**Questionnaire of the Special Rapporteur on the human rights of migrants: Ending immigration detention of children and seeking adequate reception and care for them – response of the Slovak Republic**

**1)**

In the capacity of the activities of Department of Foreign Police of the Bureau of Border and Foreign Police of the Presidium of the Police Force of the Slovak Republic (UHCP P PZ), great attention is paid to the problems of third country minor nationals, and, in particular, the unaccompanied ones, with respecting permanently the principle of the child´s best interest without any difference (irrespective of whether irregular migrants, refugees or applicants for the international protection are in question) in compliance both with international and national legislation. The fundamental document of the international nature to stipulate the children´s rights is the Convention on the Rights of the Child which is fully respected by the state administration authorities at all levels including basic units of the Service of Border and Foreign Police. Other important legal tools to stipulate the protection of the children´s rights are: the Constitution of the Slovak Republic, and, in the scope of the Border and Foreign Police, Act No. 404/2011 Coll. on residence of foreigners and on amendments to certain acts, as amended (hereinafter referred to as “Act on residence of foreigners”), as well as Act No. 305/2005 Coll. on social and legal protection of children and social guardianship and on amendments to certain facts, Act No. 36/2005 Coll. on family, and other legal norms.

Against a general background of the third country minor nationals sojourning in the territory of the Slovak Republic, the course of action taken by the Service of Border and Foreign Police units in contact with the third country minor nationals depends on the particular situation – first and foremost, it is necessary to base the things on whether the minors in question are unaccompanied or accompanied by their parents or other legal representatives.

In case an unaccompanied third country minor national is found in the territory of the Slovak Republic, the Police unit (according to Article 127 para 4 of the Act on residence of foreigners) shall without delay inform the authority of social and legal protection of children and social guardianship in order to ensure the action according to a special provision (Section 27 and Section 29 of the Act No. 305/2005 Coll. on social and legal protection of children and social guardianship and on amendments to certain facts, as amended). Under the Act on residence of foreigners, it is not possible to detain such persons or to place them in a police detention unit for foreigners (Article 88 para. 8 and Section 88a para.3). As a rule, the unaccompanied minors are not administratively expulsed (according to Article 83 para. 8 letter a) of the Act on residence of foreigners, “a police unit cannot administratively expulse a child younger than 18 years of age; this shall not apply, if the expulsion of such a child is in his/her interest” in regards of the Convention of the right of the child). After subsequently taking over the unaccompanied third country minor national by competent authorities, the overall caretaking of the child, including ensuring the appointment of a guardian and addressing the minor´s residence status) is fully passed to these authorities. The unaccompanied minor is subsequently placed in a special facility – the Children´s Home for Foreigners in the town of Medzilaborce where he/she shall have stayed up to the solution of their situation.

In case a third country minor national accompanied by his/her legal representative is found staying in the territory of the Slovak Republic illegally, the Slovak Republic takes the course of action in compliance with European legislation, in particular, with Directive 2008/115/EC of the European Parliament and Council of 16 December on common standards and procedures in Member States for returning illegally staying third country nationals (hereinafter referred to as “Return Directive”) that has been trans-positioned to the Act on residence of foreigners. Due to the conclusions of the European Commission having assumed the transposition of the Directive in question by the European Union Member States, the transposition undertaken by the Slovak Republic into the Act of residence of foreigners is fully in compliance with the text of the Directive. The Directive in question enables the Member States to carry out detention of minors and families (Art. 17 of the Return Directive). Minor foreigners accompanied by their legal representative (not the accompanied minor foreigners) are placed in the Police Detention Unit in the town of Sečovce which is a facility of the Police Force adapted to placing families with children. The Slovak state authorities observe the best interest of the child, his/her right to family life, and therefore, the child is not separated from his/her parents if accompanied by them, and, on this account, it is possible to place the child in the Police Detention Unit for foreigners if his/her parents meet the detention conditions under the Act on residence of foreigners.

**2)**

The non-detention alternatives to the detention have been introduced to the Act on residence of foreigners by the transposition of the Return Directive. In accordance with Article 89 para. 1 of the Act on residence of foreigners, the police department acting in the matter of administrative expulsion may, instead of his/her detention, impose the duty on the third country national to report the place of residence or give warranty deposit.

