

UNE ÉTUDE COORDONNÉE PAR FRANCE TERRE D'ASILE

# Le droit d'asile des mineurs isolés étrangers dans l'Union Européenne



## Etude comparative dans les 27 pays de l'UE



The study has been carried out under the supervision of  
**Laurent DELBOS** (*France terre d'asile*), coordinator of the project

On the basis of research done, in collaboration with national contact points, by

**Marine CARLIER** (*France terre d'asile* - FRANCE)

**Maria de DONATO** (*Consiglio Italiano per i Rifugiati* - ITALY)

**Julia IVAN** (*Hungarian Helsinki Committee* – HUNGARY)

**Maria KSIAZAK** (*International Humanitarian Initiative Foundation* – POLAND)

**Miltos PAVLOU** (*Institute of Rights, Equality & Diversity* - GREECE)

**Vineta POLATSIDE** (*Shelter. Safe house* – LATVIA)

**Sonja WELP** (*Terre des Hommes* – GERMANY)

The report has been written in collaboration with **Alix PIERARD** and **Caroline ROUBLIN**

(*France terre d'asile*)

The synthesis is available at <http://www.france-terre-asile.org/dam27>

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*The opinions expressed in this document are those of the author and do not represent the views of the European Commission nor of its services*

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## List of abbreviations & acronyms

Art.	Article
AWAS	Agency for the Welfare of Asylum Seekers (Malta)
BOE	Boletín Oficial del Estado (Spain)
CEAR	Comisión Española de Ayuda al Refugiado (Spain)
CESEDA	Code de l'entrée et du séjour des étrangers et du droit d'asile/ immigration and asylum law (France)
CGRA	Commissariat général aux réfugiés et apatrides/General Commission of Refugees and Stateless Persons (Belgium)
CIR	Consiglio Italiano per Rifugiati / Italian Council for Refugees (Italy)
CFM	Italian Committee for Foreign Minors
CNDA	Cour Nationale du Droit d'Asile (France)
CoE	Council of Europe
CPR	Conselho Português para os Refugiados/Portuguese Refugee Council (Portugal)
CRC	Committee on the Rights of the Child
CT	Territorial Commissions for the Recognition of International Protection (Italy)
CSW	Centre for Social Work (Slovenia)
EMN	European Migration Network (Germany)
ERF	European Refugee Fund
EU	European Union
Fedasil	Agence fédérale pour l'accueil des demandeurs d'asile /Federal Agency for the reception of asylum seekers (Belgium)
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
GNIB	Garda National Immigration Bureau (Ireland)
HHC	Hungarian Helsinki Committee (Hungary)
HSE	Health Service Executive (Ireland)
ICAR	NGO providing medical services for vulnerable asylum seekers (Romania)
MOI	Ministry of the Interior (Czech Republic)
MJHA	Ministry of Justice and Home Affairs, presently Ministry for Parliamentary and Home Affairs (Malta)
NGO	Non governmental organization

NIDOS	NGO Nederland
OFPRA	Office Français de Protection des Réfugiés et Apatrides/French Office for the Protection of Refugees and Stateless Persons (France)
OIN	Office of Immigration and Nationality (Hungary)
OPU	Organizace pro pomoc uprchlíkům (Czech Republic)
ORAC	Office of the Refugee Applications Commissioner (Ireland)
ORC/RefCom	Office of the Refugee Commissioner (Malta)
PBGB	Police and Boarder Guard Board (Estonia)
PD	Presidential Decree (Greece)
RAT	Refugee Appeals Tribunal (Ireland)
RIO	Romanian immigration office (Romania)
RLS	Refugee Legal Service (Ireland)
TZTC	Tymczasowe zaświadczenie tożsamości cudzoziemca (Poland)
SEF	Servicio de Estrangeiros e Fronteiras/Portuguese Immigration Service (Portugal)
SPRAR	Sistema di Protezione per Richiedenti Asilo e Rifugiati/System of Protection for Asylum Seekers and refugees (Italy)
UAM	Unaccompanied minor
UASC	Unaccompanied Asylum Seeking Children
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UKBA	United Kingdom border agency (the United Kingdom)

## Introduction

### Context

Today, children under 18 years old without any legal representative in their side are present in all the 27 member States. Like adults, an important part of these youngsters fled conflicts and persecutions in their country of origin: in 2010, 4% of asylum seekers in the world were unaccompanied children and 74% of them lodged their application in Europe<sup>1</sup>. Unaccompanied minors may have suffered persecution or may fear to suffer it because of their status of child: under age recruitment, trafficking of children for prostitution, sexual exploitation, subjection to female genital mutilation or child labour. Children may also be associated with situations, activities or opinions of their parents or other relatives; as a consequence they may have opinions attributed or imputed to them, and this may also lead to persecution.

To qualify for protection as a refugee, all asylum seekers including children have to bring elements on their situation regarding the Geneva Convention of 1951. They must establish that they were persecuted in the past or have a “*well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion*”<sup>2</sup>. They are also entitled to claim the benefit of subsidiary protection, another form of international protection introduced by the European Union - EU - in 2004<sup>3</sup>, if they would face a real risk of suffering serious harm<sup>4</sup> in case of return to their country of origin. Finally, the right to asylum is also established by the Convention on the Rights of the Child that states in article 22 that “*States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance (...)*”.

At the time the European Union States committed to establishing a Common European Asylum System (CEAS)<sup>5</sup>, the adaptation of procedures and practices for unaccompanied children seeking asylum remains an important issue. In fact, this particularly vulnerable population needs standards adapted to its specific situation. Issues such as legal guardianship, support during the procedure or conditions of interview are crucial for an effective protection of these children.

In this context, this study aims to analyze legislation and practices in all the 27 EU countries, in order to identify good practices, gaps and ways to improve the implementation of the right to asylum for unaccompanied children within the European Union.

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<sup>1</sup> UN High Commissioner for Refugees, *UNHCR Global Trends 2010*, June 2011, p 27, available at: <http://www.unhcr.org/refworld/docid/4e01b00e2.html> [accessed 5 July 2012].

<sup>2</sup> Convention relating to the Status of Refugees, adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950, available at: <http://www2.ohchr.org/english/law/refugees.htm> [accessed 5 July 2012].

<sup>3</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Art.2 (e), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML> [accessed 10 July 2012].

<sup>4</sup> *Ibid.*, Chapter V - *Qualification for subsidiary protection*, Art. 15, “*Serious harm consists of: (a) death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.*”

<sup>5</sup> For more information, see [http://ec.europa.eu/home-affairs/policies/asylum/asylum\\_intro\\_en.htm](http://ec.europa.eu/home-affairs/policies/asylum/asylum_intro_en.htm) [accessed 10 July 2012]

## Methodology

This project, which is co-funded by the European Commission through the Fundamental Rights and Citizenship program, was coordinated by *France terre d'asile* (France) and carried out in partnership with six non-governmental organisations (NGOs): *Consiglio Italiano per i Rifugiati* (Italy), *Hungarian Helsinki Committee* (Hungary), *Institute for Rights, Equality and Diversity* (Greece), *International humanitarian initiative foundation* (Poland), *Shelter safe house* (Latvia) and *Terre des Hommes* (Germany).

The first step was to establish in common a questionnaire for all countries<sup>6</sup>. Researchers from the seven organizations involved in the project then worked between April and December 2011 in order to answer all of the questions for several target countries. The research was carried out on the basis of documents that refer to the situation of unaccompanied minors in the studied countries, of legal provisions that govern this problem, and through the practical experience reported by front-line professionals and institutions that operate in this field. On the basis of some 650 pages of answers to national surveys, this study proposes to analyze the results and to make recommendations about the main subjects at stake in this area.

Due to the lack of resources in certain countries and the real difficulty to draw comparisons between 27 countries with different legal traditions and various national legislations, the degree of analysis in this report is variable. Moreover, the issue does not have the same importance in all countries, some of them having few applications from unaccompanied minors and therefore few practices in this field. Furthermore, the study of the situation of unaccompanied children in the overseas countries and territories<sup>7</sup> could not be included within the framework of this project in view of the confusion that would have entailed from a comparative point of view.

Thus, this study does not pretend to present law and practices in all countries in an exhaustive way. This work aims to highlight many standards and practices that should improve the knowledge of the issue of asylum rights for unaccompanied children in Europe.

We hope that this research will provide an appropriate source for everyone involved in this area and more particularly the European Union's institutions, in the perspective of building a harmonized protection based on the respect of the rights of the child.

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<sup>6</sup> For more details on this issue, see appendix 4 – Elements of methodology.

<sup>7</sup> For a definition of overseas countries and territories see:

[http://europa.eu/legislation\\_summaries/development/overseas\\_countries\\_territories/index\\_en.htm](http://europa.eu/legislation_summaries/development/overseas_countries_territories/index_en.htm) [accessed 10 July 2012].

# 1. General overview of asylum procedures for unaccompanied children.

Although right to asylum is provided by a European and international legal framework binding for States, unaccompanied children face obstacles when accessing the procedure. In this context, it is necessary to provide child-specific information about the procedure and to implement measures specifically dedicated to unaccompanied minors in their asylum procedure.

## 1.1. Obstacles to access to the procedure

Unaccompanied minors may face some obstacles such as refoulement at the border, dissuasive practices or law before or during the procedure or inefficient age assessment.

At the border, it seems that several countries are implementing **returns** without a complete assessment of the situation of the child regarding asylum<sup>8</sup> in contradiction with the non-refoulement principle<sup>9</sup>.

In **Latvia** and **Lithuania**, unaccompanied minors are subject to general Schengen requirements on lawful entry to the Schengen space. In **Austria**, a suspicion has been voiced that, especially on the border to Italy along the *Brennerpass*, systematic rejection and deportation take place which the unaccompanied minors are also affected from.

Refoulement at the border sometimes happens in **France** before the child meets his/her legal guardian and therefore with a lack of information about asylum. In **Belgium**, illegal pushbacks might occur when unaccompanied minors arrive by sea preventing them from claiming asylum. It seems to be clear that no common policy towards unaccompanied minor exists on this issue in **Germany**. When they are found inside the port of Dover in **the United Kingdom**, unaccompanied minors may be sent back to France or Belgium if they « *do not claim asylum*<sup>10</sup> ». It is not known how the border agency distinguishes between an asylum-seeking and a non-asylum-seeking minor at this point, so it might happen that unaccompanied minors are deported before their need for protection being duly assessed. In **Hungary**, the Hungarian Helsinki Committee experienced that potential asylum seekers who claimed to be minors were readmitted to the neighbouring countries, in some documented cases at the Hungarian-Ukrainian and Hungarian-Serbian border. In **Italy**, once irregular migrants are found hidden in the ferry boats from Greece during the police control at ports they are entrusted to the captain of the same boat and are therefore driven back to Greece without any notification to the authorities. On the 29 April 2009 the European Court in Strasbourg declared admissible the 35 appeals presented by minors from Afghanistan and Sudan against both the Italian and Greek governments for the violation of fundamental human rights suffered<sup>11</sup>. Another matter of concern in **Bulgaria** is the 'attachment' of unaccompanied children to an unknown adult foreign national in order to facilitate deportation.

<sup>8</sup> For more details on this issue, see infra Part 8 "Specific aspects of asylum at the border".

<sup>9</sup> *Convention Relating to the Status of Refugees*, Art. 33, *op.cit.* (Note 2).

<sup>10</sup> Interview of a UKBA agent (04/2011), in Dover.

<sup>11</sup> Admissibility decision of 29 April 2009, n° 16643/09 (Sharifi case).



In **Austria**, in border procedures at the Vienna airport, the United Nations High Commissioner for Refugees - UNHCR - has the possibility towards rejected asylum applications of unaccompanied children to file a veto and so enable the entry.

**Some aspects of the asylum procedure** could dissuade minors to ask for asylum. In some countries, youngsters do not get access to the asylum procedure when they have already applied for asylum in another 'Dublin' state<sup>12</sup>. The length of the procedure is another factor of dissuasion. In **the Czech Republic**, the practice of the Ministry of Interior to extensively prolong the asylum procedure without any relevant reasons, makes the asylum seekers tired of waiting in limbo and thus signal to the persons concerned that they are not in an 'asylum country'. The role of the guardian is another element which could have a dissuasive effect about asylum application<sup>13</sup>. In **Cyprus**, the legal representation system is defective so child applications are not processed before the age of 18. In **Germany**, minors up to 16 years old can only apply for asylum with accordance of their legal guardian so if he decides that no asylum claim is necessary the minor has to wait until the age of 16. In **Ireland**, the application must be made by a social worker on behalf of the child so he may find that it is not the best interests of the child to be in the asylum process despite the opinion of the child<sup>14</sup>. The consent of the guardian is also necessary in **Slovakia**.

In several countries, **informal practices implemented by authorities** may have an effect of discouraging minors to apply for asylum. In **Cyprus**, we noted practices in police station such as refusal to call an interpreter, refusal to hand an application form to the prospective applicant or asking the applicant to come back again and again. In **France**, withdrawal of an application form for asylum in the regional representation of the State (called *Prefecture*) may be very difficult: a quota of application form provided each day is sometimes in force, some *Prefectures* refuse to give an application form arguing that minor under 16 cannot apply for asylum<sup>15</sup> and the length of queues often forces migrants including unaccompanied minors to be present from the middle of the night to wait. The length of queues is an issue also pointed out in **Greece**. We received information that some asylum seekers in **Slovenia** were told at the Police station that only "educated applicants" are accepted.

The lack of reliability and length of **age assessment** are other points that could prevent people from being considered as unaccompanied children and then to have the benefit of specific procedures. It is a major subject of concern in almost **all EU countries**, where medical examination, yet considered as inefficient, is the most widespread method<sup>16</sup>. In any case, the "procedure" directive states that "*the decision to reject an application for asylum from an unaccompanied minor who refused to undergo*

<sup>12</sup> For more details about Dublin II procedures, see *infra* Part 4 "Dublin II regulation".

<sup>13</sup> For more details on this issue, see *infra* Part 3 "Legal guardianship".

<sup>14</sup> Defence for children international, *Closing a protection gap*, National report, 2010-2011, p 44, available at: <http://www.defenceforchildren.nl/images/20/1269.pdf> [accessed 10 July 2012]. On the other hand, the principal social worker of Health Service Executive – HSE - Dublin Team for Separated Children stated that only "very rarely" no asylum claim was lodged for an unaccompanied minor. Interview of the HSE DTSC principal social worker, 2/11/2011.

<sup>15</sup> This is what some « prefecture » say, but it is not foreseen by law. Everybody can ask for asylum, including minors of any age.

<sup>16</sup> See for example : UNICEF, *Age assessment practices : a literature review and annotated bibliography*, Terry SMITH, Laura BROWNLEES, 2011, 85 p, available at: [http://www.unicef.org/protection/Age\\_Assessment\\_Practices\\_2010.pdf](http://www.unicef.org/protection/Age_Assessment_Practices_2010.pdf) [accessed 10 July 2012].

*this medical examination shall not be based solely on that refusal*<sup>17</sup>. On the other hand, we noted some cases in **Malta** where unaccompanied minors claim being adults since the age assessment procedure can take several months, even longer than the asylum procedure which is meantime suspended.

## **1.2. Child-specific information about the procedure**

The level of awareness about even most basic information on the right to asylum in Europe among the population in the countries of origin seems very low. In this context, it is essential that children are informed about their right to apply for asylum when they are in the territory of an EU country. In almost **all EU countries**, the police is required by law to inform all migrants about their right to ask for asylum especially when they are arrested, but this information is generally the same regardless of age. Thus, in practice, many children do not understand this formal notification because there are no specific provisions for minors.

