

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

Pursuant to Human Rights Council Resolution 34/21, the Special Rapporteur on the Human Rights of Migrants is mandated “to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, recognizing the particular vulnerability of women, children and those undocumented or in an irregular situation” (para. 1 (a) [A/HRC/RES/34/21](#)). In carrying out his mandate, the Special Rapporteur dedicates his forthcoming report to the 75th session of the General Assembly to explore ways and means towards ending immigration detention of children and seeking adequate reception and care for them.

Children should never be detained for reasons related to their or their parents’ migration status. This applies to unaccompanied and separated children, as well as to children with their families. Detention of children in the context of migration is never in the best interests of the child. States should cease immigration detention of children and explore alternatives by developing and implementing rights-based non-custodial reception alternatives that fulfil the best interests of the child, and respect their rights to liberty, family life, and providing the conditions necessary to ensure the comprehensive protection of the rights of the child.

Through compiling and analysing information on legislative measures, policies, practices, and initiatives concerning rights-based non-custodial alternatives to immigration detention of children and their adequate reception and care, the Special Rapporteur intends to identify good practices and initiatives that demonstrate detention can be avoided. The Special Rapporteur wishes to provide recommendations to States on how to better protect the rights of migrant children and their families, based on existing reception solutions that do not involve deprivation of liberty. He is also interested in learning from States any challenges or obstacles they face in eliminating immigration detention of children; as well as views on how States’ efforts can be better supported by other stakeholders to ensure that their operationalisation respects and protects the rights of migrant children and their families.

Questions:

1. Please provide information on any legislation or policy that prohibits or restricts the use of immigration detention of children and their families in your country. Grateful if you could kindly submit the original text of the legislation or policy, accompanied by an English translation if it is in a language other than English, French or Spanish.

ENGLISH

The Act on International and Temporary Protection (Official Gazette, No. 70/15 and 127/17) regulates conditions and modalities of restriction of movement of children seeking international protection. Article 54 prescribes the restriction on the freedom of movement for asylum seekers, including children (paragraphs 7 and 8):

(7) The freedom of movement of a member of a vulnerable group may be restricted by means of accommodation in the reception centre for foreigners if, by individual assessment, it is established that such a form of accommodation is suitable for the applicant's personal circumstances and needs, and especially for his/her health.

(8) The freedom of movement of an unaccompanied minor may be restricted by means of accommodation in the reception centre for foreigners separately from adults, for the shortest possible duration, if, by individual assessment, it is established that this form of accommodation is necessary.

In addition, Article 17 paragraph 11 stipulates that the border procedure does not apply to unaccompanied children.

As well, special provisions on the protection of minors regarding the use of detention referred to in the Return Directive (Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24. 12. 2008.) have been fully transposed into the Aliens Act (OG 130/11, 74/13, 69/17, 46/18), in Article 138(b) which reads as follows:

“Accommodation of a minor and a family in the centre
Article 138.b

- (1) An unaccompanied minor who is a third-country national shall in principle be accommodated in the facilities of the ministry responsible for social welfare.
- (2) An unaccompanied minor who is a third-country national and a minor third-country national who is accompanied by his family members may be accommodated in the centre only if removal cannot be ensured in some other way and for the shortest term possible.
- (3) A third-country national referred to in paragraph 2 of this Article shall be accommodated in the centre separately from other third-country nationals.
- (4) Family members in the centre shall be provided with separate accommodation that guarantees adequate privacy.
- (5) Minors may not be subject to stricter police supervision.
- (6) Minors in the centre shall be provided with an opportunity to engage in leisure activities, including play and recreation in line with their age.

(7) If in view of a large number of third-country nationals it is not possible to ensure separate premises over an extended period of time, members of the same family shall be accommodated in the centre regardless of the conditions referred to in paragraph 4 of this Article.

(8) The European Commission shall be notified of the commencement of the implementation and of the termination of conditions for the implementation of the measure referred to in paragraph 7 of this Article without delay.”

HRVATSKI

Zakon o međunarodnoj i privremenoj zaštiti (Narodne novine, broj 70/15 i 127/17) propisuje uvjete i načine ograničenja kretanja djece koja traže međunarodnu zaštitu. Članak 54. propisuje ograničenje slobode kretanja za tražitelje azila, uključujući djecu (stavak 7. i 8.):

(7) Pripadniku ranjive skupine može se ograničiti sloboda kretanja smještajem u prihvatni centar za strance ako se individualnom procjenom utvrdi da takav smještaj odgovara njegovim osobnim okolnostima i potrebama, osobito zdravstvenom stanju.

