

# Unaccompanied minors

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## Unaccompanied minors in Poland - policy, practice and data

Report produced by the National Contact Point  
to the European Migration Network in Poland



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This National Report was prepared by the Ministry of the Interior and Administration acting as the coordinator of the National Contact Point to the European Migration Network in Poland (PL NCP EMN) and constitutes a compilation of replies, which have been provided - on the request of the Migration Policy Department (Ministry of the Interior and Administration) - by the staff of respective institutions: Office for Foreigners, Ministry of Family, Labour and Social Policy and International Organisation for Migration - office in Warsaw. This Report follows the common specifications and methodology prepared by the European Migration Network (EMN).



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Poland belongs to a group of countries in which the interest in issues related to unaccompanied foreign minors is still limited to a small circle of institutions and experts who come in direct contact with such minors. No systemic solutions regulating all aspects of their stay in Poland in a uniform way have been introduced. It needs to be stressed, however, that the rights of the child, the child's subjectivity and the principle of acting in the best interests of the child are respected both in relevant legislation and in everyday practice of individual institutions which come in contact with unaccompanied minors.

## Executive Summary

Issues related to unaccompanied foreign minors were the subject of a study carried out by the European Migration Network in 2009 – Poland was one of the countries participating in the study.

This report contains a list of answers to 59 questions contained in EMN questionnaire, which all EMN Member States and Norway were asked to fill in 2014. In the case of Poland information provided by the Office for Foreigners; the Aliens Department and the Border Department of the Border Guard, Department of Family Policy and Department of Labour Market at the Ministry of Family, Labour and Social Policy, as well as by International Organisation for Migration office in Warsaw were supplemented with data presented in reports and studies prepared by the Office of the Ombudsman for Children, Office of the Human Rights Defender, as well as non-governmental organisations. In addition, the report also includes articles and presentations available on various institutions' websites, including poviats centres for family support and municipal social welfare centres, as well as previously unpublished comments and opinions concerning the situation of unaccompanied foreign minors presented by experts during formal and informal meetings.

Nonetheless the questionnaire contained questions which the EMN National Contact Point for Poland was unable to answer.

Poland belongs to a group of countries in which the interest in issues related to unaccompanied foreign minors is still limited to a small circle of institutions and experts who come in direct contact with such minors. However, these issues are not the subject of public debate as they do not constitute a problem or challenge for migration and social policy due to a very small number of unaccompanied foreign children in Poland. Therefore no systemic

solutions regulating all aspects of their stay in Poland in a uniform way have been introduced. It needs to be stressed, however, that the rights of the child, the child's subjectivity and the principle of acting in the best interests of the child are respected both in relevant legislation and in everyday practice of individual institutions which come in contact with unaccompanied minors.

In Poland there is no uniform legislation regulating in a comprehensive manner the complex situation of unaccompanied foreign children. The individual aspects of their stay in Poland are regulated either very generally, referring to all foreign nationals, or in a way that takes more account of the situation of foreign minors; very rarely the provisions apply directly to unaccompanied foreign minors. In addition, in many cases provisions governing particular issues relating to minor Polish citizens are applied to unaccompanied foreign minors.

Aside from the Act on granting protection to foreigners within the territory of the Republic of Poland, two other very important acts related to some issues important in the context of unaccompanied foreign minors were adopted in Poland during the last 5 years – the Act of 9 June 2011 on family support and foster care system (amended in 2014) and the Act of 12 December 2013 on foreigners. Unaccompanied minors applying for refugee status, minor victims of trafficking in human beings or foreign children placed in foster care benefit from numerous good solutions adapted to their specific needs. The most problematic group of children consists of those children, who after coming to Poland unaccompanied for different reasons may never be covered by any support scheme and therefore remain vulnerable to various threats.

Foreign minors are a very diverse group due to the fact that many different factors have contributed

to the fact that they stay in Poland without their relatives, in particular their parents. Therefore the amount of time necessary to find a permanent solution to issues related to their stay in Poland or their return to their country of origin or to reunite them with family members staying in another EU Member State differs significantly. Act of 25 July 2014 amending the Act on family support and foster care system and certain other acts which entered into force in September 2014 specified the deadline for regulating the legal situation of the child placed in foster care – currently this deadline is 18 months.

The questionnaire contains questions about the possibility to reside in Poland legally and the scope of support for returning to the country of origin. Furthermore, EMN takes into account also solutions aiming at providing minors with shelters and satisfying their basic needs, as well as solutions related to access to education, health care, legal aid and assistance in becoming independent after reaching the age of majority adopted in specific Member States. Information about the above-mentioned issues presented in the report is limited mainly to description of solutions provided for in the current provisions; due to the limitations of the adopted form of the report and due to the lack of reliable statistical data, it is difficult to carry out an in-depth analysis of the complexity and actual scope of the issue related to the presence of foreign minors in Poland.

As it was already stated, in many cases provisions governing particular issues relating to minor Polish citizens are applied to unaccompanied foreign minors. With regard to provisions generally applicable to Polish citizens it has to be noted, that despite making valid and rational assumptions, not all of the introduced changes are fully applicable to unaccompanied foreign minors. The good example illustrating this thesis is the Act on family support and foster care system, adopted in 2011. During the works on new act it has been decided that the new system should become a separate element of state family policy, regulated by new, systemic legal act – and not just by a section of the Act on social assistance. Assumptions to the Act were meant to, *inter alia*, regulate in a comprehensive manner the issues related to assistance with the upbringing of the child in families and foster care system, including *inter alia* organisation of foster care system and the

issue of gaining independence by persons placed in foster care who attained the age of majority.

The Act gave a clear primacy to family forms of foster care by introducing provisions aiming at a significant reduction of the role of institutional care and education centres and their gradual transformation into small centres, in which the standard of living is similar to the one at home. Pursuant to previous provisions (i.e. provisions of the Act of 12 March 2004 on social assistance) which remained in force until 31 December 2010, care and education centres could house at most 30 children. Paradoxically, according to opinions of numerous experts the above-mentioned solution – which is very good from the point of view of Polish children – is not fully appropriate for unaccompanied foreign minors: according to the Ministry of Labour and Social Policy data as at 31 December 2013 there were 918 care and education centres in Poland (including 625 socialisation care and education centres, 242 family centres and 149 intervention centres) and 40 260 family-based forms of foster care (including 25 842 related foster families, 12 182 non-professional foster families, 1 906 professional foster families and 330 foster homes). After comparing data presented above with the number of unaccompanied foreign minors placed in foster care in 2013, which amounted to 199, it is difficult not to agree with arguments suggesting that identifying and preparing specific centres on the territory of the entire country, whose personnel would be appropriately trained to work with a specific group of children consisting of unaccompanied foreign minors, would constitute an optimal from the point of view of such children (especially since currently no such solution has been implemented).

Making all persons placed in foster care who attained the age of majority eligible to receive financial assistance for continuing their education regardless of their income should also be regarded as a positive development – especially due to the fact that it helps persons leaving care to raise their level of educational attainment and acquire vocational qualifications, thus improving their chances on the labour market. In this way young people can take up employment already during education and as a result – swiftly acquire professional experience.

It is worthwhile to note other positive developments, such as trainings for Border Guard officers,

since in the majority of cases they are the first people coming into contact with minors, and the cycle of expert meetings initiated by IOM office in

Warsaw for the purpose of developing the training programme for potential guardians of unaccompanied foreign minors.

# 1

## Motivations and circumstances of unaccompanied minors for entering Poland

## 1.0 Motivations and circumstances of unaccompanied minors for entering Poland

In the EMN questionnaire potential motivations of unaccompanied minors for entering the EU have been listed. Based on information obtained from the

Office for Foreigners, it can be concluded that in the case of minor foreigners entering Poland, most commonly stated motives include:



### ESCAPING

persecution or serious harm, inter alia, due to opposition activities of the parents in the country of origin, the general situation of insecurity in the country,

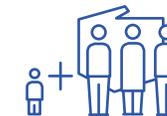
persecution or discrimination on grounds of ethnic origin, lack of religious freedom and discrimination in access to education on the grounds of nationality, involvement in anti-government-

tal activities of their diaspora in Poland, the threat of facing a punishment disproportionate to the acts committed in the country of origin;



### FAMILY REUNIFICATION

(joining family members residing in Poland in order to apply for asylum and then reunite with the family);



### JOINING

another migrant / emigrant community;



### ECONOMIC REASONS

and reasons related to aspirations – lack of or difficult access to education in the country of origin, lack of care and means of subsistence in the country of origin;



### TRANSIT

transit to another Member State;



### FACILITATED ILLEGAL ENTRY

/ smuggling;



### ARRIVAL

at external border points.

Other institutions in contact with unaccompanied minors indicated the situation of being a victim of trafficking in human beings and the abandonment of a minor on the Polish territory (in a range of circumstances<sup>1</sup>, always synonymous with lack of parental care).

Sometimes minors are not aware why they entered Poland or (which happens more often) they also don't want to reveal their real motives.

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### Initiatives that Poland undertakes together with third countries with the aim to address the root causes of unaccompanied minors' migration

The International Organization for Migration (IOM) – Warsaw Bureau carries out a number of preventive activities aimed at:

- **developing new solutions and recommendations** to improve the existing system, based on the exchange of information, knowledge and experience between experts representing various sectors and institutions involved in helping children and foreign nationals (expert meetings, also with the participation of international specialists; national thematic seminars);
- **improving knowledge and competences** of persons performing functions of custodians for foreign unaccompanied children, or persons interested in performing this function in the future (drawing up of a specialised training programme on tasks, role and challenges for foreign unaccompanied children facing custodians in Poland in the context of specific needs of this particular group of children; training for custodians of unaccompanied foreign children).

Moreover, in the years 2012 and 2013, two projects related to the trafficking in human beings have been implemented within a framework of the

Development Aid for Ukraine. The projects were aimed at capacity building in prevention and tackling human trafficking by the Ukrainian Police and at an improvement of cooperation between Polish and Ukrainian Police. Issues related to unaccompanied minors – victims of trafficking in human beings – were among many topics raised during trainings, meetings and study visits.

#### 1. „Poland and Ukraine cooperation in tackling and preventing trafficking in human beings” (2012)

- during training for Polish and Ukrainian law enforcement bodies (training organised in Łukęcin, on 26th and 27th September 2012) representatives of Polish Police and Border Guard and representatives of Ukrainian Ministry of the Interior were familiarised with a presentation entitled „Child sale – trafficking in human beings, illegal adoption or perhaps legal gap?”;
- during trainings organised in Lvov, on 5th-9th November 2012, the examples of prevention campaigns for young people have been discussed; moreover representatives of Polish and Ukrainian NGO's gave training for Police officers on the conducting of victims' hearing and carrying prevention actions for young people.

#### 2. „Tackling and preventing of trafficking in human beings as common challenge for Poland and Ukraine” (2013)

Within this project the following events have been organised:

- Trainings at the Police Training Centre in Legionowo (18th – 19th June 2013);
- Two study visits of Ukrainian representatives in Poland: on 17th-22nd November 2013 – the South of Poland (Rzeszów – Kraków) and on 1st-16th December 2013 – the North of Poland (Szczecin – Gorzów Wielkopolski).
- Publication for Polish and Ukrainian law enforcement bodies have been prepared as well.

1. Experts have pointed to cases of foreign children born in Poland and abandoned by their parents, or to cases where the entry of a minor took place with the company of legal guardians (parents, relatives, group), who then abandoned the child.

# 2

## Entry, age assessment and legalisation procedures for unaccompanied minors

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## 2.0 Entry, age assessment and legalisation procedures for unaccompanied minors

The principles and conditions governing entry of foreign nationals into the territory of the Republic of Poland, their transit through this territory, their residence on and the departures from this territory, the procedures and authorities competent in these matters are determined by the Act of 12 December 2013 on foreigners<sup>2</sup>, but mostly also by the provisions of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)<sup>3</sup> – Article 5 and Annex VII/section 6 thereof.

Chapter III of the aforementioned Act on foreigners applies to the crossing of the border, while Chapter IV thereof applies to visas – their issuance, extension, renewing, revocation and cancellation<sup>4</sup>.

In accordance with Article 23 of the aforementioned Act, a foreigner who crosses the border shall be obliged to be in possession of:

- 1) a valid travel document;
- 2) a valid visa or another valid document entitling him/her to enter into and stay in the territory of the Republic of Poland, if these are required;
- 3) a permit to enter another country or a permit for stay in another country, if such permits are required for transit.

A foreign national possessing a temporary residence permit for a fixed period, a long-term resident's EU residence permit, or who acquired an authorisation to stay for humanitarian reasons and possessing

a residence card issued in connection with granting of the above-mentioned permits may repeatedly cross the border, without the necessity to obtain a visa each time.

In principle, these provisions apply to all foreign nationals, with some modifications to take account of the situation of refugees or foreign minors (especially those unaccompanied). Foreign minors crossing the Polish border shall be subject to the same entry and exit checks as adults.

However, in accordance with paragraph 6.1 in Annex VII ("Special rules for certain categories of persons") to the Schengen Borders Code, and on the basis of Border Guard's own internal rules, during the border control Border Guard officers pay particular attention to minors and underage persons, regardless of whether they are travelling under the guidance of adults or alone, and whether they are third country nationals or exercise their right to free movement within the EU/Schengen area.

In accordance with paragraph 6.2. in Annex VII to the Schengen Borders Code, in case of minors travelling under the guidance of an adult, the Border Guard officer checks whether the person (or persons) accompanying the minors has parental custody or legal custody over them. Where minors are accompanied by one adult only and there are serious grounds for suspecting that they may have been unlawfully removed from the custody of the person(s) legally exercising parental custody over them, the Border Guard officer shall carry out further investigations in order to determine whether the information provided

2. Dz. U. [Journal of Laws] of 2013, item 1650.

3. OJ L 105, 13.4.2006, as amended.

4. In the absence of the provisions in Chapter IV concerning issuing, revoking or cancelling national visas or extending the period of their

validity or the period of the foreigner's stay on the territory of the Republic of Poland covered by those visas, the provisions of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas shall apply.

by the person claiming to be a parent or legal guardian is true. Such investigations shall also include running checks in the databases (both national ones and SIS).

In accordance with paragraph 6.3 of the aforementioned Annex in the case of minors travelling without the guidance of adults (i.e. alone), the Border Guard officer performing the check shall ensure, i.a. by examining travel documents and supporting documents and by checking in databases whether the minors are leaving the territory against the will of a person (or persons) having parental custody over them.

Poland, like other EU Member States, has set up a national contact point for the purposes of consultations on minors and, in case of any doubts, on any circumstances related to minors, regardless of whether they travel under guidance or alone, uses the list of national contact points located in other Member States, provided by the European Commission (in accordance with para. 6.4 and 6.5 of the Annex).

## 2.1 Entry documents required by unaccompanied minors

### Entry documents required by unaccompanied minors



#### VISA PERMITTING ENTRY AND STAY

### Types of documents required and the conditions that apply

Third-country nationals subject to the requirement to possess a visa may be granted a Schengen visa or a national visa.