In **Poland**, the Border Guard does not inform any foreigners on the border about the possibility of requesting asylum. There is also a lack of information for unaccompanied children in detention centre where they are placed as irregular migrants.

In **the United Kingdom** and **Sweden**, the issue of information before application is rarely raised because unaccompanied children are “automatically” directed to the asylum procedure by the police or social services. Conversely in **Ireland**, it might happen that child is not informed of their right to claim asylum because social worker assessed that it is not appropriate to make an asylum application in this case. This situation also occurs in **France** where the staff of child reception centres often knows poorly the right to asylum.

Although lawyer or legal representative can provide details on the progress and content of procedures in most of the countries, this occurs often when the application was made and does not allow any minor to make an informed choice on whether or not to apply for asylum. The NGO that ensure legal representation for unaccompanied minor in **the Netherlands** (NIDOS) provides complete information about asylum procedure before application. The guardian in **Slovakia** informs the child on the legal possibilities to solve his situation and stay in Slovakia, including information on right to asylum. But sometimes it takes quite a lot of time until the child meets the appointed guardian. In **the Czech Republic** and **Spain**, the staffs of the place where unaccompanied minor are accommodated inform the child and help her/him to take the best decision but this practice is not required by law.

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<sup>17</sup> Council directive 2005/85/EC of 1<sup>st</sup> December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, Art. 17 (c), available at : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF> [accessed 18 June 2012].



In **Sweden**, Migration Board provides a special document for children containing different general information about the process of applying for refugee status and possibilities of appealing decisions, Dublin procedure, and information on what may happen if the asylum procedure will have a different outcome. In addition, the Swedish Red Cross is giving “asylum information workshops” in the youth centres where unaccompanied minors live. Counsellor, staff or volunteer are giving general information about the asylum procedure. That activity is very popular and usually the young people have many questions about the procedure on the issues that they already received the information – the reason may be that either earlier they could not understand everything or with the Red Cross staff they are more at ease to ask all questions than with “officials” where they are afraid their questions may interfere with the asylum procedure.

In **Finland**, if there seems to be no other reason for a person to enter the country, the police and border officials have to find out whether this person wants to apply for asylum. Special attention should be paid to unaccompanied children. There are brochures available for children about the asylum process in English, Somali, Dari, Sorani languages.

Similar guides are published by NGOs in **Germany**<sup>18</sup>, **Hungary**<sup>19</sup>, **Ireland**<sup>20</sup> and **Romania**<sup>21</sup> about all important topics in a child-friendly language. A brochure is given to all asylum seekers including adults in several countries but the law in **Slovenia** provides that this document has to be orally explained to the minors. In **Bulgaria**, an information leaflet was produced by the Asylum service but it contains a rather serious inaccuracy about the presence of the child during the interview (required by law and described as optional by the leaflet).



In **Belgium**, the Commissariat général aux réfugiés et apatrides (CGRA), which is the national institution of first instance on asylum, has published a comic book to present the asylum procedure for unaccompanied children through the career of one of them<sup>22</sup>. This is a fiction that can be understood through drawings if the reader does not read English or French. The comic book is complemented by an educational booklet that outlines the steps and stakeholders in the asylum procedure.

Access to valid and comprehensive information for unaccompanied children is a serious concern in almost all EU countries. No specific measures are implemented in this field for children in most of the EU countries. The level of information provided often depends on the context and the people met, because usually there are no measures implemented or tools made available by public institutions in this area.

<sup>18</sup> This guide, called “Welcome to Germany”, is published in German, English, French and Dari – several other languages will follow. <http://www.b-umf.de/images/willkommen/willkommensbroschureenglisch-web.pdf> [accessed 10 July 2012].

<sup>19</sup> Information leaflet for young asylum seekers is available at: <http://helsinki.hu/en/info-leaflets-for-young-asylum-seekers> [accessed 10 July 2012].

<sup>20</sup> The Irish Refugee Council and UNICEF have designed a map of the asylum process for unaccompanied children.

<sup>21</sup> Romanian National Council for Refugees drafted specific information leaflets for separated children in 2010, available in Romanian, English and Pashto.

<sup>22</sup> See cover at: [http://www.cgra.be/fr/binaries/Couverture%20de%20la%20BD\\_tcm126-18333.pdf](http://www.cgra.be/fr/binaries/Couverture%20de%20la%20BD_tcm126-18333.pdf) [accessed 10 July 2012].



### 1.3. Main specificities of asylum procedures regarding unaccompanied children

First, it should be noted that the terms ‘asylum procedure’ do not have the same meaning in all EU countries. In some countries, this procedure can only lead to grant international protection (refugee status or subsidiary protection) while in some others ‘seeking asylum’ can also lead to get other kind of residence permit<sup>23</sup>. The consequence is that in some countries all unaccompanied children have to start this procedure to stay in the country.

The most widespread specificity in the 27 EU countries is the appointment of a legal guardian<sup>24</sup> to make asylum claim, provided in **all countries**.

An application cannot be considered as manifestly unfounded and unaccompanied children should always be admitted to the ‘regular’ procedure in some countries as **Bulgaria, France, Lithuania, Romania, and Slovakia**. Accelerated procedures founded on criteria such as ‘third safe country’ are not applied.

In many EU countries as **Belgium, Estonia, Finland, Greece, Hungary, Italy, Lithuania, Romania, Slovenia** and **Spain**, the law provides that priority should be given to the applications of unaccompanied children and sometimes specifies maximum deadlines shorter than for adults. It is also a possibility in Malta. Conversely, the law in **Ireland** provides that unaccompanied children have a longer deadline to fill in the questionnaire on their grounds for seeking asylum.

Regarding the main interview<sup>25</sup>, specific procedures or guidelines are included in the legal framework regulating asylum in many countries, such as **Belgium, the Czech Republic, Finland, Germany, Hungary, Ireland, Latvia, Luxembourg, the Netherlands, Poland, Slovakia, Slovenia** and **the United Kingdom**. These provisions generally relate to the training of the interviewer and the need that interviews take place in a child friendly environment. In **Hungary**, the personal hearing of the child is not obligatory under 14 unless it is essential to decide upon the claim in order to protect children from re-traumatisation, while children under age of 6 are not interviewed in **the Netherlands**.

We can also see that unaccompanied children are not always subject to special procedures at the border<sup>26</sup>. However, this is the case in some countries where the only particularity is that they must be accompanied by a legal representative during these procedures. They may also be detained in certain circumstances.

Other specificities are also implemented in the field of the best interest determination, right of residence or accommodation during the procedure, prohibition of unaccompanied children’s detention or medico-psychological support<sup>27</sup>.

<sup>23</sup> For more details, see *infra* Part 7 “Decisions and its consequences”.

<sup>24</sup> For more details about legal representation, see *infra* Part 3 “legal guardianship”.

<sup>25</sup> For more details about the main interview, see *infra* Part 6 “main interview”.

<sup>26</sup> For more details, see *infra* Part 8 “Specific aspects of asylum at the border”.

<sup>27</sup> For more details, see *infra* Part 5 “Support and accommodation during the procedure”.

#### RECOMMENDATION 1 – Access to asylum procedure

- ▶ Children should always have access to asylum procedures, regardless of their age.
- ▶ Public authorities should take measures to ensure that all unaccompanied children are always informed about their right to seek asylum and the details of such a procedure in a child friendly manner tailored to the needs of children.

## 2. Statistics and profiles

One of the first questions that arises is the number of children that are affected by asylum in the European Union. In this context, it is necessary to get disaggregated data on applications and decisions regarding unaccompanied minors.

### 2.1. Applications

#### 2.1.1. Total number of applications

The table in following pages shows figures available regarding asylum applications for unaccompanied children from 2005 to 2010. People who applied as children but were declared as adults later are not included in these statistics.

In **Malta** and to a lesser extent in **Bulgaria**<sup>28</sup>, there is extremely limited data regarding asylum applications from 2005 until now. It seems that the situation improved recently in many countries where there were no statistics at the beginning of this period but there are in recent years (**Cyprus, the Czech Republic, Finland, Italy, Latvia, Romania** and **Spain**). For some of these countries, this can be explained by the entry in the European Union.

The lack of statistics is not the problem in **Estonia**, but there has been no unaccompanied children seeking asylum in this country: two asylum seekers in 2009 and two in 2011 declared being minors, but age assessment procedures revealed that they were over 20 years of age.

In some countries, statistics are unclear or incomplete. For example, annual report of the Agence fédérale pour l'accueil des demandeurs d'asile - *Fedasil* -, federal agency for the reception of asylum seekers, in **Belgium**, indicates that 896 unaccompanied children applied for asylum in 2010, while the Immigration office quotes the figure of 860. In **Poland**, official data about unaccompanied minors is lumped together with the data of children born during asylum procedure of their parents and children who individually filled out the asylum request joining parents already in the procedure<sup>29</sup>. In **Germany**, we observe a severe increase of the number of applications since 2009 because only children under 16 were recorded as unaccompanied children before this year.

In total, we count 10,295 asylum applications for unaccompanied minors throughout the European Union in 2010. **Sweden** (2 393), **Germany** (1 948) and the **United Kingdom** (1 595) are the countries with the most important number of application.

Except in **the Czech Republic**<sup>30</sup>, there is no data available on appeal cases of unaccompanied children.

<sup>28</sup> The only figure available is total number of unaccompanied minor asylum seekers in 2010.

<sup>29</sup> In the statistic table, we collected data from an orphanage in Warsaw, a place specially contracted in 2005 by the Office of Foreigners for asylum seeking unaccompanied children.

<sup>30</sup> 6 Appeals in 2008, 2 in 2009, 2 in 2010. We have data on appeal for Latvia but only for 2006 (3 cases).

### 2.1.2. Breakdown by sex, nationalities and age

In 2010, there are complete statistics with breakdown by nationalities, sex and age in few EU member States as **Denmark, Finland, France, Hungary, Italy, Lithuania, Luxembourg, Portugal** and **Sweden**.

Afghanistan was the first country of origin in 2010, in 13 of the 21 countries where breakdown by nationality was available. The other main countries of origin in 2010 were Democratic Republic of the Congo, Iraq, Somalia, Nigeria and Guinea.

The age of these children applicants seems higher than 15 in almost every case. We see exceptions in **Finland** where 23% of the applicants are under 15 and in **Sweden** where 43 % of the applicants are under 16. The proportion of young applicants is also important in **Lithuania** (32% are under 15) and **Poland** (30% are under 16) but there are few applications in these countries. The breakdown by sex shows that a large majority of the applicants are male. In 2010, the average in the countries where this statistics are available shows that 82 % of the minor applicants are male. However in **Ireland**, a majority of applicants are girls (50% average over 2005-2009 and 68% in 2010). No interpretation of this trend is available.

## 2.2. Decisions

The majority of the countries do not provide disaggregated data that could show the number of decisions regarding unaccompanied children's asylum applications. We see when these data are available that the rate of positive decision varies from 8% (in **Ireland**) to 61% (in **the United Kingdom**), but the possible outcomes of the procedures are not the same in all countries (a "positive" decision may be issued but with a status less favourable than refugee or subsidiary protection status)<sup>31</sup>. We note that in **Cyprus**, applications are not examined until the applicant reaches 18 so there is no decision regarding unaccompanied children. In 2009, an amendment of the Refugee Law which introduced a procedure for examining asylum application from minors was adopted, but this text has not been implemented yet.

### RECOMMENDATION 2 – Statistics

- ▶ Each State should collect and provide data on asylum applications and decisions related to unaccompanied minors, with breakdown by sex, nationality and age in order to improve knowledge on this phenomenon and to design adapted policies.

<sup>31</sup> For more details, see *infra* Part 7 "Decision and its consequences".

**COUNTRY CODES used in the statistic table (see next pages)**

AF	Afghanistan	GE	Georgia	PK	Pakistan
AO	Angola	GH	Ghana	RS	Serbia
AZ	Azerbaijan	GM	Gambia	RU	Russian federation
BD	Bangladesh	GN	Guinea	SO	Somalia
BI	Burundi	IN	India	SN	Senegal
BY	Belarus	IQ	Iraq	SD	Sudan
CD	Democratic Republic of the Congo	IR	Islamic Republic of Iran	SY	Syrian Arab Republic
CI	Côte d'Ivoire	KV	Kosovo	TR	Turkey
CN	China	LK	Sri Lanka	UA	Ukraine
DZ	Algeria	MA	Morocco	UZ	Uzbekistan
ER	Eritrea	MD	Republic of Moldova	VN	Viet Nam
ET	Ethiopia	NG	Nigeria	WB	West Bank

**Other abbreviations used in the statistic tables**

Dec	Decision	N/A	Not available
F	Female	RS	Refugee status
M	Male	SP	Subsidiary protection



