves only for a transitional period of time since, by law, a minor becomes legally independent at 18 years of age. Since he/she cannot take any legal action before reaching that age, a guardian is appointed to act on his/her behalf.⁴⁶

The **residence guardian** has greater scope than the other three types of guardian and is responsible for protecting the rights and interests of UAMAS who are on the territory of the country without any representative or person responsible for his/her upbringing. This type of guardian is appointed by the court on the nomination of the Asylum and Migration Policies Department of the Ministry of Interior.

Although the respective provisions of the Law on Asylum and the Family Act anticipate that a guardian's scope of activities and tasks will be specified upon the guardian's appointment, this does not happen in practice. A standard legal definition is therefore used: even though the guardian is not a legal UAM representative, he/she de facto substitutes for a legal representative in the territory. The guardian assists UAM in defending and enforcing their

⁴⁵ Article 153, § 1 and 2 of the Family Code.

⁴⁶ Section 92 of the Law on Asylum.

rights, relative to their stay in the territory (providing help with residence status procedures, issues of schooling and education, language courses, applications for any allowances, health care, etc).

All guardianship activities relating to the procedure of seeking international protection for UAM are designed to protect the minors' interests throughout the entire process. The guardian must therefore be present during interviews and when a decision is handed down by the Ministry of Interior, in addition to providing assistance with an appeal against the Ministry's decision, if required.⁴⁷

The Law on Residence of Aliens does not specify the competencies of a **guardian for detention**. However, according to the practice of the Regional Court in Mladá Boleslav⁴⁸ (a town in Central Bohemia), the guardian for detention is authorized to file a motion on behalf of a UAM for his/her release⁴⁹ or to appeal a decision on the detention of an unaccompanied minor. However, the guardian for detention does not have the power to make a motion for preliminary action, according to section 76 of the Civic Court Procedures,⁵⁰ for the release of the minor from the detention facility and for him/her to be placed in the Facility for Foreign Children. This function is almost always performed by NGO staff.

The **guardian for administrative expulsion** assists UAM in defending and enforcing their rights in the procedure on administrative expulsion. This type of guardian is usually someone from the social and legal protection authority or an NGO. However, there have been few cases of such guardians being appointed in the Czech Republic.

HUNGARY

The Child Protection Act and its implementation Decrees⁵¹ regulate the child protection system and the guardianship system in Hungary. The regulation defines the roles, duties and responsibilities of both systems. From an organizational point of view, the protection system is a wider concept that includes the majority of the tasks and responsibilities of the guardianship administration. The operation of the child protection system is jointly carried out by the State and local governments. However, in the case of UAMAS, it remains mainly a State responsibility. The Ministry of Interior (MOI) and the Ministry of National Resources both have roles concerning UAMAS. MOI is responsible for matters relating to asylum, residence and the Dublin II Regulation. The Ministry of National Resources is responsible for accommodation, care and guardianship administration.

⁴⁷ Methodical Recommendation of the Ministry of Labour and Social Affairs no. 1/2009 on policy of municipal authorities with provincial powers in providing social and legal protection for unaccompanied minors.

⁴⁸ Regional Court Resolution in Prague no. 32Co 364/2011–20.

⁴⁹ Section 200 Law no. 99/1963, Civic Court Procedures.

⁵⁰ This section provides an opportunity for the child to be handed over to the care of the second parent or to the care of someone designated by the court.

⁵¹ Mainly the 1997th XXXI Act on child protection and public guardianship administration and the 149/1997 (IX. 10) Government Decree on the guardianship authority, and on child protection and guardianship proceedings.

The majority of UAMAS arriving in Hungary cross the country border illegally. Once the police have apprehended and identified the minors, they inform the Office of Immigration and Nationality (OIN) of the asylum application. OIN issues a decision on interim care arrangements, whereby UAMAS are accommodated in special facilities operated by the Károlyi István Child Centre (KIGYK) in Fót. Currently, this is the only facility at national level accommodating UAMAS, where care is provided by child protection practitioners. OIN's request for the appointment of a case guardian is also included in the decision on interim care arrangements, and a copy of the decision is sent to the Guardianship Office of the 5th District in Budapest.

This Guardianship Office is assigned by law to conduct all guardianship administrative tasks centrally at national level for all foreign children, including UAMAS. According to the current practice, an employee of KIGYK is appointed as case guardian, whose main role is that of providing legal representation for UAMAS, primarily in the asylum procedure. The Guardianship Office, in parallel with the appointment of the case guardian, informs the Regional Child Protection Service about the arrival of the child and the appointment of the guardian. The Regional Child Protection service, at this stage, has only an administrative role but, during the subsequent child protection procedures, will have a more significant one. Following status determination, a child protection procedure is initiated. In this context, assessments are carried out and an interagency placement meeting is held. The leading agency is the Regional Child Protection Service. UAMAS recognized as refugees and beneficiaries of subsidiary protection are taken into permanent care, and their placement is reviewed annually. The appointment of the case guardian is terminated and a so-called professional guardian is appointed. The Child Protection Act allows for some flexibility in the selection of this guardian, who can be either an employee of the child protection service or the head of the residential unit where the child is being looked after. Decisions on permanent care and guardian appointments are issued by the Guardianship Office. As UAMAS come of age, they are entitled within the child protection care system to aftercare support, up to the age of 24. At this stage, the guardian is relieved of his/her duties and a decision on aftercare support placement is made by the Guardianship Office, based on the request of the young adult and the recommendation of the institution providing the placement (which must first confirm that it has the space to accommodate fUAMAS).

Responsibility for care

Upon arrival in Hungary, UAMAS are accommodated in special accommodation facilities within KIGYK, which is one of the few child protection residential institutions operating under the direction and financing of the Ministry of National Resources. It is also one of the oldest and most renowned child protection institutions in Hungary. The structure of the residential unit and the number of employed professionals is regulated by the 15/1998 (IV 30) Welfare Ministry Decree on the premises and operation of child welfare and child protection institutions in providing personal care and on the responsibilities of

professionals. In accordance with this Decree, 10–12 children are provided full board,⁵² 24-hour care and support within each special accommodation group. There are three accommodation groups for UAMAS and fUAMAS under the age of 18. Together with the aftercare groups of fUAMAS, they form a separate unit of the institution. The number of child protection practitioners directly involved in the care of UAMAS and fUAMAS is five persons per group – one educator, one child protection assistant and three child minders. Their work is supported at unit level by the head of the unit, one psychologist, one child protection officer, one special education teacher and an aftercare professional. Training requirements for employment are outlined in the legal regulation. All positions are linked to post-secondary qualifications or higher degrees in child protection, education, social work, health, psychology or law. All practitioners involved in the care of UAMAS and fUAMAS are public servants. Their remuneration is based on salary scales and grades within the public sector.

Responsibility for guardianship

Guardians appointed for the legal representation of UAMAS and fUAMAS in Hungary are not recruited on the basis of any special condition; they are attached to the ordinary child protection services and can be appointed for either a Hungarian or a foreign child. They do not necessarily have expertise or experience in the law pertaining to foreigners. Also, they can be responsible for high numbers of minors (up to 40) at the same time.

In accordance with current practice, upon the arrival of UAMAS, the competent Guardianship Office appoints a case guardian, who is employed by KIGYK as a child protection officer. The main responsibility of the case guardian is to represent the child in the asylum procedure. Following status determination, an employee of the Child Centre is appointed as guardian. The guardian is the carer, the legal representative of the child and the person in charge of the child's property.⁵³

The Child Protection Act defines the main duties and responsibilities relating to the operation of a child protection residential unit. Each institution must prepare its own professional programme, which is also a major requirement for its operating permit (licence). The professional programme should include the organizational structure, the care system, the principles and methodology of care, and the tasks and responsibilities of each position within the organizational structure.

The main tasks of a child protection residential unit, as outlined in the Child Protection Act, are:

- to accommodate children under interim and/or permanent care and to inform the competent Guardianship Office and Regional Child Protection Service regarding

⁵² Child Protection Act § 52.

⁵³ Child Protection Act § 85 (2).

- placement;
- to accommodate young persons who are beneficiaries of aftercare support and to inform the Regional Child Protection Service regarding placement;
- to provide full-board service, based on the approved placement plan and individual care plan;
- to provide a guardian, upon the decision of the Guardianship Office, with the aim of:
 - helping to maintain the child's contact with his/her family;
 - promoting the child's freedom to choose religious beliefs and to express and exercise his/her own faith and religion;
 - preparing the child for independent living;
 - ensuring access to, and successful completion of, education;
 - provide aftercare support.⁵⁴

Thus the main responsibility of the guardian is to safeguard the rights of the children in line with their age, health, stage of development and other needs.

Case guardians and guardians of UAMAS and fUAMAS are appointed by the Guardianship Office. Under the terms of the Child Protection Act, there is only one central competent agency assigned by the government to act on matters relating to guardianship for all foreign children.⁵⁵ The 331/2006 (XII 23) Government Decree identifies the Guardianship Office of the 5th District in Budapest for this task.⁵⁶ Although the Guardianship Office is a local agency, the local government receives normative funding for the guardianship administration from the central budget through the Ministry of National Resources.

The following government bodies and institutions are involved in the Hungarian system of guardianship for UAMAS and fUAMAS (see figure 7):

1. Ministry of National Resources
 - a. directs and controls the child protection sector and its actors
 - b. operates special residential units (Control and Finance)
2. Social and Guardianship Office of Government Office (County Level)
 - a. issues the operation permits for child protection services, including residential care
 - b. monitors the operation of child protection services
 - c. takes appeal decisions (over local Guardianship Offices)
3. Regional Child Protection Service
 - a. administrates for all children in care
 - b. leads interagency assessment on placement
 - c. carries out annual review of individual care plans and placements
 - d. supports guardians
4. Guardianship Office 5th District Budapest
 - a. takes decision on placement and care of UAMAS and fUAMAS

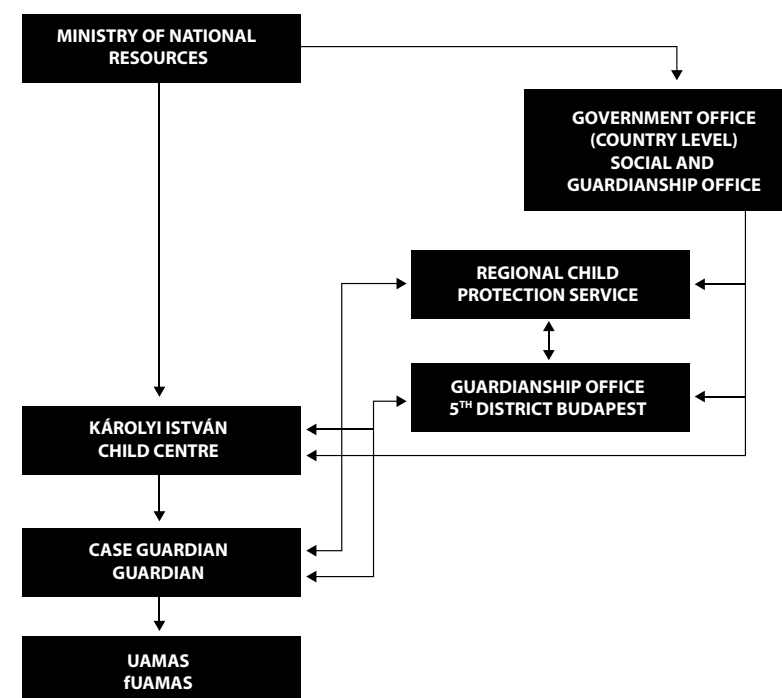
⁵⁴ Child Protection Act § 57 (3) a)–d).

⁵⁵ Child Protection Act § 73 (3).

⁵⁶ 331/2006 (XII 23) Government Decree § 12.

- b. controls the activity of guardians
5. Károlyi István Child Centre
 - a. provides accommodation and care to UAMAS and fUAMAS
 - b. employs case guardian and guardian

Figure 7: Structure of the Hungarian system of guardianship for UAMAS and fUAMAS



POLAND

Guardianship legislation relating to UAMAS in Poland is in its embryonic stage. The 2003 Decree on the Protection of Foreigners in Poland devotes 9 articles (art. 61–69) to the specific issue of UAMAS, and a further 16 to the assistance to asylum-seekers, regardless of their age (Articles 70–86). In accordance with Article 61, the institution receiving applications for asylum is responsible for requesting the appointment of a legal guardian for the applicant. Article 62 guarantees social care for UAMAS through placement with a foster home or family. Articles 63 and 67 stipulate that the State be responsible for the costs of housing the asylum-seeker while his or her claim is being analysed. According to Article 64, the chief of the Office of Foreigners must communicate the date of the hearing to the legal guardian early enough so that he/she can inform the UAMAS at least seven days prior to the hearing. Article 65 describes the format (such as language and tone) of the hearing, whereas Article 66 specifies the qualifications of the hearing officer. Articles 68–9 discuss special considerations for the victims of abuse. The second key piece of legislation

concerning migrants in Poland – the 2003 Decree on Foreigners – does not tackle the specific issue of guardianship for UAMAS (Government of Poland, 2003).

Following the 2005 agreement between the Office for Foreigners and Warsaw City Foster Home no. 9, the latter has a mandate to provide accommodation and social care to all UAMAS in Poland. An agreement between the University of Warsaw Legal Clinic and the Warsaw District Court allows the former to generate the lists of legal guardian candidates to be selected by the Judge.

Section 1, Article 179 of the Polish Family Code (*ibid.*) establishes that a guardian be paid from the budget or institution for guardianship. However, guardianship may be unpaid if the expenses incurred are considered negligible (section 2).

As of February 2012, all UAMAS legal guardians have been University of Warsaw law students. Depending on the date of their selection, they were either unremunerated students performing guardianship duties as part of their Legal Clinic class assignment, or Legal Clinic assistants paid from the EU Fund for Refugees (project Prawnicy na Rzecz Uchodźców 4). The assistants were paid a fixed monthly stipend, regardless of how many hours they put into their tasks (Dr Celina Nowak, verbal communication).