A child who is a citizen of a third country which is subject to the requirement to possess a visa must have its own visa (even if the child is entered in the parent's passport – in case of a family passport separate visas with separate photographs are issued for (each) parent/parents and for (each) child/children. A person exercising parental authority or a legal guardian submits the visa application on behalf of the minor. During the processing of visa applications consulates are obliged to verify whether the person or persons

applying for a visa on behalf of the child are his or her parents or legal guardians (in accordance with the Handbook for the processing of visa applications and the modification of issued visas<sup>5</sup>). Consent of parents or legal guardian is required for all applicants under 18 years of age, regardless of the age of majority in their state of residence. Consulates should also check whether the child has not been wrongfully taken from the person exercising parental authority over that child. In cases where there is a suspicion of such a wrongful removal, the consulate shall take all necessary steps to prevent it.



#### PASSPORT

Issues concerning the rules for issuing documents are governed by the provisions of the country of origin. Minors may cross borders with their own valid passports or based on an entry in the passport of the parent or legal guardian, under the guidance of whom the child is travelling, depending on the provisions of national law. A minor may still be included in his or her parent's passport.

Schengen Borders Code does not oblige children who are third country nationals to have their own separate passport upon entering or leaving the Schengen area, because the principle of <sup>6</sup> "one person-one passport" applies to nationals of the Schengen States<sup>7</sup>.

5. Commission Decision C(2010) 1620 final of 19 March 2010 establishing the Handbook for the processing of visa applications and the modification of issued visas.

6. The ICAO principle resulting from Annex 9 ("Facilitation") to the Convention on International Civil Aviation signed on 7 December 1944 – the Chicago Convention (OJ L 35 of 1959, item 212, as

amended); In Chapter 3 "Arrival and departure of persons and their baggage", it was concluded that "Contracting States shall issue a separate passport for each person, regardless of their age (3.15)".

7. Regulation (EC) No 444/2009 of the European Parliament and of the Council of 28 May 2009 amending Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in



#### OTHER

If the child has its own passport, but travels with an adult who is not a parent or legal guardian, it is acceptable for the adult to present a written authorisation from the parents on the basis of which the minor is allowed to travel with a given person<sup>8</sup>.

## 2.2 Circumstances where an unaccompanied minor may be refused at the border

(non-asylum seeking unaccompanied minors)

### Categories of unaccompanied minors

### Circumstances under which unaccompanied minors may be refused entry at the border

**Is the process different for those cases when the minor's age is doubtful (for instance, when the child has no documents) and the age assessment procedure has not been undertaken yet to determine the age of the minor?**



### Non-asylum seeking unaccompanied minor arriving at a land/sea border or airport

Unaccompanied minors may not be granted entry permits when they do not fulfil the conditions for entry. In accordance with national law, a minor does not have the legal capacity and the court should appoint a custodian for the purposes of the administrative procedure (in such case, for the purposes of issuing a decision on refusal of entry).

In practice, minor resigns from entry after being informed that he/she does not fulfil the required by the law conditions of entry and is not allowed to enter (in the case of an air border crossing point the carrier shall take the minor on board). The event will be described in a relevant memorandum.

When an unaccompanied minor does not hold any documents, he/she is readmitted in a simplified procedure to the country from which the minor attempted to enter. In the case of an air border crossing each time an attempt is made to transfer the minor (through the carrier), and then the event is described in a relevant memorandum. If the airlines do not agree to do so, a return procedure is initiated, in which the minor shall be admitted to the country, placed in an institutional care and education centre or a guarded centre (in the case of minors over 15 years of age), the Border Guard applies for the appointment of a custodian. If the authority expresses doubts as to the age during the return procedure, it may request to perform examinations in order to estimate the age.

passports and travel documents issued by Member States (OJ L 142, 6.6.2009) introduced the principle of "one person-one passport" referred to in recital (6). According to this principle, passports and travel documents shall be issued as individual documents, and family

passports, or other collective passports are no longer issued.

8. In case of any doubts, a Border Guard officer shall be entitled to take steps in order to make sure whether the authorisation is valid, and to run checks in the databases (national bases and SIS).



Asylum seeking unaccompanied minor arriving at a land/sea border or airport

Persons seeking international protection, including unaccompanied minors, cannot be refused entry. Each such person shall immediately submit an application for refugee status and shall be granted an authorisation for entry, thus his or her stay in the course of the procedure for granting refugee status is legal.

The procedure is the same. Only upon receipt of an application, in case of any doubts regarding the minor's age, the authority may order an examination aiming at determining the his or her age.



Asylum seeking unaccompanied minor arriving at an internal authority (e.g. police, child protection service, etc.)

The applicant for refugee status, including an unaccompanied minor, cannot be expelled. Such persons are placed in the course of a refugee procedure and during this time, their stay in a given country is legal.

There is no difference.

## 2.3 Apprehensions of unaccompanied minors by national authorities

(non-asylum seeking unaccompanied minors)

Unaccompanied minors who are not seeking refugee status may be detained in Poland, where they do not fulfil the conditions of residence and should be returned to the country of origin.

For the purposes of conducting the proceedings on establishing a return obligation for the foreign national, the authority which detained the minor requests the court to appoint a custodian. In the application for the appointment of a custodian submitted to the court, the authority may indicate the person (close relative of the minor), if such person is present beside the minor. If the minor reached 14 years of age, his fingerprints shall be taken.

Unaccompanied minors may be placed in an intervention institutional care and education centre, and if their behaviour indicates a failure to comply with the rules applied in such a centre and they reached 15 years of age – in the guarded centre for foreigners.

In practice, there is only one guarded centre with designated places for unaccompanied minors.

In the course of the return procedure, grounds for granting humanitarian protection are considered and, in particular, conditions resulting from the Convention on the Rights of the Child<sup>9</sup>. Following the decision on the establishment of a return obligation for the foreign national, the unaccompanied minor may be removed to the country of origin, if there are any relatives or competent welfare authorities waiting for him in that state. During the return procedure the unaccompanied minor is accompanied by a custodian appointed for or the conduct of the return – in practice, in the application for the appointment of a custodian submitted to the court a Border Guard officer is assigned.

In case of any doubts as to the age of the minor, the authority may request to perform examinations

in order to estimate the age. Pending the outcome of those examinations, the person claiming to be a minor is treated as a minor.

The procedures related to the refusal of entry (as described in the answer to question 4) apply at the border, which means that either unaccompanied

minor decides not to continue the journey and returns voluntarily, or in the absence of documents – he/she shall be immediately forwarded on the basis of simplified readmission (without issuing him the decision on the obligation of the foreigner to return).

## 2.4 Trainings on how to deal with unaccompanied minors entering Poland

Training for Border Guard on how to deal with minors is a part of other trainings conducted for Border Guard in the framework of the special courses in administrative proceedings at the border and in the territory, and in organizing forced and voluntary returns. These training sessions are carried out mainly by Border Guard Specialist Training Centre (OSS SG) in Lubań. Representatives of the OSS SG shall take part in the training carried out by EU agencies (Frontex and EASO) for national trainers, and then on the basis of acquired knowledge they deliver their own national trainings.

Separate trainings concern the methods of dealing with victims of trafficking in human beings. The Unit for Constant Monitoring and Coordination of Actions of the Border Guard within the field of combating and preventing trafficking in human beings was established pursuant to Decision of 18 June 2008 of the Border Guard Commander-in-Chief. The Unit carries out the tasks during the National Action Plan against Trafficking in Human Beings (currently the plan approved by the Minister of Internal Affairs for

2013–2015 applies). The National Plan recommends, inter alia, to carry out training for the officers of Border Guard. Such training shall be carried out for the foreign division and operation and investigation division of Border Guard. Training is carried out by Border Guard Training Centre in Koszalin (advanced level, diverse range of topics, mainly for the operation and investigation division). In addition, internal training is conducted in each unit of the Border Guard – the courses in themes related to trafficking in human beings are carried out at each stage of the training.

In addition, the Office of the International Organization for Migration (IOM) in Warsaw in cooperation with the Office for Foreigners and Border Guard Headquarters has developed and implemented e-learning training "Identification, protection and assistance of victims of trafficking in human beings". The course specifically took into account issue of children – victims of trafficking, as well as unaccompanied foreign children constituting one of the main risk groups. It is proposed that all officers of the Border Guard were obliged to complete the course.

<sup>9</sup> Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989. (Dz. U. of 1991, No 120, item 526)

## 2.5 The organisation of the national asylum procedures

(for asylum-seeking unaccompanied minors)

The procedure for granting refugee status can be initiated provided that the minor expresses the willingness to apply for international protection in Poland.

Application for refugee status is submitted to the Head of the Office for Foreigners via the competent Commander-in-Chief of the Border Guard Unit or post:

- a minor applicant that does not have the documents entitling him/her to cross the border, shall submit an application during the border control via the Commander-in-Chief of the Border Guard post;
- a minor applicant who is staying in the territory of the Republic of Poland, shall submit an application through the Commander-in-Chief of the Border Guard unit, whose territorial operational scope covers the Capital City of Warsaw (Nadwiślański Border Guard Unit);
- a minor applicant who is staying in a guarded centre for foreigners (SOC), shall submit an application through the Commander-in-Chief of the Border Guard, whose territorial operational scope covers headquarters of the guarded centre.

On receipt of a request from an unaccompanied minor (aged 14 or older) the fingerprints shall be taken. The authority accepting an application for refugee status (Border Guard) from an unaccompanied minor shall apply immediately to a guardianship court competent with regard to the minor's place of residence to appoint a custodian to represent the minor in the proceedings for granting a refugee status and to place the minor in institutional care centre (foster care).

The Border Guard takes an unaccompanied minor to a professional foster family that performs the functions of a family emergency house or to the intervention care and education centre in which he/she stays until the court reaches its decision. If an unaccompanied minor stayed in the guarded centre for the foreigners at the time of submission of the application for refugee status, he is released

from SOC and placed in one of the aforementioned institutions.

The Border Guard shall immediately forward the application for refugee status to the Head of the Office for Foreigners in order to examine it.

If the fact that the applicant is an unaccompanied minor comes to light in the course of proceedings, the Head of the Office shall apply for the appointment of a custodian and placing the minor in an institutional care and education centre.

The Head of the Office, if possible, shall undertake actions aimed at finding relatives of the unaccompanied minor (unless this is contrary to the interest of child). To this end, the Office for Foreigners carries out the practical cooperation with the Polish Red Cross (PCK). During the hearing, the minor is informed about the possibility of tracing his/her family members with the help of the PCK – the condition of undertaking the aforementioned actions is minor's consent. The minor is informed about the search results while the Office for Foreigners is notified that the information on the results of the search operations was sent to a minor.

An unaccompanied minor, who was refused the refugee status and the subsidiary protection, shall remain in the institutional care and education centre until he/she is handed over to the authorities or the organizations of his/her country of origin, whose statutory tasks include dealing with minors.

The procedures are the same for minors whose age is confirmed, as well as for those whose age is dubious. Until it is confirmed that a foreign national is an adult, he/she is treated as a minor.

### The appointment of a custodian (guardian)

The authority accepting an application for refugee status (Border Guard) from an unaccompanied minor shall apply immediately (on the same day) to a guardianship court competent with regard to the minor's place of residence to appoint a custodian to represent the minor in the proceedings for granting a refugee status and to place the minor in institutional care and education centre. The aforementioned

custodian ("kurator" in Polish) is not the legal guardian ("opiekun prawny" in Polish) of an unaccompanied minor. The scope of his or her duties is strictly determined by the court, in practice it is usually only representation of the minor in the proceedings for granting refugee status. The legal guardians (with broader competences) are appointed very rarely for unaccompanied minors applying for refugee status. Polish court, to appoint a legal guardian for the unaccompanied foreign minor usually needs a death certificate of both of his/her parents, or the decision of courts from his/her country of origin on the deprivation of parents of parental authority. But even when the minor has any of the aforementioned documents, if he/she has no relatives in Poland, it is difficult to find a person who would agree to become his/her legal guardian because there are no specific provisions, and also because it involves legal and financial responsibility for the child.

If the fact that the applicant is an unaccompanied minor comes to light in the course of proceedings, the Head of the Office shall apply for the appointment of a custodian and placing the minor in an institutional care and education centre.

The procedures are the same for minors whose age is confirmed, as well as for those whose age is dubious. Until it is confirmed that a foreign national is an adult, he/she is treated as a minor.

### Hearing in accordance with the procedure

Minors applying for refugee status in Poland shall be heard whenever his/her age and psycho-physical state allow this. The Border Guard carries out preliminary hearing only (without the participation of a psychologist), while the actual hearing shall be carried out by the Office for Foreigners. The Head of the Office for Foreigners shall inform the custodian of the unaccompanied minor about the time and place of the hearing, not later than 7 days before the date of the hearing. Prior to the hearing, the unaccompanied minor shall be instructed by

employee of the Office of Foreigners about actual and legal circumstances, which may affect the result of proceedings for granting a refugee status, and about the possibility to request for a hearing to take place with the presence of an adult person indicated by the minor.

The hearing shall be conducted in a language understandable for the unaccompanied minor, in accordance with age, maturity and mental development of the unaccompanied minor, taking into account the fact that the minor's knowledge of the actual situation in the country of his/her origin may be limited. It is carried out by an employee of the Office of Foreigners that meets the specified requirements<sup>10</sup>.

The hearing with the unaccompanied minors shall take place in the presence of:

- a custodian who may ask questions or make comments;
- an adult person indicated by the minor, if it does not hamper the proceedings;
- a psychologist or a pedagogue, who shall draw up an opinion about psychophysical condition of the minor.

It is possible to consolidate the conduct of hearing by using audio or video equipment.

If there are any doubts as to the actual age of the minor and if he/she must therefore undergo a medical examination, the date of the hearing will be designated probably after the tests, when his/her age will be confirmed.

### The procedure for assessing the age of an asylum-seeking UAM who claims to be a minor

The age given by the foreign national is entered to his/her refugee status application. The application is then registered in the information system operated in accordance with the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland<sup>11</sup>.

<sup>10</sup> An employee of the Office of Foreigners must satisfy at least one of the following conditions:

- completion of the master degree education at the faculty of law and 2 years of service in institutions involved in child care;
- completion of the master degree education or higher vocational education and 2 years of service in public administration and completion of the training in conducting proceedings for grant

ing a refugee status with the participation of minors;

- completion of the master degree education at the faculty of pedagogy, psychology or sociology and 2 years of service in public administration.

<sup>11</sup> Consolidated text: Dz. U. [Journal of Laws] of 2012, item 680, as amended.

Procedure for determining the age shall be carried out in case of doubt relating to the age of the foreign national who identifies himself/herself as minor.

A medical examination to determine the actual age of the foreign national shall be carried out with the consent of a minor or with the consent of his statutory representative.

The aforementioned medical examination may be carried out only in the case when the determination of actual age of a foreign national is not possible on the basis of the documentation collected during the case relating to his/her identification.

The results of the examination should indicate the age of the examined person and the margin of error. If after the medical examination there are still doubts as to the actual age of a foreign national, he/she shall be treated as a minor.

Where a foreign national does not consent to undergo the aforementioned examination, he/she shall be considered an adult.