(8) Djetetu bez pratnje može se ograničiti sloboda kretanja smještajem u prihvatni centar za strance odvojeno od odraslih osoba u što kraćem trajanju ako se individualnom procjenom utvrdi da je takav smještaj nužan.

Također, članak 17., stavak 11. propisuje da se granični postupak ne primjenjuje na djecu bez pratnje.

Isto tako, Posebne odredbe o zaštiti maloljetnika u vezi s korištenjem detencije iz Direktive o povratku (Direktiva 2008/115/EZ Europskoga parlamenta i Vijeća od 16. prosinca 2008. o zajedničkim standardima i postupanjima država članica u vezi s vraćanjem osoba trećih zemalja čiji je boravak nezakonit, SL L 348, 24. 12. 2008.) u cijelosti su prenesene u Zakon o strancima (NN 130/11, 74/13, 69/17, 46/18), u članak 138.b koji glasi:

“Smještaj maloljetnika i obitelji u centru”
Članak 138.b

(1) Maloljetni državljanin treće zemlje bez pratnje u pravilu će se smjestiti u objekte ministarstva nadležnog za poslove socijalne skrbi.

(2) Maloljetni državljanin treće zemlje bez pratnje i maloljetni državljanin treće zemlje u pratnji članova njegove obitelji mogu se smjestiti u centar samo ako prisilno udaljenje nije moguće osigurati na drugi način i na najkraće potrebno vrijeme.

(3) Državljanina treće zemlje iz stavka 2. ovoga članka smjestit će se u centru odvojeno od ostalih državljanina trećih zemalja.

(4) Članovima obitelji u centru osigurat će se odvojeni smještaj koji jamči odgovarajuću privatnost.

- (5) Stroži policijski nadzor ne može se odrediti maloljetniku.
- (6) Maloljetniku u centru osigurava se mogućnost bavljenja slobodnim aktivnostima, uključujući igru i rekreaciju u skladu s njegovom dobi.
- (7) Ako zbog velikog broja državljana trećih zemalja u duljem razdoblju nije moguće osigurati zasebne prostorije, članove iste obitelji smjestit će se u centru bez obzira na uvjete iz stavka 4. ovoga članka.
- (8) O početku primjene te prestanku uvjeta za primjenu mjere iz stavka 7. ovoga članka bez odgode će se obavijestiti Europska komisija.”

In order to establish a more structured and efficient national system for the treatment of unaccompanied children in regular situations, including the treatment in situation of restriction of freedom of movement, the Government of the Republic of Croatia adopted in 2018 the **Protocol on the Treatment of Unaccompanied Children**. The Protocol, like the Act on International and Temporary Protection, favors alternative precautionary measures with regard to restriction of freedom of movement.

2. Please provide information on existing non-custodial alternatives to immigration detention of children in your country (e.g. community-based reception solutions) and elaborate how these alternatives effectively enhance the protection of the rights of migrant children and their families.

ENGLISH

According to Article 54 paragraph 5 of the Act on International and Temporary protection, non-custodial alternatives to immigration detention are:

- Prohibition of movement outside the Reception Centre for seekers of international protection (unaccompanied children over 16 can be exceptionally accommodated in the Reception Centre for seekers of international protection with the approval of their legal guardian),
- Prohibition of movement outside a specific area,
- Appearance in person at the Reception Centre for seekers of international protection at a specific time,
- handing over travel documents or tickets for deposit at the Reception Centre for seekers of international protection.

According to Article 138(b) of the Aliens Act, underage unaccompanied third-country nationals will generally be accommodated at the facilities of the ministry competent for social welfare. These are open-type facilities which are exclusively intended for, technically equipped and staffed for the accommodation of minors.

In addition, the provisions of the Return Directive regarding the measures that are less coercive than detention have also been fully transposed into the Aliens Act, in Article 132 of the Aliens Act, which reads as follows:

“Less coercive measures”
Article 132

(1) Within the meaning of Article 131, paragraph 1 of this Act, less coercive measures includes:

1. deposition of travel documents, travel papers and travel tickets,
2. deposition of certain funds,
3. prohibition of leaving a particular address,
4. reporting to a police station at a particular time.

(2) The decision on the use of less coercive measures shall be issued by the Ministry via the respective police administration or police station.

(3) The decision shall lay down the obligations referred to in paragraph 1 of this Article appropriate to the circumstances of the case at hand until removal.

(4) No appeal is admissible against the decision on the use of less coercive milder measures, but an administrative dispute may be instituted.

(5) With respect to the use of less coercive measures, the Ministry may ensure accommodation and support, make financial payments and other material payments, conclude agreements with other state authorities, international organisations, and civil society organisations.