Since October 2011, social guardians (foster home staff) have been paid for by the Office for Foreigners. They are paid fixed monthly salaries, regardless of the number of students they take care of, the only stipulation being that their salary could be reduced if there are no UAMAS present in the foster home.

ROMANIA

If a UAM applies for asylum, the asylum procedure is suspended until a legal representative is appointed. The public servant who registers the UAMAS immediately requests that a legal representative be appointed. The General Directorate for Social Assistance and Child Protection (GDSACP), in the territorial area of the Romanian Immigration Office structure where the request for asylum was deposited, will appoint the legal representative.

The GDSACP will appoint a person with a legal or social assistance background from its own personnel, or from an authorized private body, to support the child's rights and to assist the child during the asylum procedure. This legal representative is not empowered by any authority to act in the name of the unaccompanied minor and is appointed by administrative order, rather than a judge's order. The decision officer must request that a legal guardian be appointed as soon as possible because the refugee status determination procedure is suspended until the appointment is made. In the meantime, however, the unaccompanied minor has the same rights as all asylum applicants.

SLOVAKIA

Institutional framework of guardianship

As defined by the Act on Socio-Legal Protection and Social Custody,⁵⁷ the body responsible for the socio-legal protection of children and social custody (which includes the provision of guardianship), is the Central Office of Labour, Social Affairs and Family. This central office coordinates, supervises and guides the operation of 46 Offices of Labour, Social Affairs and Family, as well as other socio-legal protection bodies responsible for the practical implementation of guardianship at the regional level.

With regard to UAM, the responsibilities of the Central Office of Labour, Social Affairs and Family are mainly the following:

- coordinating the provision of care to UAM;
- supervising and guiding the operations of children's homes and children's homes for UAM;
- participating in the fulfilment of commitments issuing from international agreements and conventions;
- implementing practical measures with regard to UAM return or reunification with family;
- participating in the implementation of measures in the field of equal opportunities and anti-discrimination;
- organizing and ensuring the training of staff at socio-legal protection and social custody institutions.

The Office falls under the auspices of the Ministry of Labour, Social Affairs and Family (MLSAF), which is responsible for the development of legal instruments in relation to the provision of care for unaccompanied minors.

In most cases, the labour office in Trenčín is appointed as the guardian for UAM as the minors are placed in the specialized children's home in Horné Orechové, which falls within its territorial competence.

Legal framework of guardianship

The Constitution (Act no. 460/1992 Coll.) ensures that international human rights conventions (specifically the United Nations Convention on the Rights of the Child (UNCRC), in this context), take precedence over national law. The Constitution and Act no. 36/2005 Coll. on Family guarantee protection of the rights and interests of all children below the age of 18, without bias of gender, nationality, skin colour or citizenship. This means that foreign minors are entitled to the same level of socio-legal protection as children with

⁵⁷ Section 73 of the Act on Socio-Legal Protection.

Slovak citizenship, in line with the constitutional principle of equal status for all children in need of such protection.

Act no. 305/2005 Coll. on Socio-Legal Protection of Children and Social Custody is the only act that defines the term UAM in Slovak legislation. The act defines measures of social and legal protection of children, in general, as well as those of UAM, in particular, including guardianship, the appointment of guardians, etc. It further describes the duties and competencies of institutions responsible for the socio-legal protection of children (the labour offices) in relation to UAM, and specifies the role and functioning of children's homes, including the specialized children's home for unaccompanied minors.

The Civil Procedure Act no. 99/1963 Coll. regulates court procedures with regard to the placement of UAM, the appointment of guardians, and supervision of the guardian's performance. Act no. 480/2002 Coll. on Asylum governs the asylum procedure, including the rights and obligations of asylum-seekers, as well as the rights and obligations of guardians who lodge asylum claims on behalf of UAM. Act no. 36/2005 Coll. on Family is concerned with the relationship between the child and his/her parents; however, it also contains provisions concerning the procedures to be implemented if the parents are unable to take care of their child, and regulates the different modes of foster care. The Act pertains to all minors – Slovak citizens and foreigners – while the Act on Socio-Legal Protection contains specific provisions relating to UAM.

Guardian responsibilities

The guardian is responsible for:

- contacting the embassy of the country of origin and carries out measures to implement their return (if applicable);⁵⁸
- submitting the application for asylum;⁵⁹
- participating in the search for the unaccompanied minor's parents;⁶⁰
- ensuring legal counselling and help for UAM.⁶¹

Within the asylum procedure, the rights and responsibilities of the guardian are defined by the Act on Asylum. According to this act, the guardian:

- has the right and obligation to be present at the interview carried out with the UAMAS in order to justify the minor's asylum claim; the guardian must inform the UAMAS about the purpose of the asylum interview and prepare him/her for it;⁶²
- has the right to participate in all other actions carried out within the asylum procedure;⁶³
- approves the medical examination of the UAMAS for the purpose of age assessment;⁶⁴

⁵⁸ Section 29, Article 1 letter b) and c) Act on Socio-Legal Protection.

⁵⁹ Section 29, Article 1 letter d) Act on Socio-Legal Protection and § 3 Article 2 Act on Asylum.

⁶⁰ Section 29, Article 3 Act on Socio-Legal Protection.

⁶¹ Section 29, Article 4 Act on Socio-Legal Protection.

⁶² Section 6, Article 6 Act on Asylum.

⁶³ Section 16, Article 2 Act on Asylum.

⁶⁴ Section 23, Article 7 Act on Asylum.

- proposes evidence necessary for the asylum procedure;⁶⁵
- provides information on the minor's country of origin, which could be of benefit to the UAMAS;
- has the right to inspect the case file before the asylum procedure is concluded and a decision is issued;⁶⁶
- has the right to provide a statement supporting the minor's asylum claim;⁶⁷
- is delivered the asylum decision;⁶⁸
- has the right to delegate a legal representative for the asylum procedure, through power of attorney;⁶⁹
- decides whether to file an appeal, in the case of a negative first instance decision.⁷⁰

The labour offices and their employees performing the tasks of guardianship are paid out of the State budget.

SLOVENIA

According to Article 201 of the Marriage and Family Relations Act, a minor who has no parents, or who is not being taken care of by his/her parents, must be given a guardian, appointed by the Centre for Social Work (CSW), to protect the child's benefits and interests. Article 202 of the same law stipulates that the guardian is responsible for taking care of the child as would a parent. A child in guardianship, who is over 15 years of age, may handle his/her legal affairs, with the approval of his/her guardian or the CSW.⁷¹ With reference to Article 178 of the Marriage and Family Relations Act, the purpose of guardianship is to ensure the protection and development of a child's personal integrity, through the provision of food, medical care and training for self-sufficient living, as well as the protection of the child's financial means, rights and benefits. The guardian should ensure that the child has appropriate care, accommodation, education, language support and provisions for his/her health.⁷² According to section 2 of Article 190 of the Act, the guardian must consult with the child about all important decisions. Guardianship ends when the child turns 18.

The appointment of a guardian and his/her legal responsibilities depend upon the legal situation of the unaccompanied minor. The guardianship for UAMAS is prescribed and regulated by the International Protection Act (IPA) (section 1.1). In accordance with Article 179 of the Marriage and Family Relations Act, the position of guardianship is voluntary and honorary, although guardians are reimbursed for travel expenses incurred while performing their guardianship role.

⁶⁵ This right is not defined explicitly; it is the general right of asylum-seekers.

⁶⁶ Section 17, Article 2 Act on Asylum.

⁶⁷ Section 33, Article 2 Act on Administrative procedure.

⁶⁸ Section 20a, Article 1 and § 17b art 5 Act on Asylum.

⁶⁹ Section 17a, Article 1 Act on Asylum.

⁷⁰ See footnote 68.

⁷¹ Article 203 of the Marriage and Family Relations Act.

⁷² Article 194 of the Marriage and Family Relations Act.

Although the IPA defines such reimbursements, the criterion for measuring these amounts has not been legally established (Slovene Philanthropy, 2011: 13).

Slovene Philanthropy (SP) has for years tried to get guardianship established as a professional and paid function, as it became clear that the task was too complex and demanding to be carried out by unpaid volunteers (ibid., p. 55).

As documented by SP in a recent report (Slovene Philanthropy, 2010: 41), most guardians and relevant experts deemed it necessary that the guardianship function be paid, given the responsibilities and challenges involved and the existing inadequate regulations. The report also revealed that most unaccompanied minors were not aware that their guardians performed their function on a voluntary basis.

4. APPOINTMENT, DURATION AND TERMINATION OF GUARDIANSHIP/TRUSTEESHIP

BULGARIA

The guardianship/trusteeship authority is the mayor of the municipality in which the child is residing. For children aged 0–13 years, it is obligated to appoint a guardianship council (made up of a guardian, a substitute for the guardian and two counsellors) and, for children aged 14–18, a trustee and a substitute for the trustee, within 30 days of being informed of an unaccompanied child residing in the municipality. Whenever guardianship is established for a child, the Social Assistance Directorate is also consulted,⁷³ as it is obliged to assist the appointed guardian/trustee.

The guardian/trustee must submit a written report to the guardianship council by the end of February each year, which is then assessed by the Social Assistance Directorate. Failure to submit a report or to appear before the guardianship council for non-excusable reasons results in a fine of BGN50–500 (approximately USD34–340) being imposed by the guardianship and trustee authority.

CZECH REPUBLIC

The previous section presented the four different types of guardian that exist in the current guardianship system in the Czech Republic. This section provides information regarding the guardians' appointment, as defined by Czech law.

The **guardian for administrative proceedings** is appointed to represent the minor, since a minor cannot legally act on his/her own behalf.

The appointment of a **residence guardian** is regulated by Section 89 of the Law on Asylum, which states:

(1) If an applicant for international protection is an unaccompanied minor, a guardian shall be appointed by the court to protect his/her rights and legally protected interests related to his/her stay in the Territory, in accordance with a special legal regulation. With regard to the protection of a minor, the court shall, on the initiative of the Ministry, appoint a guardian without delay by way of a preliminary ruling. The proceedings on the appointment of a guardian shall not be subject to any special legal regulation (13a).

⁷³ The Social Assistance Directorate is a specialized authority that implements the policy of child protection within the municipality in which a child protection department is established (Article 20 of the Law on Child Protection).

(2) The function of a guardian shall be performed by a relative of an unaccompanied minor who is staying in the Territory; if there is no such person or if such person cannot be entrusted with the function of a guardian, the function of the guardian shall be performed by another suitable natural or legal person or a municipal authority with extended powers, according to the registered address of the unaccompanied minor.

The appointment of a **guardian for detention** is determined by section 124 of the Law on Residence of Migrants. "If there is a decision of detention of unaccompanied minor in process (§ 180c), the police must appoint the guardian immediately. The police shall inform the unaccompanied minor and explain the tasks of the guardian to him/her." In the past, the appointment of this type of guardian had little meaning as the time frame of the appointment had not been defined by the Law. It was up to the police to decide when the guardian should be appointed. In practice, there had been cases when the police had appointed the guardian to the UAM weeks or months after his/her detention – when the deadline for filing a suit had already passed (Jeřábková, 2010). This problem has been resolved by the amendment of the Law on Residence of Aliens, which stipulates that the Immigration Police is obliged to appoint a guardian for detention for a UAM without delay.⁷⁴ At present, the guardian is appointed for the UAM immediately after detention, regardless of whether the minor has applied for international protection.

A **guardian for administrative expulsion** is appointed in accordance with section 119, Article 8 of the Law on Residence of Migrants, as follows: "If there is an unaccompanied minor (§180c), the police shall appoint the guardian for the expulsion process without delay. The police shall inform the unaccompanied minor about the guardian and shall explain to the unaccompanied minor the guardians' tasks". As mentioned in the previous section, there have been only a few cases of this type of guardian being appointed.

In the Czech Republic, unaccompanied minors cannot choose their guardians, nor can they get the list of available guardians. The minors would usually not know the guardians on the list and would be unable to assess them. However, the provision of guardianship services may be terminated and a guardian may be replaced if a complaint is lodged by a minor (IOM, 2011).

HUNGARY

Once an asylum application has been made, the OIN makes a decision regarding the care and accommodation of UAMAS (which includes a request for a guardian to be appointed) and informs the 5th District Budapest Guardianship Office. The case guardian is appointed within 24 hours to 15 days of UAMAS being accommodated and interim care arrangements being decided upon, and the guardian accompanies the minor throughout the asylum

⁷⁴ Law no. 427/2010.

procedure. Following status determination and at the same time as the child is taken into permanent care, the mandate of the case guardian is terminated and a professional guardian (the head of the child protection residential unit) is appointed.

Given that all UAMAS services are centralized and that the number of UAMAS is relatively low, only two case guardians are appointed. Minors therefore do not have the option of choosing their guardian. However, there have been no reported cases of refusal or non-cooperation between UAMAS and the case guardian. It is conceivable that, at some point, a former unaccompanied minor may contact the Guardianship Office regarding his/her dissatisfaction with the guardian's activity. In such cases, the Guardianship Office would have to investigate the complaint.

According to the practice of the past few years, those UAMAS whose asylum procedure could not be completed before they turned 18 were transferred to an adult reception facility. With regard to the non-appointment of guardians, the Act on Asylum has been amended to provide for this, as follows: "If the person seeking recognition is an unaccompanied minor, the asylum authority shall, without delay, provide for the appointment of a representative ad litem (case guardian) serving to represent the minor, except when the person seeking recognition is likely to reach adulthood before the asylum authority would take the in merit decision."⁷⁵

POLAND

*Legal guardians*⁷⁶

The Warsaw University Legal Clinic became involved in guardianship in the mid-2000s, responding to a request from a UNHCR representative that law students from the Warsaw University Law Clinic assume guardianship for migrants (both minor and adult) seeking asylum in Poland. These Legal Clinic students are now the most likely guardians to be assigned to UAMAS.