If the determination of age is carried out at the stage of application for refugee status, the age resulting from the examination shall be entered in the application. The results of the examination shall be annexed to the case file. If estimation of the age is carried out on the stage of the procedure before the Head of Office for Foreigners, the age given by a foreign national to the Border Guard shall be entered in the application, the result of the medical examination shall be annexed to the case file and the foreign national's age shall be changed in the information system in which the application is registered.

The authority responsible for ensuring that the medical examination is carried out is the Head of Office for Foreigners, and in the case when doubts about a foreigner national's age arose during the submission of the application the responsibility lies with the authority accepting such application, i.e. the Border Guard.

Before the examination, the foreign national shall be informed – in a language that he/she understands – on how the examination shall be carried out and on the possible consequences of the obtained result, and consequences of the refusal to undergo such

examination. In order to determine the age of the person, and to increase the probability of its proper estimation, the following examination shall be carried out:

- **general examination** - The examination aimed at determining the level of physiological development through analysis of anthropometric data of the examined person (height, weight, etc. – comparison with the constitutional type). The general examination is also to identify possible malformations and to identify potential diseases (including past diseases) that may affect the proper assessment of the age of the examined person.
- **radiological examination** of the left wrist bone – aimed at determining the level of development of the skeletal system – the degree of boning (ossification); in the case of radiological examination, any constraints imposed by the contraindications for the use of this method apply;
- **dental examination**, on which the determination of age by analyzing the pantomographic picture – teeth mineralisation phases – is based.

The specialised science-research unit assesses and gives the final expertise/opinion of the X-ray.

The foreign national is considered to be a person whose age is defined by the lower error limit for the age estimated in the examination; in the case where as a result of medical examination, a person's age was estimated to be over 18 years old, and the adopted error limit indicates that a person may be under 18 years old – such person shall be treated as a minor. If after the medical examination there are still doubts as to the actual age of a foreign national, he/she shall be treated as a minor (so-called privilege of doubt).

#### **The average duration of an asylum procedure for unaccompanied minors**

The average duration of the procedure for granting refugee status to minor in Poland is 6 months. Procedures in cases of minors whose age is dubious, are generally longer than those in which the age of minor is sure because the estimation of the age must be carried out and this action requires additional time.

## 2.6. Guardianship and age assessment for non-asylum seeking unaccompanied minors

Unaccompanied foreign minors who are not under the refugee procedure are placed – depending on the circumstances – either in foster care facilities (most frequently) or in the guarded centres (in justified cases and provided that they are over the age of 15 years old). In any case, the guardianship court shall decide on the type of the facility in which the minor shall be placed, and shall appoint a custodian to represent the minor in the administrative proceedings. The scope of the custodian powers depends on the court's decision; there is no reason why the same person should not represent a minor in various cases related to his stay in Poland or organisation of return to his/her country of origin. However, in practice it can happen that especially in the event of difficult and long-lasting cases, different people can respectively act as a custodian.

The actual care of the minor, including the satisfaction of living and healthcare needs, access to education, legal aid, is provided by the personnel of the facility in which the minor is placed.

#### **The procedure for assessing the age of a non-asylum seeking unaccompanied minor who claims to be a minor**

The first information on the age and lack of care shall be recorded in the detention report.

The procedure for determining the age shall be carried out in case of doubt of the authority as to

the age given by a foreign national. The age obtained from the examination results replaces in the files the age given by the foreign national.

Pursuant to the Act on foreigners, should there be any doubts as to the age of the foreign national who claims to be a minor and is admitted to a guarded centre or an arrest for foreigners, the foreign national, with his/her consent or with the consent of his statutory representative, undergoes medical examination aimed at establishing his/her actual age. The results of the medical examination should inform of the margin of error.

Where a foreign national who claims to be a minor does not consent to undergo medical examination, he/she shall be considered an adult.

The examination to determine the actual age of a foreign national shall also be carried out in the event of justified doubts as to the actual age of a foreign national:

- who is detained in a guarded centre or in an arrest for foreign nationals or in an institutional care and education centre,
- who is not detained in a guarded centre or in an arrest for foreigners (detention facility) or in an institutional care and education centre, with respect to whom activities that are aimed at executing the decision about the return obligation are carried out.

Further rules were described in section 2.5.

## 2.7 Residence permits granted to unaccompanied minors

(both asylum- and non-asylum seeking unaccompanied minors)

The Act of 12 December 2013 on foreigners does not provide for a separate basis for the legalisation of stay of unaccompanied foreign minors residing in Poland. Such foreigners have an opportunity for legalisation of stay in Poland in accordance with the general rules.

As a result of proceedings for the return obligation or as a result of separate proceedings, an unaccompanied minor may obtain an authorisation to stay for humanitarian reasons on the grounds related to the protection of his/her rights, in particular on the basis of the

Convention on the Rights of the Child but also on the basis of the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950, (by obtaining "residence permit") or permit for tolerated stay due to the impossibility of expulsion to their country of origin (by obtaining "permit for tolerated stay"). Both these permits are granted by the Border Guard under non-application procedure (proceedings conducted ex officio).



#### Respect for the Rights of the Child set out in the UN Convention on the Rights of the Child

Foreign minors illegally residing in Poland may apply for a temporary residence permit referred to in Article 187(7) of the Act on foreigners. According to Article 187(7) of the abovementioned Act, a temporary residence permit may be granted to a foreigner due to other circumstances, if:

- his/her departure from the territory of the Republic of Poland would violate the rights of the child, as defined in the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989 (Dz. U. of 1991 No 120, item 526, of 2000 No 2, item 11 and of 2013 item 677), to the extent that could significantly adversely affect his/her mental and physical development, and the foreigner stays in the territory of the Republic of Poland illegally.

Pursuant to Article 191(1)(4) of the abovementioned Act, a foreigner shall be refused to be granted a temporary residence permit mentioned in Article 187(7) when:

- 1) he/she does not meet the requirements for being granted a temporary residence permit due to the declared purpose of the stay or the grounds for applying for such a permit do not justify his/her stay in the territory of the Republic of Poland for a period longer than 3 months; or
- 4) it is justified by national security or defence, or by the protection of public safety and order, or
- 5) in the course of the proceedings on granting him/her a temporary residence permit, the foreigner:

- a) filed an application containing false personal data or false information or attached documents containing such data or information to the application, or
- b) testified untruthfully or concealed the truth, or forged or modified a document in order to use it as an authentic one, or used such a document as an authentic one.

Due to the abovementioned circumstances, a temporary residence permit shall be granted at the request of a foreigner. In order to obtain the abovementioned residence permit, a foreign national shall be exempt from the requirement to comply with the general conditions of migration, such as having an established place of residence in Poland, health insurance and income or financial resources sufficient to cover the cost of living. Each time the permit is granted for a period that is necessary to achieve the purpose of residence, which is longer than 3 months but not longer than 3 years.

After 5 years of residence on the basis of the abovementioned permit, a foreign national will be able to apply for a long-term resident's EU residence permit under the conditions set out in Chapter 2 of the Act on foreigners. The abovementioned residence permit is granted according to the rules provided for in Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

Foreign nationals for whom there are grounds for issuing a decision on imposing the return obligation (e.g. residing in Poland despite the lack of a document entitling them to reside on that territory), when issuing such a decision would result in the violation of the rights of the child, as defined in the Convention on the Rights of the Child, to the extent that could significantly adversely affect mental and physical development of a child, they have the opportunity to obtain national forms of protection against the expelling measures taken in the form of a residence permit for humanitarian reasons.

In accordance with Article 303(1)(2) and Article 330(1)(3) of the Act on foreigners, when a foreign national has been granted a residence permit for humanitarian reasons (and a permit for tolerated stay within the territory of Poland) or there are grounds for granting it, a decision on imposing the return obligation shall not be issued and a decision already issued

shall not be executed.

Pursuant to Article 348 of the abovementioned Act, a foreign national shall be granted a residence permit for humanitarian reasons in the territory of the Republic of Poland, if a return obligation for him/her:

- 1) can be made solely to the state in which within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950:
  - a) his/her right to life, freedom and personal security might be threatened, or
  - b) he/she could be subject to torture or inhumane or degrading treatment or punishment, or
  - c) he/she could be subject to forced labour, or
  - d) he/she could be deprived of the right to fair trial or be punished without a legal basis, or
- 2) would violate his/her right to family or private life within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950, or
- 3) would violate the rights of the child, as defined in the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989, in a manner which may represent a serious threat to his/her psychophysical development.

Pursuant to Article 349 of the abovementioned Act:

1. A foreigner shall not be granted a residence permit for humanitarian reasons if there are substantial grounds to believe that:
  - 1) he/she has committed a crime against peace, a war crime or a crime against humanity within the meaning of the international law, or
  - 2) he/she is guilty of acts contrary to the purposes and principles of the United Nations set out in the Preamble and Article 1 and 2 of the Charter of the United Nations, or
  - 3) he/she has committed a crime within the territory of the Republic of Poland or committed an act outside this territory that is a crime under the Polish law, or
  - 4) represents a threat to national security or defence, the protection of public order and safety, or
  - 5) he/she has instigated or otherwise participated in

the commission of crimes or offenses referred to in subparagraphs 1-3.

2. A foreigner who, before the arrival in the territory of the Republic of Poland, has committed an act other than the ones specified in subparagraphs 1-3 that is an offense under the Polish law and is punishable by imprisonment, may be denied residence permit for humanitarian reasons if he/she left the country of origin solely in order to avoid punishment.

Foreign nationals resided uninterruptedly in the territory of the Republic of Poland for a minimum period of 5 years on the basis of a residence permit for humanitarian reasons may apply for a permanent residence permit (Article 195(1)(6) of the abovementioned Act). The permanent residence permit shall be granted without the need for a foreigners to comply with the general migratory conditions, such as having an established place of residence in Poland, health insurance and income or financial resources sufficient to cover the cost of living.



#### Victims of trafficking in human beings

In the case of unaccompanied minors who are victims of trafficking, the rules of the Act on foreigners shall apply, regulating the legalisation of stay of the victims of trafficking in human beings (Chapter 9 "Stay in the territory of the Republic of Poland of foreigners who are victims of human trafficking").

In accordance with the abovementioned Act, when foreigners (including minors) residing illegally in the territory of Poland are identified as victims of trafficking in human beings, they are entitled to the time for reflection ("reflection period") and, in the case of cooperation with the law enforcement authority, they are entitled to a temporary residence permit (and in the future – the right to permanent residence permit).

Pursuant to Articles 170 - 175 of the abovementioned Act, a foreign national who is presumed to be a victim of trafficking in human beings within the meaning of Article 115 § 22 of the Penal Code

12. Journal of Laws of 2013 item 182.

shall be provided with a certificate confirming the existence of such a presumption. A foreign national's residence in the territory of the Republic of Poland shall be considered legal throughout the period of validity of the certificate issued to the foreigner, i.e. for the period of 3 months from the issue date of the certificate (and for the period of 4 months in the case of minors). The certificate is issued by the authority competent to conduct procedure on trafficking in human beings, i.e. by the Police or the Border Guard or a prosecutor. At that time a foreign national cannot actively, voluntarily and on his/her own initiative establish contacts with any persons suspected of committing the crime of trafficking in human beings. The authority competent for issuing the certificate shall advise the foreign national in writing about the abovementioned provisions in a language which they understand (Article 173 of the Act on foreigners).

Apart from the right to legal residence, the certificate entitles the victims of trafficking in human beings to:

- a) receive benefits in the form of crisis intervention, shelter, meal, necessary clothing and designated benefit, according to Article 5a of the Act of 12 March 2004 on social assistance<sup>13</sup>;
- b) an immediate release from a guarded centre or an arrest for foreigners (detention centre) (Article 406(1)(4) of the Act on foreigners). In addition, a foreigner residing in the territory of the Republic of Poland on the basis of a certificate cannot be obliged to return (Article 303(1)(12) of the Act on foreigners), and if a decision on imposing the return obligation had been issued, it cannot be executed (Article 330(1)(5) of the Act on foreigners). Such decisions issued by the authorities of other Member States shall not be executed either (Article 386(3b) of the Act on foreigners). The validity of the entry of the victim's personal data into the list of foreigners whose residence in the territory of the Republic of Poland is undesirable, shall be suspended for the period of the validity of the certificate (Article 437(1)(4) of the Act on foreigners).

According to the Article 176 and further of the mentioned Act, a temporary residence permit for

victims of trafficking in human beings shall be granted to a foreigner who meets each of the following conditions:

- 1) resides in the territory of the Republic of Poland;
- 2) has started to cooperate with the authority competent to conduct proceedings related to the criminal offence referred to in Article 189a(1) of the Criminal Code;
- 3) has ended contacts with persons suspected of committing the criminal offence referred to in Article 189a(1) of the Criminal Code.

A temporary residence permit shall be granted, refused to be granted or revoked by the voivode competent with respect to the place of residence of the foreigner, by way of decision (Article 104 of the Act on foreigners).

A foreigner residing in the territory of the Republic of Poland on the basis of a temporary residence permit for victims of trafficking in human beings has the right to:

- a) be released from the obligation to possess a work permit, pursuant to Article 87(2)(1) of the Act of 20 April 2004 on employment promotion and labour market institutions<sup>14</sup>;
- b) be provided with education, inter alia in public schools for adults, public post-secondary schools, public art schools, public establishments and public teacher training centres, pursuant to the Article 94a(2)(11) of the Act of 7 September 1991 on the education system<sup>14</sup>;
- c) receive benefits in the form of crisis intervention, shelter, meal, necessary clothing and designated benefit - Article 5a of the Act on social assistance;
- d) be immediately released from a guarded centre or a detention facility for foreign nationals (Article 406(4) of the Act of foreigners).

Moreover, a foreigner residing in the territory of the Republic of Poland on the basis of a temporary residence permit for victims of trafficking in human beings cannot be obliged to return (Article 303(1)(5) of the Act on foreigners). A previously issued decision on this matter shall expire by virtue of law (Article 306(2) of the Act on foreigners), and pending proceedings shall be suspended (Article 305(1) of the

Act on foreigners). The decision imposing an obligation to return shall not be executed also in the case where it is issued by a body of another Member State (Article 386(2) of the Act on foreigners).

The personal data of the victims who received the permit shall not be entered into the list of foreign nationals whose residence in the territory of the Republic of Poland is undesirable and if their personal data had been entered, it shall be erased (Article 436(1)(5) and Article 436(2) of the Act on foreigners).

A temporary residence permit granted to victims of trafficking in human beings shall be revoked inter alia: when the purpose of residence for which the permit was granted ceased to exist or when a foreigner no longer complies with the requirements for granting the permit on the grounds of the declared purpose of residence, especially where the foreigner has ceased to cooperate with the authority competent to conduct the proceedings related to the crime of trafficking in human beings or where such proceedings have been closed (Article 180(1) of the Act on foreigners). The permit might also be revoked in the event of the occurrence of one of the following circumstances:

- a) it is required for reasons of state defence or security, the protection of public safety and order;
- b) in the proceedings for granting a temporary residence permit to a foreign national:
  - the person submitted an application containing false personal data or false information or attached to it documents containing such data; or
  - the person has given false testimony or withheld the truth or counterfeited or forged a document that person intended to use or used as an authentic document (Article 180(2) of the Act on foreigners).