	Age	<14= 5% >14= 95%	N/A	N/A	>14=100 %	<15=0% >15=100%	<15=10% >15=90%	0	<15=23% >15=67%	<16=5% >16=95%	N/A	N/A	N/A	<14=4% >14=96%	<14=3% >14=97%	<14=5% >14=95%	N/A	<15=32% >15=58%	<17=58% >17=42%	N/A	N/A	<16=30% >16=70%	17 (average)	N/A	N/A	N/A	N/A	<16=43% >16=57%
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		27 EU countries	AUSTRIA	BELGIUM	BULGARIA	CYPRUS	THE CZECH REPUBLIC	DENMARK	ESTONIA	FINLAND	France	GERMANY	THE UNITED KINGDOM	GREECE	HUNGARY	IRELAND	ITALY	LATVIA	LITHUANIA	LUXEMBOURG	MALTA	THE NETHERLANDS	POLAND	Portugal	ROMANIA	SLOVAKIA	SLOVENIA	SPAIN	SWEDEN		
Decisions	2008	Positive dec.	1276	N/A	129	N/A	0	13	33	0	157	N/A	111	N/A	N/A	8	13	N/A	1	1	N/A	N/A	N/A	8	5	N/A	N/A	1	N/A	796	
		(rate) %	N/A	N/A	41,7	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	62	N/A	N/A	12,3	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
		RS	299	N/A	107	N/A	0	12	N/A	0	3	N/A	102	N/A	N/A	6	13	N/A	0	0	N/A	N/A	N/A	0	0	N/A	N/A	0	N/A	56	
		SP	475	N/A	22	N/A	0	1	N/A	0	0	N/A	9	N/A	N/A	2	N/A	N/A	1	0	N/A	N/A	N/A	6	5	N/A	N/A	1	N/A	428	
		Other status	469	N/A	0	N/A	0	N/A	N/A	0	154	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0	1	N/A	N/A	N/A	2	0	N/A	N/A	0	N/A	312	
		Nationalities		N/A	GN AF CD	N/A	N/A	UA=69% CD=15%	N/A	N/A	SO=42% IQ=27% AF=11%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	AF	CD	N/A	N/A	N/A	RU=88% SD=12%	GN CD SN	N/A	N/A	N/A	KV	N/A	N/A
		Sex		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	M	F	N/A	N/A	N/A	F=50% M=50%	F=20% M=80%	N/A	N/A	M	N/A	N/A	
	Age		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	16	N/A	N/A	N/A	N/A	N/A	16	N/A	N/A	17	N/A	N/A		
	2009	Positive dec.	4684	159	231	N/A	0	3	92	0	247	209	330	2310	N/A	30	3	N/A	N/A	3	N/A	N/A	N/A	1	2	N/A	N/A	4	N/A	1060	
		(rate) %	N/A	N/A	55,5	N/A	N/A	N/A	N/A	N/A	42,7	N/A	N/A	65,8	N/A	N/A	4,9	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
		RS	822	17	189	N/A	0	3	N/A	0	1	N/A	195	340	N/A	6	3	N/A	N/A	0	N/A	N/A	N/A	N/A	0	N/A	N/A	0	N/A	68	
		SP	1250	142	42	N/A	0	0	N/A	0	103	N/A	135	25	N/A	19	N/A	N/A	N/A	3	N/A	N/A	N/A	1	2	N/A	N/A	4	N/A	774	
		Other status	2311	0	0	N/A	0	N/A	N/A	0	143	N/A	N/A	1945	N/A	5	N/A	N/A	N/A	0	N/A	N/A	N/A	N/A	0	0	N/A	N/A	0	N/A	218
		Nationalities		AF=78% SO=7% ER=3%	GN AF CD	N/A	N/A	UA=100%	N/A	N/A	SO=64% IQ=19% AF=11%	N/A	N/A	N/A	N/A	N/A	AF=83% SO=13% RS=3%	N/A	N/A	N/A	AF=67% RU=33%	N/A	N/A	N/A	RU	N/A	N/A	N/A	AF KV	N/A	N/A
		Sex		F=10% M=90%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	F=7% M=93%	N/A	N/A	N/A	M=100%	N/A	N/A	N/A	M	M	N/A	N/A	N/A	N/A	N/A	
	Age		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	17=67% 16=33%	N/A	N/A	N/A	N/A	17	N/A	N/A	17=25% 16=75%	N/A	N/A		
	2010	Positive dec.	4249	N/A	413	N/A	0	5	148	0	262	188	448	1450	N/A	35	3	N/A	4	5	N/A	N/A	N/A	N/A	2	N/A	N/A	1	N/A	1285	
		(rate) %	N/A	N/A	51	N/A	N/A	N/A	N/A	N/A	38,5	N/A	N/A	61	N/A	N/A	8,8	N/A	N/A	100	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
RS		1013	N/A	290	N/A	0	3	N/A	0	6	149	140	325	N/A	7	3	N/A	0	0	N/A	N/A	N/A	N/A	0	N/A	N/A	0	N/A	90		
SP		1637	N/A	123	N/A	0	2	N/A	0	120	39	308	10	N/A	24	N/A	N/A	4	1	N/A	N/A	N/A	N/A	2	N/A	N/A	1	N/A	1003		
Other status		1451	N/A	0	N/A	0	N/A	N/A	0	136	N/A	N/A	1115	N/A	4	N/A	N/A	0	4	N/A	N/A	N/A	N/A	0	N/A	N/A	0	N/A	192		
Nationalities			N/A	AF GN RU	N/A	N/A	CD=60% AF CN	N/A	N/A	SO=55% AF=17% IQ=16%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	AF	AF=60% GE=20% VN=20%	N/A	N/A	N/A	N/A	GN CD	N/A	N/A	AF	N/A	AF=50% SO=37% ER=4%		
Sex			N/A	F=67% M=33%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	M	M=100%	N/A	N/A	N/A	N/A	M F	N/A	N/A	M	N/A	N/A		
Age		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	17	17=80% 16=20%	N/A	N/A	N/A	N/A	17	N/A	N/A	17	N/A	N/A			



## STATISTICAL DATA – Sources

AUSTRIA	NC
BELGIUM	Commissariat général aux réfugiés et apatrides Ministère de la Justice - Service des tutelles
BULGARIA	UNHCR, Operations in Bulgaria
CYPRUS	Ministry of Interior, Asylum service
THE CZECH REPUBLIC	Ministry of Interior
DENMARK	NC
ESTONIA	Policy and Boarder Guard Board Citizenship and Migration department
FINLAND	NC
FRANCE	Office français de protection des réfugiés et des apatrides
GERMANY	Federal Office for Migration and Refugees
THE UNITED KINGDOM	Home office Refugee Council
GREECE	Ministry of Public Order/Protection of the Citizen, UNHCR
HUNGARY	UNHCR Office of Immigration and Nationality
IRELAND	European migration network Office for the refugee applications commissioner
ITALY	Commissione nazionale per il diritto di asilo: National Eligibility Commission
LATVIA	NC
LITHUANIA	NC
LUXEMBOURG	Ministère des affaires étrangères. Direction de l'immigration
MALTA	NC
THE NETHERLANDS	Dutch Refugee Council
POLAND	Office for Foreigner Orphanage #9
PORTUGAL	NC
ROMANIA	Romanian national council for refugees
SLOVAKIA	Ministry of Interior
SLOVENIA	UNHCR Ministry of Interior
SPAIN	European Migration Network
SWEDEN	NC

### 3. Legal guardianship

#### **Terminological clarification:**

The term 'legal guardianship' will be used here to designate any person whose role is to represent the minor throughout the various procedures. His role, duties and competences will be detailed for every country using the terms of *guardian*, *custodian*, *legal representative* or even *administrator*.

As children do not have legal capacity, they should be represented by adult in all legal procedures. Without such a legal guardian, their asylum claim could not be considered as valid. Respecting the right to asylum for unaccompanied minors requires that unaccompanied children be represented by a legal guardian as soon as they express the wish to seek asylum.

In this context, EU directives on asylum provide that "*Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors*"<sup>33</sup>. The directive on minimum standards on procedures provides more details on this requirement. It defines 'representatives' as a "*person acting on behalf of an organization representing an unaccompanied minor as legal guardian, a person acting on behalf of a national organization which is responsible for the care and well-being of minors, or any other appropriate representation appointed to ensure his/her best interests*"<sup>34</sup>. This legal representative must be appointed as soon as possible, to provide information to the minor and to assist him/her during the interview<sup>35</sup>. His/her appointment is not compulsory in some cases: minor who will reach the age of maturity before a decision at first instance is taken, minor with a lawyer, 16 year or older minor able to apply alone, or married minor<sup>36</sup>. The appointment of legal representative at the border is provided by the 2005 directive<sup>37</sup>.

The need of legal guardianship is also expressed by the UNHCR<sup>38</sup>, the Committee on the rights of the Child<sup>39</sup> and the Council of Europe<sup>40</sup> in many recommendations or guidelines published over the last 20 years.

<sup>33</sup> EC, Council directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Art. 19., available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0009:EN:HTML> [accessed 10 July 2012]; EC, Council directive 2004/83/EC of 29 April 2004, Art. 30, *op.cit.* (Note 3).

<sup>34</sup> EC, Council directive 2005/85/EC of 1<sup>st</sup> December 2005, Art. 2, *op.cit.* (Note 17).

<sup>35</sup> *Ibid.*, Art. 17.1.

<sup>36</sup> *Ibid.*, Art. 17.3.

<sup>37</sup> *Ibid.*, Art. 35.

<sup>38</sup> UNHCR, « Children : guidelines on protection and care », 1994, Chapter 8, available at:

<http://www.unhcr.org/refworld/pdfid/3ae6b3470.pdf> [accessed 10 July 2012] ;

UNHCR Guidelines on Policies and Procedures in dealing with unaccompanied children seeking asylum, 1997, Art. 4.2., 5.7 and 8.3, available at: <http://www.unhcr.org/3d4f91cf4.pdf> [accessed 15 June 2012].

<sup>39</sup> Committee on the Rights of the Child (CRC), *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, §33-38, §69, available at: <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf> [accessed 10 July 2012].

<sup>40</sup> Parliamentary assembly, Recommendation 1703 (2005), Protection and assistance for separated children seeking asylum, §5, §9.d, §9.e, available at: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta05/erec1703.htm> [accessed 10 July 2012]; Parliamentary assembly, Resolution 1810 (2011), unaccompanied children in Europe: issues of arrival stay and return, §5.5; §6.4, available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta11/ERES1810.htm> [accessed 10 July 2012]; Parliamentary assembly, Recommendation 1985(2011), Undocumented migrant children in a irregular situation : a real cause for concern, §7, available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta11/EREC1985.htm>

We will see that European states implemented different models of legal guardianship. Issues of qualification of guardians, and monitoring, will also be studied to better understand the implementation of European and international standards on this issue.

### **3.1. The different models of legal guardianship**

#### **3.1.1. Legal representation ensured by a specific guardian for unaccompanied children seeking asylum**

Several EU countries implemented a system of legal guardianship specifically earmarked for unaccompanied children seeking asylum.

**In some countries with specific guardianship system for unaccompanied minor seeking asylum, the representation is ensured by only one organization or institution (Cyprus, the Czech Republic, Denmark, Portugal and Slovenia).**

In **Cyprus**, the legal representative who assists the minor during the asylum application and other legal procedure is appointed by the Child Commissioner in accordance with the Refugee Law. The Commissioner shall act *“as soon as possible, either in person or through an officer from his Office, as representative and advocate of the unaccompanied minor during the examination of the application of the said minor”*<sup>41</sup>. This provision was interpreted by the Child Commissioner as mandating her to contract external lawyers to represent unaccompanied minors during the asylum procedure. However, when an external lawyer contacted the Asylum Service asking for access to an applicant’s file, the Asylum Service declined the request, based on an interpretation of the law that does not allow the Child Commissioner to hire external lawyers but to use only members of her own staff. This interpretation was supported by an opinion of the Attorney General, who was asked to advise on this issue. The result is that since no legal representatives can be appointed, no asylum applications from minors are examined or processed. All unaccompanied minors are placed into the care of the Director of Social Welfare, but this institution does not act as legal representative in asylum procedures.

In **the Czech Republic**, there are 4 types of guardian for unaccompanied minors: the *“procedural guardian”*, *“guardian for stay/residence”*, *“guardian for administrative expulsion”*, *“guardian for detention”*. It is usually the same person being appointed as a guardian throughout the procedure, which is mostly a lawyer working with the NGO *Organizace pro pomoc uprchlíkům* - OPU. In practice the OPU’s lawyer is appointed by the Asylum Department as a guardian to be at the beginning of the asylum procedure (first type in the list above). Later the Asylum department approaches the court to appoint the guardian for the overall well-being of the child. After this second guardian, usually a municipality officer, is appointed *“OPU’s guardianship”* formally ends but since the municipality guardian is not usually familiar with the asylum procedure, he gives immediately the power of attorney back to the previous guardian to act as guardian for the asylum procedure. These NGO lawyers from OPU then act as a guardian in the asylum, expulsion and detention procedure.

<sup>41</sup> *Refugee Law of 2000 (last amended 2007)* [Cyprus], No. 6(I) of 2000, 2000, Art. 10(1)(IB), available at: <http://www.unhcr.org/refworld/docid/4a71aac22.html> [accessed 5 July 2012].

In **Denmark**, every unaccompanied child will have a personal representative appointed to attend to his/her interests. The Danish Red Cross, who administers the representative service, will be asked to recommend a representative to the local authority, which hereafter will formally appoint the representative. All guardians are in some way hired by the Red Cross. The belonging to public institutions and independence from authorities is under careful care during the verification process of candidates applying to be legal representatives. The specificity related to asylum is that since 1993 the Danish Red Cross has provided unaccompanied children with an assessor, whenever the child has to be in contact with the authorities. The task of an assessor is to support the child in the situation of interrogation and conversation with authorities related to the asylum case examination. The assessor also has to ensure that everything takes place with proper regard to the age and maturity of the child and to the character of the case. When a representative is appointed, the assessor can continue to be present during contact with the authorities, if this is the wish of the representative.

In **Portugal**, a special law is applied rather than the civil code for unaccompanied asylum seeking minors<sup>42</sup>. Asylum Act refers to representation (“*representação*”) never referring to guardianship or legal guardian<sup>43</sup>. This law foresees the possibility of an appointment of a representative. This representation is linked to the fact that the minor is unaccompanied and has presented an asylum request. In practice *Conselho Português para os Refugiados* - CPR (Portuguese Refugee Council) is the only NGO that provides support exclusively to asylum seekers and refugees in Portugal and is recognized as such, although not formally appointed.

In **Slovenia**, the Police notify the Centre for Social Work - CSW, which should immediately assign a guardian to the minor<sup>44</sup>. The CSW appoints the organization “Slovenian Philanthropy” as legal guardian. The statutory role of the legal guardian in the asylum procedure is only linked to the process of obtaining international protection. As a result, other tasks (support for learning, leisure activities, escorting the unaccompanied minor to the doctor ...) are undertaken by the staff of the Asylum Home.

**In many other countries as Estonia, Finland, France, Luxembourg, Poland, Romania and Sweden, the specific representation for unaccompanied asylum seeking minors is provided and ensured by various people or organizations.**

In **Estonia**, Family Act provides a legal basis for appointing a guardian for children separated from parents who are applying for asylum. According to the Act on Granting International Protection to Aliens, besides a guardian, a child can also be represented, by a guardianship authority, the head of the reception centre or a person authorized by the latter. In practice, the reception centre may be the representative of children who are about to turn 18. If the child is placed in social welfare institution, the child's guardian should be the local government. The NGO *Omapäi* and its representatives/guardians are mainly engaged on a voluntary basis. In the future, the Ministry of

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<sup>42</sup> Lei n° 147/99 de 1 de Setembro, Lei de protecção de crianças e jovens em perigo (Protection of Children and Young People in Danger), available at: [http://www.cnpcjr.pt/preview\\_documentos.asp?r=1026&m=PDF](http://www.cnpcjr.pt/preview_documentos.asp?r=1026&m=PDF) [accessed 27 July 2012].

<sup>43</sup> Law 27/2008 of 30 June 2008, Establishes the conditions and procedures for granting asylum and subsidiary protection and the statuses of asylum applicant, refugee and of subsidiary protection, transposing into internal juridical order Council Directives ns 2004/83/CE, of 29th April and 2005/85/CE, of 1st December [Portugal], 27/2008, 30 June 2008, Art. 79 § 1 to 3, available at: <http://www.unhcr.org/refworld/docid/48e5c13c8.html> [accessed 15 June 2012].

<sup>44</sup> *Aliens Act* [Slovenia], 61/99, 30 July 1999, Art.60, available at: <http://www.unhcr.org/refworld/docid/3ae6b59c14.html> [accessed 15 June 2012].

Social Affairs plans to introduce a practice of allowing the trained specialists of NGO to act as guardians.

According to the law in **Finland**, a representative will be appointed without delay for an unaccompanied minor who applies for international protection, who has got temporary protection or is a victim of trafficking without a legal permit to stay in the country. The reception centre, at which the minor is registered as a resident, requests the court to appoint a guardian. Before the appointment of a representative is applied for, the child must be provided with an opportunity to make clear his/her wishes and opinions, in so far as his/her age and development level allows it. A guardian is formally independent from authorities. However, the Finnish Immigration Service is responsible for paying the fees for guardians and provides guidelines about the work with unaccompanied children. Immigration service in the same time investigates the asylum applications and takes decisions, as well as it is responsible for the system of guardianship.

In **Luxembourg**, a new law of July 2011 replaced the term 'guardian' by '*ad hoc* administrator'<sup>45</sup>. It remains to be seen how this new law will change the practice of guardianship for unaccompanied children in Luxembourg. Until November 2011 nothing changed in practice. As before, guardians are designed by the judge during the asylum procedure. The Red Cross is in charge of unaccompanied minors below 16 and a half years of age and Caritas takes care of those between 16 and a half and 18 years of age. All unaccompanied minors are placed under guardianship from the moment they show up (the procedure can take up to two weeks). The main interview in the asylum claim will not take place as long as the guardian or *ad hoc* administrator has not yet been appointed.