The Warsaw University Legal Clinic could probably be best described as an honours class, whereby law students in their third, fourth or fifth year take coursework and work on real-life legal cases. In order to qualify, students must submit their CVs and motivation letters to the Clinic staff. The profile of students varies. In recent years, those working with UAM have been fourth-year students with an interest in international relations and working with people with different cultural backgrounds. Some have taken internships before and wish to deepen their practical experience. Others perceive the programme as an opportunity to gain practical experience.

⁷⁵ Act on Asylum § 35 (6).

⁷⁶ Information in this section is based on an interview with the Legal Clinic supervisor, Dr Celina Nowak.

Guardian candidates must submit their applications by May. The Legal Clinic staff members assess the applications and submit them to the Warsaw District Court judge in charge of legal guardians' selection. Since many of the students are not available to work during the summer, the Warsaw Clinic staff members (and the students themselves) submit the names of potential clinic assistants (the remunerated staff). Unlike regular students, who are not paid for their service, student assistants are remunerated and thus available to assume guardianship positions at any time of the year.

The Legal Clinic seeks guardians that will commit to working with a minor throughout the entire case. Thus, if a guardian is to be selected at the end of the summer, the Clinic would rather wait until the students return from summer vacations in October and assign a student guardian then. However, if this involves a long waiting period, an assistant can always be assigned. Most students commit to being available for the entire case. To start or interrupt the service, legal guardians must receive clearance from the judge. In the case of a misfit between the legal guardian and the child, the former may select a representative to work on his/her behalf. This procedure has arisen as a result of guardians having linguistic difficulty communicating with asylum applicants. If selecting a legal guardian representative is not likely to bring the required results, UAMAS can also ask for a new guardian. In both cases, a judge's clearance is necessary. The person most likely to help the child voice any concerns about a guardian is a social guardian from the foster home.

What challenges guardianship is the lengthy asylum adjudication process, which can take up to 12 months or more, if minors decide to appeal. This works against the applicants, most of whom are aged 17 or 18. If they begin the asylum procedure at the age of 17, it's possible that their case will not be adjudicated until they turn 18, which means they lose the right to be assessed as a minor and to be subject to the principle of the best interests of the child.

According to Jolanta Chmielewska, one of the social guardians, it is crucial that UAMAS work with the same legal guardian throughout the entire procedure. In some cases, legal guardians leave the process, while others remain personally committed to the case after their UAMAS turn 18. Sometimes, guardians appear uncommitted and insufficiently prepared and may only see the migrants during the interview. At other times, they demonstrate high levels of commitment and engagement. All guardians are supervised by the Legal Clinic supervisor.

Social guardians

Unlike the legal guardians, their social counterparts (who are employed by the foster home) work year-round. Their background should meet the general criteria for work in a Polish foster home (degree or professional experience working with children). They should be capable of working in a diverse environment and communicating in a foreign language.

UAMAS are entitled to State-provided legal and social guardianship until the age of 18. Children who are not granted refugee status should leave Poland (since 2009, seven UAMAS have left Poland through a voluntary return programme). In most cases, though, they are granted protected status, allowing them to stay until the age of 18. A number of children who were approaching adulthood and could not count on having their asylum claim recognized have fled the foster home. According to the social and legal guardians, a significant number of UAMAS approaching the age of 18 disappear, thereby prematurely giving up their right to guardianship (Chmielewska and Nowak, verbal communications).

Children may only remain in the foster home as long as they are underage and in the asylum application process. To facilitate the transition period, social guardians prepare children for the transition into social and legal independence. Children who are almost 18 can live in an adult asylum-seeker centre or seek independent housing. If they opt for independent housing, they are usually offered a couple of week-long grace periods during which they can stay at the foster home, following their eighteenth birthday (Chmielewska, verbal communication). Furthermore, they can represent themselves or seek a legal representative, and a number of them express an interest in doing so. (The Helsinki Foundation and the Association of Legal Assistance are two NGOs that offer migrants free legal guardianship following their entry into adulthood.) The legal guardian supervisor recommends that they keep the legal guardians that they have worked with so far. Whether they continue this relationship or not often depends more on the legal guardians than on UAMAS. Student guardians are encouraged, but cannot be legally bound, to work with UAMAS until their case is finished. Some continue, but others may not want or be able to do so. The Legal Clinic tries to avoid recommending prospective legal guardians in their final (fifth) university grade (Nowak, verbal communication) in case they leave upon graduation.

ROMANIA

The appointment of a legal guardian is made by the General Direction for Social Assistance and Child Protection (GDSACP). It appoints a person with a higher education in law or social assistance, from its own staff or from an authorized private organization, to uphold the child's rights and participate with him/her in the entire refugee status determination procedure. The document of appointment is sent to the Romanian Immigration Office (RIO) decision officer, who includes it in the asylum-seeker's personal file. If it is determined that the person appointed by the GDSACP does not fulfil his/her obligation to appropriately protect the interests of the child or to carry out required tasks in good faith, the RIO may request that the guardian be replaced.

SLOVAKIA

In accordance with section 80a of the Act on Stay of Aliens, the competent police department (Department of Border Control of the Police Force Presidium or the Department of Alien Police of the Police Force Presidium) immediately notifies the Office of Labour, Social Affairs and Family in the territory in which the unaccompanied minor was found. In line with the Act on Socio-Legal Protection,⁷⁷ the Office must immediately file a proposal for a preliminary decision with the court to specify the location where the minor will be placed, which would generally be the specialized children's home in Horné Orechové, near the town of Trenčín. This procedure applies also during weekends and on national holidays as the courts provide a 24-hour service, seven days a week.

Once UAM are placed in a children's home (usually within 24 hours of being found by the Police), they are also provided with a legal guardian, which is the territorially competent Office of Labour, Social Affairs and Family. Nowadays, the court's decision on placement in a children's home usually also contains the decision on the appointment of the legal guardian (Renáta Brennerová, verbal communication). If not, such a decision is issued within 30 days.

The Office delegates an employee to pursue all activities and tasks in relation to guardianship. The minors cannot influence who their guardian will be. The employees (usually at the Trenčín or Medzilaborce labour office) authorized to act as guardians are social workers, and the provision of guardianship to UAM is only one of their tasks. This, according to Chudžíková and Fajnorová (2010: 28), results in a lack of information provided to children, a lack of communication between the guardian and the child, a lack of personal contact and not enough time to conduct all the necessary activities properly.

In principle, guardianship starts at the moment of appointment by the court and ends when the minor reaches the age of majority, when it terminates automatically (ex lege). Before this time, the guardianship may terminate for the following reasons: 1) family reunification takes place (the child's parent or other adult relative, into whose care the child can be entrusted, is found); 2) a long-term guardian is appointed (for example, when the child is granted asylum); 3) UAMAS leaves Slovakia (for example, he/she disappears or is reunited with a family claiming asylum in a different Member State in line with the Dublin II Regulation procedure); or 4) the asylum procedure ends – when the child is granted asylum and gets placed in a children's home, other than Horné Orechové.

⁷⁷ Section 27, Article 1.

SLOVENIA

The decision on the guardian's appointment is issued by authorized Centres for Social Work (CSW), which are public institutes within the Ministry of Labour, Family and Social Affairs.

According to Slovene Philanthropy (SP), "It is important for the child to have the possibility to complain about a certain situation or guardian. The information derived from a complaint procedure can help to improve the quality of the work and it protects the child" (Slovene Philanthropy, 2010: 61). The right to complain corresponds to Article 12 of the Convention on the Rights of the Child, which states:

*"States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."*⁷⁸

In Slovenia, according to the Marriage and Family Relations Act, the CSW must respect the wishes of the child when appointing a guardian.⁷⁹ This is not the current practice, however, as UAMAS do not have the option of selecting their legal guardian, partly because the number of legal guardians is very small.

If a child is not satisfied with the work of the legal guardian, he/she can complain to the head of SP (if their legal guardian is a representative of SP) or the head of AH who, in turn, informs the competent CSW. If the child wants another guardian, the CSW must begin an assessment procedure in order to establish the grounds for a change, although no such request has been made, thus far. Several studies have revealed that most UAMAS are satisfied with their legal guardian, largely because the legal guardian is always available to them and is kind and understanding (Slovene Philanthropy, 2010) and 2011). The studies also revealed that some of the interviewed UAMAS do not have sufficient information about who to turn to if they wanted to complain about their guardian.

The current procedure is that a guardian is appointed to every unaccompanied minor soon after his/her arrival. In most cases, this is done during their accommodation at the Centre for Foreigners.⁸⁰

There are no waiting lists for UAMAS in need of a guardian in Slovenia. This good practice reflects the right to special protection and assistance of an unaccompanied child and the obligation of the State to ensure that the child is cared for.⁸¹

⁷⁸ Article 12 of the United Nations Convention on the Rights of the Child (UNCRC).

⁷⁹ Article 183 of the Marriage and Family Relations Act.

⁸⁰ The Centre for Foreigners in Postojna is the only accommodation facility in Slovenia that accommodates persons who are categorized as irregular migrants. The Police temporarily accommodate UAM who have entered the State irregularly, at the special department responsible for minors at the Centre for Foreigners. The centre is a detention facility where the movement of detained persons is de facto limited – aliens are limited to the centre's facility and to the surrounding area, according to the centre's house rules (Slovene Philanthropy, 2010: 47–48).

⁸¹ Article 20 of the United Nations Convention on the Rights of the Child (UNCRC).

When UAMAS turn 18, they are no longer entitled to a legal guardian as they are considered adult migrants. However, in practice, they still receive a lot of support from their former guardians and other SP representatives, since their situation does not change much after reaching the age of majority. The main difference is the fact that they can no longer formally rely on guardians for assistance with all their procedures and must start to take care of their own business and become more independent (Slovene Philanthropy, 2011: 18). The guardians usually try to prepare a child for the transition into adulthood – largely through conversations and by giving the child increasing levels of responsibility.

“In the very beginning, I tell a child that, according to the Slovenian legislation, I’m officially his guardian until he turns 18 years, so that he is familiar with this information. When he is approaching [adulthood], this becomes something I mention more frequently in our talks, so in some way I am preparing him [for] this fact. We talk [about] what this means and what is going to be different and things like that. However, we always continue with the help and support in the same way... there are no bigger changes except that I encourage a child even more to lead certain things. Yes, the difference is that officially I am no longer responsible for certain things, however in practice there are no significant changes” (Slovene Philanthropy, 2010: 37).

SP strives for children to have the same guardian during all legal procedures, although this is not always possible.

5. FREQUENCY OF CONTACT BETWEEN GUARDIANS AND UNACCOMPANIED MINORS

BULGARIA

Contact between social workers and unaccompanied minors is as frequent as deemed necessary for each particular situation. All of the social worker’s activities are coordinated with the head of the child protection department in the relevant municipality and with the Director of the Social Assistance Directorate. The key role of the social worker is to monitor the case until its final resolution, from the viewpoint of the Law on Child Protection – that is, until the child’s parents are found, until the child reaches the age of majority, or if the child disappears, which often happens. In such cases, the guardianship is considered terminated and child’s case is closed, following a report by the social worker.

CZECH REPUBLIC

Under the current framework, a guardian is obliged to meet his/her ward at least once every three months.⁸² This frequency of contact is, however, insufficient for establishing a close and trusting contact and relationship with a child. One minor stated: “I have a guardian since my arrival; however, I feel he does not help us enough, that he visits us rarely – only once every three months” (IOM and Organization for Aid to Refugees, forthcoming). A low frequency of visits may cause the child to have an unclear idea of the guardian’s role. This was mentioned by one minor: “I am not sure about the role of a guardian. There are things that cannot be done by a minor. Perhaps this is what a guardian is good for” (ibid.). Due to a lack of time and capacity, however, more individualized attention is not possible. Even getting to the Facility for Foreign Children, which is located about 60km outside Prague, is problematic for many guardians.

As mentioned earlier, the Socio-Legal Protection of Children Authority always delegates authority regarding asylum application processing to NGO lawyers, on the basis of the power of attorney (usually to the same person that was appointed as a guardian for administrative proceedings, expulsion or detention). This person visits the Facility for Foreign Children approximately once a week to provide legal counselling regarding asylum application proceedings. There is therefore frequent contact between a minor and his/her lawyer.

⁸² Section 29, Art. 2 of the Law on Social and Legal Protection of Children.

The other types of guardian (namely, guardians for detention, deportation or administrative proceedings) usually only have temporary functions, linked to specific proceedings. These functions are fulfilled by NGOs, who are not legally obliged to visit their clients at least once every three months. It is therefore up to the guardian to decide on the frequency of visits, which is usually determined by the respective guardian's availability and good will.

HUNGARY

The contact between UAMAS and their guardian is one of the most important practical developments introduced by recent law amendments that became effective on 1 May 2011. UAMAS are accommodated in a mainstream child protection residential unit and their care and representation are provided in line with child protection guidelines. However, 2011 appeared to be a year of transition, with new actors, new procedures and a coherent and consistent practice being developed.

According to the new practice, the case guardian and the subsequently appointed guardian are members of the staff in charge of the care of UAMAS. As a professional team, they ensure that there is ongoing and regular contact, as well as exchange of information, between the care staff and the guardian. Furthermore, the head of the residential unit (who, at a later stage, acts as the guardian for underage fUAMAS), organizes, monitors and supervises the work of the care staff.

In contrast to the previous practice, daily contact between UAMAS and their legal representative can be assured from the very first day of the children's placement. The main duty of the case guardian is to represent the child in the asylum procedure. He/she must also stay in regular contact with the asylum authority, to organize the transport of UAMAS to different assessments, hearings, medical examinations etc. and to accompany and represent UAMAS at these proceedings.