Pursuant to Article 178 of the abovementioned Act, a foreigner is refused to be granted a temporary residence permit mentioned in Article 176 (for victims of trafficking in human beings) when:

- 1) he/she does not meet the requirements for being granted a temporary residence permit due to the declared purpose of the stay or the grounds for applying for such a permit do not justify his/her stay in the territory of the Republic of Poland for a period longer than 3 months; or
- 4) it is justified by national security or defence, or by the protection of public safety and order, or

5) in the course of the proceedings on granting him/her a temporary residence permit, the foreigner:

- a) filed an application containing false personal data or false information or attached documents containing such data or information to the application, or
- b) testified untruthfully or concealed the truth, or forged or modified a document in order to use it as an authentic one, or used such a document as an authentic one.

A temporary residence permit for victims of trafficking in human beings shall be granted for the period of at least 6 months and maximum 3 years. The body conducting the proceedings for granting a temporary residence permit to a foreigner who is a victim of trafficking in human beings provides a foreigner who does not have sufficient command of the Polish language with the help of an interpreter.

Pursuant to Article 195(1)(5) of the abovementioned Act, a foreigner who is presumed to be a victim of trafficking in human beings within the meaning of Article 115 § 22 of the Penal Code shall be granted the permanent residence permit for an indefinite period of time, if:

- a) he/she has resided in the Republic of Poland directly before filing the application for a permanent residence permit for at least a year on the basis of a temporary residence permit for victims of trafficking in human beings,
- b) he/she cooperated with law enforcement bodies in proceedings related to the criminal offence referred to in Article 189a(1) of the Penal Code,
- c) he/she has justified concerns about returning to their country of origin, confirmed by the prosecutor who carries out the proceedings related to the criminal offence referred to in Article 189a(1) of the Penal Code.

In case of victims of trafficking in human beings (pursuant to Article 260(1)(2) of the Act on foreigners) the Polish identity document of a foreigner may be issued to a foreign national (victim of trafficking in human beings), if he or she meets the following conditions:

- resides in the territory of the Republic of Poland on the basis of a certificate confirming the existence of a presumption that he or she is a victim of trafficking in human beings,

13. Journal of Laws of 2013 item 674 consolidated text.

14. Journal of Laws of 2004, No 256, item 2572, consolidated text.

- has no travel document and it is impossible for him/her to obtain any other identification document,
- submits an application for such a document – and is exempt from the obligation to produce a valid travel document or another document confirming his/her identity when filing an application (Article 231(4) of the Act on foreigners).

A Polish identity document of a foreigner shall be valid for 1 year from the date of its issue (Article 262 of the Act on foreigners). Within the period of its validity, it shall confirm the identity of the foreign national during his/her stay in the territory of the Republic of Poland, but it shall not confirm his/her citizenship. Accordingly, it shall not entitle its holder to cross the border (Article 261(1) and (2) of the Act on foreigners).

In case of a minor who is a victim of trafficking in human beings the above mentioned document may be applied for by the guardian appointed for that purpose by the family court.

The actual ability to legalize the residence provided for in the Polish law is often limited by the specific situation of an unaccompanied foreign minor. It should be noted, however, that this group is not homogeneous. The fundamental problem

may be the lack of documents confirming the child's identity (a birth certificate is not accepted as proof of identity because of lack of a photograph of the person for whom it was issued). This problem occurs often in case of children born in Poland by mothers of irregular stay.

The easiest situation to be resolved with regard to the legalisation of stay is the situation of a child abandoned by parents whose identity and citizenship is not established, because according to the Article 15 of the Act of 2 April 2009 on Polish Citizenship<sup>15</sup>, a minor child shall acquire the Polish citizenship when he/she is found in the territory of the Republic of Poland and his/her parents are unknown. Moreover, a minor child shall acquire the Polish citizenship by birth when he/she was born in the territory of the Republic of Poland and his/her parents are unknown, do not hold any citizenship or their citizenship is undetermined (Article 14 (2) of abovementioned Act).

Polish legislation also provides for a possibility of granting a temporary residence permit "due to other circumstances" to a foreigner if he/she is a minor child of a foreigner, born in the territory of the Republic of Poland and residing unattended in this territory (Article 186, para 1 point 2 of the Act on foreigners).

persecution<sup>16</sup> in their country of origin because of race, religion, nationality, political opinion or membership in a particular social group, they cannot or do not want to enjoy the protection of that country.

A foreign national who does not meet the conditions for a refugee status, shall be granted subsidiary protection (pursuant to Article 15 of the Act) in cases

where a return to the country of origin may expose him to a real risk of serious harm by:



**1) a death penalty sentence or an execution to be carried out,**



**2) torture, inhumane or degrading treatment or punishment,**



**3) a serious and individualized life or health hazard as a result of common use of violence towards the civilians in a situation of an international or internal military conflict.**

and due to this risk he or she shall not or do not want to enjoy the protection of their country of origin.

Authority receiving the application for refugee status shall grant the applicant – an unaccompanied foreign minor – a provisional identity certificate of a foreigner, hereinafter referred to as "the identity certificate", valid for a period of 30 days. After the expiry of the first certificate of identity the Head of the Office

for Foreigners shall issue successive identity certificate, valid for period no longer than 6 months, until completion of proceedings for granting refugee status.

The identity certificate, within the period of its validity, shall confirm the identity of a person for whom it was issued and shall entitle this person to stay in the territory of the Republic of Poland.

A foreigner with refugee status or benefitting from subsidiary protection shall be entitled to the same rights as a foreigner who has been granted the temporary residence permit, unless the provisions of the Act or of other Acts provide for otherwise. The decision on obligation to leave the territory of the Republic of Poland or on expelling from the country shall not be issued with regard to a foreigner with refugee status or benefitting from the subsidiary protection, without withdrawing that refugee status or protection.

A foreigner who is granted refugee status, receives the travel document provided for in the Geneva Convention (valid for a period of 2 years) and a residence card valid for a period of 3 years from the date of issue (after expiry of the permit, a new residence permit is issued, valid for another period of 3 years).

A foreigner who enjoys subsidiary protection shall be granted a residence card valid for a period of 2 years from the date of issue (and after the expiry – another card, also valid for a period of 2 years).

Pursuant to Article 195(1) of the Act on foreigners, a permanent residence permit shall be granted to a foreigner for an indefinite time, at his/her request, if the foreign national: resided uninterruptedly in the territory of the Republic of Poland, immediately before filing an application for a permanent residence permit, for a period of no less than 5 years<sup>17</sup> under refugee status, subsidiary protection or on the basis of a residence permit for humanitarian reasons. In the case in which a foreign national is an unaccompanied minor – the permanent residence permit is applied for by the guardian (custodian) on his behalf.

the period of residence during which the procedure for granting the refugee status is held, even if the foreign national was placed in a guarded centre or an arrest for foreigners (detention facility).

## 2.8 The residence permit granted to unaccompanied minors whose claims for asylum are successful

(e.g. refugee status, residence permit issued on other grounds than international protection, etc.)

Issues connected with the refugee status and subsidiary protection are regulated in the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland.

In accordance with Article 13 of the above mentioned Act, a foreign national is granted the refugee status if, as a result of well-founded fear of

<sup>15</sup>. Journal of Laws of 2012, item 161 as amended.

<sup>16</sup>. Persecution, as referred to must: 1) due to its nature or repetition constitute a serious violation of human rights, in particular the rights whose repealing is inadmissible pursuant to Article 15(2) of the Convention for the Protection of Human Rights and Fundamental

Freedom signed in Rome on 4 November 1950 (Dz. U. of 1993, No. 61, item 284 and 285, as amended); 2) be an accumulation of various acts or omissions, including breaches of human rights, whose impact is as severe as the persecution referred to in Paragraph 1.

<sup>17</sup>. The required period of 5 years residence with respect to a foreign national who resides on the territory of the Republic of Poland on the basis of refugee status or subsidiary protection shall also include

# 3

## Reception arrangements, including integration measures for unaccompanied minors

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### 3.0 Reception arrangements, including integration measures for unaccompanied minors

#### 3.1 Reception and care arrangements; searching for "durable solution" for unaccompanied minors

In Poland there is no uniform legislation regulating in a comprehensive manner the complex situation of unaccompanied minors. The individual aspects of their stay in Poland are regulated either very generally, referring to all foreign nationals, or in a way that takes more account of the situation of foreign minors; very rarely the provisions apply directly to unaccompanied foreign minors. In addition, in many cases provisions governing particular issues relating to minor Polish citizens are applied to unaccompanied foreign minors. Most of the legal acts in force are referred to in the text of this report.

Best described in legal frames and most comprehensively regulated are issues regarding reception of unaccompanied foreign minors who apply for granting refugee status.

In Poland the following institutions are responsible for reception of unaccompanied minors:

- Border Guard,
- Office for Foreigners,
- courts – family and juvenile divisions,
- voivodeship offices,
- poviats centres for family support.

In case of unaccompanied minors applying for granting refugee status the distribution of responsibilities (and costs) is as follows:



##### RECEPTION

- Border Guard shall accept an application for refugee status submitted by an unaccompanied minor and shall immediately apply to a court applicable to the place of residence of a minor to appoint a guardian (custodian) which will represent the minor in the proceedings for granting refugee status and to place the minor in institutional care and education centre;
- Border Guard shall take the unaccompanied minor to intervention-type institutional care and education centre;
- at the admission to the centre the foreigner should present a provisional identity certificate of a foreigner issued by the competent Border Guard Unit (with the exception of minors transferred from other Member State on the basis of the Dublin II agreement);
- if during the stay in the centre the minor reaches the age of 18 years, and final decision on granting refugee status has not been issued, it is necessary to contact the Border Guard / Office for Foreigners on placing him/her at the reception centre for refugees;
- the minor shall have the right to be reunited with his/her family under the Dublin procedure

(necessary contact Border Guard / Office for Foreigners / guardian);

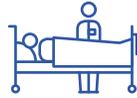
- the minor shall have the right to return voluntarily to his/her country of origin (necessary contact Border Guard / Office for Foreigners / IOM / guardian).



### COSTS OF STAY

- the costs of the minor's stay in the intervention-type institutional care and education centre shall be financed from the funds being at the disposal of the Head of the Office for Foreigners;
- the foreigner shall stay in the above mentioned centre for a period of 3 months with the possibility of extending this period, then the court decision on placing the minor in socialisation-type institutional care and education centre should be issued and in this case further costs shall be borne by the voivode;
- Office for Foreigners shall cover the costs of stay of minors in accordance with invoices issued by intervention-type institutional care and education centre, and the costs of medical care – borne until the conclusion of the refugee procedure conducted with regard to the foreign minor – regardless of the type of institutional care centre that issued the invoice;
- the aforementioned invoices shall include costs of stay of the minor according to rates fixed each year by order of local authorities with respect to each centre individually as well as total medical costs;
- a minor, who has been refused granting the refugee status, subsidiary protection and permit for tolerated stay shall remain in the centre until they are handed over to the authorities or the organizations of their country of origin, whose statutory tasks include dealing with minors – in this case costs of the stay of the minor shall be covered by the Commandant in Chief of the Border Guard;

- after issuing the final decision regarding granting the minor refugee status, the cost of stay shall be covered by a poviát.



### MEDICAL CARE

Foreign nationals, including unaccompanied minors, shall have the right to free of charge medical services from the moment of submitting the application for refugee status. These persons are staying legally in the territory of the Republic of Poland.

The costs of medical care provided until the conclusion of proceedings for granting refugee status in the way of issuing the final decision shall be financed from the state budget, from the part which is administered by the minister in charge of internal affairs, from the resources at the disposal of the Head of the Office.

The medical care shall include providing health care within the scope in which people covered by the obligatory and voluntary healthcare insurance are entitled to medical services under the Act of 27 August 2004 on health care services financed from public funds (Journal of Laws of 2008, No 164, item 1027, as amended), except from health resort treatment or rehabilitation.



### EDUCATION

Minors subject to proceedings for granting refugee status shall have the same right to education up to 18 years of age or to completing upper secondary school as other children, including foreign children.

"A durable solution for the child" shall be subject to the initial situation of the unaccompanied minor, i.e. a situation of the child, when it comes into contact with state institutions, which means that the durable solution differs with respect to particular groups of unaccompanied foreign minors. It is necessary to take into account different experience and life situations of unaccompanied foreign children. The most advantageous for the child is to find its family (and/or its return to its country of origin). In the case when the child's return to parents is not possible (or parents are unknown or it is impossible to find them) the "durable solution" would consist of providing the minor with the best possible care in Poland<sup>18</sup>. From the point of view of the "durability" of the solution the most advantageous seems to be an adoption<sup>19</sup> (especially in case of very young children), though this is not a common solution; if the adoption is not possible – placing the unaccompanied minor in a socialisation-type institutional care and education centre or in a foster family (if safe return to their country of origin and to their own family is not possible).

To protect the best interest of the child, it is necessary to carry out activities in two ways. On the one hand, it is necessary to make rapid decisions, so that the child would not be left in a situation of suspension and uncertainty. These measures should include providing the child safe shelter, legal representation, medical care and other ad hoc measures necessary in a given situation. On the other hand, a durable solution for the child, which will be an expression of its best interest in the long term, should be sought. All taken steps should be based on a careful and comprehensive analysis of the child's situation with regard to the assessment of its family situation<sup>20</sup>.

Having regard to the complexity of the experience and situation of different groups of unaccompanied foreign minors it is extremely difficult to respond to such questions. The court shall decide on what to do with a child that comes into contact with state institutions – on the basis of the court decision the child is directed to the appropriate type of centre. As

a general rule, decisions on minors are issued without undue delay, however, in particularly complex cases issuing a decision on durable solution requires many months.

In case of unaccompanied foreign minors who apply for granting refugee status decisions on durable solutions are being issued relatively quickly (as from the date of submitting the application). With regard to other children finding a durable solution takes much more time. In the first place foreign children shall be placed in intervention-type centres which shall not refuse their admission – the stay in this type of centres is temporary and should not last longer than three months. In practice, however, it happens that children stay in those centres for longer period of time (e.g. due to the lack of places in institutional care and education centres), which delays the moment in which it is possible to implement the durable and scheduled solution, adapted to the situation of the child.

As for foreign minors applying for refugee status, the authority to which the application is filed shall apply immediately to a guardianship court to appoint a guardian (custodian) to represent the minor in the proceedings for granting the status and to place the minor in an institutional care and education centre. It brings in the minor to a professional foster family that serves as a family emergency shelter or to an intervention-type institutional care and education centre. The minor remains there pending the court ruling. If the minor is refused the refugee status and subsidiary protection, he/she stays in the institutional care and education centre until he/she is handed over to the authorities or the organisations of his/her country of origin, whose statutory tasks include dealing with minors (Chapter 4 of the Act on granting protection to foreigners within the territory of the Republic of Poland).

In case a foreign minor staying unaccompanied in the territory of Poland is detained (i.e. when his/her stay is illegal):

- 1) the Police – immediately handle over the foreign minor to the Border Guard Unit competent for the place of his/her detention;

<sup>18</sup>. The crucial issue is not only satisfying the basic needs of unaccompanied minors related to daily live, but also regularisation of their legal position in Poland.

<sup>19</sup>. Adoption is possible only in the case when parents of the child are dead and when this option is allowed by the law of the country of

origin of the child.