The presence of an *ad hoc* administrator is also provided by law in **France**, but this mission is ensured by various persons who volunteered for this role. This people are on a list in each 'regional' Court. This specific guardian is appointed only when the general guardian dealing with all matters related to the welfare of the child has not been appointed at the time a minor asks for asylum, as it is often the case.

In **Poland**, the Court appoints for the unaccompanied minor in asylum procedure the legal representative, for asylum procedures only<sup>46</sup>. In practice, guardians are often law students acting as part of the Warsaw University Law Clinic. The Court also appoints caretaker to the unaccompanied child in asylum procedure which is responsible for overseeing all social aspects concerning housing, food, access to education and medical assistance of the minor.

In **Romania**, a legal guardian is appointed as soon as a minor submits his/her asylum request. Romanian Office for Immigration informs immediately the General Directorate for Social Assistance and Child Protection authorities responsible for the appointment of a legal guardian<sup>47</sup>. The legal framework does not specify the timeframe for the appointment of the guardian this is made quickly - usually within 2-3 days up to 1 month. However, no legal guardian is appointed for an unaccompanied asylum seeking minor who is to turn eighteen within 15 days from lodging his/her

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<sup>45</sup> Loi du 1er juillet 2011 modifiant la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration et la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, Art.2, 6°, available at: <http://www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf#page=2> [accessed 27 July 2012].

<sup>46</sup> Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland (as amended in 2005), 1 September 2003, art. 47. Available at: <http://www.unhcr.org/refworld/docid/44a134a4.html> [accessed 31 July 2012]

<sup>47</sup> Law 272/2004 of June, 21<sup>st</sup> 2004, published in the Romanian Official Gazette, Part I, no. 557.

asylum application<sup>48</sup>. If the unaccompanied asylum seeking minor is finally rejected in asylum procedure, the **Romanian Immigration Office** - RIO - informs the local Directorate Social Assistance and Child Protection authorities. The role of the legal guardian appointed for the minor during the asylum procedure ends.

In **Sweden**, the municipalities provide legal guardians to all unaccompanied asylum seeking minors during their asylum claim. Unaccompanied children are simultaneously provided legal representatives who are lawyers involved in asylum procedure only.

### **3.1.2. Legal representation ensured by a guardian dedicated to all unaccompanied children**

In many countries, unaccompanied children are represented during the asylum procedure by legal representative who are not especially appointed for this procedure.

**In some countries where legal representatives are not specifically appointed for asylum procedure as Belgium, Bulgaria, Greece, Latvia, the Netherlands and Slovakia, the representation is ensured by only one organization for all unaccompanied minor.**

In **Belgium**, a service of Ministry of Justice (*'Service des tutelles'*) appoints a professional guardian for each unaccompanied minor. One of the missions of this guardian is to assist and represent the child during the asylum procedure. The guardian has to be independent from all asylum and migration authorities. Some shortcomings of this system have been identified such as the long deadline of the appointment and the weak wages of the guardians.

In **Bulgaria**, if no guardian under the Family Code is appointed, the child should be represented in the asylum procedure by the Social Assistance Directorate at the Social Assistance Agency at the Ministry of Labour and Social Policy<sup>49</sup>. This situation might constitute a conflict of interest. However it is hard to find implementation of this theoretical mechanism in practice. It seems that often in practice no legal guardian is appointed at all.

In **Greece**, when an application is lodged by an unaccompanied minor, the competent authorities should take action in order to appoint a guardian for the minor<sup>50</sup>. For that purpose the authorities must inform immediately the public prosecutor who acts as temporary guardian<sup>51</sup> and he can propose the appointment of a permanent guardian through the court. The prosecutor also acts as a representative of minors under 14 years old in order to submit the application of asylum<sup>52</sup>. This

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<sup>48</sup> Law no. 122/2006 on Asylum in Romania [Romania], 25 August 2006, Art. 16 (3), available at: <http://www.unhcr.org/refworld/docid/44ace1424.html> [accessed 14 June 2012].

<sup>49</sup> *Law for the Asylum and the Refugees (as amended in 2007)* [Bulgaria], 16 May 2002, Art. 25, available at: <http://www.unhcr.org/refworld/docid/47f1faca2.html> [accessed 18 June 2012].

<sup>50</sup> *Presidential Decree (P.D.) 220 on the transposition into the Greek legislation of Council Directive 2003/9/EC from January 27, 2003 laying down minimum standards for the reception of asylum seekers (Official Journal of the European Communities L 31/6.2.2003)* [Greece], P.D. 220/2007, 6 November 2007, Art. 19 §1, available at: <http://www.unhcr.org/refworld/docid/49676abb2.html> [accessed 14 June 2012].

<sup>51</sup> *Ibid.*, Art.19/1; Greek Civil Code, Art.1592 and 1601.

<sup>52</sup> *Presidential Decree 90/2008, on the transposition into the Greek legislation of Council Directive 2005/85/EC from December 1, 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (L326/13.12.2005)*, Art. 4-3, available at: [http://emn.ypes.gr/media/17801/p.d.%2090-2008\\_en.pdf](http://emn.ypes.gr/media/17801/p.d.%2090-2008_en.pdf) [accessed 27 July 2012] and *Presidential Decree 114/2010 on the establishment of a single procedure for granting the status of refugee or of beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (L 326/13.12.2005)* [Greece], 16 November 2010, Art. 4-3, available at: <http://www.unhcr.org/refworld/docid/4cfdadf2.html> [accessed 27 July 2012].

system for guardianship is unfortunately dysfunctional because asylum procedures are administrative and these procedures are out of the mandate of prosecutors.

The child may be represented by the head of a child care institution in **Latvia**. The Asylum law states that the representation may also be ensured by the Orphan's Court or a guardian appointed thereby. If it is possible, the Orphan's court tries to appoint a relative of the child to be a legal guardian. Guardians in most cases are representatives of non-governmental organizations working with asylum seekers, from educational institutions or a child's relative. In practice, it is very difficult to find a legal guardian for unaccompanied child seeking asylum.

In **the Netherlands**, a minor who is separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so, gets a guardian appointed to him or her<sup>53</sup>. NIDOS is the Dutch guardianship institution for all separated children<sup>54</sup>, financed by the Ministry of Justice. The separated child gives his or her signed consent for the appointment of the guardianship institution.

In **Slovakia**, a legal guardian is appointed by the court for all the necessary legal steps/acts taken in the name of the child in the territory of the Slovak republic. The guardian appointed at the beginning of the stay of the unaccompanied minor in Slovakia is an employee of the Office of Labour and Social Affairs in Trenčín appointed by the district court. During the study visit it was identified that the guardian that dealt with 140 of unaccompanied minors in 2011 (out of which only a few sought asylum in Slovakia and the majority left or some stayed but not by seeking asylum) lacks training in the field of asylum even if she would prefer to have more expertise in this issue. Because of the lack of training the guardian decided not to participate actively in the asylum procedure but mandate a lawyer with the necessary skills and expertise.

**In some countries as Austria, Hungary, Ireland, Lithuania, Spain and the United Kingdom, the representation is ensured by care institutions or their staff.**

In **Austria**, unaccompanied minors are legally represented by a legal advisor for the approval procedure. Then, the local youth welfare institution takes the guardianship and therefore the legal representation of the minor in the asylum system, only after the application to international protection, the admission to the procedure, the assignment to a counselling centre and the following assignment to a youth care facility. The guardianship includes legal representation<sup>55</sup>. In practice, there is hardly any personal contact between minor and guardian, whereupon there are some positive exceptions<sup>56</sup>. In some States, the local youth welfare institution transfers the legal representation to NGOs. The guardian's duties and responsibilities are usually performed very deficiently.

In **Hungary**, the legal guardian is the employee of the accommodation centre for unaccompanied minors. This person is the appointed guardian for all unaccompanied children seeking asylum. He or she is responsible for all issues and for a longer time (depending of course on the decision but

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<sup>53</sup> Dutch Civil Code, Art.1:295, available at: <http://www.dutchcivillaw.com/legislation/dcctitle001414.htm> [accessed 11 July 2012].

<sup>54</sup> Defence for children international, *Closing a protection gap*, National report the Netherlands, December 2010, p 12, available at: <http://www.defenceforchildren.nl/images/20/1266.pdf> [accessed 10 July 2012].

<sup>55</sup> Allgemeines Bürgerliches Gesetzbuch (Austrian civil code) §§ 154, 154a, available at : <http://www.ibiblio.org/ais/abgb1.htm#abgb> [accessed 27 July 2012].

<sup>56</sup> Linz, Tirol some districts in the city of Vienna.

usually). The guardian may become the “final” guardian (tutor) if the child was granted protection until he/she is 18. It should be noted that the asylum authority is not obliged to appoint a legal guardian if it is probable that the minor would turn 18 before the end of the asylum procedure<sup>57</sup>.

In **Ireland**, legal guardianship of unaccompanied minors is ensured by the Health Service Executive - HSE<sup>58</sup>. The HSE provides legal representation as well as day-to-day care for unaccompanied minors. However, the Child Care Amendment Act of 2011 provides that a “guardian” means that the person acting as a guardian is appointed by Court order<sup>59</sup>. This requirement is never met for unaccompanied minors, who are taken into care under section of the Child Care Act related to voluntary care (or reasons of homelessness)<sup>60</sup> rather than sections that provide with a full care order where HSE is formally appointed as a legal guardian<sup>61</sup>. In brief, HSE is considered as a legal guardian, and indeed acts as a guardian, but this role is not formalized by a Court order. The whole Irish Refugee Council's report on guardianship in Ireland raised the issue of the independence of HSE as a guardian and “*its ability to act in the child's interest uninfluenced, or independently, from agencies of the State (...)*”<sup>62</sup>. The fact that the HSE is also responsible for the care of the child, with financial implications, may create a conflict of interests between the HSE and the child.

A new development is that the Irish Refugee Council, in coordination with the Children's Rights Alliance, has received funding to develop and run an independent advocate pilot to begin in 2012<sup>63</sup>. The pilot would be inspired by the guardianship project implemented by the Scottish Refugee Council in 2010.

In **Lithuania**, the temporary guardianship is appointed by the decision of the Child Rights Protection Service and the municipality to the Refugees Reception Centre, as an institution, which appoints the responsible social worker. Usually the guardian is a social worker from the Refugees Reception centre, but there is a possibility for a child to have a guardian independent from authorities (for example, the family member of the child).

In **Spain**, the Civil Code states that the public entity, entrusted with the protection of minors in its respective territory, assumes by law the guardianship of that child and must adopt the necessary protection measures for the child's custody and inform the Public Prosecutor's Office. Generally, the legal representatives belong to the public autonomous institutions. The right to guardianship of all unaccompanied children is guaranteed whether they are legal asylum seekers or not.

In **the United Kingdom**, the situation is very specific because there is no real guardianship system for unaccompanied minors, whether they are seeking asylum or not. Instead, an unaccompanied child has a variety of contact persons whose duty is to assist him or her in specific issues (social worker, “responsible adult”, solicitor, advisers of the British Refugee Council children's panel). None of these adults is fully responsible for the child's welfare and representation. Many stakeholders insist on the

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<sup>57</sup> Act LXXX of 2007 on Asylum [Hungary], Act LXXX of 2007, 25 June 2007, section 35 (6), available at: <http://www.unhcr.org/refworld/docid/4979cc072.html> [accessed 14 June 2012].

<sup>58</sup> This issue was investigated in detail in the following study *Closing a protection gap*, *op. cit.* (Note 13).

<sup>59</sup> Child Care (Amendment) Act, 2011, section 10, available at: <http://www.irishstatutebook.ie/2011/en/act/pub/0019/sec0010.html> [accessed 27 July 2012].

<sup>60</sup> Child Care Act, 1991, Part II, III or IV, available at: <http://www.irishstatutebook.ie/1991/en/act/pub/0017/index.html> [accessed 11 July 2012].

<sup>61</sup> *Ibid.*, Part IV, Section 17 or 18.

<sup>62</sup> *Closing a protection gap*, p 7, *op.cit.* (Note 14).

<sup>63</sup> Separated Children in Europe Programme, *Newsletter n°36*, autumn 2011, available at: [http://www.savethechildren.net/separated\\_children/publications/newsletter/](http://www.savethechildren.net/separated_children/publications/newsletter/) [accessed 11 July 2012].



need for an independent adult to represent and advocate for the best interests of the child. While in 2008 the United Nations – UN – Committee for the Rights of the Child recommended to the UK to “consider the appointment of guardians to unaccompanied asylum-seekers and migrant children”<sup>64</sup>, the Government declared that the implementation of such a guardianship system was not planned, and that the role of such a guardian remained unclear<sup>65</sup>. But the UK Government considers that the Procedures Directive requirements concerning guardianship are met.

**In some countries where legal representatives are not specifically appointed for asylum procedure as Germany, Italy, and Malta, the representation is ensured by various people or organizations.**

In **Germany**, there are four different types of guardianship. Public guardianship means that an employee of the Youth Welfare Office takes over guardianship. This type of guardianship is very common in all federal states and minimum of 80% of all unaccompanied minor have a public guardian. The problem could be that the required distance between guardian and social services and therefore the partiality that is expected of the guardian cannot be granted. The three other types (private, associational and professional guardianship) are independent from public institutions. The appointment of the guardian can take several months. A new law has come into force in June 2011, provided that the case-load will be reduced (50 wards per guardian) and that a monthly contact is foreseen. All unaccompanied minors need a guardian, but those above 16 are capable of acting regarding alien’s law. This limitation is in accordance with EU provisions on legal guardianship<sup>66</sup>. Due to this rule, most of the 16-year-old unaccompanied minors have already filed an asylum claim when their guardian is being appointed.

In **Italy**, the guardian is responsible for the protection and the well being of the child. The system of legal guardianship does not stand for asylum procedures only. Guardians are usually social workers from municipalities. A decree foresees the suspension of the asylum procedure till the legal guardian is appointed, the only person responsible to reactivate the asylum procedure<sup>67</sup>. However it is left at the discretionary power of this guardian to reactivate the asylum procedure. Judges for guardianship tend not to appoint the legal guardian when the minor is 17: in such cases the minor cannot reactivate the asylum procedure because he /she has no legal capacity. Therefore, minors are obliged to attend 18 to make an asylum request.

In **Malta**, unaccompanied minor seeking for asylum “shall be assisted in terms of the Children and Young Persons (Care Orders) Act, as if he were a child or young person under such Act”<sup>68</sup>. The Ministry for Employment, Education and the Family takes on the guardianship of children through the issuing of a document certifying that the child is now under the care of the State. Given that the social workers in *Dar il-Liedna* and *Dar is-Sliem* (shelters accommodating unaccompanied minors) are the guardians of nearly all UM, this means the responsibility of around 20 minors each. The legal guardian appointed by virtue of the Care Order is not limited to asylum issues but is intended to

<sup>64</sup> UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention : Convention on the Rights of the Child : concluding observations : United Kingdom of Great Britain and Northern Ireland*, 20 October 2008, §71c, CRC/C/GBR/CO/4, available at: <http://www.unhcr.org/refworld/docid/4906d1d72.html> [accessed 27 July 2012].

<sup>65</sup> Separated Children in Europe Programme, *Newsletter n°30*, July 2008, available at: [http://www.savethechildren.net/separated\\_children/publications/newsletter/](http://www.savethechildren.net/separated_children/publications/newsletter/) [accessed 11 July 2012].