POLAND

Legal guardians

Although the border authorities request that a legal guardian be appointed as soon as a minor enters the asylum procedure, it may take up to three weeks for the Office for Foreigners and then the judge to finalize the appointment. To some extent, this delay may be due to the need for the guardian candidate to accept the appointment (Chmielewska, verbal communication).

There is no formal requirement in terms of the frequency of contact between a legal guardian and UAMAS. Formally, legal guardians are only supposed to inform their assigned UAMAS

of the date of the hearing, explain the purpose of the hearing and attend it (Government of Poland, 2003: Articles 64–65). Whether and how frequently a guardian meets with the child in the meantime depends on a whole range of factors, such as the guardian's availability, the complexity of the case, and ease of communication. Migrants able to communicate in a language known by the legal guardian have a somewhat higher chance of meeting with the guardian more often. According to the legal guardians' supervisor, guardians can make up for the infrequent contacts by researching their cases well (although such research often calls for good communication with UAMAS). In some cases, migrants and guardians may meet for the first time at the hearing (Chmielewska, verbal communication).

*Social guardians*⁸³

Given that UAMAS are transported to the foster home directly from the border, they meet their social guardians immediately upon arrival in Warsaw. UAMAS can contact their foster home social guardians directly, between 7 a.m. and 9 p.m. on weekdays. Contacts are physically easy as the guardians' office is on the floor where the children live. The guardians have an open-door policy allowing children to pop in and out at will. After hours, they can refer to the night-duty guardians assigned to all foster home children.

Generally, foreign children have up to three weeks to become acclimatized, following their arrival at the centre. During this time, they are subject to medical and language examinations as well as general orientation. By the end of the third week, children are ready to go to school and to meet their legal guardian. The three social guardians assist children with their daily tasks, in addition to explaining the asylum interview procedure. However, the extent of their services depends on the personal relationship they develop with the children rather than on a formal job description (children refer to their social guardians as *aunt* or *uncle*). Officially, the legal guardian prepares the children for the asylum interview process, but if the service provided by a legal guardian is insufficient, the three social guardians fill in. They may also participate in the asylum interview, but only passively.

When children check into the foster home, one of the top priorities for the social guardians is to assign children to the appropriate school and class. Polish law obliges all minors, be they Polish or foreign, residing in Poland to attend school until the age of 18. Polish public schools are free, but few have developed curricula or built resources to accommodate foreign children. Between 2005 and 2011, a semi-private high school in the vicinity of the foster home benefitted from EU funds (via the Refugee 4 – Integration of Foreigners in Poland Project) to create a 'multicultural' class. The social guardians were able to successfully include their pupils in this class, and this had the positive impact of expanding social guardianship to include school teachers with an above-average ability and willingness to care for unaccompanied foreign minors. Some social guardians have suggested that the Polish education system take a more proactive approach to adjusting

⁸³ Information in this section is based on an interview with the Legal Clinic supervisor, Dr Celina Nowak.

to the needs of foreign children or that funds be made available for the children to attend semi-private schools. Apart from free education (up to the age of 18), UAMAS are entitled to free health care (Government of Poland, 2003, Article 63). While staying at the foster home, they receive pocket money and all meals.

Foreign children may attend vocational training. The trainings last two years and are organized by *Ochotnicze Hufce Pracy* (Volunteer Work Teams). These trainers add to the network of social guardianship available to foreigners in Poland. However, their role is less significant than that of the foster home workers.

ROMANIA

Reception, registration and accommodation

When UAMAS submit an application, it is processed at the central headquarters of the RIO. The children then receive a temporary ID and free transportation to the RIO. In the case of a third-country national minor under the age of 14, his/her interests will be protected by a legal representative and, in the absence of such a representative, one is appointed, in accordance with Romanian law. After the age of 14, the minor can submit the application personally and can, by law, be appointed a legal representative. A personal file will be created (including the child's application, photo and fingerprints) and the following data will be collected: name, date of birth and country of origin, names of the parents, status (unaccompanied by parents, relatives, others, etc.) and the nature of the relationship, languages spoken, and level of education attained. UAMAS are informed about their rights and obligations and about the asylum procedure. Those under the age of 16 are accommodated in GDSACP centres or in the centre of an authorized private organization. In the event that their application for protection is denied, UAMAS over 16 who do not have the means to support themselves can be accommodated in the RIO reception and accommodation centres for up to 15 days after the issuance of a final and irrevocable decision to reject the application for protection.

Rejection of application

If an unaccompanied minor's application is rejected by a final and irrevocable decision, the GDSACP takes legal action to establish a measure of protection for the minor, requesting that the courts place the child in a special protection service. Subsequently, the Department for Migration, within RIO, is informed about the child's situation and the rejection of his/her application. This department, together with the GDSACP, has to resolve the situation, while respecting the rights of the child. The protection measures remain in place until the return of the child to the country of residence of the parents or to the country where other family members have been identified as willing to receive the child.

Granted protection

In order to accommodate minors who are granted some form of protection, the age of the minor is taken into consideration: those under 16 years of age are accommodated in centres belonging to the GDSACP, and those over 16 may be placed in either the aforementioned centres or in centres belonging to the RIO. For the latter age group, the choice is made in consultation with the legal representative appointed by the National Authority for the Protection of Child Rights. These UAM will receive residence documents and have the right to stay in the centres until they are 18.

Minors can be enrolled in special integration programmes. Within the Romanian education system, minors granted protection in Romania benefit from a free introductory course to the Romanian language for the duration of one school year. During this time, they participate in theoretical, practical and recreational learning activities in normal schools, without their presence being registered in official documents. At the end of the introductory Romanian language course, an evaluation committee assesses the children's level of competency in the Romanian language and decides on the appropriate grade in which the minors should be enrolled. The children also receive a personal identity number.

SLOVAKIA

UAMAS usually have the same guardian throughout their stay in the Slovak Republic, or at least until their status is determined. Theoretically, this provides stability for the minor and ensures that the guardian is familiar with the case. In practice, however, it may impede contact and communication between the guardian and the minor once the minor applies for asylum and moves to other facilities located far from Trenčín, where the guardian is usually based. Once the asylum claim has been lodged (by the guardian, on behalf of the minor), UAMAS are moved from the children's home in Horné Orechové to the facilities run by the Migration Office (the Reception Centre Humenné and, later on, the Opatovská Nová Ves Asylum Centre), since the guardian has limited resources for travelling to meet the child, personal contact with the minor is infrequent (Chudžíková and Fajnorová, 2010: 30). However, the minor has a phone number and/or e-mail address for the guardian and can contact him/her, if necessary. According to the Asylum Act⁸⁴ the asylum-seeker has the right to meet his/her guardian without the presence of third parties, and the Ministry of Interior is obliged to assign suitable premises for such meetings.

The minor's guardian also has a duty to be present at interviews conducted with the minor as part of the asylum procedure. In the past, however, the labour office in Trenčín often delegated this task to the representative of the local labour office. The delegated guardian therefore often saw the child for the first time, at this meeting (ibid., p. 27). According to

⁸⁴ Section 40, Article 2.

information provided by the Ministry of Labour, Social Affairs and Family in November 2011, this practice has since changed, and the guardian now travels from Trenčín to attend the interview.

As is the case at the Horné Orechové centre, the daily needs of the minor are catered to by the social workers in the asylum facilities – first, at Humenné, for quarantine and medical examinations (lasting up to 30 days) and then at Opatovská Nová Ves, for the rest of the asylum procedure. Since 2010, the Opatovská Nová Ves Asylum Centre has been designated exclusively for unaccompanied female minor asylum-seekers and asylum-seeking families with children. Social workers from the Migration Office or NGOs do not have specific cases assigned to them but work on shifts and tend to the needs and requests of asylum-seekers as they arise.

UAMAS with granted subsidiary protection or asylum and recognized refugees are placed in the specialized children's home or a mainstream children's home. At this stage, a different guardian may be appointed.

SLOVENIA

UAMAS meet their legal guardian prior to submitting their application for asylum, which usually takes place a day or two after their arrival at the Asylum Home. As mentioned earlier, most guardians and other experts feel that a guardian should be appointed and should meet with UAMAS immediately after a child enters the country. They also felt that the first meeting with a child should occur much sooner than it currently does (Slovene Philanthropy, 2010: 16).

Until March 2011, the representative of the AH informed CSW and SP about the presence of UAMAS in the AH and about the date and the hour of lodging the application for international protection. After March 2011, only the CSW is informed about the presence of UAMAS in the AH. Most UAMAS had no understanding of the role and tasks of the legal guardian upon first contact and some even for months after (Slovene Philanthropy, 2011: 15).

The frequency of contact between UAMAS and their guardian varies, depending on the case. While a child whose guardian is an SP representative meets and consults with the guardian (in person or by phone) several times a week, a child whose guardian is a CSW employee meets with the guardian only after the asylum application has been submitted.⁸⁵

Some guardians participating in qualitative research carried out by SP have commented on the lack of time they have to introduce themselves to UAMAS, to explain who they are

and to explain the process of formal application for asylum (Slovene Philanthropy, 2010: 16). Of the five guardians interviewed, three of them said that “the frequency of contact is of great importance, since it contributes to the level of trust with the child and provides a potential opportunity to create ‘bridges’ between them, the children and the community”; they therefore have contact with a child several times per week (ibid., p. 19).

“It is very difficult to talk in general. There are periods when it might happen that some children come to my office every day, while others [come] several times a week. There is no rule. For me it is very important that, if I don't see him, I'm at least in contact with the social service at the Asylum Home to make sure everything is ok” (ibid., p. 18).

The level of help and support and the frequency of contact between SP guardians and fUAMAS remain the same as before the minor reached the age of majority. The guardians stay in contact with the children and are available whenever (former) children have a problem, including on the weekends and at night. Therefore, unofficially, little actually changes after the child has turned 18. Likewise, the frequency of contact does not change after UAMAS are granted international protection status (Ibid., p. 37).

⁸⁵ Information based on a consultation with a guardian who is a representative of SP.

6. COMPETENCIES AND STAFF DEVELOPMENT

BULGARIA

According to an agreement between SAR and the Social Assistance Agency, a letter is sent by SAR to both the Social Assistance Directorate and the local department for child protection at the place where the child is residing, informing them about the existence of a registered unaccompanied minor. The Director of the Social Assistance Directorate issues an order for the appointment of a representative (a social worker) of the Directorate during the procedure for granting protection. The social worker has advisory functions during the procedure and receives a salary from the institution employing him/her. However, the social worker receives no additional payment for serving in an advisory capacity during the asylum procedure to unaccompanied asylum-seeking children.⁸⁶

The social worker considers the unaccompanied child as a child at risk and visits the place where the child has been placed – usually a Registration and Reception Centre (RRC) – to start a case for the child. When communicating with the child, the social worker may use the services of SAR translators/interpreters. All of the social worker's activities are coordinated with the head of the child protection department in the relevant municipality and with the Director of the Social Assistance Directorate. The key role of the social worker is to monitor the case until its final resolution, as per the Law on Child Protection – that is, when the child's parents are found or the child reaches the age of majority, or if the child disappears. In such situations, the case of the child is considered terminated and is closed, following a report by the social worker.

If the unaccompanied child changes residence within the same district, the case is not transferred to another social worker. If the unaccompanied child changes residence to another settlement, the case is transferred to a social worker in the child's new place of residence.⁸⁷

CZECH REPUBLIC

Under the Family Act, the rights and obligations of a guardian are to be specified by the court, with a view to securing the full protection of a minor's interests. However, neither the court (in the case of the residence guardianship) nor the MOI or Alien Police (for other types of guardianship) fulfil their obligations. A detailed description of a guardian's required competencies is included in internal documents, such as the directives of the Ministry of Labour and Social Affairs (MLSA) or relevant legislation.

⁸⁶ Information provided by the Integration Centre of SAR.

⁸⁷ Information provided by the head of Child Protection Department, Municipality of Mladost, Sofia.

The effectiveness of the institution of guardianship depends, to some extent, on the personal qualities of a guardian – namely, on his/her diligence, willingness to learn, knowledge and personal experience in working with UAMAS. However, the lack of training being offered to the social workers of institutions responsible for the social and legal protection of children is a problem. Thus far, there has been no training for guardians in the Czech Republic and only a few people are familiar with the issues. This situation, according to the CAUAM project report, is no longer sustainable. In the report, one expert described the current situation as follows: "The social workers of other institutions should ... be aware about whom to contact in case that they do not know how to deal with an unaccompanied minor. I understand ... that they only deal with a foreigner once every three years; however, they should at least know whom to call for advice" (IOM and Organization for Aid to Refugees, forthcoming).

HUNGARY

In Hungary, the guardianship of UAMAS is professionalized. Guardians' responsibilities and tasks are outlined in different legal instruments and transposed in their job descriptions. As previously mentioned, the legal representation of UAMAS is a two-part procedure. Initially, a temporary legal representative (case guardian) is appointed to represent the child during specific procedures such as the asylum procedure. Following status determination, a permanent guardian is appointed to ensure the representation and the well-being of the child until he/she comes of age. Both professionals are employees of the child protection institution, nominated under the current practice to accommodate and look after UAMAS. For UAMAS, a child protection officer is appointed as case guardian but, for fUAMAS, the head of the residential unit serves as guardian. The range of formal qualifications required for entering these positions is set out by law. Both positions are linked to degrees in law, social work, pedagogy, psychology or sociology, among others.⁸⁸

Systematically organized training for guardians dealing with UAMAS is not available in Hungary. NGOs active in the field of asylum and/or UAMAS offer various training courses, but they are not held regularly and staff members' commitment and willingness to participate in them have an impact on the effectiveness of the courses.⁸⁹

All child protection practitioners need to register or be registered by their employers with the National Institution of Family and Social Policy.⁹⁰ They also have a duty to attend continuous professional education/training.⁹¹ Each professional must accumulate 60–80 credits within a period of five years. It is the responsibility of the employer to provide access to, and to cover the costs of, the training. All trainings must be accredited by the National

⁸⁸ Second Annex to 15/1998 (IV 30) Welfare Ministry Decree.