<sup>20</sup>. Conclusions from the expert meeting in the framework of the project Enhancing the efficiency of measures in the field of voluntary returns. Phase II, organised by the Office of IOM in Warsaw on 24 June 2013 – material not published, report, page 3.

2) the Border Guard – requests the court with jurisdiction over the place of detention of the foreign minor for the child to be placed in an institutional care and education centre or in a guarded centre (but only in the case of a foreigner who is 15 or older). When examining an application for placing a foreign minor staying unaccompanied in the territory of the Republic of Poland in a guarded centre for foreigners and having the best interests of the child in mind, the court shall take into account the foreign minor's physical and mental stage of development; his/her personality traits, the circumstances of the detention and the personal conditions in favour of placing the foreign minor in a guarded centre.

Should there be any doubts as to the age of the foreigner who claims to be a minor and is admitted to a guarded centre or an arrest for foreigners (detention facility), the foreigner, with his/her consent or with the consent of his statutory representative, undergoes medical examination aimed at establishing his actual age. The results of the medical examination should inform of the margin of error. Where a foreigner who claims to be a minor does not consent to undergo the medical examination, he shall be considered an adult.

Very often it is challenging to verify one's age and determine whether provisions relating to children apply to a given person, however, in case of doubt as to the age of a foreigner and pending its determination the foreigner is treated as a child.

## 3.2 Accommodation and other material reception provisions

Accommodation type and access to other care and material reception provisions (in cash or in kind)	Unaccompanied minors seeking asylum or have been granted international protection	Unaccompanied minors not seeking asylum, including those who entered irregularly and/or child victims of trafficking
Accommodation with adults	NO	Victims of trafficking – NO
Accommodation with a foster family <sup>21</sup>	YES	Victims of trafficking and UAMs not seeking asylum – YES
Accommodation/reception facilities specifically for minors (PL: institutional foster care - care and education centres <sup>22</sup> )	YES	YES

21. Pursuant to Article 39(1) of Act of 9 June 2011 on family support and foster care system, the forms of family-based foster care include: 1) foster family: a) related, b) non-professional, c) professional, including professional one that performs the function of a family emergency house and professional specialist one; 2) foster home. Both these forms provide 24-hour child care and upbringing, in particular they provide access to the healthcare services, education (including compensation of development and school-related deficiencies), the development of talents and interests, they satisfy emotional, welfare, development, social and religious needs of the child, as well as enable the child to have contact with persons close to him/her, unless the court decides otherwise.

A professional foster family that performs the function of a family emergency house shall admit a child: 1) on the basis of a court ruling; 2) in case when a child was escorted by Police or the Border Guard; 3) at the request of the parents, the child or any other person in

the event of an imminent threat to the life or health of the child in connection with domestic violence. In particularly justified cases, it may refuse to admit a child: 1) when the total number of children placed in a family exceeds 3; 2) when the child escorted by the Police and the Border Guard is above 10 years of age. A child is placed in a professional foster family that performs the function of a family emergency house until his/her situation has been settled, however, for no longer than for a period of 4 months (in exceptional cases, this period may be extended up to 8 months).

It is estimated that about half of the unaccompanied foreign children are placed under family foster care, while the other half under institutional foster care.

22. In accordance with Article 93 of the abovementioned Act the institutional foster care is exercised inter alia in the form of care and education centre (the other two forms are: regional care and therapy centre and pre-adoptive intervention centre). A care and education

Specialised accommodation facilities available for UAM victims of trafficking

Specialised accommodation facilities available to UAMS to meet specific identified needs

Other types of accommodation (please state, e.g. in adult accommodation facilities if over 16 years of age)

Food (e.g. meal vouchers to buy or prepare own meals, prepared meals, etc.)

Clothing (e.g. provision of a budget to buy clothes, provision of second-hand clothes, etc.)

No, although in theory it is possible for minor mothers with children and minors with disability certificates to be placed in a professional specialised foster family (article 59(1) of the Act on assistance with the upbringing of the child and foster care system).

Not applicable – unaccompanied minors remain in institutional care and education centres from their arrival until they have attained the age of 18 years (with the possibility to remain under foster care even until the age of 25, as long as they continue their education).

Yes, pursuant to the Act of 9 June 2011 on family support and foster care system, minors remaining in an institutional care and education centre shall be provided with full care, including meals. They can prepare light meals, but not basic meals.

Pursuant to article 18(1)(6) of the Regulation of the Ministry of Labour and Social Policy on institutional foster care a child placed in a care and education centre shall be provided with clothing, shoes, underwear and other personal items, according to his/her age and individual needs.

Victims of trafficking: NO  
There are no special institutional care centres for minor victims of trafficking. Minor victims of trafficking are placed in care centres on the basis of the general principles referred to in the Act on assistance with the upbringing of the child and foster care system.

However, as for teenage girls – victims of trafficking in human beings (aged 15 to 17) it is possible for them to be placed, following the decision of a family court, in a shelter of the National Consulting and Intervention Center for Polish and Foreign Victims of Trafficking in Human Beings.

A specific case concerns unaccompanied foreign children who have attained the age of 15 years and who reside illegally in the territory of the Poland and thus may be placed in guarded centres for the time necessary to arrange their return to their country of origin.

Minors staying in foster care facilities are served meals that are adequate to their developmental, cultural, religious and health-related needs (Article 18(1) of the Regulation of the Ministry of Labour and Social Policy on institutional foster care).

centre provides 24-hour child care and education, fulfils the child's essential needs, implements a child assistance plan developed in cooperation with the family assistant, and enables the child to have contact with his/her relatives, as well as provides access to education, therapeutic actions and eligible healthcare services. In socialization, intervention or specialist therapy care and education centres shall be placed children above 10 years of age (younger children are admitted only in exceptional cases and shall be immediately transferred to one of the family forms of foster care). A care and education centre

admits children 24 hours a day. With regard to the exercise of its tasks it cooperates among others with the court, the poviat family assistance centre and other institutions, in particular to prepare the child for independent life.

The interventional institutional care centre is to provide ad hoc child care during an emergency. The child shall be admitted to the centre: 1) on the basis of a court ruling; 2) where a child was escorted by the Police or the Border Guard; 3) at the request of the parents, the child or a third person in the event of domestic violence.

<b>Allowance/pocket money</b>	Pursuant to article 18(1)(8) of the Regulation of the Ministry of Labour and Social Policy on institutional foster care, a child placed in a care and education centre shall be provided with a sum of money for his/her own use from the age of 5 to be determined by the head of the institutional care centre (the	amount depends on the age of the child and the type of school he/she attends). The amount of pocket money ranges from PLN 10 to PLN 80 per month (which is not less than 1% and not more than 8% of the amount of PLN 1,000).
<b>Other types of material reception provisions</b>	The supply of textbooks, teaching aids and school supplies, toys appropriate to the child's development stage participation in extracurricular activities and recreational sports.	participation in educational and cultural events, the ability to provide holidays and tours.

Unaccompanied minors have the freedom to make their own choices with regard to the provisions available to them with the ultimate goal of preparing them for the transition to adulthood. The existence of a very effective form of self-empowerment of children brought up in institutional care and education centres – the so-called “self-empowering accommodation” – should also be noted. The idea behind the self-empowering accommodation is to create a transition phase between the care and education centre, the foster family and full independence. Self-empowering accommodation is a separate flat located outside the facility, where the foster children aged 18–25 may live running an independent household.

The organisations which are responsible for the provision of accommodation/other material reception conditions of unaccompanied minors are La Strada Foundation against Human Trafficking and Slavery and the PoMOC Mary Immaculate Association for Women and Children under the public task “Running the National Consultation and Intervention Centre for Polish and Foreign Victims of Trafficking in Human Beings” financed from the funds of the Ministry of Interior – in the case of a foreign child identified as a victim of trafficking and placed, following a court ruling, in a NCIC (National Consulting and Intervention Center for the Victims of Trafficking) shelter<sup>23</sup>.

#### The staff responsible for the reception and care of unaccompanied minors

Generally, running a foster family and a foster home can be entrusted to persons who meet the conditions

laid down in Article 42 of the Act of 9 June 2011 on family support and foster care system (inter alia they guarantee that they will adequately fulfil their duties, they are not and have not been deprived of parental authority, their capacity to perform acts in law has not been limited, they are able to provide the child with adequate living conditions, they have not been convicted of a deliberate crime, etc.). The candidates must undergo a special training (and obtain a certificate of its completion) whose content has been approved by the Minister of Labour and Social Policy. Regardless of the aforementioned training, they are required (under a legal requirement) to systematically raise their qualifications in the course of the exercise of custody of minors.

People working with children at institutional care and education centres must hold a higher education degree in an appropriate field of study and have a documented experience in working with children (Article 98(1) of the abovementioned Act).

In Poland there are no selected specific foster care institutions where unaccompanied foreign children would be sent to, and thus there are no special trainings on the specific needs of this group of minors.

A professional or non-professional foster family may admit no more than a total of 3 children or persons that attained the age of majority when remaining under foster care at a time; in the case of a foster home no more than 8 residents are allowed at the same time (both in the case of a foster family, and in the case of a foster home it is allowed to admit more children to accommodate siblings, if needed).

14 children may stay in a socialisation or intervention institutional care and education centre; while in a family-based foster care centre – 8 children (up to 10).

There are no provisions concerning the number of foreign unaccompanied minors covered by the various types of foster care.

#### The overall assessment of the standard of accommodation/material reception conditions provided to unaccompanied minors in Poland

From the financial point of view, the accommodation standards of foreign minors are evaluated rather positively. The problem is the lack of a sufficient number of foster families and an insufficient number of places in care centres for the needs of all unaccompanied children and not just foreign children.

Moreover, experts emphasize that the unaccompanied foreign children should be placed in a care and education centre(s) adopted to meet the specific needs of this group of children, employing experienced staff with expertise necessary to work with foreign children.

"An example of a good practice are measures implemented in 2004–2012 aimed at the development

of a dedicated facility where unaccompanied foreign children were placed. It was Children's Home No. 9 in Warsaw. According to the experts, over the years this facility has not only developed a number of practical solutions for the development and integration of unaccompanied children, but also managed to put together a team of professional tutors and carers who obtained several trainings organised by the Office for Foreigners and the Border Guards. However, the staff was not the only driving force behind the success of this project; the efforts aimed at the development of broadly understood social and institutional facilities also translated into the development of social and cultural competences by foreign children (...). In addition to the formal and institutional solutions, there was a palpable atmosphere of caring and understanding in the facility, and the ties and relationships between the children and the tutors are clearly visible long after the children left the children's home. The exercise was financed by the Office for Foreigners. In the opinion of the experts, the project should be continued and developed in other regions of the country"<sup>24</sup>.

The work to support the integration process of foreign minors is ongoing.

### 3.3 Access to legal advice

#### Legal advice

##### Unaccompanied minors seeking asylum or have been granted international protection

#### Legal advice and other forms of legal support

The authority admitting an application of an unaccompanied minor for granting refugee status shall apply immediately to a guardianship court to appoint a guardian (custodian) to represent the minor in the proceedings for granting

a refugee status. Because a person who has not attained the age of 18 years does not have full legal capacity and does not have the capacity to perform procedural steps it is necessary to appoint the guardian, who acts as a repre-

sentative of the child in all proceedings involving him. In addition the guardian provides support for the minor applying for a refugee status at the hearing, which is a part of the status procedure.

##### Unaccompanied minors not seeking asylum, including those who entered irregularly and/or child victims of trafficking

In the case of the minors who do not apply for international protection and whose legal and residence situation requires regulation, it is necessary for the

guardianship court to appoint the guardian (custodian), who will represent the minor in the proceedings to legalize his stay in Poland or to ensure that the minor

will return to his country of origin (if this is in the best interests of the minor). Moreover, in many cases, legal aid is necessary to confirm the identity of the

23. <http://www.kcik.pl/>

24. Report from the expert meeting under the project "Enhancing the efficiency of measures in the field of voluntary returns. Phase II",

which took place on 24 June 2013 at the initiative of IOM Office in Warsaw - material not published.

	minor and to obtain documents – at this stage it is necessary to turn to the competent diplomatic post. Regardless of the form of support, legal assistance (including counselling) is offered by workers of foundations and non-governmental organizations, volunteers – law students, as well as persons	who have actual custody of the minors (e.g. staff of foster care institution or district family assistance centres). In the case of minors being the victims of trafficking in human beings the legal assistance is particularly important in the context of cooperation with law	enforcement authorities. Since 2010 Poland has the National Consulting and Intervention Center for the victims of trafficking in human beings, which implements the Programme of support and protection of victims/witnesses of trafficking in human beings.
<b>Is the process different for those cases when the minor's age is doubtful?</b>	No		

The organisations which are responsible for the provision of legal support to unaccompanied minors are: Halina Nieć Legal Aid Centre, Association for Legal Intervention, UNHCR, the Rule of Law Institute Foundation, University Legal Clinics (University of Warsaw and Jagiellonian University in Cracow), the Ombudsman for Children, the Human Rights Defender, Helsinki Foundation for Human Rights, the Polish Migration Forum Foundation, the Polish Humanitarian Action.

**The overall assessment of the provision of legal support to unaccompanied minors in Poland**  
Legal aid to foreigners is provided mainly by non-governmental organizations, making use of EU funds – this state of affairs was criticized by the organizations, because in their opinion it is the obligation of the State to provide legal aid to foreigners, not of the social organizations. Halina Nieć Legal Aid Centre as well as other Polish non-governmental organisations over the years have called for introduction of a free legal aid system for foreign nationals and refugees.

### 3.4 Healthcare

Healthcare <sup>25</sup>	Unaccompanied minors seeking asylum or have been granted international protection	Unaccompanied minors not seeking asylum, including those who entered irregularly and/or child victims of trafficking	Is the process different for those cases when the minor's age is doubtful?
<b>Emergency treatment</b>	Yes	Yes	The procedure is the same.
<b>Basic medical care</b>	Yes	Yes, taking into account the information provided in "The overall assessment of the standard...".	The procedure is the same.

25. Act of 27 August 2004 on health care services financed from public funds (Journal of Laws of 2008, No 164, item 1027, as amended) defines the conditions for granting and the scope of health care

services financed from the public funds. The Act also regulates rules of the common voluntary and compulsory health insurance. The groups of foreigners who have free access to health care services are

<b>Essential/specialised healthcare if required</b>	Yes	Victims of trafficking in human beings: Yes (under NCIC) Other unaccompanied minors: Yes taking into account the information provided in "The overall assessment of the standard...".	The procedure is the same.
<b>Psychological support/counselling</b>	Yes	Victims of trafficking in human beings: Yes (under NCIC)	
<b>Do unaccompanied minors have equal access to healthcare as child citizens?</b>	Yes	Minors residing in the foster care facilities – Yes, taking into account the information provided in "The overall assessment of the standard...".	
<b>Are unaccompanied minors assessed to ensure their healthcare needs are met (e.g. through a health assessment)?</b>	No	Yes, taking into account the information provided in "The overall assessment of the standard...".	
<b>Do unaccompanied minors have access to health insurance? If yes, under what conditions?</b>	No	No	
<b>How is reception organised for unaccompanied minors with psychiatric problems or addictions?</b>	There is no systemic solution addressed specifically to the unaccompanied foreign minors. However, taking into account	- as he overriding principle - the interest of the minor, if necessary, people or institutions, who effectively take care on the minors.	try to provide professional psychiatric/psychological aid.