(6) In the case of mass influx of third-country nationals staying in the Republic of Croatia illegally, the decision establishing camps for the accommodation of third-country nationals subject to less coercive measures shall be issued by the Government of the Republic of Croatia.”

HRVATSKI

U članku 54., stavku 5. Zakona o međunarodnoj i privremenoj zaštiti navode se sljedeće mjere kao alternative detenciji:

- zabrana kretanja izvan prihvatilišta za tražitelje međunarodne zaštite (djeca bez pratnje starija od 16 godina iznimno mogu biti smještena u prihvatilištu za tražitelje međunarodne zaštite uz odobrenje njihovog zakonskog zastupnika),
- zabrana kretanja izvan određenog područja,
- osobno pristupanje u prihvatilište u određeno vrijeme za tražitelje međunarodne zaštite,
- davanje u polog putnih isprava i karata prihvatilištu za tražitelje međunarodne zaštite.

Sukladno članku 138.b Zakona o strancima, maloljetni državljaniin treće zemlje bez pratnje u pravilu će se smjestiti u objekte ministarstva nadležnog za poslove socijalne skrbi. Radi se o objektima otvorenog tipa koji su isključivo namijenjeni te tehnički opremljeni i kadrovski popunjeni za smještaj maloljetnika.

Pored toga, odredbe Direktive o povratku o mjerama koje su blaže od detencije također su u cijelosti prenesene u Zakon o strancima, u članak 132. Zakona o strancima koji glasi:

“Blaže mjere”
Članak 132

(1) U smislu članka 131. stavka 1. ovoga Zakona, mjerama koje su blaže od smještaja u centar smatraju se:

1. polog putnih isprava, putnih dokumenata i putnih karata,
2. polog određenih financijskih sredstava,
3. zabrana napuštanja određene adrese smještaja,
4. javljanje u policijsku postaju u određeno vrijeme.

(2) Rješenje o primjeni blažih mjera donosi Ministarstvo putem nadležne policijske uprave, odnosno policijske postaje.

(3) Rješenjem će se odrediti obveze iz stavka 1. ovoga članka koje su primjerene okolnostima konkretnog slučaja, na vrijeme do prisilnog udaljenja.

(4) Protiv rješenja o primjeni blažih mjera nije dozvoljena žalba, ali se može pokrenuti upravni spor.

(5) U vezi s primjenom blažih mjera Ministarstvo može osigurati smještaj i uzdržavanje, obavljati financijske isplate i druga materijalna davanja, sklapati sporazume s drugim državnim tijelima, međunarodnim organizacijama i organizacijama civilnog društva.

(6) U slučaju masovnog dolaska državljana trećih zemalja koji nezakonito borave u Republici Hrvatskoj odluku o osnivanju kampova za smještaj stranaca prema kojima se primjenjuju blaže mjere donosi Vlada Republike Hrvatske.”

In general, the Republic of Croatia does not have significant experience in applying provisions restriction of the freedom of movement for children asylum seekers. However, based on experience gained so far we can say that the implementation of alternative measures helps building trust and contributes to improving cooperation between children and the authorities.

3. Please provide information on any existing good practices or measures taken in your country to protect the human rights of migrant children and their families while their migration status is being resolved, including inter alia their rights to liberty, family life, health and education (e.g. by ensuring effective access to *inter alia* adequate reception, healthcare, education, legal advice, family reunion).

When it comes to access to international protection for unaccompanied children, they can express intentions for international protection orally or in writing at all border crossings during border controls. If they are in the territory of the Republic of Croatia, they can express intention at any police department /police station. Immediately upon application is made the legal guardian (representative) is appointed to the child. The guardian is trained to work with