⁸⁹ In 2011/2012, HIA is offering a training programme for staff working with UAMAS and fUAMAS, as part of an ERF project.

⁹⁰ 8/2000 (VIII 4) Social Affairs, Family and Labour Ministry Decree 1§.

⁹¹ 9/2000 (VIII 4) Social Affairs, Family and Labour Ministry Decree 1§.

Institution of Family and Social Policy. However, only two trainings and two conferences regarding the general tasks and development of guardians in child protection were listed in the Institute's training catalogue for 2011.⁹²

POLAND

According to one social guardian in Poland, the quality of legal guardians varies over time and between guardians (Chmielewska, verbal communication). In recent years, the quality has improved, but much still depends on guardians' ability to commit to their cases and to communicate effectively with migrants.

The Polish Family Code enumerates the qualities of people who cannot become guardians (Government of Poland, 2012, Article 148), but does not specify the criteria for becoming a guardian. The selection of social guardians depends on the facility employing them (*ibid.*, Article 149), which, in the case of UAMAS, is Warsaw Foster Home no. 9.

All three social guardians have had education and training and/or previous experience in child care. They have not been specifically trained to work with foreigners, because the migration phenomenon is new to Poland and it is only now that the second generation of migrants to Poland is becoming visible. The social guardians (as a team) can communicate with children in Polish, Russian, English and French. When a child does not speak any of these languages, they seek help from the foster home alumni, or provide the child with extra Polish language tutoring (Chmielewska, verbal communication).

The profile of asylum-seekers is likely to have an impact on the profile of guardians required. The larger the social, economic and education gap between the Polish and foreign children, the more qualified the guardians need to be. For instance, illiterate youngsters, who received little education at home and cannot communicate in any of the common languages, may challenge the effectiveness of legal guardians. Likewise, the children with more complex migration histories may challenge the legal guardians – particularly those who are volunteers. Already, by 2010, social guardians had to ask for outside help in communicating with migrants, and the knowledge of student legal guardians sometimes proved insufficient.

⁹² For the list of available trainings provided under the auspices of the National Institution of Family and Social Policy, see: http://www.szmi.hu/kepzesi-igazgatosag-1_6/tovabbkepzesi-es-szakvizsga-foosztaly--orszagos-szocialis-szakmai-tovabbkepzesek-2_48/tovabbkepzesi-jegyzekek-2011-4_167 (accessed on 13 March 2012).

ROMANIA

Public authorities or private bodies may establish, organize and develop services and special child protection services (according to the individualized protection plan, which documents the planning of services, benefits and special child protection measures, based on the psychosocial evaluation of the child), only if they have obtained a licence issued from the GDSACP. The licence is granted when minimum standards for services developed for special child protection are met. The standards are developed by the GDSACP and approved by order of the Secretary of State, and regular inspections are carried out to ensure that the public authorities or private bodies meet these legal standards. Conditions and procedures for the granting, withdrawal, cancellation or suspension of a licence are referred to in Law no. 272/2004 and the conditions and procedures for conducting inspections pursuant to the law are established by government decision.

Initial training in the field of child protection is mandatory for all of those who have power of decision concerning the child. The GDSACP, together with the Ministry of Education, Ministry of Labour, Family and Social Protection, Ministry of Health and, as appropriate, other interested public and private institutions, provides initial and ongoing staff training. The staff members also undergo annual psychological testing and the results are kept in the employees' personal files.

SLOVAKIA

Guardians

The Act on Socio-Legal Protection defines the qualifications of long-term guardians: a university degree in social work, psychology, law, social services and counselling, public policy and governance or pedagogical study fields.⁹³ The act does not define qualifications for employees delegated to perform guardianship tasks as short-term guardians; however, based on information provided by the Ministry of Labour, Social Affairs and Family (Renáta Brennerová, verbal communication) the same provisions apply to these employees as well. During the selection process, the cultural and language competencies of the candidates for the job are taken into consideration (Chudžíková and Fajnorová, 2010: 28).

Social workers and tutors at the children's homes

The Act on Socio-Legal Protection states that social work may only be performed by those who hold a university degree in social work.⁹⁴

⁹³ Section 93 Article 1.

⁹⁴ Section 93 Article 9.

Legal representatives

The legal representation of UAM is mostly carried out by NGO lawyers. All NGO legal representatives must be qualified lawyers and are continuously trained in asylum law as well as in specific approaches to vulnerable groups, such as UAM. In the framework of various projects, they participate at various seminars and trainings, including international events.⁹⁵

Staff development

According to government and civil society experts interviewed as part of the CAUAM project, no formal training is provided by the State for social workers dealing directly with UAM, even though the State recognizes the importance of training for the provision of care to such a vulnerable group. Such training should focus on multicultural competencies, asylum and international humanitarian law, the legal status and special needs of UAM, interview techniques with foreign minors and traumatized children, the psychological needs of UAM, the risks of harm/secondary traumatization, and human/child trafficking (identification of victims as well as prevention) (ibid., p. 29). All staff involved in the provision of care to UAM utilize every opportunity to participate in trainings organized by external organizations (NGOs/international organizations).

SLOVENIA

No special training or qualification is required for guardians in Slovenia. In interviews carried out by SP, it was clear that none of the guardians or other experts working with UAM placed any importance on the official education of the guardians. All of them were of the opinion that graduating from a particular university should not be a requirement for guardians and that “the degree does not guarantee anything” (Slovene Philanthropy, 2010: 26).

“I don’t see the importance in what kind of education a guardian has. It seems to me that one can be a good guardian regardless of whether [one] is a social worker or lawyer or has a degree in some other area. The only thing that matters is that a guardian has and is developing knowledge and skills in both fields – legal and social – since both are important” (ibid.).

In Slovenia, SP is currently the only organization that organizes training for those who are or would like to become a guardian to an unaccompanied minor. No training is provided by governmental institutions. The IPA was amended in December 2011, with the prescription that training be mandatory only for legal guardians, although this has not yet entered into force, since the Ministry of Interior, in coordination with the Ministry of Labour, Family

⁹⁵ Information provided by the Slovak Goodwill Society

and Social affairs, still has to adopt a regulation to prescribe the implementation of such training.

“Legal guardians and other representatives of SP that are included in the treatment of UAMAS take part in training courses organised by SP as well as others. In the past, they took part in courses on asylum procedures, treatment of [UAM], family mediation, domestic violence, work with addicts and underprivileged youths” (Slovene Philanthropy, 2011: 34).

Representatives of SP and the AH have expressed a need for additional training for those working with UAMAS (ibid.).

“The need for additional training was emphasized also by experts themselves, as they feel they need additional knowledge for working with this population. Additional effort should also be invested in the sensitization of experts who occasionally work with UAMAS, including medical workers and social workers at the CSW, and in raising awareness among the general public” (Slovene Philanthropy, 2011: 58).

Adults interviewed as part of the SP research considered training to be extremely important, particularly in terms of providing adequate support and advice to the children, and greater protection of their best interests.

Guardians have enough knowledge about migration procedure and children’s rights. However, they would appreciate receiving additional, in-depth and ongoing training about different cultures, how to assess the best interests of the child, how to resolve conflicts, and how to help children search for information about their country of origin. They would also like to gain more knowledge about the psychosocial development of children and youth (Slovene Philanthropy, 2010: 25–26).

7. SUPERVISION, MONITORING AND EVALUATION OF GUARDIANSHIP/ TRUSTEESHIP

BULGARIA

The guardianship/trusteeship authority supervises the well-being of the unaccompanied child and it may suspend the actions of a guardian/trustee or prescribe the performance of certain actions, following a consultation with the guardianship council. It keeps a record of those who have been put under guardianship/trusteeship, according to their place of residence. The data are entered in the register after the written order for the appointment of the guardianship council, which is issued by the relevant mayor.

In practice, no guardian/trustee is appointed for unaccompanied children seeking protection. Only in cases where protection is granted is a child placed in a specialized institution providing social services – an orphanage – the director of which becomes the child's guardian/trustee. However, if unaccompanied children are very young, they are placed in an orphanage before a decision regarding the granting of protection is taken.

The reason for this is that the system of guardianship has not been set up to accommodate unaccompanied children seeking protection, as its key aim is to provide a substitute for parental care. The requirements of a guardian/trustee are rather high – for example, he/she must live at the same address with the person under trusteehip and be present during all procedural actions concerning the child. In addition, the work of the guardian/trustee is honorary and no remuneration is received for the fulfilment of such duties. Other challenges include the lack of Bulgarian citizens willing to take the position of a guardian/trustee of an unaccompanied child and a lack of knowledge of the language, way of life and customs of such a child, as well as the inability to communicate with them on a day-to-day basis. Appointing a guardian/trustee from within the child's community is not an option either, due to the inability of people in the community to exercise parental care with respect to an unaccompanied child. Moreover, due to overcrowding and poor living conditions in the reception centres, there is insufficient social assistance to support the needs of unaccompanied children.

Given the vulnerable position of unaccompanied children seeking protection, the children are accommodated according to a special administrative procedure under LAR, pursuant to an order by the Director of the Reception and Registration Centre (on the grounds of Article 51, § 2, in relation to Article 71, § 1 of LAR) and the order is similar to the one issued by the Director of the Social Assistance Directorate under Article 27 of LCP. Nevertheless, in practice, the issue regarding the fulfilment of the obligation under Article 28 of LCP and the ruling of a court on the child's placement in a Registration and Reception Centre (RRC)

remains unresolved. Following the registration of an unaccompanied child as a person seeking protection, the child is placed in an RRC, in safe conditions, on a floor specially separated for this purpose. In this way, the SAR fulfils the guardianship/trusteeship role. Unaccompanied children who have been granted protection, however, are placed in specialized institutions for raising and educating children who lack parental care. In this case, the guardian/trustee of the unaccompanied child is the manager of the respective institution, who may assist in all legal actions on behalf of the child, with a view to exercising the child's rights concerning identity documents, social assistance, etc. The law expressly stipulates that, in these cases, no guardianship council or trustee substitute is appointed, and no guardianship proceedings are initiated.

CZECH REPUBLIC

The quality of guardianship has improved significantly in recent years. However, in 2005, UAM had only a rough idea of the role of a guardian and guardians were particularly criticized by former unaccompanied minors:

“As I learnt on the Internet, a guardian was supposed to observe my daily activities and provide me feedback from the Ministry of the Interior proceedings. I did not even know I had one, although it was an important person. There was a time when I intend[ed] to kill myself. Nobody was there to listen to me. Guardians should be here to [ensure] we are fine. They should have time enough to concentrate on our problems, though I understand they are overloaded. Weekend outings were the only activity sufficiently maintained by my guardian” (IOM and Organization for Aid to Refugees, forthcoming).

There is no unified system of guardianship quality control. When a guardian is appointed from the Socio-Legal Protection of Children Authority, he/she is supervised by his/her superior or by the court that appointed him/her. The supervision is focused on administrative files, which must contain reports from visits with minors. The frequency of visits (once every three months) is also monitored. The guardian is also obliged to inform the court of all important issues concerning the child. An NGO worker performing guardianship can only be supervised by his/her superior, within the framework of a Labour Law relationship.

HUNGARY

Supervision of guardians' administrative tasks and of the child protection system is the responsibility of the State, as exercised through municipalities and guardianship offices.⁹⁶ Guardians' activities are supervised by the Guardianship Office, and the Regional Child

⁹⁶ Child Protection Act § 105 (1), (2).

Protection Service may provide guardians with regular support and advice.⁹⁷ All guardians must submit to the Guardianship Office biannual written reports on their activities and their wards' situation. This is in addition to the other statutory reporting obligations, such as the clearing (final) statements with regard to the administration of the ward's property.⁹⁸ As minors' placement in the child protection system is reviewed annually, information provided by the carers/guardians in the interagency assessment carried out by the Regional Child Protection Service might also be considered a form of statement of all actions and achievements linked to the child. However, there is no evidence that this occurs for UAMAS and no other forms of guardianship supervision, monitoring or evaluation could be identified.

POLAND

According to the Family Code, guardians must inform the judge about the well-being of the minor in their charge (Government of Poland, 2012, Art. 166). The judge may revoke the guardian if care is difficult or the guardian is unwilling or unable to provide it (ibid., Art. 169). Legal guardians are directly supervised by the Warsaw University Legal Clinic professor in charge. As students, legal guardians participate in ongoing legal training. While this training covers a number of issues related to legal guardianship, it is not specific to UAMAS or even asylum-seekers, due to the relatively small number of asylum-seekers in Poland. Officially, social guardians report to the Office of Foreigners; in practice, however, they are supervised on a daily basis by the director of the foster home. Since 2005, no social guardian has been revoked. Given the ad hoc nature of their involvement, the legal guardians have the highest rotation rate, as far as their work with UAMAS is concerned.

ROMANIA

Compliance with the principles and rights established by Law no. 272/2004 and by the United Nations Convention on the Rights of the Child (UNCRC),⁹⁹ regarding the coordination, control and supervision of the protection and promotion of child rights, is performed by the General Directorate for Child Protection, under the Ministry of Labour, Family and Social Protection.

⁹⁷ Child Protection Act § 85 (4).

⁹⁸ Child Protection Act § 89 (1), (2).

⁹⁹ Ratified by Law no. 18/1990.