<sup>66</sup> Council Directive 2005/85/EC, Art. 17.2, Art. 17.3, *op. cit.* (Note 17).

<sup>67</sup> Decreto Legislativo 28 gennaio 2008, n.25 "Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato", Art. 26.5, available at: <http://www.camera.it/parlam/leggi/deleghe/08025dl.htm> [accessed 11 July 2012].

<sup>68</sup> *Refugees Act (Chapter 420)* [Malta], 1<sup>st</sup> October 2001, Art. 12, available at: <http://www.unhcr.org/refworld/docid/3fd9d0787.html> [accessed 14 June 2012].

monitor the child's overall welfare. In practice, the legal guardian is generally the social worker responsible for the child who belongs to Agency for the welfare of asylum seekers (AWAS). When the appointment of a guardian is finalized, the Refugee Commissioner is informed and the process of claiming asylum begins.

**TABLE # 1 – Different models of legal guardianship for unaccompanied minor in the 27 EU countries.**

	Specific representation for the asylum procedure	Legal representation ensured by care institutions or their staff	Legal representation ensured by various persons or institutions	Legal representation ensured by only one organization in the country	COMMENTS
AUSTRIA		X			In practice there is hardly any personal contact between minor and guardian.
BELGIUM				X	The Ministry of Justice offers a Guardianship service for all unaccompanied minors.
BULGARIA			X		The legal guardian is appointed in accordance with the general procedure described in the Family Code. If no such guardian is appointed, the child should be represented by the Ministry of Labor and Social policy.
CYPRUS	X			X	A legal representative should be appointed by the Commissioner for the Protection of the Rights of the Child in accordance with the Refugee Law. In practice no representative is appointed and therefore no asylum applications from minors are processed.
CZECH REP.	X			X	There are 4 types of guardian (procedural guardian, guardian for stay, guardian for administrative expulsion, guardian for detention). In practice it is the same NGO lawyer from OPU who is appointed as a guardian throughout the procedure.
DENMARK	X			X	The Danish red Cross recommends a representative to the local authority, which hereafter formally appoints the representative. Furthermore, an assessor provided by the Red Cross support the child in his/her contact with authorities.
ESTONIA	X		X		The asylum seekers' reception centre or the local government may be representatives of the child. The government plans to introduce a practice of allowing the trained specialists of a NGO to act as a full guardian.
FINLAND	X		X		According to the law, a representative will be appointed without delay for an unaccompanied minor who applies for international protection.
FRANCE	X		X		A guardian dealing with all matters related to the welfare of the child should be appointed for all unaccompanied minors. If not, a specific guardian for the asylum procedure ( <i>ad hoc</i> administrator) is appointed.
GERMANY			X		A large majority of unaccompanied children are under public guardianship: an employee of the Youth Welfare Office takes over guardianship. Children above 16 are capable of acting so a guardian is not always appointed for them.
GREECE				X	The public prosecutor acts as temporary guardian and he can propose the appointment of a permanent guardian through the court. This system for guardianship is unfortunately dysfunctional in practice.
HUNGARY		X			The legal guardian is the employee of the accommodation centre for UAMs, this person is the appointed guardian for all unaccompanied children seeking asylum.
IRELAND		X			Legal guardianship of unaccompanied minor is ensured by the Health Service Executive – HSE – that acts as a legal guardian although its role is not formalized by a Court order.

ITALY			X		Guardians are usually social workers from municipalities. The asylum procedure is suspended till the legal guardian is appointed. It is the only person responsible to reactivate the asylum procedure.
LATVIA				X	Unaccompanied minor should be represented by the Orphan's Court or a guardian appointed thereby, or the head of a child care institution. In practice, it is very difficult to find a legal guardian for unaccompanied child seeking asylum.
LITHUANIA		X			The temporary guardian is appointed by the decision of the Child Rights Protection Service and the municipality to the Refugee Reception centre, as an institution, which appoints the responsible social worker.
LUXEMBOURG	X		X		An 'ad hoc administrator' is appointed to represent the minor during the procedure. The Red Cross is in charge of unaccompanied minor below 16 ½ and Caritas take care of those between 16 ½ and 18.
MALTA			X		Unaccompanied children should be assisted in terms of the Children and Young Persons Act. Social workers in shelters accommodating unaccompanied minors are the guardians of nearly all unaccompanied minors.
THE NETHERLANDS				X	A minor who is separated from both parents and is not being cared for by an adult gets a guardian appointed to him or her. NIDOS is the Dutch guardianship institution for separated children.
POLAND	X		X		The Court appoints for the unaccompanied minor in asylum procedure a legal representative appointed for asylum procedures only. In practice, guardians are often law students acting as part of the Warsaw University Law Clinic.
PORTUGAL	X			X	The Asylum act foresees the possibility of an appointment of a 'representative' but never refers to 'guardianship'. In practice, <i>Conselho Português para os Refugiados</i> is the only NGO that provides this support
ROMANIA	X		X		Romanian Office for Immigration informs immediately the General Directorate for Social Assistance and Child Protection authorities responsible for the appointment of a legal guardian.
SLOVAKIA				X	Legal guardian is appointed by the Court "for all the necessary legal steps/acts taken in the name of the child in the territory". The guardian is an employee of the Office of Labour and Social Affairs in Trencin.
SLOVENIA	X			X	The Police notify the Centre for Social Work, which appoints the organization "Slovenian Philantropy" as legal guardian.
SPAIN		X			The public entity that discovers an abandoned minor assumes by law the guardianship of that child.
SWEDEN	X		X		The municipalities provide legal guardians to all unaccompanied asylum seeking minors during their asylum claim. Unaccompanied children are simultaneously provided legal representatives who are lawyers involved in asylum procedure only
THE UNITED KINGDOM		X			There is no guardianship system for unaccompanied minors, whether or not they are seeking asylum. Instead, an unaccompanied child has a variety of contact persons whose duty is to assist him or her in specific issues.

## 3.2. Knowledge and qualification of representatives

It is necessary that legal guardians who represent unaccompanied minor during asylum procedures have specific knowledge in the field of law and asylum procedures. The UNHCR recommends that “the guardian or adviser should have the necessary expertise in the field of child caring, so as to ensure that the interests of the child are safeguarded and that his/her needs are appropriately met”<sup>69</sup>. This requirement is also expressed by the Committee of the Rights of the child<sup>70</sup> and the Council of Europe<sup>71</sup>. However, the conditions to be appointed as a guardian vary from one country to another.

In the EU countries where legal representation is not specifically implemented for minors seeking asylum, **no qualifications in this area is required or implemented in practice.**

In **Austria**, the legal advisor appointed for the approval procedure must either prove academic law studies or several years of experience in the field of law relating aliens. Experience in dealing with the minors has not yet been a requirement. Regarding the guardian appointed for the general procedure there are no legal or professional guidelines/directives on which qualification a guardian for unaccompanied minors must have. Thus no suited or qualified persons are entrusted with guardianship. The quality of a guardian’s work, especially in asylum right issues, depends on the individual and varies a lot. In some federal states<sup>72</sup> the local youth welfare office transfers the legal representation to a NGO. In Vienna and Upper Austria this task is always performed by youth welfare office agents themselves. Since 2005, the NGO *Asylkoordination österreich* organizes yearly meetings of legal representatives of unaccompanied minor asylum seekers, to improve the quality of their work.

In **Austria, Bulgaria, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Romania, Slovakia, Spain** and **the United Kingdom** there is **no formal requirement for any knowledge or training in the field of asylum law.** In **Finland**, it is mentioned in the government proposal preceding the Act that it would be good to have a social work experience, especially in the child protection, as well as some knowledge about international protection and so on, but it is not a requirement in the law. Although a Ministerial text in **France** provides that the mission of the *ad hoc* administrator requires legal knowledge<sup>73</sup>, there is no such condition to become *ad hoc* administrator and many of them do not have sufficient knowledge in this field.

There are not special conditions for an adult to be appointed as a legal guardian in **Greece**. Usually, he/she is the manager of the social institution that is the residence of the minor in case he/she is protected and placed in a care institution. In **Latvia**, to be appointed as legal guardian for an unaccompanied asylum-seeking child, an adult has to fulfill the same conditions as a guardian for any

<sup>69</sup> Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, 1997, Executive Summary p.1, *op.cit.* (Note 38).

<sup>70</sup> Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 2005, Chapter 5, *op.cit.* (Note 39).

<sup>71</sup> Parliamentary Assembly, Resolution 1810 (2011), §5.5, *op.cit.* (Note 40).

<sup>72</sup> e.g. Steiermark, Salzburg and Vorarlberg, partly also in Lower Austria and Tirol.

<sup>73</sup> Circulaire n° CIV/01/05 du 14/04/2005 prise en application du décret n° 2003-841 du 2 septembre 2003 relatif aux modalités de désignation et d’indemnisation des administrateurs *ad hoc*, available at : <http://www.justice.gouv.fr/bulletin-officiel/98-03-DACS-b.pdf> [accessed 10 July 2012].

child who is a citizen of the Republic of Latvia so there is no condition about knowledge of asylum law.

In **Germany**, the Family Court has to check if a person is appropriate as guardian. But formal criteria do not exist. Unfortunately a lack of expert knowledge that is necessary to deal successfully with this clientele, particularly regarding asylum proceedings, is very common.

In **the United Kingdom**, no particular skill or knowledge is required concerning the “responsible adult”, who attends the substantive asylum interview. This responsible adult may be “*the legal representative, social worker, guardian/relative or foster carer. However, other persons who are independent of the Secretary of State and have responsibility for the child could also assume this role, such as a doctor, priest, vicar, teacher, charity worker or Refugee Council representative*”<sup>74</sup>.

In **Romania**, some legal guardians do not have knowledge on the asylum procedure and do not benefit from specialized training from authorities or NGOs. In the past, UNHCR Romania, Save the Children and Romanian National Council for Refugees provided special training for legal guardians. However due to rotation of staff the new one is not trained.

**A specific expertise is required or implemented in practice in few countries.** In **Cyprus**, the legal representative appointed by the Child Commissioner must have legal training. In **Denmark**, some guardians are professionals (employees of the Red Cross) and so qualified to represent unaccompanied minors in the field of asylum. According to the Family Act in **Estonia**, the characteristics and capabilities of the person to perform the duties of guardian and the person’s relations with the person for whom guardianship is established are taken into consideration.

In **Portugal**, the chosen representative does not have specific knowledge about asylum law but the NGO CPR ensure the representation in practice due to its expertise in this field. In **the Czech Republic**, the NGO that provide legal representation in practice is also qualified.



To become a guardian in **the Netherlands**, a bachelor degree in social work is needed. To support the guardians, workshops and in company courses are organized by NIDOS. When they enter into service a four day introduction course is organized. The guardians at Schiphol Airport receive information on countries of origin from conferences and cultural mediators.

In **Sweden**, legal representatives are lawyers so they are usually well trained and knowledgeable in the field of asylum and children’s rights.

Knowledge in the field of law and asylum procedures for legal guardian seems ensured in practice in some countries by **implementation of training or specific guidelines**.

In **Belgium**, no specific expertise is required in the field of migration law or asylum law but each guardian is trained during 5 days at the beginning of her/his mandate on different issues : right of residence in Belgium, schooling, health, psychological issues and cultural mediation. Moreover, in-

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<sup>74</sup> UK BORDER AGENCY, *Guidance for special cases – Processing an asylum application from a child*, §4.3, available at: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary> [accessed 27 July 2012]. In this sentence, “have responsibility for the child” should not be interpreted as a formal or legal responsibility.

service trainings are organized each year. Finally, a 400 pages guide presenting all missions and challenges is given to all guardians. This guide contains section on asylum procedures. However, these skilled guardians have to support numerous minors (up to 40 simultaneously).

In **Luxembourg**, guardians appointed normally have some background training in child care although they are not requested to have qualifications regarding child rights. Additional training is provided regularly. But there is no regulation by law.

In **Malta**, no formal requirements exist for a person to be a legal guardian, because no law exists specifically on this issue. There have been some *ad hoc* training sessions. UNHCR disseminated Guidelines on this issue. However, official training courses are not compulsory.

In **Slovenia**, the International Protection Act provides that the guardian can be any person that qualifies for the guardian under the law governing marriage and family relations. Trainings are performed by the Community of Centres for Social Work and must contain the knowledge in family law, social work, psychology, protection of children's rights and duties, protection of human rights and fundamental freedoms and asylum law. In practice trainings are carried out by the NGO Slovenian Philanthropy.

### **3.3. Change of representative and monitoring**

In few EU countries as **Austria, Cyprus, France, Greece, and Hungary**, it is not possible for the child to **ask for another guardian**. However, such a possibility exists in some countries.

In **Belgium**, a request for mediation may be submitted to the guardianship service. The child may also refer to the judge (*Juge de Paix*) who can stop the mission of the legal guardian<sup>75</sup>. In practice, it seems that unaccompanied minors are not aware about these possibilities<sup>76</sup>.

Under the Family Code in **Bulgaria**, in each case the mayor of the respective city or municipality appoints a 'guardianship council' (it consists of a guardian, vice-guardian and two counsellors) and might decide to change its membership '*when the interests of the child so require*'. The decision-making organ is obliged to hear the opinion of the child, if the child is at least 10-years old. However, in practice these provisions are not implemented, as there is no legal guardian appointed for unaccompanied minors.

In **the Czech Republic**, it is possible to ask for change upon request to the institution that appointed the guardian. However, the NGO OPU reported that it is not aware of a single case where the unaccompanied minor requested the change of the guardian.

If the child is over 12 years of age in **Denmark**, a meeting could be held with him/her regarding the appointment of the representative. It happens very rarely in practice.

<sup>75</sup> *Loi-programme du 24 décembre 2002 Tutelle des mineurs étrangers non accompagnés* [Belgium], 24 December 2002, Art. 20, available at: <http://www.unhcr.org/refworld/docid/48abd55f0.html> [accessed 9 July 2012].

<sup>76</sup> Defence for children international, *Closing a protection gap*, National report Belgium, 2010-2011, p 50, available at: <http://www.defenceforchildren.nl/images/20/1267.pdf> [accessed 10 July 2012].

In **Estonia**, the wishes of a child who is at least ten years of age should be considered in the appointment of a guardian. The wishes of a child younger than ten years of age should also be considered if the development level of the child so permits. In **Finland**, the child over 15 can ask the release of the representative. The reception centre also has the power to change the guardian.

In **Germany**, the child can ask the court for another guardian. But many minors are not informed about their rights and can't make use of them. Other persons who support the child (e.g. social worker) can also ask the Family Court to revise the guardianship. Furthermore the registrar reviews the work of the guardian every year and reports to the Family Court.

In **Ireland**, unaccompanied minors can complain about their allocated social worker by contacting the team leader or the principal social worker of the local HSE team. However, the Irish Refugee Council stated that none of the children they interviewed knew how to complain if they had a problem with their social worker<sup>77</sup>. There is no independent process for complaints, and children might be worried about complaining to the statutory agency responsible for their care and support.

In **Italy**, the judge for guardianship intervenes when he/she knows that there is a conflict between the guardian and the minor, usually by an NGO or the personnel of accommodation centres, but this rarely occurs. In **Latvia**, if a child is not satisfied with a guardian, he/she has a right to request the Orphan's court to change a guardian. There has been such a case in Latvia, when the guardian was changed during the asylum procedure, based on the request of the child.