children and not in conflict of interest with the child. All further procedures related to the international protection are carried out with the mandatory presence of a legal guardian. Besides caring for the rights and obligations of the child, legal guardian role is preparing the child for the personal interview and providing the child with the necessary information about the meaning and consequences of the interview. The child, like any applicant for international protection, is allowed to use a language that is reasonably assumed to be understood, and the costs of the translator are borne by the Ministry of the Interior. All applications made by unaccompanied children are prioritized and all procedures are conducted in line with the principle of the best interests of the child, which is stipulated as a basic principle of the procedure. A child over the age of 16 and who is married has full legal responsibility and capacity to be a party in legal proceedings. A child asylum seeker has the right of residence in Croatia from the day of expression of intention of international protection until the decision on the asylum application becomes final. Further, with respect to the procedural guarantees, the child is entitled to appeal before the administrative court. In order to ensure the legal remedy to be effective, the child is also entitled to the right to free legal aid. This right includes representation in first instance administrative disputes as well as assistance in drawing up an appeal. In addition, the child is entitled to information as well as to right to counselling regarding the international protection. Children asylum seekers are accommodated in social welfare institutions as a rule. Exceptionally, those above 16 years of age and based on the opinion of the legal guardian (representative), may be placed in Reception for asylum seekers. In this case, the child should be accommodated separately from adults. However, prior to accommodation, each child must be medically examined. In Reception Centre for seekers for international protection, all material reception conditions and pocket money are guaranteed. Material reception conditions encompass accommodation, food (3 main and 2 additional meals) and cloths free of charge and according to child's age and needs. Also, minor applicant accommodated in Reception Center are provided with psychosocial support as well other daily activities (sports and others). As regards health care, the child (as a vulnerable group) is entitled to appropriate health care related to their specific condition free of charge. Each minor applicant of international protection is entitled to primary and secondary education under the same conditions as Croatian citizens. This right is exercised within 30 days from lodging the application until the execution of the return decision in the event of a negative asylum decision. If child does not speak Croatian or speaks it insufficiently, he/she will be provided with preparatory classes or supplementary classes in the Croatian language, as well as supplementary classes in individual subjects, insofar as such a need arises.

The general provisions on the protection of minors in the return procedure referred to in the Return Directive, which must be applied when it comes to the detention of minors, have been fully transposed into the Aliens Act, in Article 101 of the Aliens Act, which reads as follows:

ENGLISH:

“Protection in the procedure of return”
Article 101

- (1) At the time of implementation of the measures for ensuring return the best interest of the minor and needs of other vulnerable persons, the family life and health of the third-country national subject to such measures shall be taken into account.
- (2) Within the meaning of paragraph 1 of this Article, vulnerable persons are regarded as minors, people with disability, the elderly, pregnant women, members of single-parent families with children under age, victims of trafficking, victims of torture, rape or other forms of psychological, physical or sexual violence, such as the victims of female genital mutilation and people with mental disorders.
- (3) In the procedure of return, third-country nationals are entitled to health protection and schooling in accordance with special legislation.
- (4) Decisions related to return referred to in Article 115, paragraph 1 of this Act shall be taken on the basis of an individual assessment in accordance with the principle of proportionality.”

HRVATSKI:

„Zaštita u postupku povratka“
Članak 101.

- (1) Prilikom primjene mjera za osiguranje povratka uzet će se u obzir najbolji interes maloljetnika i potrebe drugih ranjivih osoba, obiteljski život i zdravstveno stanje državljanina treće zemlje prema kojem se poduzimaju mjere.
- (2) U smislu stavka 1. ovoga članka ranjivim osobama smatraju se maloljetnici, osobe s invaliditetom, starije osobe, trudnice, članovi jednoroditeljskih obitelji s maloljetnom djecom, žrtve trgovanja ljudima, žrtve mučenja, silovanja ili drugog oblika psihičkog, fizičkog ili spolnog nasilja kao što su žrtve sakaćenja ženskih spolnih organa te osobe s duševnim smetnjama.
- (3) Državljanin treće zemlje u postupku povratka ima pravo na zdravstvenu zaštitu i školovanje sukladno posebnim propisima.
- (4) Odluke u vezi s povratkom iz članka 115. stavka 1. ovoga Zakona donose se na temelju individualne procjene u skladu s pravilom razmjernosti.“

The Ministry of the Interior and the ministry competent for social welfare services have drafted leaflets in cooperation with UNHCR Croatia, which have been translated into languages that unaccompanied migrant children understand. They contain information for unaccompanied children. The leaflets are used by police administrations and police stations when working with unaccompanied children.

4. Please indicate any challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention of children and their families.

Croatia is still perceived among seekers of international protection as a transit country, so we face the challenge of high percentage of children who seek international protection leaving/absconding Croatia before the asylum procedure is completed. Since these persons are accommodated in open-type facilities, they most often leave the premises voluntarily and are at the later stage mostly encountered illegally crossing the state borders towards Western European countries.

5. What support could other stakeholders (other than your Government) provide to strengthen the development and/or implementation of non-custodial alternatives to immigration detention of children and their families that enhance the protection of their rights?

With regard to their possible role in implementation of non-custodial alternatives to immigration detention of children, NGOs and international organisations could focus on ensuring accommodation for a larger number of families, minors and other vulnerable persons as well as on further carrying out various types of leisure activities and workshops. Their role could also be valuable in providing of psychosocial support as well as legal counselling on the rights and obligations of asylum seekers.

So far, the Ministry of the Interior has been for several years successfully cooperated with NGOs aiming to assist children in school tasks, as well as workshops and other activities to which they were enrolled.