SLOVAKIA

In Slovakia, the courts are crucial to ensuring that the rights of UAM are respected. According to the Civil Procedure Act, it is the court that monitors the performance of guardians and the provision of care to UAM. Article 2 of this Act binds the court to assess the suitability and efficiency of proposed care measures and the court usually requests the opinion of the socio-legal protection body (i.e. the labour office) or any relevant persons who know the particularities of a given case. If suitable, the court also interrogates the minors. The court permanently monitors how guardians fulfil their duties and evaluates their performance at least twice a year, in cooperation with the municipality and the socio-legal protection body. The court also oversees the administration of the minor's property by the guardian. In line with this provision, the guardian submits a written report to the court twice a year, or upon the court's request.

According to the Ministry of Labour, Social Affairs and Family (MLSAF), an internal system of control has been established at the labour offices, and each labour office has a department for control, which is also responsible for checking the quality of care and guardianship.

The Act on Socio-Legal Protection does not define complaint or appeal mechanisms that could be used by minors wishing to complain about a guardian's performance. However, according to the MLSAF, if a minor is dissatisfied with the guardian's work, he/she may discuss this with the social worker/tutor at the children's home and the labour office (i.e., the guardian him/herself) would be obliged to deal with their complaint (Renáta Brennerová, verbal communication).

SLOVENIA

There is no legal framework for monitoring and evaluation of services. Legal guardians are required only to report annually to the CSW on their guardianship activities and at the CSW's request.¹⁰⁰ The role of the CSW that appoints UAMAS guardians is merely a formal one and refers only to the issuance of the decisions on the appointment of legal guardians. CSW does not engage in seeking long-term solutions (in terms of health or education) for UAMAS, as this is handled by the designated legal guardian (Slovene Philanthropy, 2009: 20).

Until May 2006 (when it ceased operations in Slovenia), UNHCR monitored guardianship services through its implementing partners in the country, which were, at that time, SP and PIC. However, both SP and PIC have continued to carry out monitoring in the area of protection and support to UAMAS and refugees.

¹⁰⁰ From the written order composed by the Centre for Social Work Ljubljana Vič – Rudnik.

8. BEST INTERESTS OF THE CHILD

BULGARIA

Bulgarian law has adopted the concept reflected in the UNCRC that all actions with respect to the child should be taken with a view to serving the child's best interests. The law¹⁰¹ defines the concept as "an estimation of: a) the wishes and feelings of the child; b) the physical, mental and emotional needs of the child; c) the age, gender, background and other characteristics of the child; d) the danger or harm [that has] been or may be inflicted on the child; e) the ability of the parents to take care of the child; f) the consequences for the child in the event of change of circumstances; g) other circumstances in relation [to] the child." These factors are reviewed in their entirety when the best interests of the child are being considered.

Bulgaria lacks any specific mechanism for estimating the best interests of the child. Within the meaning of the law, all institutions that take measures with respect to children should be guided by the children's best interests. The obligation to estimate the best interests of an unaccompanied child must be largely fulfilled by the child's guardian/trustee. If a guardian/trustee has not been appointed, this function must be shared by the social worker representing the child protection authority and the administrative authority responsible for reviewing the application for protection. In practice, the relevant social worker organizes a team meeting with representatives of SAR for the purpose of estimating the best interests of the child and planning any necessary action – for example, finding the child's parents.

CZECH REPUBLIC

The Action Plan¹⁰² defines the best interests of the child as "a state of providing living standards and conditions for healthy physical, mental, moral and social growth; securing the right of a child to full and harmonised development of his/her personality and skills, ensuring that adequate childhood and personal potential is fully developed in a family; other forms of care are provided only to the necessary extent"

This principle is stipulated in section 5 of the Law on Social and Legal Protection of Children, which states that the fundamental criteria for the social and legal protection of a child are his/her best interests and well-being. An explanatory memorandum on the draft law on social and legal protection of children further states:

¹⁰¹ Additional Provisions of the Law on Child Protection.

¹⁰² The National Action Plan to Transform and Unify the System of Care for Vulnerable Children, 2009–2011.

"The proposed provisions define the basic principle of social and legal protection (provided by the relevant institutions) in terms of acting in the best interests of the child and his/her welfare. The interest of the child can never be subordinate to other interests, such as the interests of parents, families, other persons, state, etc."

Neither the Asylum Act nor the Act on Residence of Aliens includes the principle of best interests of the child.

There is controversy over whether this principle is adhered to, in practice – largely due to the lack of guardian training in matters relating to UAM, such as the proceedings on administrative expulsion, detention, or the Dublin II Regulation procedure. This situation could be improved through greater cooperation between stakeholders and further training.

HUNGARY

The main EU asylum instruments treat the principle of best interests of the child as "a primary consideration" in dealing with UAMAS.¹⁰³ Most EU Member States mention the best interests of the child principle, usually in connection with child protection and, to a lesser extent, immigration law.

In Hungary, this principle appears in the Child Protection Act as well as in the Asylum Act. The General Provisions of the Child Protection Act stipulate that all agencies, institutions, authorities and individual practitioners involved in child protection shall take into consideration the best interests of the child and shall safeguard the rights outlined in the Act, while applying the regulation of the Act.¹⁰⁴ The Law on Asylum also anticipates that a sympathetic procedure is to be applied to UAMAS. This same law states that "the best interests of the child shall be a primary consideration".¹⁰⁵ However, because legislation and policies do not define the principle in detail, and since there are no formal legal mechanisms for determining the best interests of the child, the authorities responsible for protecting the child's best interests must act as they deem appropriate.

As outlined in the Child Protection Act and its implementation decrees, a unified registration system, consisting of a set of forms, is being used in all child protection procedures.¹⁰⁶ To some extent, this ensures the enforcement of the principle relating to the best interests of the child, as it serves as a tool for a thorough assessment of the different stages of a child's life and as a basis for the annual interagency placement reviews. Information is provided by the guardian and the carer, and the child's views must also be taken into consideration.

¹⁰³ Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status – Article 17.

¹⁰⁴ Child Protection Act 2§ (1).

¹⁰⁵ Act on Asylum 4§ (1).

¹⁰⁶ 15/1998 (IV 30) Welfare Ministry Decree 2A§ (1).

POLAND

The best interests of the child are not defined in Polish legislation per se, but Poland has ratified the UNCRC. The legal and social guardians tend to consider that the best interests of the child are served by respecting his/her right to obtain asylum or some other form of protected status, given the assumption that a child would not have left for Poland if he/she had been better off in the country of origin. However, the guardians suspect that the State authorities may be more sceptical about the inability of children's homelands to protect the children's best interests (Nowak, verbal communication).

ROMANIA

According to Romanian law, the principle of ensuring the best interests of the child shall prevail in all actions and decisions concerning children, whether undertaken by public authorities, private bodies or the courts.

Article 2 of Law no. 272/2004 states that any other regulations adopted in the context of observing and promoting the rights of the child, as well as any legal act issued or signed in this field, are subordinated primarily to the child's best interests. The best interests of the child also take priority over the rights and duties of the child's parents, legal guardians or other persons legally responsible for him or her, in all actions and decisions concerning children, whether undertaken by public authorities or authorized private institutions, as well as courts of law. In addition, Article 8 of Law no. 122/2006 states that, when the provisions of this law are enforced, all decisions regarding minors must be made in accordance with the best interests of the children involved.

Currently, UNHCR is working in Romania with relevant NGOs to develop a procedure for determining what constitutes the best interests of a child.

SLOVAKIA

The term *best interests of the child* is defined in Article 3 of the UNCRC. With regard to UAM, the term is included under section 2 of the Act on Socio-Legal Protection, where socio-legal protection is defined as a "set of measures to ensure protection of the child as necessary for their well-being and respect of their best interest according to the international convention".

Slovak legislation does not further define the term, nor is there a formal procedure in place for determining a child's best interests – as defined, for example, by UNHCR (UNHCR, 2011).¹⁰⁷

According to the Ministry of Labour, Social Affairs and Family (Renáta Brennerová, verbal communication), an assessment of a child's best interests is usually handled by a qualified and experienced person who considers the following aspects: the child's right to family and family ties; the need for a family-like environment; and the child's right to information about important steps relevant for his/her life. In addition, emphasis is also placed on finding out the child's opinion, for which formalized mechanisms are in place.

In line with the provisions of the Act on Socio-Legal Protection, State authorities have a duty to assess the best interests of the child. However, the law does not define remedial measures in the event that this duty is not fulfilled by the relevant bodies, and any remedial action would have to go through the court. In practice, it would be very problematic for a UAM to take legal action, as a child's opinion and that of the guardian, regarding the child's best interests, might obviously and justifiably differ and, more importantly, because the child would not be legally competent.

SLOVENIA

According to the guardians involved in the SP study, an assessment of a child's best interests depends on the individual child. The guardians stated that they considered each child's situation separately, with regard to any decisions affecting the child's best interests.

In the guardian training organized by SP, special attention is given to the issue of how to lead a conversation with a child. Unfortunately, in Slovenia, there are no documented guidelines for conversations that the guardians could use. However, SP is preparing this kind of material for guardians.

In their conversations with UAMAS, guardians focus on the child's history and background to determine what kind of leisure activities the child might wish to engage in. A guardian listens to the child, providing advice and information, and helping him/her to figure out solutions, bearing in mind the child's age, gender and cultural background. These conversations are carried out in private, to create a safe and confidential environment for the child.

¹⁰⁷ A formal process, with strict procedural safeguards, is needed to determine the child's best interests for particularly important decisions that affect him or her. It should facilitate adequate child participation and involve decision makers with relevant areas of expertise, who can identify and balance all relevant factors in order to determine the best option. The process must be documented (UNHCR, 2011: 8).

9. OTHER ISSUES

BULGARIA

Accommodation

Unaccompanied children seeking protection are accommodated in an RRC, in safe conditions, according to their needs. If they are placed in an RRC in Sofia, they also have access to the Integration Centre of SAR, which is part of the same building. The RRC assists unaccompanied children in their registration with doctors/general practitioners, as such children are given health insurance from the moment of their registration as protection-seekers and they avail of the same health-care rights as Bulgarian citizens. In addition to the Integration Centre, the Refugee and Migrant Service of the Bulgarian Red Cross and the Council of Refugee Women are also involved in the field of social services. The Bulgarian Red Cross uses trained social mediators from within the community to accompany protection-seekers to institutions or to refer them to organizations providing services.¹⁰⁸ In this respect, SAR and the NGOs working in the sphere of social services take care of the main social and everyday needs of unaccompanied children, even though they are not the children's guardians/trustees.

HUNGARY

Accommodation

Currently, there is only one child protection institution in Hungary accommodating UAMAS. Upon arrival in the country, UAMAS are accommodated in one of three special accommodation groups for UAMAS/fUAMAS, within the Károlyi István Child Centre in Fót. Conditions in the centre fully comply with the child protection legislation in terms of minimum area requirements, equipment, etc. The accommodation groups are self-managed and the children are involved in organizing everyday life, under the guidance of their carers, who are present around the clock. As the case guardian and the guardian are also employees of the Child Centre, they can have regular – even daily – contact with their wards.

Education

In Hungary, education is compulsory up to the age of 18 (although, according to new legislation, the age limit will be reduced to 16, from the academic year 2012/2013). UAMAS arriving in Hungary are mainly 14–18 years of age, which is clearly a high-school age group.

¹⁰⁸ Information provided by the Refugees and Migrants Unit of the Bulgarian Red Cross.

However, most of them have not completed their primary education in their country of origin and the level of their knowledge or its applicability in the host country is hard to assess. In order to attend high school in Hungary, children must have a school leaving certificate attesting to their completion of primary education. Further difficulties arise from their poor knowledge of Hungarian. Under the current practice, UAMAS are enrolled mainly in two high schools, both in Budapest: The Charles Than Ecological Vocational/High School and the Esély Kövessi Erzsébet Vocational/High School. Both institutions provide remedial education to UAMAS so that they can fulfil the high-school entrance requirements. NGOs also provide further learning assistance, language courses and tutoring for UAMAS. Many fUAMAS who already have a primary education certificate and a good command of Hungarian language study at other schools or attend vocational training institutions. The case guardian and the guardian are also involved in identifying the best available education, selecting the school and providing the required consent to the children's enrolment.

Health care

UAMAS and fUAMAS are entitled to the same level of health care as nationals. By law, the child protection system must provide access to health care and cover any costs incurred. However, in the case of UAMAS, the costs of the initial health screening (mandatory to all asylum-seekers) and the costs of primary care required until completion of the asylum procedure are covered by the asylum authority. Following status determination, UAMAS receive their numbered health insurance card, procured by the case guardian. Following the completion of the child protection procedure, fUAMAS in permanent care are entitled to a public health card, which covers in-kind social benefits and the costs of prescribed medication and medical aids.

Cultural needs/religion

Practising religion is probably one of the least problematic issues for UAMAS and fUAMAS in Hungary. The care staff and teachers are supportive of children's religious beliefs, and the children/adolescents can regularly attend mosque. It has been reported that one of the high schools attended by most UAMAS/fUAMAS is setting up a prayer room for Muslim students. Attending the mosque provides an opportunity for UAMAS to establish regular contact with members of their own diasporas. Cultural sensitivity is also reflected in the meals provided to UAMAS, and religious dietary requirements are always taken into consideration. Some ERF projects are being implemented within KIGYK by an NGO (Hungarian Interchurch Aid) to provide cultural orientation courses, leisure activities, Hungarian language classes, access to basic art education and sports activities, among others.

POLAND

UAMAS and Polish children enjoy the same rights, including the right to free health care, education and social services. They can practise their faith of choice. They have the right to privacy, and are protected against abuse and exploitation. Despite the parity of law, however, slight divergences may occur, in practice – both to the benefit and to the detriment of UAMAS. As of February 2012, foreign children residing in foster home received 60 per cent higher pocket money entitlements than their Polish counterparts (PLN50 versus PLN30 a month – equivalent to USD16 and USD10, respectively). While there are no significant status-related obstacles to integration, some practical difficulties stemming from the relative novelty of UAMAS inflows and the small numbers involved may arise. For instance, very few schools in Poland have experience working with foreign children, the ability of schools and foster homes to cater to special dietary needs is limited, and making provisions for UAMAS to practice their faith may sometimes be difficult.