In **Lithuania**, if a child has strong arguments that current guardian does not perform his/her duties properly, the commission responsible for care of unaccompanied minors can review the case and decide to appoint another guardian. In **Malta**, nothing is specified by law but the minor has little chance to effectively access the Board to request the appointment of another guardian. In **the Netherlands**, it is possible to complain about the guardian but it is unclear whether unaccompanied minor make use of it. In **Poland**, it is possible for the child to ask for another legal representative by voicing such request to his/her caretaker.

According to the law in **Portugal**, in case of a conflict of interests between the minor and his/her legal guardian, the competent authorities, the Family and Juvenile Court and the Commission to Protect Children and Youths at Risk (CPCJRs) intervene to settle such a conflict<sup>78</sup>. Another guardian might be appointed.

In **Romania**, the minor can be assisted by NGOs staff or the responsible of the accommodation centres to draft a written request asking for the replacement of the legal guardian. However, the minor has to submit personally this request to the RIO officers who will ask the local Directorate Social Assistance and Child Protection authorities to designate another legal guardian. Not all the times the replacement takes place. In **Slovakia**, the child is not informed on the possibility to change the guardian and this does not happen in practice at all although in theory it would be possible, but not without a help of experienced person.

In **Slovenia**, unaccompanied minors have the possibility to change the guardian. As long as the NGO Slovenian Philanthropy was the only appointed guardian the procedure to change the guardian was

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<sup>77</sup> Defence for children international, *Closing a protection gap*, p 18, *op.cit.* (Note 14).

<sup>78</sup> Lei 147/99, *op.cit.* (Note 42).



carried out within this organization. Among the available guardians the change could be made, upon the request of the minor or the guardian. There has been only one guardian appointed for a while and in one case where the minor was not satisfied, the CSW took over the guardianship.

In **Spain**, the child can inform the Public Prosecutor's Office of any incident related to the execution of his/her rights. The Prosecutor's Office has the legal power, through legal action, to take the case to the corresponding courts. The courts can make the decision they consider appropriate, based on the Law of Legal Child Protection<sup>79</sup>. In **Sweden**, it is possible for the child and legal guardian to ask for another legal representative and it happens in some cases.

The 2003 directive in its article regarding legal representation of unaccompanied minors, provide that "Regular assessments shall be made by the appropriate authorities"<sup>80</sup>. In some countries as **Belgium, Bulgaria, Denmark, Estonia, Germany, Latvia, Lithuania, Malta, the Netherlands, Romania, and Sweden**, there is a framework designated to monitor the work of the guardian.

In **Belgium**, legal guardians have to send reports to the guardianship department of the Ministry of Justice. In **Lithuania**, the Ministry of Social Security and labour is responsible for unaccompanied children and also monitors the work of guardians. In **Sweden** there is a network – association of legal guardians – with a web site where the members can ask for advice and help whenever they need it.

As we have seen in this section, the issue of legal guardianship is handled in many ways within the EU. Some countries understand the role of the legal guardian as someone who takes care of all aspects of the child's life, including asylum procedures. This option seems good if the guardian has sufficient knowledge of asylum right. A specific guardian dedicated to asylum procedure is also an interesting way but it implies that a good relationship be established between this specific guardian and the general guardian. It implies also that the role of the specific guardian, trained in asylum issues, be extended to all aspects of the procedure including support in the writing of the application and the preparation of the interview.

### RECOMMENDATION 3 – Legal guardianship

- ▶ A legal guardian should be appointed for all unaccompanied children during all the asylum procedure.
- ▶ The guardian should have specific knowledge in the field of law and asylum procedures and he/she should have experience in the field of child rights and child protection. He should be independent from public authorities.
- ▶ A monitoring system should be implemented in order to evaluate the work of the legal guardian. In accordance with the age and maturity of the child, he/she should be given the opportunity to be heard on the appointment and the work of the guardian.

<sup>79</sup> Organic Law 1/1996 of January 15 on the Legal Protection of Minors, partially amending the Civil Code and Civil Procedure Act. (*Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor, de modificación parcial del Código Civil y de la Ley de Enjuiciamiento Civil*) BOE 15 January 1996. Art. 11, Available at : <http://www.boe.es/boe/dias/1996/01/17/pdfs/A01225-01238.pdf> [accessed 10 July 2012]

<sup>80</sup> EC, Council directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Art 19.1, *op. cit.* (Note 33).

## 4. Dublin II regulation

According to the Council Regulation of 18 February 2003 usually called “Dublin II regulation”, “where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that **where a member of his or her family is legally present, provided that this is in the best interest of the minor**. In the absence of a family member, the Member State responsible for examining the application shall be that **where the minor has lodged his or her application for asylum**”<sup>81</sup>. It is only possible to take fingerprints of minors over 14 years old. In practice, it means that minors under 14 years old cannot be transferred under Dublin II regulation, except if they have family members in another member State.

The age of the applicant is of high relevance and importance, as these special provisions only apply to minors. The transfer possibilities for adults are wider. Indeed, adult asylum seekers, who irregularly crossed the border into a Member State, can be transferred to that Member State under Dublin II regulation (this responsibility ceases 12 months after the date on which the border has been illegally crossed).

According to the resolution 1810 (2011) of the Council of Europe’ parliamentary assembly “unaccompanied children in Europe: issues of arrival, stay and return”, the Dublin II Regulation should only be applied to unaccompanied children if transfer to a third country is in the child’s best interests (point 5.14).

### 4.1. Unaccompanied children transferred to other Member States under the Dublin II Regulation

Most European countries **allow the transfer of unaccompanied minors in both cases foreseen by Dublin II regulation (family reunification or asylum application lodged in another EU country): Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.**

In theory, the absence of transfer should be systematic for minors who only had their fingerprints taken. Indeed, the Dublin II regulation does not foresee that unaccompanied minors can be transferred to another member State in this situation.

In **Germany**, children are transferred under the Dublin II regulation if they already lodged an asylum-application in another European country. Family Reunification is also possible but in most cases it takes some months to carry it out. If just fingerprints appear in the EURODAC database, in most cases it seems possible for minors to stay in Germany and not to be transferred.

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<sup>81</sup> Council of the European Union, *Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national*, 18 February 2003, No. 343/2003, Art. 6, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF> [accessed 10 July 2012].

In **Slovenia**, children can be transferred when their fingerprints appear in the EURODAC database or if they have already lodged an asylum application in another European country. In **the Czech Republic** finally, two non asylum seeking children were transferred to Slovakia in 2011.

In **Ireland**, authorities transfer unaccompanied children under Dublin II regulation. According to the Office of the Refugee Applications Commissioner - ORAC, such transfers are only implemented when they are in “the child’s best interest<sup>82</sup>”. Five minors were transferred under this regulation in 2010<sup>83</sup>. It seems that most transfers are implemented to the United-Kingdom, for the purpose of family reunification<sup>84</sup>.

In **Netherlands**, where transfers are possible, the NGO NIDOS points out that in some countries children will not receive good care, if sent back, for example in Italy. In such cases, NIDOS tries to negotiate with the government, so that the asylum-case will be proceed in the Netherlands. In some cases, these negotiations were successful.

In **Finland**, there seems to be a decrease in the number of Dublin cases for unaccompanied minors. In 2009, there were 139 out of 432 unaccompanied asylum-seeking children that were seen as Dublin cases and in 2010 the figures were only 19 out of 330.

In **the United Kingdom**, according to the data provided by the Parliament, 334 unaccompanied children were removed under this regulation between 2004 and 2009<sup>85</sup>. According to solicitors, the United Kingdom Border Agency - UKBA - still tries to transfer unaccompanied minors under Dublin II regulation, but many decisions are successfully appealed and there are few effective removals<sup>86</sup>.

In some of these countries, **transfer can happen, but rarely**. It is the case in **Luxembourg**, where transfers under Dublin II regulation are possible, according to Law, but in practice there is almost no transfer (there was only one transfer of a minor to Norway in the last seven years. This young person was listed as a minor in Luxembourg and as of full age in Norway). In theory, **Slovakia** allows the transfer of minors via the Dublin II procedure, but no transfer is known in practice. **Romania** also allows transfers of unaccompanied minors under Dublin II regulation, but in practice there was no reported case of transfer on Dublin II for separated children.

The situation in **Cyprus** is peculiar, due to its geographical position in Europe. As it is a point of entry, Cypriot authorities have ever faced such case and it is unlikely that such cases will ever appear in great numbers anyway. Concerning transfers to Greece, it seems that the Cypriot government could not refuse them if it would happen, according to the country’s close relations with Greece.

In **Estonia, Greece, Latvia, Malta, and Spain**, there have been no or few cases until now or information is not available.

A few countries **allow the transfer of unaccompanied minors under Dublin II regulation only for family reunification: Lithuania, Italy.**

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<sup>82</sup> Interview of ORAC, 3/11/2011.

<sup>83</sup> Separated children in Europe Programme, *Newsletter n°35*, Spring 2011, available at: [http://www.savethechildren.net/separated\\_children/publications/newsletter/](http://www.savethechildren.net/separated_children/publications/newsletter/) [accessed 11 July 2012].

<sup>84</sup> After family links were investigated.

<sup>85</sup> “Anger as hundreds of children deported alone under EU rules”, *Children and Young people Now*, 22<sup>nd</sup> June 2010, available at: <http://www.cypnow.co.uk/cyp/news/1052520/anger-hundreds-children-deported-eu-rules>

<sup>86</sup> Interviews of solicitors, 28/11/2011 and 29/11/2011.

**Lithuania** only transfers minors for family reunification and only if it is in the best interest of the child. In **Italy**, unaccompanied minors are not transferred in another country unless the minor and the family member clearly express their willingness to reunite and the best interest of the child principle is safeguarded.

Most countries allowing transfer for unaccompanied minors under Dublin II regulation though **suspended transfers to Greece**. Following a 2011 case of the European Court of Human Rights<sup>87</sup>, removals to Greece are on hold in **Austria, Belgium, Denmark, Finland, Germany, Hungary, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovenia, Sweden** and **the United Kingdom**. Some countries also note that **transferring to Italy is problematic (Finland, Germany<sup>88</sup>, Netherlands, Sweden, the United Kingdom)** due to the shortcomings in reception conditions and failures of the asylum system in this country. In **the United Kingdom**, it happened that the Court ordered the UKBA to bring a child back from Italy after the removal, because there was evidence that this minor was destitute, in the streets. In **Finland**, there have been very bad experiences with minors returned to Italy and also Malta. In **Germany**, more and more local courts stopped removals to Italy, but there is no common policy for the moment. Currently, there is also a discussion in **Sweden** about not transferring asylum seekers to Italy under Dublin II Regulation.

In **France**, according to the authorities, **unaccompanied minors are not transferred under Dublin II regulation**. Fingerprints of minors older than 14 years old are taken and recorded in the EURODAC database. It means that transfers could be possible if a minor had lodged an asylum application in another member State. However, French authorities declare not implementing the Dublin II regulation. In 2009, the French Minister of Immigration declared that “France, although it is not obliged to by European legislation, abstains from transferring unaccompanied minors to member States where they lodged an asylum application before entering France<sup>89</sup>». However, in 2011, it seems that France referred to other member States under Dublin II regulation for 10 unaccompanied minors<sup>90</sup>. **Hungary** also declares receiving minors from other member States, in particular transferred from France and Germany.

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<sup>87</sup> *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, Available at: <http://www.unhcr.org/refworld/docid/4d39bc7f2.html> - [accessed 19 April 2012]

<sup>88</sup> See for example : <http://www.spiegel.de/politik/deutschland/urteil-fluechtlinge-duerfen-nicht-nach-italien-zurueckgefuehrt-werden-a-844105.html> [accessed 10 July 2012].

<sup>89</sup> MINISTERE DE L'IMMIGRATION, DE L'INTEGRATION, DE L'IDENTITE NATIONALE ET DU DEVELOPPEMENT SOLIDAIRE, « Visite d'un centre d'accueil de mineurs étrangers isolés interpellés à Calais : Eric BESSON salue le succès du dispositif mis en place », 01/10/2009, Available at : [http://www.immigration.gouv.fr/spip.php?page=imprimer&id\\_article=1821](http://www.immigration.gouv.fr/spip.php?page=imprimer&id_article=1821) [accessed 10 July 2012].

<sup>90</sup> Statistics from the NGO *La Cimade* on the Dublin II regulation's implementation in France in 2011, March 2012: <http://www.cimade.org/nouvelles/3743-Statistiques-sur-l-application-du-reglement-Dublin-II-en-France-en-2011> [accessed 10 July 2012]

**TABLE # 2 – Application of Dublin II regulation for unaccompanied minors in 27 EU countries**

	No practice	Dublin II regulation applied for family reunification + asylum application	Dublin II regulation applied only for family reunification	Dublin II regulation not applied	Suspended transfers to Greece
AUSTRIA		X			X
BELGIUM		X			X
BULGARIA		X			
CYPRUS	X	X			
CZECH REP.		X			
DENMARK		X			X
ESTONIA	X	X			
FINLAND		X			X
FRANCE				X	
GERMANY		X			X
GREECE	X	X			
HUNGARY		X			X
IRELAND		X			
ITALY			X		X
LATVIA	X	X			
LITHUANIA			X		
LUXEMBOURG	X	X			X
MALTA	X	X			
THE NETHERLANDS		X			X
POLAND		X			X
PORTUGAL		X			X
ROMANIA	X	X			X
SLOVAKIA	X	X			
SLOVENIA		X			X
SPAIN	X	X			
SWEDEN		X			X
THE UNITED KINGDOM		X			X

#### ***4.2. Implementation of the transfer, when required***

Although Dublin II regulation does not contain provisions on the implementation of the transfer for unaccompanied minors, the EU ‘return directive’ provides that *“before removing an unaccompanied minor from the territory of a member State, the authorities of that member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate*

*reception facilities in the State of return*<sup>91</sup>. Although this provision refers to transfers to third country, the same requirements should *a fortiori* be applied for transfers under the Dublin II Regulation.

Implementation of transfers varies from country to country. In some countries, children can be detained pending deportation. Sometimes, they are informed of their coming transfer a few days before and given explanation on what is going to happen. Sometimes, they are transferred with very little information. In some countries, they can be led to the country of transfer and sometimes they have to leave on their own.

When **Belgium** considers it is not responsible for examining the asylum application, the minor receives a document called “Annex 26 quater”. This document means that the minor has 30 days to leave the country and go to the Member State responsible of the asylum application.

In some countries, **children are accompanied to the country of transfer**. In **Belgium** for example, the guardian goes to the airport with the child. Some guardians even chose to take the minor to the country of destination and, in this case, the fees (plane tickets) are now paid by the Foreign Office. In **Denmark**, the child is escorted to the destination country. In **Estonia**, an official with the Police and Border Guard Board (in civilian clothes) and a representative of the guardianship authority, if necessary, accompany the child. In **Hungary**, in most cases, children are accompanied by police officers or immigration officers. In **Lithuania**, there was only one case of unaccompanied minor returned to another European country and it was for family reunification. Anyway, the unaccompanied child should be accompanied by the border guard or social worker.

In **Romania**, the child is normally accompanied to the destination country. One case was reported of an Iraqi minor transferred to Germany, where part of his family members got a form of protection. The minor was escorted until Berlin by Office for Immigration staff. In **Netherlands**, the NGO NIDOS tries to prepare the unaccompanied minor to the departure, explaining him/her what is going to happen. The arrival of the minor is also announced to the country of return.