The organisations which are responsible for the healthcare of unaccompanied minors are the Ministry of Health, the Office for Foreigners, the foster care facilities.

#### The overall assessment of the standard of healthcare provided to unaccompanied minors in Poland

For the purposes of this report, the Office of International Organization for Migration in Warsaw submitted the following comments<sup>26</sup>:

- The costs of medical care provided to the unaccompanied foreign minor applying for refugee status or

residing in institutional care and education centre (intervention type) or in foster family (emergency service) are financed from the state budget, from the part which is administered by the minister in charge of internal affairs, from the resources at the disposal of the Head of the Office for Foreigners.

- For other foreign children residing unaccompanied in foster care facilities, medical care is provided to the same extent as to Polish children – costs are incurred by the poviats in which the institution is located (in the case of children who are in an irregular situation - by voivodes).

listed exhaustively; whereas granting of these privileges to some of them is subject to further conditions. The cost of health care benefits provided to insured persons within the meaning of the aforementioned Act shall be borne by the National Health Fund. Some of the free health care services are available for the foreign nationals

on the basis of the bilateral agreements concluded by Poland with some countries.

26. Other assessments/comments: <http://www.prawoimedycyna.pl/?str=artykul&id=1335>, <http://interwencjaprawna.pl/docs/poza-systemem.pdf>.

With regard to medical care, in the case of foreign nationals residing in Poland illegally, outside the foster care centres, it is not the access to health care benefits that constitutes a problem, as in emergency situations health care institution has the obligation to provide aid to anyone, but the later coverage of the costs of treatment. In the absence of a regulation of this issue on the basis of Polish law, in practice the health care institution bears the costs of treatment, therefore there are situations in which young patients with an irregular status are very reluctantly admitted and are seen as “troublesome” or as a burden for the Polish health care system. One option here is the conclusion of bilateral international agreements governing the financing of health care services provided to citizens of States Parties. Such agreements concerning social security or cooperation in the field of health and medical sciences are concluded with Macedonia, Bosnia and Herzegovina, Serbia, Montenegro and Croatia, Albania and Russian Federation. Under these agreements, the citizens of aforementioned countries are entitled to use some

of the health care services free of charge on the territory of Poland.

There is also a group of health services that are available for all foreign nationals free of charge. They include: health care services provided in order to combat infections and infectious diseases and casually related to these infections and infectious diseases (including quarantine, sanitary and epidemiological supervision, sanitary and epidemiological studies and preventive vaccination against infectious diseases), health care benefits to provide mental health care for people who are mentally ill or mentally handicapped, the services to provide drug treatment for people addicted to alcohol and the services to provide drug treatment for people addicted to drugs. In addition, it should be noted that the Polish legislator has also provided the possibility of obtaining free preventative health care services for children of foreign nationals attending schools, with the exception of schools for adults.

No changes in the national legislation/existing practices in the light of the amended Reception Conditions Directive (2013/33/EU) are envisaged.

in the country of origin (the previous place of residence) and the age of the child.

Foreigners are admitted to classes II-VI of public primary schools and public lower secondary schools (gimnazjum), upper secondary schools (szkoły ponadgimnazjalne), on the basis of: (a) certificate or other document confirming the completion of overseas school or the next stage of education, considered, in accordance with separate regulations as equivalent to the Polish certificate of completion of

appropriate public school or b) certificate or other document issued by a school abroad, confirming that the foreign national attended to the school abroad and indicating the class or stage of education achieved by this person abroad, and the document confirming the sum of school years of the foreign national<sup>28</sup>. On the basis of the aforementioned documents the director of public school shall accept and admit the foreign national to the appropriate class or the appropriate semester.

If the foreigners are unable to submit the aforementioned documents they shall be accepted and admitted to the appropriate class or on the appropriate semester on the basis of the interview. In the case of the foreigner who does not speak the Polish language, the interview is carried out in a foreign language spoken by a foreign national. If necessary, the person who speaks the same language as a foreigner should be present during the interview.

**How does Poland ensure that the education provided to unaccompanied minors are adapted to their age, level of education in the country of origin and the degree of the language barrier (e.g. individual assessments etc.)?**

According to the Act on the educational system, foreign children who are subject to compulsory education, but do not speak the Polish language or their level of knowledge of the Polish language is insufficient to attend classes, shall be entitled to additional free classes of the Polish language. Additional classes of the Polish language for these persons shall be organised by the school

authority (gmina). In addition, pupils have the right to assistance provided by a person speaking the language of their country of origin, employed as a teacher's assistant by the principal of the school. This help is granted for no longer than 12 months. Children can attend additional compensatory classes in terms of subjects organized by the school authority, but for no longer than 12 months.

Ordinance of the Minister of National Education of 1 April 2010<sup>29</sup> (see below) regulates the specific issues concerning the admission of people who are not Polish citizens in public kindergartens, schools and organization of the additional compensatory classes and learning the language and culture of the country of origin.

**What support measures are available to help the unaccompanied minors with the transition to education in Poland (e.g. language training, mentoring, vocational training, other support mechanisms)?**

For foreigners and Polish citizens who are subject to obligatory education and who do not speak the Polish language or their level of knowledge is insufficient to attend classes, the school authority organizes additional free Polish language courses in the form of additional Polish language classes. Classes are conducted as one-on-one or group classes in the amount that is sufficient for the foreign national to acquire a level of proficiency in Polish language enabling him/her to participate in compulsory educational activities and not less than 2 lessons per week (90 minutes). The principal of the school, where the classes are held, shall determine a weekly schedule and the number

of additional Polish language classes in consultation with school authority. For foreigners, in respect of which the teacher conducting educational activities in a given subject finds that it is necessary to supplement the curricula differences in this course, the school authority organizes the additional compensatory classes of this subject. Compensatory classes in the given subject are conducted as one-on-one or group classes, in the form of additional lessons of this course, the number of which is one lesson per week (45 minutes). The principal of the school, where the classes are held, shall establish a weekly schedule of

additional compensatory classes in consultation with the school authority. The total number of classes, referred to above, may not be more than 5 hours per week for one student. In addition, foreigners have the right to assistance provided by the person speaking the language of their country of origin (the so-called intercultural assistant), employed as a teacher's aid by the principal of the school. This help is granted for no longer than 12 months. It constitutes a form of support of integration of the foreign national in the Polish school. Foreign nationals applying for a refugee status are additionally entitled to Polish language courses, teacher training institutions and establishments, and organization of the additional Polish language classes, additional compensatory classes and learning the language and culture of the country of origin – Dz. U. No 57, item 361.

28. If, on the basis of the aforementioned documents, it is not possible to determine the sum of the school years it is permitted to submit a written statement concerning the sum of school years of foreign national

29. Ordinance of the Minister of National Education of 1 April 2010 on admission of people who are not Polish citizens to public kinder-

## 3.5 Education

Education	Unaccompanied minors seeking asylum or have been granted international protection/	Unaccompanied minors not seeking asylum, including those who entered irregularly and/	/ or child victims of trafficking
<b>Is access to education (appropriate to the age and needs of the unaccompanied minors) provided for in legislation in Poland?</b>	YES. Pursuant to Article 70 of the Constitution of the Republic of Poland education to 18 years of age shall be compulsory, while education in public schools shall be without payment. Compulsory education covers all children irrespective of their nationality, and the legal basis of their stay in Poland.	Pursuant to Article 15(2) of the Act of 7 September 1991 on the educational system <sup>27</sup> compulsory education of child starts at the beginning of the school year in the calendar year, in which the child reaches the age of 6, and lasts until he/she graduates lower secondary school, however not longer than he/she reaches 18	years of age. In accordance with article 14(3) of the Act, a child at the age of 5 years is required to complete an annual kindergarten preparation in kindergarten, a pre-school department organized in the primary school or any other form of pre-school education.
<b>How quickly can an unaccompanied minors access education in Poland?</b>	There is no reason why the child should not gain access to education immediately after arrival in the territory of the Republic of	Poland, during the school year. Admission to kindergartens and 1st class of primary school is the easiest; at a later stage of educa-	tion it is necessary to qualify the child to the appropriate class, taking into account the stage of education completed

27. (Dz. U. of 2004, No 256, item 2572, as amended).

	es, receipt of didactic equipment necessary for learning, support for extracurricular activities and recreational sports. Access to education in guarded centres for foreigners is characterised by certain specificity, as the classes do not pursue the so called core curriculum, period of residence at the centre being generally short.	There are no regulations that would determine obligations of educational authorities or schools in the scope of teaching foreign minors placed in the guarded centres. Teaching children falls within the scope of public school teachers tasks and it is organized in cooperation with schools. Regardless of this	fact, courses in centres are usually led also by appointed Border Guards officers (often after pedagogical training). Additional teaching and educational activities, as well as recreation and sport activities are granted to foreign minors placed in guarded centres managed by Border Guard.
<b>Do unaccompanied minors have the same right to education as other children in Poland?</b>	Yes. Article 94a of the Act on educational system states clearly, that persons who do not have Polish citizenship shall be provided with education and care in public pre-schools, and persons subject to compulsory education shall be provided with education	and care in public primary and lower secondary schools, public art schools and institutions, including art institutions, on conditions applicable to Polish citizens. Persons who do not have Polish citizenship, who are subject to compulsory education	make use of education and care in public post-secondary schools on conditions concerning Polish citizens until they reach 18 years or until they graduate from post-secondary school.
<b>Do unaccompanied minors receive education in specialised educational establishments?</b>	Not applicable.		
<b>How does the education provided to unaccompanied minors support their social integration in Poland?</b>	Access to education constitutes the elementary factor facilitating integration of children. Thanks to learning Polish language, to having the possibility of acquiring subsequent stages of	education, to spending time in an environment of peers, foreign children acquire a kind of "capital" facilitating their functioning in the host country society. The aid provided by the so-called	intercultural assistants employed by directors in schools where a group of foreign nationals attends, is of the utmost importance for supporting the integration process <sup>30</sup> .
<b>How does Poland prepare unaccompanied minors for accessing their labour market (e.g. provision of training, vocational guidance, etc.)?</b>	Certain elements of support of unaccompanied foreign minors entering the labour market (constituted in law) are contained	in the so-called empowerment programs available to children in the foster care system.	Other elements include preparation for apprenticeship, training to work in a specific profession, courses and trainings.

The organisations which are responsible for the education of unaccompanied minors are: The Ministry of National Education, the Education offices in given voivodeships, local authorities that educational institutions are subject to.

### The overall assessment of the standard of educational support provided to unaccompanied minors in Poland.

The Human Rights Defender Report from 2013 is dedicated to the implementation of the foreign minors' right to education<sup>31</sup>. The Defender focused on two groups of foreigners, namely:

30. Usually the assistant was employed in the framework of a project carried out at school by a non-governmental organisation. The presence of the assistant was therefore limited by the duration of a given project. The Human Rights Defender Report, p. 53.

31. [http://www.brpo.gov.pl/sites/default/files/RAPORT-RZEC-ZNIKA-PRAW-OBYWATELSKICH-Realizacja-prawa-maloletnich-cudzoziemcow-do-edukacji%20.png\\_.pdf](http://www.brpo.gov.pl/sites/default/files/RAPORT-RZEC-ZNIKA-PRAW-OBYWATELSKICH-Realizacja-prawa-maloletnich-cudzoziemcow-do-edukacji%20.png_.pdf).

- on minors who benefit from social aid in the reception centres for foreigners applying for refugee status;
- on minors placed in guarded centres for foreign nationals and waiting for the issue or execution of a decision containing order on expulsion from the territory of Poland.

school, lower secondary school, post-secondary school). Educational activities are held in the guarded centres, while the curriculum content, the number of teaching hours and the choice of qualified teachers remain within the competence of local schools.

In order to unify the implementation of compulsory education of children placed in the guarded centres, the Ministry of the Interior has addressed the request to the Ministry of National Education to consider the possibility of the development of the curriculum framework for foreign children, taking into account their age, short-term stays, cultural and linguistic diversity.

As for the foreign minors (not only unaccompanied) placed in guarded centres, compulsory education is implemented in 2 guarded centres, i.e. in Kętrzyn (for primary school, lower secondary school, post-secondary school) and in Białą Podlaska (for primary

## 3.6 Access to support to employment

### Access to support to employment

#### Unaccompanied minors seeking asylum or have been granted international protection

(doubts on the minor's age – without an influence on the procedures)

#### What is the minimum age an unaccompanied minors can take up employment in Poland?

The term "unaccompanied minor" is not used in the current provisions of the labour law. Pursuant to Article 190 of the Labour Code a juvenile who has already attained 16 years of age, but has not yet reached 18 years of age, may be employed. Employment of a person under 16 is forbidden.

Juveniles may be employed if they: have completed at least lower secondary school and can present a medical certificate confirming that a given type of job does not pose a threat to their health.

Juveniles without vocational qualifications

#### Unaccompanied minors not seeking asylum, including those who entered irregularly and/or child victims of trafficking

(doubts on the minor's age – without an influence on the procedures)

may be employed only for the purposes of vocational training.

A juvenile may also be employed in order to carry out light works. The list of light duties is prepared by the employer after obtaining approval of an occupational medicine physician.

Children under 16 years of age may only perform work for an entity conducting cultural, artistic, sports or advertising activity subject to prior consent of their statutory representative or custodian, as well as permit of relevant labour inspector.

#### Is access to employment for unaccompanied minors conditional upon obtaining legal (residence) status, a work permit, etc.?

After 6 months from the date of submitting his/her application and being issued relevant certificate by the Head of the Office for Foreigners (in line with Article 36 of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland), a foreigner applying for a refugee status will be entitled to perform work on the territory of the Republic of Poland without a permit. Foreigners who are beneficiaries of international protection in Poland are also entitled to perform work without a work permit.

Foreign minors will be subject to the Labour Code provisions concerning juvenile persons (see above).

A valid residence permit authorising its holder to perform work constitutes one of requirements which a foreigner has to fulfil in order to be able to work legally in Poland. Provisions on the performance of work by foreigners in Poland do not differentiate foreigners based on their age or family situation. Therefore foreign minors will be subject to general provisions on employment of foreigners (Act of 20 April 2004 on employment promotion and labour market institutions and the secondary legislation thereto) and provision of the Labour Code concerning juvenile persons (see above).

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**Under what circumstances does an unaccompanied minor receive a permit to work in Poland once the minimum age is reached?**

Under the Act of 20 April 2004 on employment promotion and labour market institutions and under Article 36 (1) of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland:

After 6 months from the date of submitting his/her application and being issued relevant certificate by the Head of the Office for Foreigners, a foreigner applying for a refugee status will be entitled to perform work on the territory of the Republic of Poland without a permit. Foreigners who are beneficiaries of international protection are also entitled to perform work without a work permit.

Upon attaining the age making them eligible for employment, unaccompanied foreign minor may perform work in Poland under general rules applicable to all foreigners. Generally a foreigner who is not exempted from this requirement has to obtain a work permit issued by the voivode at the request of the employer or, if work is to be carried out during a period longer than 3 months, he/she may apply to the voivode for issuing a residence and work permit (the so-called uniform permit) himself/herself.