The wording is as follows: **“Article 89**

*(1) The police department acting in the matter of administrative expulsion may impose the duty on the third country national to report the place of residence*

*a) or give warranty deposit*

*b) instead of his/her detention.*

*(2) The kind and method of the duty imposition under paragraph 1 shall be decided by the police department taking account of the person of the third country national, his/her background and the level of risk for the purpose of the detention. However, the duty under this paragraph 1 cannot be imposed in case of proceedings relating to administrative expulsion due to reasons pursuant to Art. 82 par. 2 a) or b).*

*(3) The police department may impose the duty under the paragraph 1 only in the third country national provides the proof of accommodation for the duration of this period and financial cover for the residence in the amount according to Art. 6. The decision on the imposition of the duty according to paragraph 1 b) may be made by the police department also during the detention of the third country national. The decision on the imposition of the duty according to paragraph 1 is unappealable.*

*(4) The third country national who was imposed the duty according to paragraph 1 a) shall be obliged to reside at the address specified and report regularly in person at the police department within the defined period.*

*(5) The third country national who was imposed a duty according to paragraph 1 b) shall be obliged to pay a warranty deposit, in the amount and within the period specified by the police department, to the account of the police department, reside at the place specified and report any changes to the place of residence. The warranty deposit on behalf of the third country national may be paid by a person close to the third country national. The person paying a warranty deposit shall be required to notify the police department of a bank account number which the warranty deposit should be returned to, or the address where he/she will be residing at for the purposes of returning the warranty deposit.*

*(6) If the third country national breaches the obligation to report the residence or avoids the execution of the administrative expulsion, the police department shall decide on his/her detention and at the same time on the forfeiture of the warranty deposit, if given.*

*(7) The police department shall return the warranty deposit to the person who paid it immediately after the execution of the administrative expulsion of the third country national, after his/her departure within assisted voluntary returns or if he/she was granted a residence permit, asylum or provided subsidiary protection. The costs of returning the warranty deposit shall be borne by the person who paid it. If the person fails to collect his/her warranty deposit within one year from the date of the decision on the return of the warranty deposit becoming effective, the warranty deposit shall be forfeited to the state.”*

As for the effectiveness assessment of the non-detention alternatives and their contribution to the protection of the children migrants´ and their families´ rights, we state that the there is a very low rate of using the non-detention alternatives in the Slovak Republic (raging in dozens of cases at most). The reason is especially the fact that the possible applicants for the non-detention alternative either do not have a sufficient cash to give the warranty deposit or are not able to meet the condition of reporting the residence which is associated with sojourning in the vicinity of the residence reported, i.e. ensuring the housing and basic needs for living (meals, hygiene etc.) for themselves. Therefore, for the abovementioned reason, the classical form of the detection is preferred, followed by subsequent placing the third country nationals in the Police Force units for foreigners. Based on the abovementioned, we are not able to assess how effectively the non-detention alternatives contribute to the protection of the children migrants´ and their families´ rights.

**3)**

Due to the abovementioned answer to the question No. 2, i.e. due to the fact that the Slovak Republic mostly uses the option of the detention and placing the third country nationals in the Police Force unit for foreigners, it is only possible to point at the good practice in the cases of the detention.

As for the detention of the minor migrants and their families, a family is placed in the relevant Police Force unit for foreigners to be always kept together if no serious reasons arise to separate them; this results into the children being placed together with their parents preferably. The family with their children may be detained and placed in the facility for the period of 6 months at most; this period cannot be prolonged in case of the family with their children, unlike the detention of the minor third country nationals who are being detained in separation.

The facility in which the family with their children are placed meets all the hygienic and sanitary standards and is equipped in a way to prevent any threats to life or any harm to health. At the same time, the facility is equipped to take into account all the needs of the minors; this is reached not only by providing the consisting facilities (play-room, playground, gym, library etc.) but also in the form of activities focused on the children (outdoor activities, cultural activities, education etc.).