SLOVAKIA

Accommodation

Initially, UAM are placed in the specialized children's home in Horné Orechové, which is designated for male UAM. Female UAM are accommodated in the children's home in Medzilaborce, where a specialized group for female UAM was created at the beginning of 2011. Experts interviewed as part of the CAUAM project viewed the Horné Orechové facility positively, appreciating its specialization in unaccompanied minors and its equipment. However, the location of the facility in a remote area with poor transport connections was considered to be a major disadvantage (Chudžíková, 2011: 18).

Once an asylum application is lodged, all UAMAS are moved to the Reception Centre Humenné (a facility designed for all asylum-seekers), where medical testing of communicable diseases is carried out during a three-week quarantine. When all the medical procedures have been completed, UAMAS are moved to the Opatovská Nová Ves Asylum Centre, which is primarily for families with children. The age, gender and cultural background of the minors are considered when putting them up in particular rooms and they are usually placed with other UAMAS, if possible. When the asylum procedure is lawfully ended, UAMAS are either moved back to Horné Orechové or sent to mainstream children's homes.

The frequent change of facilities is the main issue with regard to accommodation for UAMAS, which was deemed inappropriate by experts interviewed within the CAUAM project (Chudžíková, 2011: 19). The placement of UAM and UAMAS is governed by the Act on Socio-Legal Protection and the Act on Asylum; the guardian has no say in these placements and the UAMAS and UAM have little or no say either (Chudžíková, 2011: 20). However, with

the help of their guardian, they can, for example, obtain long-term permission to leave the Opatovská Nová Ves Asylum centre, if they wish to live elsewhere.

Education

According to Act no. 245/2008 Coll. on Education and Upbringing (the Schooling Act), school education is mandatory for all children under 16 years of age. UAMAS younger than that are thus obliged to attend primary school. UAMAS must be enrolled in an appropriate school grade as soon as their previously attained education and their level of Slovak language command have been assessed, but no later than three months after their asylum application has been lodged. In the case of unsatisfactory Slovak language proficiency, UAMAS can be enrolled in a school conditionally, for a maximum period of one year.¹⁰⁹ Slovak legislation does not provide any guidelines as to how the previous education of UAM/UAMAS should be assessed and the assessment therefore depends on the respective school.

UAM and UAMAS older than 16 years usually do not attend school because the school authorities are reluctant to enrol them due to language barriers, missing documents confirming education level attained, and frequent changes of accommodation or disinterest on the part of the children themselves. Unaccompanied minors (usually subsidiary protection holders), placed in children's home in Horné Orechové, attend the Secondary Vocational School in Trenčín, which is literally the only secondary school that currently accepts UAM/UAMAS in Slovakia – and the only school that sought ways of enrolling UAM, rather than focusing on the obstacles involved. Openness among the school authorities is therefore a key factor in overcoming these obstacles (Chudžíková, 2011: 23).

The role of the guardian in relation to a minor's education is to approve the enrolment of the child in a school and make any necessary decisions about the child's education. Help with daily preparations for school is the task of social workers at the accommodation centres.

Health care

According to Act no. 580/2004 Coll. on Health Insurance Costs, an unaccompanied minor is publicly insured and the insurance premiums are paid by the State. Application for health insurance is submitted by the facility where the unaccompanied minor is placed – usually the Horné Orechové facility. Once an asylum application has been lodged for a child, his/her status changes, with regard to the provision of health care. Asylum-seekers cannot be publicly insured, thus the costs for their health care are covered directly by the Migration Office. Like other asylum-seekers, UAMAS are only entitled to basic health care. Further health care is funded only in special cases, if specific health needs are identified as a result

¹⁰⁹ Section 146, Article 4 of the Schooling Act.

of on individual assessment of the asylum-seeker's condition.¹¹⁰ With respect to UAM, the law also obliges the Migration Office to ensure that appropriate health care be provided to minor asylum-seekers who are victims of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from the consequences of an armed conflict.¹¹¹

Migrants with granted subsidiary protection are not entitled to public insurance and their health care is also covered directly by the Migration Office, while recognized refugees can be publicly insured.

The role of the guardian with regard to health care is to approve any medical examinations or treatment.

Cultural needs and religion

According to the Act on Socio-Legal Protection, the specialized children's home must take into account the minor's previous upbringing and his/her specific needs in relation to culture and religion.¹¹² Respect for the cultural and religious background of UAMAS is guaranteed by the Act on Asylum.¹¹³

All accommodation facilities in which UAM and UAMAS may be placed strive to comply with the principles guaranteed by the Convention on the Rights of the Child (that is, the right to freely express one's cultural heritage and practise one's religion, freedom of thought, conscience and religion, prohibition of discrimination on the grounds of the child's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status), however, mainstream children's homes may have technical problems in accommodating some of the children's cultural and religious needs. Given the low numbers of UAM, care providers try to resolve such issues individually (Chudžíková and Fajnorová, 2010: 40).

The specialized children's home and the asylum facilities have designated prayer rooms. Meals are adapted to the needs of the minors and they are also able to cook for themselves. UAM are allowed and encouraged to celebrate their religious holidays. As the exercise of cultural and religious preferences is a part of the daily care and activities, the role of the guardian is not significant.

¹¹⁰ Act on Asylum, § 22 Article 5.

¹¹¹ Act on Asylum, § 22 Article 5.

¹¹² Section 50, Article 2 of the Act on Socio-Legal Protection.

¹¹³ Section 39 of the Asylum Act.

Leisure time

The Horné Orechové centre is equipped with a gym and a playground, and tutors also take the children on trips to the surrounding area or to the town's swimming pool. Those UAM that attend school participate in extracurricular activities offered by the school. The asylum facilities (at Humenné and at Opatovská Nová Ves) provide UAMAS with playgrounds for playing football, basketball or other ball games, both have small gyms, a room for a TV (with foreign channels), and several computers in the Opatovská Nová Ves Asylum Centre have Internet access. Leisure activities are also organized by NGO social workers and include sports activities, computer courses and crafts workshops, among others. They also try to involve UAM in activities organized for Slovak children. However, the remote location of the centre makes it difficult for asylum-seekers to participate in Slovak social life. UAMAS older than 16 years of age do not attend schools, although this would be a very meaningful way for them to spend their time (ibid.). To participate in any activities that take place outside the centres, UAM should receive a permit from the guardian.

SLOVENIA

Accommodation

As mentioned earlier, Slovenia has only one institution that accommodates applicants for international protection and that is the Asylum Home. The AH houses UAMAS in a special department where they share rooms with other UAMAS (in most cases, there are two to three UAMAS per room). According to an AH social worker, the wishes and needs of UAMAS (such as wanting to share a room with friends, having a single room if there are medical issues, and taking into account their various cultural backgrounds) are considered when setting up accommodation. The department has a club room with a TV and a computer with Internet access (Slovene Philanthropy, 2011: 18).

According to Slovene Philanthropy, the AH is not an appropriate accommodation facility for UAMAS as it cannot provide the children with 24-hour care, suitable psychosocial/ psychotherapeutic treatment, or suitable psychosocial programmes and leisure activities that would fulfil the needs of UAMAS.

When UAMAS turn 18 or are granted international protection, their accommodation changes. They are moved to separate single men or women's departments and are informed of the change in due time by the guardian and the psychosocial service of the AH. When UAMAS are granted international protection, they are moved to the Integration House in Ljubljana and then, a year later, to private accommodation (Slovene Philanthropy, 2011: 20).

Education

According to the provisions of the International Protection Act,¹¹⁴ underage applicants for international protection are assured the right to primary school education and are assured access to education at vocational and secondary schools under the same conditions that apply to the citizens of the Republic of Slovenia. In spite of this legislation, existing options for UAMAS to enrol in the standard education system are, in practice, very limited.

“Since most UAMAS are over 16 years of age upon their arrival in Slovenia, they are not enrolled in regular primary school but instead pursue their education within the programme of primary school education for adults and youths at the Cene Štupar Centre for Continuing Education (hereinafter Cene Štupar). This programme is the only primary school programme that UAMAS are enrolled in and is somewhat adapted to their needs due to the nature of the programme (classes include individuals of different ages and migrants from different countries)” (Slovene Philanthropy, 2011: 22–23).

This programme is a shortened one: one grade is finished in six months and the number of grades is the same as in the normal primary school (nine) but with fewer courses, so students gain less knowledge than they would in standard primary school. After finishing this programme, UAMAS can continue their education at normal vocational secondary schools (Slovene Philanthropy, 2011: 23).

Currently, UAMAS usually cannot be enrolled in school immediately after arriving at the AH, usually because they lack the required knowledge of the Slovenian language. This can be frustrating for UAMAS, many of whom are keen to learn.

“Going to school... This is my dream, I don't want anything else than this. This is my big dream. I wait for this” (Slovene Philanthropy, 2011: 67).

When UAMAS stay at the AH, they are free to take part in formal and informal Slovenian language classes. The lessons in AH are carried out by a representative of Cene Štupar. “The course consists of a monthly 48-hour basic course and an advanced course that is organized three times per year for students who finished the basic course. The main purpose of the course is to prepare applicants for life inside and outside the AH as soon as possible. It focuses on teaching the basic skills required for functioning in everyday life” (Slovene Philanthropy, 2011: 23).

UAMAS who wish to have additional and/or advanced Slovenian language courses are given language lessons by SP volunteers. These lessons are usually one on one, since an individualized approach allows for maximum adjustment to the needs of each UAMAS.

¹¹⁴ Article 86 of IPA.

Health care

In compliance with Article 84 of IPA,¹¹⁵ underage applicants for international protection are entitled to the same level of health care as citizens of the Republic of Slovenia. However, some UAMAS indicated that they had problems accessing and/or receiving health care, and some complained the doctors did not take them seriously (Slovene Philanthropy, 2010).

“I had skin problems. My guardian helped me [and] went with me to the doctor. The doctor in [the] Asylum Home didn't check me. She didn't like to listen to me” (Slovene Philanthropy, 2011: 70).

Others said that, when they were ill, their guardian and, in some cases, the psychosocial service at the AH, helped them obtain health care and went with them to the hospital.

Religious beliefs

Culture and religion are important to most UAMAS. The AH has a special prayer room where applicants can pray in peace although, according to the information SP received from UAMAS, most UAMAS prefer to pray in their own rooms. UAMAS are usually provided with information on their options for practising their religion outside the AH by other asylum-seekers and friends they meet outside the home. The guardians sometimes discuss such matters with UAMAS, but most UAMAS feel they do not need such support (Slovene Philanthropy, 2011: 22).

Leisure time

Leisure activities play an important role in the psychological and physical health of every child. Recreational and leisure activities are vital and provide an opportunity for pleasure and enjoyment, encourage active participation and social interaction, and can be a source of strength and a way of keeping the mind off negative thoughts.

Most of the UAMAS interviewed as part of the SP study said that leisure and recreational activities were important activities in which they liked to engage. Currently, UAMAS have limited possibilities for active leisure time as they do not receive any pocket money,¹¹⁶ do not have the right to work in order to earn some money, and they receive no bus passes¹¹⁷ from the AH for such activities.

¹¹⁵ Paragraph 3 of Article 84 of IPA.

¹¹⁶ The IPA states that those applying for international protection are entitled to pocket money, but they are not yet receiving it as the government decision that will establish the amount of pocket money to be given is still pending.

¹¹⁷ In accordance with the Regulation on the Rights of Applicants for International Protection, the AH only ensures that UAMAS have access to institutions for the enforcement of rights such as health protection, free legal assistance, education and humanitarian support.

UAMAS are therefore completely dependent on the AH and NGOs that implement recreational and leisure programmes. According to UAMAS, there are not enough leisure time activities (the AH offers the possibility of playing table tennis, badminton and football) and there is insufficient assistance and support in this area. Some UAMAS have said that they often have nothing to do and are left on their own (Slovene Philanthropy, 2011: 27–28).

As part of its programmes, SP occasionally organizes leisure activities for former UAMAS, such as cultural and sports events, trips, visits to cinemas, etc. Representatives of SP also support UAMAS by contacting sports clubs, arranging free visits and providing bus passes (Slovene Philanthropy, 2011: 64).

According to the interviewed UAMAS, guardians and other experts that had been participating in the SP research, UAMAS would like to spend some leisure time with their guardians and do fun things with them. The adult respondents felt that the guardian should show do fun things with UAMAS. However, having fun with the child is not part of the guardians' responsibility. Nonetheless, the adult respondents agreed that, for guardians to build a bond of trust with UAMAS, there had to be more than just formal contact (ibid.).

CONCLUSIONS/RECOMMENDATIONS

BULGARIA

The main flaw in the Bulgarian system for the protection of unaccompanied children is the lack of an effective mechanism for the prompt appointment of a guardian/trustee. Legal provisions are conflicting, as a result of which the special provision of section 1, item 4 of the Additional Provisions of the Law on Asylum and Refugees (LAR) cancels out the applicability of the general provision in Articles 156 and 157 of the Family Code (lex specialis derogat legi generali). Thus, there are some major contradictions:

- Section 1, item 4 of the Additional Provisions of LAR excludes the option – both legal and factual – for the child's relatives and kin, defined as "other adults, responsible for the child by law or custom" to be appointed as his/her guardian/trustee, since the child would then be considered "accompanied" and would therefore not require a guardian/trustee.
- At the same time, on the grounds of national legal provisions, said adults do not have representative power (in accordance with Article 3 of the Law on Persons and Family) and legal actions for and on behalf of minors under the age of 14 must be performed by their legal representatives – parents or guardians; according to Article 4 of the Law on Persons and Family, legal statements and legal actions may be made and performed by juveniles between the age of 14 to 18, with the approval of their parents or trustees. Therefore, even though in the aforementioned cases children are considered accompanied, they cannot be represented or assisted in the status-granting procedures by the "other adults", as defined by section 1, item 4 of the Additional Provisions of the Law on Asylum and Refugees.
- The issue concerning the guardianship/trusteeship of protection-seeking children who are not accompanied by any adults – parents, guardians, trustees or accompanying persons, as defined by section 1, item 4 of Additional Provisions of the Law on Asylum – remains completely unresolved.