In other countries, **children are not accompanied to the country of transfer**. It is the case in **Germany**, where the children often do not know who will collect them after the transfer. In **Slovenia**, the children may be escorted or transferred alone. In **Cyprus**, there is a legal framework on removal of minors that presumably would be applied in a transfer under Dublin II regulation. The Welfare Services are responsible for deciding whether it is in the best interest of the child to remain in Cyprus or to be sent back to family in another European country. Generally speaking, very effort via the International Welfare Service is made to reunite children with their parents and families<sup>92</sup>. According to the Welfare Services, an investigation is carried out into the general situation in the country and the specific situation into which the child would be returned but no follow up is required or carried out once the child is returned.

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<sup>91</sup> European Union, *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*, 16 December 2008, 2008/115/EC, Art. 10-2, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF> [accessed 10 July 2012].

<sup>92</sup> Information provided by officer of the Welfare Service Maria Kyrantzi, 24/06/2009 for the purposes of the 2009 FRA Study “Thematic National Legal Study on rights of irregular immigrants in voluntary and involuntary return procedures”.

One important question is the one of **follow-up after returning**, which seems to be non-existent. **Finland** highlights the fact that there is no monitoring system on how minors are treated after return. Sometimes, minors contact their former guardian in Finland telling them the poor living conditions in the Mediterranean. It would be good if a contact could be made with an organization in the country of transfer before the transfer is executed.

Concerning the **period of time before leaving** and the **conditions before deportation**, it depends on the country deciding the transfer to another member State. In **Austria**, the transfer of an unaccompanied minor seems to happen in the same conditions as the one of an adult. The minor can be detained, pending deportation, at least one day before the transfer. In **Germany**, the Law stipulates that the decision should be transmitted to the unaccompanied minor and his/her guardian at least one week before the planned transfer. In practice, there seems to be cases in which minors are not informed before the transport takes place. In **Ireland**, a European comparative report on the implementation on Dublin II regulation states that, like adults, minors are “‘picked up’ in the early morning by (...) the Garda National Immigration Bureau - GNIB. They must then dress and pack under the supervision of the GNIB officers. They are generally not informed of the exact date and time that they will be transferred. [They] are generally brought to the airport, where they are kept until their flight departs later that day. As the pick-ups generally take place in the early hours of the morning, and flights may in some cases not be scheduled until the evening or night time, this makes for a long and stressful day<sup>93</sup>”.

This lack of information could be very traumatizing for minors, who have to leave to another place they do not know.

#### ***4.3. Reception of unaccompanied children transferred from other countries under the Dublin II regulation***

Most countries underline the fact that there is no information available on this subject. There is a real lack of data on this matter, but it seems that if unaccompanied minors were transferred from other countries under the Dublin II regulation, there would be no discrimination between them and unaccompanied asylum seeking children just arriving in the country.

**Austria, Belgium, Denmark, the United Kingdom, Hungary, Italy, Lithuania, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia** and **Sweden** receive unaccompanied asylum-seeking children returned under Dublin II regulation.

In **Italy**, there is a special issue of minors treated as minors or as adults depending on the statements made by asylum seekers (if they said they were adults to avoid to remain in centres for minors with the intention to go in another country) and on rules of age assessment applied in Italy and those countries that transferred the minors to Italy under the Regulation without the consensus of the interested persons (considered minors by the sending countries). If a child declares to be adult in Italy and minor in the country he reaches, he/she will be treated as an adult. The “Consiglio Italiano per Rifugiati” - CIR has several times asked the competent authorities to treat them as minors and in case of doubt to submit them to age assessment, but no procedural change has been registered so far. On the contrary, if asylum seekers declare to be minors in Italy as well as in another country

<sup>93</sup> FORUM REFUGIES *et al.*, *Projet transnational Dublin, Rapport final*, 2011, p. 67.

when they are transferred to Italy under the Regulation they are treated as unaccompanied asylum seekers and are therefore channelled in *ad hoc* centres for minors.

The same problem occurs in **Malta** and in some cases in **Hungary**. It means that if a child declares to be an adult in Malta and then declares to be a minor in the country he wants to reach, he/she is treated as an adult, according to his/her first declaration, when coming back to Malta. Normally the child could access to age assessment, if he/she asks for, but then credibility could be an issue.

In **Romania**, a minor transferred under Dublin II regulation and still in the asylum procedure will be accommodated in the reception and assistance centre of RIO. On the contrary, if the minor was already notified with a negative decision, by the Romanian administrative or judicial body, the minor transferred to Romania will be placed in emergency placement centres because he/she will not be considered as an asylum seeker anymore. He/she will be tolerated until voluntary repatriation takes place or until the child becomes an adult.

In **Hungary**, there were cases reported that after being transferred under the Dublin II regulation the minors were treated as adults even if they possessed a certificate (the result of an age assessment performed in other Member States) proving that they were not adults yet. In these cases, the minors may be detained together with other adult asylum seekers. This is very traumatizing for most of these kids. Dublin returnees have to submit a subsequent asylum application if they do not want to return to their country of origin but the second application does not have a suspensive effect. Therefore, there is a risk that the asylum application is never examined on the merits. Due to the present practice of the Office of Immigration and Nationality – OIN, all “Dubliners” are expelled which is a serious risk of *refoulement* or the denial of access to the procedure.<sup>94</sup>

In **France**, the consulted NGOs have not heard of unaccompanied minors transferred from other member States under the Dublin II regulation. In particular, the French Red Cross, which manages the reception of people transferred to France under the Dublin II regulation through the Charles de Gaulle airport, did not face any case of minor readmitted. In theory, **Luxembourg** could receive unaccompanied minors transferred from other countries under the Dublin II regulation, but in practice no such case is known.

#### RECOMMENDATION 4 – Dublin II

The Dublin II regulation should not be applied to unaccompanied minors, except for the purpose of family reunification if it is in the best interest of the child. In this case, minors should be properly informed and accompanied during the transfer.

<sup>94</sup> For more information, consult HHC: *Access to Protection Jeopardised*, December 2011, <http://helsinki.hu/wp-content/uploads/Access-to-protection-jeopardised-FINAL1.pdf> [accessed 18 June 2012].



## 5. Support and accommodation during the procedure

Unaccompanied children who have lodged an asylum application have to wait for many weeks or month before the main interview and then a final decision. During this period, they need basic accommodation but also a specific support as children and asylum seekers covering medical, psychological and legal aspects.

In this context, the article 20 of the International Convention on the Rights of the Child stands that « *A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State* ». Moreover, according to a 1997 Resolution of the Council of the European Union on unaccompanied minors who are nationals of third countries<sup>95</sup>, “Irrespective of their legal status, unaccompanied minors should be entitled to the necessary protection and basic care in accordance with the provisions of national law”.

The need of care, based on the best interest of the child is a principle also expressed by many international organizations, such as the UNHCR<sup>96</sup> and the European Union. The EU directives insist on the necessity of an appropriate placement that could meet the specific needs of unaccompanied minors<sup>97</sup>.

### 5.1. Accommodation for unaccompanied asylum-seeking children

In 2005, the Council of Europe recommended that unaccompanied minors should be placed in care and reception structures in keeping with their age and maturity<sup>98</sup>. The 2003 directive on asylum is more precise stating that “Unaccompanied minors who make an application for asylum shall (...) be placed with adult relatives; with a foster-family; in accommodation centres with special provisions for minors; in other accommodation suitable for minors”<sup>99</sup>. This text provides an exception for children over 16: Member states may place them in “accommodation centres for adult asylum seekers”<sup>100</sup>.

Unaccompanied asylum-seeking children are most of the time accommodated in reception centres, but in certain cases, they can be placed in **foster families**. Children may be **accommodated with other national children in need of protection**. They also may live in **specific centres for foreign unaccompanied minors**. They may be placed in **centres for asylum seekers**, as a consequence sometimes with adults. Finally, some countries have centres **specifically designed for unaccompanied asylum seeking children** where these children can benefit from the necessary legal support their status of asylum seeker requires, and at the same time their children’s needs will be

<sup>95</sup> Council Resolution 97/C 221/03 on unaccompanied minors who are nationals of third countries, 26 June 1997, Art. 3-2, available at: [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31997Y0719\(02\)&model=guichett](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31997Y0719(02)&model=guichett) [accessed 18 June 2012].

<sup>96</sup> UN High Commissioner for Refugees, *Best Interests Determination Children - Protection and Care Information Sheet*, June 2008, available at: <http://www.unhcr.org/refworld/docid/49103ece2.html> [accessed 18 June 2012].

<sup>97</sup> Council directive 2003/9/EC *op.cit.* (Note 33).

<sup>98</sup> Council of Europe’s Parliamentary Assembly, Recommendation 1703 (2005), Protection and assistance for separated children seeking asylum §5, *op.cit.* (Note 40).

<sup>99</sup> Council Directive 2003/9/EC, Art. 19.2, *op.cit.* (Note 33).

<sup>100</sup> *Ibid.*

taken into consideration. Sometimes, there is a difference in the accommodation of unaccompanied minors, depending on their age.

The option of **foster family** for unaccompanied asylum-seeking children is sometimes chosen in certain countries, but never widely. In some countries, it depends of the age of the minor. In **Cyprus**, unaccompanied minors under 3 years old are placed in a foster family, whether they are unaccompanied minors or Cypriot children without guardian. In **the Netherlands**, it only concerns children under 13 years of age. In **Estonia, France, Germany, Ireland, Italy** and **the United Kingdom** it is sometimes used. In **Finland**, some minors are placed in private accommodation in families declaring to be the child's relatives and wishing to take the child in their care, but only after the family's abilities and resources for seeing to the child's care are established.

Unaccompanied minors may be accommodated in **reception centres for children**, which means with nationals.

In **Cyprus**, the Welfare office will follow the same procedure regarding unaccompanied minors as with Cypriot children who have no guardian. In **France**, unaccompanied asylum seeking children are generally taken in charge by the child welfare (*'Aide sociale à l'enfance'*), as other children in need of protection<sup>101</sup> and thus accommodated in reception centres designed for children. In **Hungary**, unaccompanied asylum seeking children are accommodated in *Fót* (a town 20 km from Budapest), in a centre designated for children in state care (both Hungarian and foreigners). They have a separate house within the complex.<sup>102</sup> In **Sweden**, unaccompanied asylum seeking children are accommodated by municipalities same way as Swedish unaccompanied minors are. There are many different municipal accommodations where the unaccompanied minors can be placed. Some of these centres used to be centres for youth delinquent and continue to be run by the same staff that previously ran these youth delinquent centres. Many of the people working in such centers may not get specific support and training from the municipalities for their new difficult role with asylum seeking children.<sup>103</sup> In **Poland**, in orphanage 9 in Warsaw, parts of premises are designated for unaccompanied asylum seeking minors. In **Romania**, unaccompanied minors under 16 are accommodated in centres of Child Protection, designed for Romanian children.

Unaccompanied minors may be accommodated in **centres designed for unaccompanied foreign minors**.

In **Belgium**, all unaccompanied minors (asylum seekers or not) are normally accommodated by FEDASIL. However, due to the increase of the number of unaccompanied minors, only those who apply for asylum are now accommodated there. Others (and asylum seekers waiting for age assessment) are accommodated in hotels and some of them are even sleeping in the street. At the end of March 2012, the Government approved measures in the asylum policy. A new Fedasil centre, specific for unaccompanied asylum seeking minors will open soon. It will offer 70 places.

In **the Czech Republic**, unaccompanied minors applying for asylum are first accommodated in the Home for Foreign Children, with other unaccompanied minors with different legal statuses.

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<sup>101</sup> Art. 375 of the civil code, available at:

[http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=48475E9009D5FFD3573D22E62240E798.tpdjo08v\\_3?idArticle=LEGIARTI000006426776&cidTexte=LEGITEXT000006070721&dateTexte=20120709](http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=48475E9009D5FFD3573D22E62240E798.tpdjo08v_3?idArticle=LEGIARTI000006426776&cidTexte=LEGITEXT000006070721&dateTexte=20120709) [accessed 10 July 2012]

<sup>102</sup> Information available at: <http://www.kigyk.hu/> [accessed 10 July 2012].

<sup>103</sup> Information provided during the Interview with Anki Carlsson from Red Cross in Sweden 01/2012.

In **Finland**, unaccompanied minors are accommodated in specially designed centres for unaccompanied children. The standards of accommodation for unaccompanied minors are comparable with the Child Welfare Act, but only for children of 15 years old or younger. For unaccompanied minors of 16-17 years old, the standards are lower. The majority of unaccompanied minors are first placed in a group home functioning as a transit unit situated in the Helsinki Metropolitan Area, where they reside for approximately two to four months, during which the police establishes the minor's identity, travel route and entry into the country. After the asylum interview, minors are transferred to group homes to wait for the decision on asylum and residence permit.

In **Denmark**, unaccompanied minors are accommodated in one of the three special centres established by the Red Cross. These centres have facilities adapted to these children and have specialized staff. In **Ireland**, on arrival, unaccompanied minors are usually referred to the Dublin Social Work Team for Separated Children, and received in one of the three short term residential units (6 beds each). This “intake” period aims to assess the young person’s age if necessary, and to find a suitable orientation for him/her. The minor may then be directed to a foster family or a long-term residential unit, and his/her case will be passed from the Dublin Team to the local HSE team. Children are then dispersed throughout the country for long-term accommodation.

In **France**, unaccompanied minors could be accommodated in centres designed for unaccompanied foreign minors, whether they are asylum seekers or not.

In **Greece**, the Ministry of Health periodically funds through the European Refugee Fund places for unaccompanied children in shelters run by NGOs (Arsis is a prominent case) but there are problems with the flow of the funding and absorption of the EU funds and therefore of sustainability of such structures<sup>104</sup>.

In **the United Kingdom**, local authorities are responsible for the reception and care of unaccompanied children. There is huge variation in standards of care and accommodation, depending on local authorities, on the child’s age and on the grounds for the child being looked after<sup>105</sup>. According to the level of maturity assessed by social workers, unaccompanied minors may fall under different section of the Children Act<sup>106</sup> and then be accommodated in semi-independent accommodation (in hotels, bed and breakfasts or shared apartments) for the most autonomous youngster and in foster families or residential homes for the others.

Accommodation in centres designed for unaccompanied foreign minors also takes place in **Ireland, Spain and the Netherlands**.

Sometimes, their status of asylum seeker takes precedent on their status of minor in the choice of the accommodation. Therefore, they may be placed in **reception centres for asylum seekers with adults**, as permitted by European law for children above 16. They thus receive a legal follow-up but their specific needs as minors are not always satisfied.

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<sup>104</sup> Fundamental Rights Agency, *Coping with a fundamental rights emergency – The situation of persons crossing the Greek land border in an irregular manner*, 2011, [http://fra.europa.eu/fraWebsite/attachments/Greek-border-situation-report2011\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/Greek-border-situation-report2011_EN.pdf) [accessed 30 July 2012].

<sup>105</sup> European Migration Network, United Kingdom, March 2010, p 28, available at: <http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?directoryID=115> [accessed 10 July 2012], and interviews with solicitors, 28/11/2011.

<sup>106</sup> Children act (1989), section 17 or 19, available at: <http://www.legislation.gov.uk/ukpga/1989/41/part/III> [accessed 10 July 2012].

In **Bulgaria**, in practice children are often accommodated in one of the two reception centres for asylum seekers, the one of Banya.

In **Lithuania**, the law foresees that unaccompanied minors are accommodated at the Refugees' Reception Centre, if their temporary guardian/curator does not object to such decision. This place is designed to accommodate foreign nationals granted asylum in the Republic of Lithuania and all unaccompanied asylum seeking minors. All unaccompanied asylum seeking minors – by the decision of the Migration Department– are accommodated at the Refugees' Reception Centre, located in Rukla, near Kaunas town. The Refugees' Reception Centre is the only institution in Lithuania providing living place for unaccompanied asylum seeking minors.