As a rule, a daily timetable is observed in the facility (hygiene, breakfast, outing, lunch, dinner, night repose etc.). Everyday personal hygiene is ensured for the minors as well as meals 5 times a day (in addition to breakfast, lunch and dinner, the children also receive morning and afternoon snacks). In addition, it is possible to request for ensuring fruits, vegetables and sweet drinks as appropriate for children. During daytime, due to the timetable, outdoor stay and activities of children are ensured (according to Article 96 papa. 1 of the Act on residence of foreigners, “a third-country national younger than 18 years shall be entitled to three walks per day, one in the morning and two in the afternoon”) with this being carried out through spending time at the children´s playground where there is a possibility for the children to go in for various activities including playing and re-creation activities appropriate to their age (the right to have access to these activities is stipulated in Article 96 para 2 of the Act on residence of foreigners).

In case of bad weather, there is also a gym accessible in the facility. In the inner part of the facility, there is a play-room established for the children where they are various playing and re-creation activities offered to them and appropriate to their age. The play-room is furnished adequately and designed overall in order to enhance performing cultural activities and spending leisure time of the minors. Day rooms are equipped with DVD players and TV sets with the reception of satellite TV and radio broadcasting.

Furthermore, a social worker is present and devoted to the children in the facility to plan and regulate the educational activities (the right of the third country nationals to have access to education within three months after the detention is stipulated in Article 96 para. 2 of the Act on residence of foreigners), re-creational and playing activities of the minors, and, at the same time, to cooperate with the authorized non-government organization. The social worker pays a special attention to the minors who have problems of mental nature. As a rule, music-therapy is carried out in the facility once a month, in the form of recorded music performance.

In Slovak Republic, all asylum seekers have to go through 1 month quarantine, during which their health condition is assessed. After the quarantine the asylum seekers are usually transferred to an accommodation centre.

Once in the accommodation centre, the asylum seekers can get a short or long-term leave permit allowing them to stay outside the centre. One accommodation centre (Accommodation centre in Opatovska Nová Ves) is designed for families with children and vulnerable persons. The capacity of the centre is 120 persons.

All asylum seekers have access to urgent health care. The costs of urgent healthcare for an applicant who does not have public health insurance are covered from the budget of the Ministry of Interior. If, based on individual examination of the applicant’s health condition, it is established that special needs for the provision of health care exist; the Ministry also covers the costs of such health care in the cases worth special consideration. The Ministry also ensures adequate health care for minor applicants who are victims of abuse, neglect, exploitation, torture or cruel and inhuman and degrading treatment, or who have suffered from consequences of an armed conflict

The children of asylum seekers have access to education under the same conditions as citizens of the Slovak Republic. The children of asylum seekers are enrolled into appropriate grade by the head of the school after the level of their previous education and the knowledge of the slovak language have been assessed, but no later than 3 months after the commencing of the asylum procedure. For the reason of insufficient knowledge of the slovak language the child can be conditionally enrolled in a grade based on the child’s age, for the maximum period of one year. The Ministry of Interior organizes basic language education for asylum seekers and their children staying in asylum facilities.

**4)**

As stated in the reply to the question No. 2, the rate of using the non-detection alternatives in the Slovak Republic is very low. The reason and the most important obstacle is the fact that the possible applicants for the non-detection alternative are not able to meet the conditions stipulated in the Act on residence of foreigners to take advantage of applying this alternative, i.e. they either have not the sufficient cash to give the warranty deposit or are not able to meet the condition of reporting the address of residence (they do not have the possibility to get accommodated).

**5)**

As for the possible support to be provided by other actors that would enhance the development of and/or the reinforcement of the non-detection alternatives for the children´ migrants and their families in order to improve the protection of their rights, we would like to state as follows:

The effective use of the non-detection alternatives will only be possible to apply in the event that the targeted group is able to meet the conditions of the non-detection alternatives as stipulated in Article 89 para. 1 of the Act on residence of foreigners. This is where we see a challenge for various organizations or partners to be able to help the third country nationals (especially those who have got stuck without any financial means) meet the conditions of the non-detection alternative, for example, to ensure a housing for them and provide them with basic living conditions (meals, means of hygiene etc.).