In view of this situation, it can be concluded that the system for guardianship/trusteeship, stipulated in the Family Code, has the purpose of substituting parental care and is inapplicable towards unaccompanied children seeking protection. In 2009, a working group was established with the aim of elaborating criteria for the appointment of guardians/trusteeship of unaccompanied children.¹¹⁸ Participants to the working group were representatives of SAR, the Social Assistance Agency with the Ministry of Labour and Social Policy, the Bulgarian Red Cross, the Bulgarian Helsinki Committee, and the Association for Integration of Refugees and Migrants. The activity of the working group resulted in a

¹¹⁸ The working group was established by the Bulgarian Helsinki Committee's Legal Protection of Refugees and Migrants Programme, relating to the implementation of a national ERF project.

report containing specific proposals regarding the development of a mechanism for the appointment of guardians/trustees of unaccompanied children seeking protection. The core of the proposal was to amend the job description for the position of social worker, so that the official responsibilities of social workers included the functions of a guardian/trustee. In this case, the proposal was for limited responsibilities of the guardian/trustee, mostly related to representation in the asylum procedure, thus allowing for the appointment of a legal representative. With a view to the implementation of that proposal, amendments to a number of legislative acts were envisaged. The working group's proposal was included in the Plan on Implementation of Activities under the National Programme for the Integration of Refugees in the Republic of Bulgaria for the period 2011–2013. According to the Plan, the Integration Centre of SAR was assigned the task of preparing and initiating in 2011 legislative amendments with a view to providing guardians/trustees for unaccompanied refugee children, in cooperation with NGOs.

In the meantime, social workers who represent the child protection authority in the asylum procedure should take part in regular trainings on the specifics of work with unaccompanied children seeking protection. The Social Protection Agency has issued methodological instructions for social work with children at risk; however, unaccompanied children seeking protection are not mentioned there. Therefore, the development of methodology for working with unaccompanied children seeking protection, combined with periodic trainings, would significantly increase social workers' specialization in the sphere of care for this category.

CZECH REPUBLIC

The main weakness of the guardianship system in the Czech Republic is the lack of clarity about what guardianship really is. The solution to this could be to increase children's awareness of the role the guardian plays and in what kinds of situation the children can contact the guardian, etc. (IOM and Organization for Aid to Refugees, forthcoming). Criticism has also been made regarding the low number of guardians available and the existence of several types of guardians, each covering a different area. One of the solutions suggested by experts would be to appoint a single guardian for all issues related to UAM. This approach would be rather problematic, however, as the guardian's qualifications may be insufficient. For example, due to a lack of legal training, the authority for the social and legal protection of children would not be qualified to represent a child in proceedings for granting international protection or to apply for a judicial review of the legality of a detention, and a lawyer could not provide qualified advice on further education. Finally, given the specificity of working with unaccompanied minors, regular training for guardian experts – lawyers, social workers and psychologists – should be introduced.

HUNGARY

Amendments to the asylum and child protection legislation have induced considerable changes in the setup and practice of procedures and the provision of care provision for UAMAS. The most important change is that, as of 1 September 2011, UAMAS and fUAMAS are accommodated and cared for within the child protection system, which means that they are moved from a refugee reception centre to a child protection residential unit. These amendments also marked the start of a transition period, during which new policies and guidelines, focusing on the special-needs-based work with UAMAS and fUAMAS, are being developed.

KIGYK – the new institution involved in the care of UAMAS/fUAMAS – is a well known and important actor of the Hungarian child protection system, with a long history. However, UAMAS/fUAMAS moving to this institution must adapt to the general standards and set-up of the Hungarian child protection system. The majority of staff members working with UAMAS/fUAMAS have little or no refugee-related experience or knowledge. In order to better integrate UAMAS and fUAMAS into the existing structures, a 'special needs' approach, emphasizing the intercultural aspects of this field, should be developed. This would require the development of special guidelines that could also serve as a basis for the fine-tuning of the current provision and for any law amendments deemed necessary.

Hungarian Interchurch Aid (HIA), as part of a European Refugee Fund project, provides a series of trainings to staff working with UAMAS and fUAMAS. Unfortunately, however, this is only a temporary activity. In order to maintain the staff's level of knowledge and ensure further skill development, specialized trainings should be regularly provided.

Cooperation between KIGYK, NGOs and international organizations active in the field of asylum and refugee care should be enhanced. This could bring new perspectives to, and have a positive impact on, child protection practitioners working with asylum-seeking adolescents.

Individual care plans are a key element in the care of UAMAS/fUAMAS. To enhance the efficiency and successful implementation of these plans, it is essential that a procedure for determining a child's best interests be developed.

POLAND

Due to the currently low numbers of UAMAS in Poland, children do not suffer from a lack of legal or social guardians. However, if the numbers of UAMAS were to rise, the staff and budgetary deficits in the country would become apparent. On the other hand, as long as the numbers of UAMAS remain modest, guardianship is unlikely to be professionalized. As of October 2011, guardians had not had many possibilities for professional development, apart from learning on the job and learning from one another.

More needs to be done to reduce the number of UAMAS fleeing the foster home (20% of all UAMAS flee). The legal and social guardians are under significant pressure to enhance coordination in order to prevent such occurrences.

Two financial challenges surfaced in the autumn of 2011: funding for the incorporation of UAMAS into the semi-private high-school-run 'multicultural class' came to an end, as did the funding to pay the salaries of Legal Clinic assistants, who must sometimes assume the role of legal guardians when the volunteer legal guardians are unavailable. UAMAS were reported to be keen to have ongoing access to their legal guardians and to attend the semi-private school.

ROMANIA

All unaccompanied minors should be considered as vulnerable at all times, regardless of their social or ethnic background, physical condition or legal status. Accordingly, the protection of their rights as children should be given a prominent position and specific measures must be drawn up for them. Specific assistance (in the form of social, psychological and medical care, as well as education) should be tailored to the individual needs of the child. The child's right to stay in the territory should be ensured – for example, subsidiary protection of stay should be granted for UAM until they are 18. Every step of the procedure should be harmonized with the special needs and best interests of the child. As laid down in the Action Plan of the European Commission, all children should be treated first and foremost as children. Protecting the best interests of the child should be the primary consideration in all actions concerning UAM and at all stages of the displacement cycle. A decision on the future of each child should be made as rapidly as possible.

With regard to UAMAS, the following standards should be adopted: 1) the interview length should be kept to a minimum and the interview should be conducted in the presence of a trustworthy person (someone with relevant childcare expertise and an understanding of the special and cultural needs of the UAM); 2) the interviewer should be specifically trained in communicating with UAM and should be assisted by an equally well trained and trusted translator, to minimize stress for the minor; 3) to avoid interviewing a minor several times on the same subject, his/her information should be kept in one file and circulated among the various institutions involved; and 4) following the interview, a team of professionals (including a guardian, a psychologist and a social worker) should assess whether it is appropriate to transfer the minor to an institution or whether the minor's own wishes should be taken into account.

There is a need for professional, well trained guardians to be appointed for UAM to ensure that the minors' best interests are protected, upon the minors' arrival in the country. The guardian's mandate must be clearly defined so that the guardian can represent the UAM both legally and socially in an effective and independent way.

SLOVAKIA

Appointment of long-term guardians

Although the Act on Socio-Legal Protection establishes the institution of a temporary guardian and long-term guardian, UAM are usually only appointed a temporary guardian. However, since the long-term guardian possesses more competencies than the temporary one, a long-term guardian should be appointed for all UAM – or at least for those who have been granted asylum or subsidiary protection, where it can thus be assumed that they would remain in the territory of the Slovak Republic or stay for a longer period of time (Fajnorová and Številová, 2009: 40).

Legal representation during the asylum procedure

It has been suggested by various organizations, such as UNHCR¹¹⁹ and Save the Children through the Separated Children in Europe Programme,¹²⁰ that UAMAS should be provided with a legal representative (an attorney/lawyer), in addition to a guardian, during the asylum procedure. Currently, UAMAS are not systematically represented by a lawyer in the asylum procedure, as appointment of a legal representative is not mandatory. The delegated employee of the labour office that performs the guardianship tasks is a social worker who does not have the appropriate training in asylum and international human rights law. This can lead to violations of UAMAS rights in the procedure, such as the right to qualified legal advice, the right to appeal against negative first instance decisions and thus to the judicial review of the administrative decision, the right to proper consultation concerning the results of the asylum procedure, and so forth (Chudžíková and Fajnorová, 2010: 54). Although cooperation with NGO lawyers has improved, and UAMAS have recently been legally represented by NGO lawyers, legal representation should be mandatory for all UAMAS or, as a minimum, during the appeal procedure (Fajnorová and Številová, 2009: 94).

Reducing the need for movement of UAMAS

Once found in the territory of the Slovak Republic, UAM are placed in a specialized facility – the Horné Orechové children's home for UAM. Once an asylum application has been lodged on behalf of a child, he/she is moved to the facilities of the Migration Office – first, to RC Humenné, for the quarantine period (with no free movement outside the Centre) and then to the Opatovská Nová Ves Asylum Centre, for the duration of the asylum procedure. This directly affects the level of personal contact with the guardian (which is low, due to the guardian's limited time and financial resources), leads to interruptions in the children's

¹¹⁹ Not being legally independent, an asylum-seeking child should be represented by an adult who is familiar with the child's background and who would [protect] his/her interests. Access should also be given to a qualified legal representative" (UNHCR, 1997: 12).

¹²⁰ "...separated children must have legal assistance and a legal representative who will assist them [in making] their claim for protection and [in] the implementation of any ensuing durable solutions..." (Save the Children, 2010: 34).

schooling, and reduces their chances of integrating. It is therefore vital for the Ministry of Labour, Social Affairs and Family (with competence for UAM as children) and for the Ministry of Interior (with competence for UAM as asylum-seekers) to collaborate more effectively in order to adopt a more comprehensive approach to UAM, given the complexity of their situation.

Training for personnel working with UAM and UAMAS

Social workers or guardians working with UAM and UAMAS do not receive systematic training in the specifics of care for UAM or in asylum and residency law. Government experts consider the possession of a university degree in social work to be satisfactory, while stressing that great care is taken in the selection of prospective employees (Chudžíková, 2011: 28). Training for guardians should focus on multicultural competencies, asylum and international humanitarian law, the legal status and special needs of UAM, interview techniques with foreign minors and traumatized children, the psychological needs of UAM, the risks of harm/secondary traumatization, and human/child trafficking (identification of victims as well as prevention) (Fajnorová and Chudžíková, 2010: 29).

SLOVENIA

The function of a guardian should be clearly defined and communicated to all those working with UAMAS. UAMAS should also be given clear information about the role and limitations of the guardian assigned to them. It is also recommended that guardians clearly explain their role before and after UAMAS turn 18 and that they stay in contact with UAMAS after the latter reach the age of majority.

All UAMAS should be informed about how and where to complain if they have problems with their guardian. It is important that the guardians be professionally supervised, trained and supported by the institution responsible for their appointment. The work and methodology of guardians should be evaluated by an independent institution.

The legal guardian should always be present at interviews that UAMAS have with the migration authorities and should provide assistance and support during these interviews. It is important that all UAMAS have a guardian as well as a legal representative to protect their rights and ensure the protection of their best interests. The legal representative should have juridical knowledge of the migration and asylum procedure and is responsible for handling all legal matters.

Guardians and others working with UAMAS should be provided with appropriate (ongoing) training courses and should have the competencies and knowledge needed to fulfil their guardianship and other functions.

Such training should have both practical and theoretical components. Moreover, all others dealing with UAMAS should be qualified to work with this population of young migrants.

Guardians and others working with UAMAS should strive to provide the children with holistic care – suitable accommodation, education and health care, as well appropriate psychosocial and integration programmes, in accordance with the children's needs and interests.

Best interest assessment

The best interests of the child should be a primary consideration in all actions concerning UAMAS. Such interests should be assessed individually and based on the views and opinions of the child. The child should be involved in all important decisions concerning his/her life.

Interpretation

Access to interpreters should be ensured in cases when guardians and UAMAS do not speak the same language. It is important that UAMAS truly understand the interpreter and that the interpreters be trained in, and have knowledge of, migration procedures.

Professionalization

The guardianship function should be professionalized, with the guardian receiving remuneration.

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INTERVIEWS/VERBAL AND WRITTEN COMMUNICATIONS

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The Synthesis Report provides an overview of the guardianship systems, concepts, practices and policies in Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia. After defining the main concepts, the report discusses the trends related to unaccompanied minor asylum-seekers (UAMAS) and guardians and looks into the organizational structure of national guardianship systems in the aforementioned countries. The report explores the appointment procedures, duration and termination of guardianship services and the frequency of contact between guardians and UAMAS. It also explores how competencies of guardians are determined, how guardianship is monitored, supervised and evaluated and how the best interest of the child is determined in the seven countries.

The report is primarily based on desk research of relevant legislation, previous studies, reports and projects, building on and complementing particularly the IOM project 'Best Practices for a Coordinated Approach to Assist Unaccompanied Minor Asylum-seekers (UAMAS) and former UAMAS in EU Member States'. In situations where the relevant information was not available, data were collected through semi-structured, individual interviews with experts. Consultations were occasionally carried out to clarify particular aspects or to obtain specific data. The report is guided by international and European Union (EU) human rights standards – most importantly, the 1989 United Nations Convention on the Rights of the Child (UNCRC), ratified by all EU Member States, and the EU Charter of Fundamental Rights.

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