A foreign national who is a victim to trafficking in human beings and who resides in Poland on the basis of a temporary residence permit for victims to trafficking in human beings (Article 176 of the Act on foreigners) is released from the obligation to possess a work permit (pursuant to Article 87(2)(1) of the Act of 20 April 2004 on employment promotion and labour market institutions).

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**Is labour market access limited to a maximum number of days per year?**

No. It is limited to daytime work, with the reduced number of hours. An exception – when the work is combined with preparation for apprenticeship, then the minors work 3 days a week full-time and two days a week they learn at school.

If work is carried out on the basis of a relevant entity's declaration of intention to employ a foreigner registered in poviat employment office, it can be carried out only for 6 months during subsequent 12 months. Only citizens of the following 6 countries may take advantage of this possibility: Armenia, Belarus, Georgia, Moldova, Russia and Ukraine.

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**Can unaccompanied minors take up paid employment/household tasks for pocket money from the accommodation facilities where they are residing?**

The Act of 9 June 2011 on family support and foster care system does not make it possible for institutional care centres to employ children residing there.

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**What other forms of support are available to unaccompanied minors once working age is reached if they are unable to find employment?**

Foreigners who are beneficiaries of international protection and foreigners who received a certificate issued pursuant to Article 36 of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland, as well as other foreigners referred to in Article 1 of the Act of 20 April 2004 on employment promotion and labour market institutions, may be registered as unemployed or as job seekers, provided that they fulfil other conditions laid down in the above-mentioned Act. After being registered such persons will be able to benefit from the full spectrum of placement services, careers guidance and vocational information, as well as assistance in active job search and trainings organised by employment offices.

Foreigners registered as unemployed may also be entitled to receive unemployment benefits, provided that they fulfil the relevant requirements laid down in the Act on

employment promotion and labour market institutions.

Foreigners staying in Poland on the basis of either a temporary residence and work permit or a visa issued for the purpose of work, as well as on the basis of other temporary residence permits, may use generally available placement services provided by employment offices and information about vocations, labour market and training and educational opportunities provided by employment offices, as well as information and electronic data bases facilitating the process of acquiring job-seeking skills and skills related to self-employment, regardless of whether they are registered as unemployed or as job-seekers.

The amended Act on employment promotion and labour market institutions introduces new labour market support instruments addressed to young people, such as: vouchers (for training, internship, employment, settlement), a teleworking grant or activity benefits.

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**What other forms of support are available to unaccompanied minors once working age is reached if they are unable to find employment?**

Voluntary Labour Corps carry out activities in the field of employment and combating marginalisation and social exclusion of young people.

Support for unaccompanied minors residing in the foster care facility includes also

24-hour care till they reach the age of majority (18 years); accommodation, meals, medical care, mentoring tailored to the individual needs of the minor.

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The organisations which are responsible for providing employment access support to unaccompanied minors are: the Ministry of Labour and Social Policy, Vocational Education, Voluntary Labour Corps, Polish Humanitarian Action, vocational courses and guidance.

**The overall assessment of the standard of employment access support provided to unaccompanied minors in Poland**

Lack of information. The overall assessment of the standard of employment access support provided to UAMs was not a subject of separate studies and reports.

### 3.7 Other integration measures

An individual integration program for foreign minors is carried out in the socialisation foster care facilities,

in accordance with the educational program of the given facility.

### 3.8 Withdrawal of reception and integration support

It is impossible to withdrawn reception and integration support measures available to unaccompanied minors. It is against the law.

### 3.9 Identified challenges and good practices

One of the main challenges associated with the reception, care and integration of unaccompanied minors in Poland is creation of opportunities for

learning on variety of vocational courses, intensive Polish language courses taking into account the professional terminology as well as funding of courses.

# 4

**Unaccompanied  
minors that go  
missing/abscond  
from reception/  
care facilities**

#### 4.0 Unaccompanied minors that go missing/abscond from reception/care facilities

No evaluations or studies on the number/rate/ country of origin of unaccompanied minors who go missing or abscond from guardianship/reception/ care facilities are undertaken in Poland. This kind of research is not carried out as the migration of unaccompanied minors, including unaccompanied minors leaving supervised facilities, is of negligible scale.

Ministry of Labour and Social Policy collect data concerning the length of residence of foreign children in foster care in particular years. These data

show, that short-term residence (lasting 1 day, 2 days, 3–5 days) occur, but it is not possible to come to more generalized conclusions on this basis<sup>32</sup> – the more these data are not the basis for conclusions concerning foreign minors who disappear from supervised facilities. However, they confirm that the scale of the phenomenon is small, as according to statistics the long-term residences are far more predominant.

Length of residence Number of minors (third-country citizens and EU citizens) in foster care facilities, Ministry of Labour and Social Policy data

	2009	2010	2011	2012	2013
1 day	18	6	3	10	4
2–5 days	7	5	13	13	12
6–30 days	14	7	7	25	12
1–6 months	23	22	33	37	26
7–12 months	15	28	20	18	25
1–2 years	42	25	15	21	29
2–5 years	13	27	25	25	27
Over 5 years	36	48	43	44	64

32. Short-term residences concern both small children of few years of age, as well as children of eighteen years of age (the youngest

child placed in the facility was below one year of age), girls and boys, the third-country citizens rather more often than the EU citizens.

Among possible reasons for the disappearance of UAMs the following ones have been cited:

- Further migration to another EU Member State – especially in case of minors who did not treat Poland as their country of destination, and have submitted applications for refugee status only because they were detained in Poland by the Border Guard or by the police;
- The intention to join the family members or friends who are residing illegally in Poland or other EU countries, and about whom the minor did not want to inform the Border Guard and the Office for Foreigners.

As for the socio-demographic profile of unaccompanied minors that go missing/abscond from reception/care facilities, these are most frequently boys above the age of 15 years (Border Guard data).

#### **Measures that Poland developed to prevent or to react to disappearances of unaccompanied minors**

Foster care facilities are open, and there is no other possibility to prevent unaccompanied minors from leaving them than by making them aware, that their residence in this facility is aimed at their own good and its aim is to provide them with security and care. Unaccompanied foreign child is placed in foster care on the basis of a court decision. Under Article 5 (3) of the Act of 9 June 2011 on family support and foster care system, provisions of division III of the Act applies to unaccompanied foreign minors, independently of the type of residence status granted to a child. Immediately after the admission of a child to the institutional care centre, the diagnosis on the psychophysical condition of the minor is produced, and a child help plan is drawn up. Diagnosis includes analysis of, among others, the child's needs, the causes of the crisis situation that the child is in and the impact of this situation on the development of the child, the child's relationship with his closest environment and with people important

for the child, as well as the analysis of the stage of development of the child. Child help plan includes among others short-and long-term objectives and measures, and sets the goal of working with the child. Moreover, according to the circumstances, the degree of mental and physical development, state of health and the degree of maturity of the child, child's opinion shall be taken into account during the development of the plan.

In the institutional care and education centre, apart from the child help plan, the card of residence is kept where important events of the child's life, child's special needs and a description of the child development among others are recorded, taking into account the emotional state and the autonomy of the child, as well as the information about their state of health. Card of residence includes also sheets of psychological and pedagogical examination and observation as well as information about possible participation of the child in activities carried out by the therapist, psychologist or teacher, including the description of this participation.

In spite of this, it can be concluded that there is lack of systemic solutions. There is also no research devoted to the problem of disappearance of unaccompanied foreign minors from facilities.

In case of unexcused absence of a child, an explanatory proceedings is carried out and – over 24 hours – legal guardians of the child, police, court that held the decision about placing the foreign national in the given centre and poviast centre for family support are informed (§5 of the Ordinance of the Minister of Labour and Social Policy of 22 December 2011 r. concerning institutional foster care – Journal of Laws of 2011, No 292, item 1720).

Besides, there is the lack of systemic solutions in view of the negligible scale of migration of unaccompanied minors to Poland.

Institutional care and education centres keep the child's card of residence in which the cases of disappearances are recorded.

# 5

## Arrangements in Poland for unaccompanied minors when turning 18 years of age

## 5.0 Arrangements in Poland for unaccompanied minors when turning 18 years of age

### Arrangements for former unaccompanied minors

**What residence permit provisions are in place for the unaccompanied minor turning 18 years of age in Poland? What are the consequences for the rights and obligations of the former unaccompanied minor in accordance with these residence provisions?**

### Unaccompanied minors seeking asylum or who have been granted international protection

Unaccompanied minors seeking asylum or international protection when turning 18 years of age have continued their efforts aiming at obtaining abovementioned forms of protection according to the same rules and procedures which have been applied to them before reaching a majority. The only difference is a fact that they are no longer represented by a guardian (custodian) as they have a full legal capacity.

Foreigners, regardless of their age, applying for granting a refugee status or granting asylum, a subsidiary protection, a temporary protection or who have been granted a refugee status in Poland are refused to launch proceedings related to granting a temporary residence permit.

Foreigner who has been granted asylum, receives a permanent residence permit.

Foreigners who have been granted an international protection have a possibility of obtaining a permanent residence permit on the basis of the Article 195 (1) point 6 of Act on foreigners.

Foreigners who have applied for, or who have been granted an international protection status (refugee status and subsidiary protection status), have a possibility of obtaining a long-term resident's EU residence permit under conditions specified in the Chapter 2 of Act on foreigners. That permit is issued in line with the rules established by the Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

### Unaccompanied minors not seeking asylum including those who entered irregularly and/or child victims of trafficking

The provisions under the Act on foreigners do not foresee special regulations in this respect. Such persons have possibility to legalize their residence on general terms. Foreigners have possibility to apply for a permanent residence permit for an indefinite period of time before reaching the age of 18 years.

Victims of trafficking in human beings have possibility of obtaining the permanent residence permit under the conditions foreseen in Article 195 sec. 1 point 5 of the Act on foreigners.

Foreigners residing in Poland on the basis of residence permit for humanitarian reasons have possibility to obtain the permanent residence permit under Article 195 sec. 1 point 6 of the abovementioned act.

Other foreigners will be able to apply for a long-term resident's EU residence permit under the conditions set out in Chapter 2 of the Act on foreigners. The abovementioned residence permit is granted according to the rules provided for in Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

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**Are there any exceptions to the residence provisions that are in place for unaccompanied minors who are turning 18 years of age? If not, what are the implications of these provisions for the reception arrangements and integration measures that have supported the unaccompanied minor up to that stage?**

There are no exceptions to the residence provisions that are in place for UAMs who are turning 18 years of age.

According to the Article 191 sec. 2 of the Act on foreigners, a foreigner who has attained the age of majority during his/her residence in the territory of the Republic of Poland and has applied for a temporary residence permit due to other circumstances within 1 year from the date on which he/she attained the age of majority, may not be refused such a permit where it is justified by a particularly vital interest of the foreign national, and the refusal of such a permit is grounded solely on his/her illegal stay in the territory of the Republic of Poland.

The abovementioned provision applies to all foreigners.

In addition to enabling foreigners who reside in Poland illegally regulation of their status of residence, this permit shall be granted in the remaining scope on general terms. A foreigner applying for a residence permit should indicate the circumstances justifying his residence in Poland for a period longer than 3 months and he/she should meet the conditions of migration, such as having an established place of residence in Poland, adequate health insurance, and a source of stable and regular income sufficient to cover the cost of living.

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**What measures are in place to support the unaccompanied minor in advance of the transition (e.g. integration support, return support)?**

The issues related to assistance for minors leaving care are regulated under section IV of the Act on family support and foster care system. In case when placing under foster care (foster family, foster home or care and education centre) resulted from a court ruling, a person leaving foster care after reaching the age of majority is entitled to receive assistance for continuation of education, for gaining independence and for establishing a household, to receive a legal and psychological support and to obtain assistance in finding appropriate accommodation (living premises) and employment.

Such assistance will be provided on the condition that the beneficiary presents an individual independence programme<sup>33</sup> at least a month prior to reaching the age of majority. The person leaving care has to choose a guardian<sup>34</sup> of his/her independence process at least a year prior to reaching the age of majority.

However, it is absolutely crucial to regulate the child's legal status before he/she reaches the age of majority – the lack of an ID card and unregulated legal status are equivalent to the lack of ability to use programmes providing assistance during the process of gaining independence.

**33.** Individual independence programme specifies in particular the scope of cooperation between the person assisted in gaining independence with an independence guardian and the means of obtaining education or vocational (professional) qualifications, assistance in finding appropriate living premises and undertaking employment by the person leaving care.

**34.** The independence guardian may be a person running a foster family or a foster home, a family foster care coordinator, a social worker

of poviat centre for family support, a tutor or psychologist employed in a care and education centre or other person indicated by the person leaving care. Obtaining consent of such person and acceptance of this person as an independence guardian by the head of poviat centre for family support constitutes a necessary prerequisite in this regard. Taking into account the specific situation of unaccompanied foreign minors, such person should also possess other qualifications and competences.

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**What measures are in place to support the former unaccompanied minor after the transition (e.g. formal follow up or after-care service, open door policy at residential homes, personal adviser, pathway plan, etc.)?**

Assistance described above is provided upon request of the person leaving care. An application for assistance for continuation of education and assistance in gaining independence, as well as an application for assistance for establishing a household, for assistance in finding appropriate living premises or in finding a job need to be submitted at poviat level. The independence guardian supervises the gaining independence process. Individual independence programmes specify the means of obtaining education or vocational qualifications and support measures for securing accommodation and employment. Real ability to provide accommodation<sup>35</sup> and employment depends on the capacity of a given poviat, on the one hand, and on the motivation, involvement and determination of the person leaving care, on the other hand.

Assistance for gaining independence may be provided in one or in several instalments (depending on the individual independence programme), usually after the beneficiary is no longer entitled to obtain assistance for continuation of education. Assistance for establishing a household takes form of a one-off payment and it may also be provided in kind. A person leaving care is entitled to receive both these types of assistances until he/she reaches 26 years of age.

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**What are the implications of the change in residence status for the access to education and/or training of the former unaccompanied minor?**

In general, change in residence status influences significantly on the access to education. Article 94a (2) of the Act on educational system specifies a catalogue of persons not being Polish citizens entitled to free access to education similarly to the Polish nationals in different types of public school for adults. This group includes inter alia:

- Foreigners who have been granted a permanent residence permit in the Republic of Poland;
- Foreigners being in a possession of valid Card of Pole;
- Foreigners entitled to such access on the basis of the international agreements;

Upon reaching adulthood victims of trafficking in human beings may also benefit from support provided by the National Intervention and Consultation Centre for Victims of Trafficking in Human Beings (NICC/KCIK) in the form of e.g. shelter (after leaving institutional care centres), psychological and legal support, translation services and individual consultations.

- Persons who have been granted a refugee status (and their family members);
- Persons who have been issued a permit for tolerated stay on the territory of the Republic of Poland;
- Person who have been granted a residence permit for humanitarian reasons (and their family members);
- Persons who have been granted a subsidiary protection (and their family members);
- Persons who have been provided with temporary protection on the territory of the Republic of Poland;
- Person who have been granted a long term resident's EU residence permit;

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**35.** The Act on family support and foster care system does not specify the form of assistance for securing appropriate accommodation. Therefore, it may consist in e.g. providing the person leaving care with an opportunity to reside temporarily in a supervised apartment, covering the costs of renting a room, facilitating the process of obtaining social housing from gmina resources. Furthermore pursuant to the Act, the pupil of an institutional care centre who attained the age of majority may remain in this centre until the age of 25 after obtaining agreement of its director, if she/he will remain in school, teacher training centre, university or in employment in order to receive vocational training

(Article 37(2) point 1), and in case of persons with significant or moderate disabilities, or if he/she takes part in courses, provided that their completion will be compliant with the individual empowerment programme (Article 37(2) point 2). While poviat remains responsible for the provision of support for persons leaving institutional care centres (Article 180 point 3 and point 13(b) of the Act), poviat government is not entitled to dispose of housing resources. Applications for the allotment of social or municipal apartment are examined by gminas (<http://www.sejm.gov.pl/Sejm7.nsf?InterpelacjaTresc.xsp?key=6D20EA98>).

- Persons who have been granted a temporary residence permit due to strictly defined circumstances, including permit for victims of trafficking in human beings<sup>36</sup>
- Family members of applicants for granting a refugee status.

Foreigners not listed in the abovementioned Article, have access to education in those types of schools as beneficiaries of scholarships or for a fee.

**What are the implications of the change in residence status for the access to employment of the former unaccompanied minor?**

The access to employment is strictly linked with a residence status – see section 3.6.

Individual independence programme described above will ensure that pupil of care institution who attained the age of majority will be able to function independently throughout his/her adult life. This programme may be amended as appropriate.

In experts' opinion, aside from their ability to benefit from individual independence programmes, foreign children are not specifically supported during their transition to the age of majority in any other way – they are left on their own. They are forced to rely on their determination and support of persons/institutions which were responsible for exercising actual care over them.

#### **Examples of proven good practices regarding the transition to 18 years of age of unaccompanied minors**

Pursuant to Article 37 of the Act on family support and foster care system, a child may remain in one of the forms of foster care until he/she reaches the age of majority. However, a person who attained 18 years of age and who remains in foster care may decide to stay in his/her current foster family, foster home or institutional care and education centre (until attaining 25 years age), if he/she remains in school, teacher training center, university or in employment in order to receive vocational training (or additionally – in case of persons with significant or moderate disabilities – or if he/she takes part in courses, provided that their completion will be compliant with the individual empowerment programme).

<sup>36</sup>. Other circumstances are those listed in the Article 127 of the Act on foreigners: "a highly qualified employment", Article 159 (1) "a family reunification"; Article 186 (1) 3 or 4; possession of a long-term

resident's EU residence permit granted by another European Union Member State and having (concrete, listed) grounds for a residence in the territory of the Republic of Poland.

# 6

## Return practices, including reintegration of unaccompanied minors

## 6.0 Return practices, including reintegration of unaccompanied minors

Categories of unaccompanied minors that may be returned to the country of origin	Circumstances under which unaccompanied minors may be returned voluntarily to the country of origin: a) in national legislation / policy and b) in practice, with a particular focus on developments since 2009	Circumstances under which unaccompanied minors may be the subject of a forced return to the country of origin/Dublin country/transit country: a) in national legislation/ policy and b) in practice, with a particular focus on developments since 2009	Is the process different for those cases when the minor's age is doubtful (for instance, when the child has no documents) and the age assessment procedure has not been undertaken yet to determine the age of the minor?
<b>Non-asylum seeking unaccompanied minor arriving at a land/ sea border or airport</b>	If unaccompanied minor does not fulfill the conditions of entry, he will be returned at the border without obtaining a decision on refusal of entry (the event will be described in a relevant memorandum) – see section 2.2.	If unaccompanied minor does not have any documents, he/she is returned to the country from which he/she came in accordance with the simplified readmission procedure. If such event takes place at an airport, an attempt shall be made to convince the carrier to take the unaccompanied minor on board. If the carrier does not agree to take the unaccompanied minor on board, such minor is detained and the return procedure is initiated (see section 2.2).	If a given person can be returned, no further analysis is required and the person is treated as a minor.
<b>Non-asylum seeking unaccompanied minor apprehended in Poland</b>	Unaccompanied minor who does not fulfill the conditions of residence may be the subject of a decision obliging a foreigner to return in which a deadline for voluntary return has been set (between 15 and 30 days) – such deadline may be extended in duly justified cases even up to one year. The minor may execute such a decision himself/herself by leaving the territory of the Republic of Poland voluntarily. He/she may also receive support in the field of voluntary return (provided he/she declares his/her willingness to return, his/her parents or legal guardian agree to this and the return is not	Unaccompanied minor who does not fulfill the conditions of residence may be the subject of a decision obliging a foreigner to return in which no deadline for voluntary return has been specified. In such situation the minor may be placed in an interventionist institutional care centre or in a guarded centre for foreigners. Decision is executed in the presence of a guardian appointed for the purposes of return – usually a Border Guard officer. The deadline for handing the minor over is always communicated to his/her statutory guardians via third country diplomatic	In general, a person claiming to be a minor is treated as a minor until results of a study proving otherwise are presented.

contrary to best interests of the child). Assisted voluntary return programme is carried out in the framework of cooperation between the Border Guard and IOM and covers foreigners subject to a decision in which a deadline for voluntary return has been set. The return itself is organised by IOM, while the Border Guard is responsible for its co-financing. IOM cooperates also with the Office for Foreigners in the field of returning persons subjected to the refugee procedure.

representation or competent services.  
Transfers carried out under the Dublin procedure concern mostly persons subjected to the refugee procedure – in the case of unaccompanied minors this means that they do not have to be placed in a guarded centre in order to be returned.

**Asylum seeking unaccompanied minor arriving at a land/sea border or airport**

Lack of grounds to analyse the issue of refusal of entry due to the fact that minor is subjected to the refugee procedure.  
Pursuant to Article 75 of the Act on granting protection to foreigners within the territory of the Republic of Poland, a foreigner who submitted an application for refugee status and who has subsequently withdrawn his application is eligible to obtain support for voluntary return.

Lack of grounds to analyse the issue of refusal of entry due to the fact that minor is subjected to the refugee procedure.

As above.

**Asylum seeking unaccompanied minor apprehended in Poland**

Lack of grounds to analyse the issue of return due to the fact that minor is subjected to the refugee procedure.  
In accordance with Article 330(1) point 1 of the Act on foreigners a decision obliging a foreigner to return shall not be executed if a foreigner is a party to refugee status proceedings.  
Pursuant to Article 306 point 1 of the above mentioned Act decision obliging a foreigner to return shall expire by virtue of law if the foreigner is granted the refugee status and is covered by subsidiary protection.

Lack of grounds to analyse the issue of return due to the fact that minor is subjected to the refugee procedure.  
In accordance with Article 330(1) point 1 of the Act on foreigners a decision obliging a foreigner to return shall not be executed if a foreigner is a party to refugee status proceedings.  
Pursuant to Article 306 point 1 of the above mentioned Act decision obliging a foreigner to return shall expire by virtue of law if the foreigner is granted the refugee status and is covered by subsidiary protection.

As above.

**Asylum seeking unaccompanied minor arriving at an internal authority (e.g. police, child protection service, etc.)**

As above.

As above.

As above.

Generally unaccompanied minors cannot be detained whilst awaiting return. However, an unaccompanied minor may be detained pursuant to Act of 12 December 2013 on foreigners if he/she does not fulfil conditions of residence and the issuing of a decision obliging him/her to return is justified. The minor's fingerprints are taken (provided he/she has attained 14 years of age). Detaining authority applies for the appointment of a guardian (the application may indicate a friend or relative of the foreigner, if any) for the duration of the proceedings. Unaccompanied minor may be placed in an intervention institutional care and education centre or in a guarded centre for foreigners (in the latter case the minor has to be over 15 years of age). Guarded centres in Poland has been profiled according to types of detained persons and their needs – only one guarded centre for families has been designated for the purpose of holding unaccompanied minors (it includes only 12 places for unaccompanied minors, which is also – indirectly – indicative of the negligible scope of this phenomenon in Poland). Before the minor is returned the Border Guard applies to court for the designation of a guardian for the duration of the return procedure – in practice a Border Guard officer is usually designated as a potential guardian in the application.

Unaccompanied minor applying for refugee status is subject to provisions of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland – pursuant to this Act an unaccompanied minor cannot be detained nor placed in a guarded centre.

Since 1 May 2014 the Polish legislation provides for measures alternative to detention, i.e. placing foreigners in guarded centres. However, these measures are not applicable to unaccompanied minors, as unaccompanied minors (whose legal status is not regulated, who are not applying for protection in Poland, who are detained but willing to return to their country of origin) are usually placed in intervention institutional care and education centres and may be detained in a guarded centres only in exceptional circumstances.

Poland provides reintegration support to unaccompanied minors returning to their country of origin under voluntary return assistance programme. International Organisation for Migration (IOM) provides assistance to vulnerable persons in making

a voluntary return to their country of origin – unaccompanied minors are also included in this group.

In justified cases vulnerable persons received aid in the form of:

- **medical examinations assessing** the beneficiary's fitness to make the return journey,
- **medical escort or ordinary escort** (e.g. in case of unaccompanied minor, lone parent returning with several children, people requiring constant care or disabled people).

Unaccompanied minors are subject to special procedures, in line with the guiding principle of acting in the best interests of the child (Convention on the Rights of the Child). Prior to the minor's return to his/her country of origin guardians of the child in the country of origin are contacted.

Aside from organising voluntary return IOM also provides support for reintegration in the country of origin in close cooperation with local IOM offices, adjusted to individual needs of each beneficiary. Decision on the measure which will be the most beneficial for the minor is taken with the involvement of the child, his/her guardian and IOM representative. Provided aid usually takes the form of measures enabling one to start education and raise qualifications – financing training and vocational courses, as well as to purchase teaching aids and pay for treatment.

No integration measures are provided in the case of forced return.

Foreigners' returns (sustainability of return) and foreigners situation after returning to his/her country of origin are monitored by the Steering Committee consisting of representatives of IOM, the Office for Foreigners and the Border Guard. Results of support for reintegration provided to foreigners are evaluated on the basis of surveys with beneficiaries carried out by phone or during monitoring visits.

Furthermore, the payment of assistance for reintegration in tranches, which usually takes about a year, and supervision over the use of such funds carried out by IOM branches in countries of return both constitute monitoring tools.

A data base of returning persons, which includes e.g. information about provided aid for reintegration, is also kept.



## Statistical Annex

## Statistical Annex

**TABLE 1**

Statistics on asylum applications from unaccompanied minors in Poland (2009-2013)

SOURCE: Office for Foreigners

Total number of asylum applications submitted by unaccompanied minors in Poland, by country of nationality	2009	2010	2011	2012	2013
Russia	333	214	162	164	210
Georgia	31	16	18	30	10
Afghanistan	5	3	5	10	2
Vietnam	2	2	1	5	4
China	2	0	0	1	1
Other	12	9	24	37	32
<b>Total</b>	<b>385</b>	<b>244</b>	<b>210</b>	<b>247</b>	<b>259</b>

Total number of asylum applications submitted by unaccompanied minors, disaggregated by their sex and age	2009		2010		2011		2012		2013	
	M	F	M	F	M	F	M	F	M	F
Less than 14 years old	152	126	86	95	79	70	90	70	108	91
From 14 to 15 years old	15	13	9	10	10	6	16	13	12	5
From 16 to 17 years old	51	28	30	14	31	14	44	14	29	14
<b>Total</b>	<b>218</b>	<b>167</b>	<b>125</b>	<b>119</b>	<b>120</b>	<b>90</b>	<b>150</b>	<b>97</b>	<b>149</b>	<b>110</b>

**TABLE 2**

Statistics on asylum and/or non-asylum seeking unaccompanied minors in the care of public authorities in Poland (2009-2013)

SOURCE: Ministry of Family, Labour and Social Policy

Total number of unaccompanied minors in the care of the public authorities, disaggregated by their country of nationality	2009	2010	2011	2012	2013
Afghanistan	0	1	1	14	8
Armenia	9	9	5	5	5
Belarus	3	2	4	1	8
Moldova	3	4	3	2	1
Russia	20	16	13	9	11
Syria	0	0	0	9	14
Ukraine	34	38	39	45	42
Vietnam	9	10	7	13	6
Other non-EU countries	9	3	10	23	14
<b>Total of non-EU countries</b>	<b>87</b>	<b>83</b>	<b>92</b>	<b>121</b>	<b>109</b>
EU country: Bulgaria	15	19	14	17	34
EU country: Romania	53	53	45	36	37
Other EU countries	13	13	18	19	19
<b>Total number of all unaccompanied minors in the care of the public authorities</b>	<b>168</b>	<b>168</b>	<b>159</b>	<b>193</b>	<b>199</b>

	2009	2010	2011	2012	2013
<b>Total number of all unaccompanied minors in the care of the public authorities</b>	<b>168</b>	<b>168</b>	<b>159</b>	<b>193</b>	<b>199</b>
<b>Total number of unaccompanied minors (excluding the EU/EFTA nationals) in the care of the public authorities</b>	<b>87</b>	<b>83</b>	<b>92</b>	<b>121</b>	<b>109</b>

Total number of all unaccompanied minors (EU and third-country nationals) in the care of the public authorities, disaggregated by their sex	2009		2010		2011		2012		2013	
	M	F	M	F	M	F	M	F	M	F
	71	97	86	82	75	84	113	80	108	91

Total number of all unaccompanied minors (EU and third-country nationals) in the care of the public authorities, disaggregated by their age	2009	2010	2011	2012	2013
Less than 14 years old (up to 13)	108	112	101	93	104
From 14 to 15 years old	27	24	25	29	26
From 16 to 17 years old	24	23	27	52	45
18 years old and more	9	9	6	19	24
<b>Total</b>	<b>168</b>	<b>168</b>	<b>159</b>	<b>193</b>	<b>199</b>

**TABLE 3**

Statistics on unaccompanied minors  
in detention pending return in Poland (2009-2013)

SOURCE: Border Guards

	2009	2010	2011	2012	2013
Total number of unaccompanied minors in detention pending return	No data	1	14	16	4

**TABLE 4**

Statistics on unaccompanied minors returned from Poland (2009-2013)

SOURCE: IOM

Total number of unaccompanied minors returned as part of:	2009	2010	2011	2012	2013
forced return (country of return)	0	0	1 (Russia)	10 (Afghanistan)	0
assisted voluntary return measure (organised by the IOM and Office for Foreigners)	3	3	1	1	2



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In Poland, the interest in issues related to unaccompanied foreign minors is still limited to a small circle of institutions and experts who come in direct contact with such minors. No systemic solutions regulating all aspects of their stay in Poland in a uniform way have been introduced. It needs to be stressed, however, that the rights of the child, his/her subjectivity and the principle of acting in his/her best interest are respected both in relevant legislation and in everyday practice.

This report was prepared in relation with Polish membership in the European Migration Network and constitutes contribution to the report synthesising the knowledge about admitting unaccompanied minors to the EU countries plus Norway.

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