In **Luxembourg**, unaccompanied minors are received and accommodated in normal reception centres for asylum seekers run by Caritas and Red Cross, that are not tailored to the specific needs of minors (e.g. no attendance of social workers at night or during the week-ends etc.). Only children under 15 years are placed in normal child and youth welfare facilities. This 15 years old limit is not in line with the 2003 directive which foresees that only children over 16 may be placed in accommodation centres for adult asylum seekers.

In **Malta**, upon arrival and throughout the age assessment procedure, unaccompanied minors are detained in closed centres together with adults who may or may not be related, despite several recommendations to the contrary from agencies such as UNHCR and several NGOs. Once age is confirmed, unaccompanied minors are released from detention and offered accommodation in specialized centres. Unaccompanied minor aged sixteen years or over may be placed in accommodation centres for adult asylum seekers where living conditions are very poor and where there is inadequate support<sup>107</sup>.

In **Romania**, children over 16 are accommodated in RIO centres, which are governmental centres for asylum seekers, refugees and beneficiaries of subsidiary protection. These centres do not provide food but only very basic items like soap, toilet paper and toothpaste. Each person receives 108 lei (43 lei corresponding to 10 Euros) per month. In practice, in these centres, legal counselling is ensured by the Romanian National Council for Refugees, education and social assistance by Save the Children. Psychological assistance is provided by ICAR only in Bucharest centre.

In **Slovakia**, even if the law prescribes that they should be placed separately from adults, this is not always the case. They are placed together with adults although if possible in separate rooms. In **Slovenia**, asylum-seeking children are received and accommodated in the Asylum home, but have their own section, which is shared between them and single women.

In **the Netherlands**, for unaccompanied minors older than 13, the daily care is provided by the Central Agency for the reception of asylum seekers (under 13 years old, they are accommodated in foster families). Age is the leading factor on the basis of which a determination may be made concerning the form of reception in which an unaccompanied minor will be placed.

Accommodation in asylum centres with adults also takes place in **Estonia, Italy and Portugal**.

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<sup>107</sup> Reception of Asylum Seekers (Minimum Standards) Regulations 2005 (Malta), Art. 15, available at : <http://www.doi.gov.mt/en/legalnotices/2005/09/LN320E.pdf> [accessed 10 July 2012].

In **Italy**, the law stands that unaccompanied asylum seeking minors should be placed in Sistema di Protezione per Richiedenti Asilo e Rifugiati – SPRAR – centres. In such centres, unaccompanied asylum-seeking children can have a very complete follow-up. Unfortunately, due to the lack of places in these centres, not all unaccompanied asylum-seeking children can be placed there.

Finally, children can be accommodated in **specialized centres for unaccompanied asylum-seeking children**.



In **France**, there is only one centre specifically designed for them, which offers legal and educational support and follow-up. This reception centre for minors seeking asylum (called 'CAOMIDA') is allocated near Paris, in Boissy Saint Léger, but can take in charge children from all parts of France. A psychologist and a legal expert are working within this centre for supporting children during their asylum application. This centre only has 33 places, which means that many other unaccompanied asylum seeking children are not accommodated there<sup>108</sup>.

In **Malta**, there are two government-run centres for unaccompanied asylum-seeking children, Dar is-Sliem and Dar il-Liedna.

In **Portugal**, the CPR's Refugee Reception Centre<sup>109</sup>, located in Bobadela, at the outskirts of Lisbon, is the only centre in Portugal designed for housing asylum seekers, financed by the EQUAL Initiative, based on a new concept of integration of this population within the community. The Reception Centre is a temporary residence for asylum seekers (during the first phase of asylum procedure: the admissibility phase), unaccompanied minors and resettled refugees. There is a room in this centre earmarked specifically for unaccompanied asylum seeking children. It is also important to mention that, according to Portuguese legislation, unaccompanied minors aged 16 years or older can be placed in residential centres for adult asylum seekers<sup>110</sup>. The Reception Centre represents an innovative experience in the EU; a unique way to promote the integration of asylum seekers and refugees in Portuguese society, through their integration into the local community. The idea is to create an intercultural dynamic based on the relations between asylum seekers, refugees and the local community, re-enforcing the community ties, values and the sense of belonging to a cohesive community. A new reception centre for refugee children of the Portuguese Refugee Council opened in 2012. This project is the product of cooperation between the Municipality of Lisboa<sup>111</sup>, the Ministry of Interior (through the Servicio de Estrangeiros e Fronteiras – SEF –/Portuguese Immigration Service)<sup>112</sup>, the Swatch Tempus International<sup>113</sup> and CPR.

In **Germany**, minors under 16 years old are normally accommodated in youth welfare accommodations. In some federal States, minors aged 16 or 17 are accommodated in youth welfare accommodations as well. Most of these accommodations are specialized on children who are seeking asylum. In some federal States (Bavaria, Brandenburg, Saxony, Lower Saxony, Mecklenburg-

<sup>108</sup> In 2011, 595 unaccompanied children applied for asylum in France.

<sup>109</sup> For more information, see: <http://www.refugiados.net/novosite/car/car.pdf> [accessed 11 July 2012] and <http://www.refugiados.net/novosite/car/car.html> [accessed 11 July 2012].

<sup>110</sup> Law 27/2008, Art. 79, *op.cit.* (Note 43).

<sup>111</sup> The Municipality of Lisboa, besides giving in a degraded building at the *Belavista* Park, also grants 125.000€ for the construction.

<sup>112</sup> The Borders and Aliens Service also grants 125.000€ for this project of construction.

<sup>113</sup> The Swatch – Tempus Internacional, S.A. gave 600.000€ for this construction.

Vorpommern) minors aged 16 and 17 are accommodated in reception centres for asylum seekers. Some of these accommodations have special facilities for minors.

## 5.2. Legal support to unaccompanied asylum-seeking children

During asylum procedure, children may need advice from a lawyer for preparing their application and submitting it. Sometimes, a State legal aid can be foreseen, but most of the time NGOs provide such support.

### 5.2.1. Different types of legal support

In some countries, a **free legal support** (generally provided by a lawyer) is foreseen or/and provided. It is the case in **Belgium, Estonia, Finland, Hungary, Ireland, Lithuania, Luxembourg, the Netherlands, Slovakia, Slovenia, Spain, Sweden** and **the United Kingdom**. In these countries, unaccompanied minors can benefit from legal support at all stages of the procedure.

In **Finland**, the NGO Refugee Advice Centre is the biggest office providing legal aid to asylum seekers.<sup>114</sup> Beside their lawyers there are also some independent attorneys who have specialized in asylum matters. The reception centres play an important role when an asylum seeker is searching for the lawyer – they have some listings and offer the contact details of the lawyers. In **Ireland**, unaccompanied asylum-seeking minors are entitled to free legal support from the Refugee Legal Service - RLS, like any asylum seeker. This legal assistance can be provided at any stage of the procedure. In **Slovenia**, unaccompanied asylum-seeking minors can benefit from free legal support from a lawyer at every stage of the procedure, as all asylum seekers. Moreover, in practice, presence of a lawyer is ensured automatically already at the official submission of his asylum application, for unaccompanied minors.



In **Belgium**, the French speaking Bar of Brussels has a legal aid office with a pool specialized in unaccompanied minors. This pool is composed of 15 lawyers who train themselves and who exchange on all procedures concerning unaccompanied minors.

However, **legal aid is not always of high quality and suitable for unaccompanied asylum-seeking children**. In **Hungary** for example, lawyers in general are not specialized in asylum law. In **Luxembourg**, on the contrary, lawyers appointed are specialized in asylum matters but they are not specially trained to deal with children. In **the United Kingdom**, findings of a 2011 study on the quality of legal advice provided to unaccompanied minors highlighted the variable quality of legal representation, “within legal firms or organizations as well as between them”; the insufficient number of “high quality legal representatives”; and the high number of representatives whose knowledge is “inadequate”<sup>115</sup>. Examples are given of legal representatives failing to communicate

<sup>114</sup> More information available at : <http://www.pakolaisneuvonta.fi/index.html?lang=eng> [accessed 11 July 2012].

<sup>115</sup> “The number of quality legal representatives who are able to work effectively is limited. Estimates from Advisers are that there are currently fewer than 20 representatives in London who are able to provide the desired standard of service to children and the figure is

with children about interview times and dates, or not attending substantive interview, or paying very little attention to the specific circumstances of the case and not providing accurate information in the Statement of Evidence Form, although it is an important source for decision-making. Nevertheless, there are also excellent legal representatives, providing children with high quality support.

The situation is peculiar in **Cyprus**. In theory, according to the refugee law, all minors are entitled free legal assistance for all stages of the procedure. In practice though, minors have to wait until they reach 18 years old to see their application processed. And when they are adults, they have no guarantee of free legal support. In **Slovakia**, in theory unaccompanied asylum seeking minors can benefit from free legal support. However, in practice, this occurs very rarely, because the local office appointed as a guardian does not delegate a lawyer to represent the child in the asylum procedure.

In **Italy** legal support is ensured in SPRAR centers and by specialized NGOs when the legal guardian asks them to accompany the minor through the whole asylum procedures. However, taking into account that not all minors are in these situations, not all unaccompanied minors benefit from these services.

In other countries, **free legal support is only available for the appeal or under certain circumstances**, as in **Denmark, France, Germany, Greece, Italy, Latvia, Malta, Portugal** and **Slovakia**.

In **Denmark**, the Danish Immigration Service appoints an attorney to represent the child if the child's asylum case is rejected. In **France**, unaccompanied asylum seeking children can benefit from free aid of a lawyer, like adult asylum seekers, during the appeal phase. This free aid is provided according to income of the applicant, and unaccompanied minors generally satisfy this criterion. In **Portugal**, asylum seekers have the right to free legal aid but only during the jurisdictional phase. To benefit from free legal aid, the appellant has to show his/her level of income<sup>116</sup>. The request for free legal aid must be directed to the Institute of Social Security for admission and later directed to the Lawyers' Bar Association for the effective nomination of a lawyer. Besides this, the NGO CPR may provide free legal aid in administrative procedure.

In **Italy**, an asylum seeker can be supported by a lawyer before the Territorial Commissions for the Recognition of International Protection – CT – at his/her own expenses<sup>117</sup>. In theory the minor could be accompanied by a lawyer but it rarely happens in practice, depending on the willingness of the legal guardian and of the lawyers to be present before the CT free of charges. In case of judicial appeal there is the possibility for all asylum seekers (minors included) to obtain free legal aid<sup>118</sup>. Legal

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significantly lower in other areas of England. The majority of legal representatives have limited knowledge of the specific issues that separated children face in the asylum determination procedure and their knowledge of child welfare legislation is extremely limited. Few are knowledgeable in both asylum and child welfare legislation. There are also gaps in current knowledge about the situation for children in countries from which separated children originate and specific issues such as female genital mutilation" (REFUGEE COUNCIL, *Lives in the balance, The quality of immigration legal advice given to separated children seeking asylum*, February 2011, p 13. Available at: <http://www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/researchreports/Lives%20in%20the%20balance.pdf> [accessed 10 July 2012])

<sup>116</sup> According to Art.39 of Act 34/2004 of July 29<sup>th</sup>, amended by Act 47/2007 of August 28<sup>th</sup>, available at: [https://queixaselectronicas.mai.gov.pt/content\\_images/Lei\\_34\\_2004\\_47\\_2007.pdf](https://queixaselectronicas.mai.gov.pt/content_images/Lei_34_2004_47_2007.pdf) [accessed 27 July 2012] and according to Law 27/2008, Art.49, § 1.d) *op.cit.*(Note 43).

<sup>117</sup> Decreto Legislativo 28 gennaio 2008, n.25 "Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello *status* di rifugiato", Art. 16-1, available at: <http://www.camera.it/parlam/leggi/deleghe/08025dl.htm> [accessed 10 July 2012].

<sup>118</sup> According to Art. 24 sub-section 3 of the Italian Constitution, available at: [http://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf) and D.P.R. n. 115/2002.

support is also ensured in SPRAR centres. However, taking into account that not all minors are in these situations, not all unaccompanied minors benefit from these services.

When free State legal support is not foreseen, or in addition to such support, **NGOs or legal specialists within the reception centres** can offer such aid.

In the **Czech Republic**, all unaccompanied asylum-seeking children benefit from free legal aid provided by an NGO called OPU<sup>119</sup> in all places in which they live (Diagnostic Centre, Home for Foreign Children or even in detention).

In **Estonia** for example, a European project was implemented by the Estonian Human Rights Centre EHRC. Since January 2011, this project called “Giving Legal Assistance to Asylum Seekers” and funded by the European Refugee Fund, has guaranteed free legal support to asylum seekers during first instance procedures and appeal cases.

In **Poland**, most of the time they can benefit from free advice and support of a legal representative which is usually a student of law, but this representative can have free access to lawyers’ advice when needed. This service is provided by NGOs and not supported by government though.

In **Romania**, minors can be assisted by a lawyer during administrative procedure as long as they pay for. For the appeal, they may obtain the support from a *pro bono* lawyer<sup>120</sup>. This issue is very important, which explains that projects are developed to offer free legal support to asylum seekers.

In **France**, the reception centres where unaccompanied minors are accommodated, as well as NGOs or Child Welfare service can offer legal advice. They know the minor case, as they help him to prepare the interview with the Office Français de Protection des Réfugiés et Apatrides-OFPRA/French Office for the Protection of Refugees and Stateless Persons. They can give much information to the lawyers to prepare the appeal.

In **Germany**, in most federal states, there are asylum procedure help desks within reception centres.

## 5.2.2. Mission of the lawyer in relation with the tasks of the legal guardian

First, it is important to underline that in many countries the appointment of the lawyer is facultative, while the appointment of the legal guardian is compulsory.

In some countries, the mission of the lawyer and the mission of the legal guardian are **well-defined and complementary**, as in **Belgium, Cyprus, Greece, Ireland** and **Sweden**. While the lawyer handles the legal aspect of the case, the guardian handles the social care of the minor. In **Belgium**, it is the guardian who has to find a lawyer for the unaccompanied minor. And after that, both work together. In **Ireland**, the legal guardian gives instruction to the legal counsel on behalf of the child. The lawyer and guardian may be the same person, as in **the Czech Republic**.

In **France**, these 2 missions are different. The guardian only has a mission of representation, as minors do not have legal capacity and the lawyer’s mission is to defend the minors’ interests.

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<sup>119</sup> Organizace pro pomoc uprchlíkům, Organization for Aid to Refugees.

<sup>120</sup> Code of Civil Procedure, Art. 74-81, available at: <http://www.lexit.ro/legislatie/codprciv.pdf>



All countries insist on the **necessity** for the lawyer and the guardian **to cooperate**, as in **Latvia, Lithuania, Estonia, Finland, Luxembourg, Malta, the Netherlands, Romania, Hungary, Poland, Portugal** and **Sweden**.

In **Malta**, this necessity to cooperate is important but in reality, due to the low number of available lawyers working with asylum seekers, many unaccompanied minors have no legal assistance. In **the Netherlands**, the cooperation is necessarily close, as the guardian has a role to play in the asylum procedure, by preparing the minor for the interview. In **Portugal**, the NGO CPR provides legal orientation and representation of the minor in administrative procedure. During the appeal, the minor can have a lawyer. Therefore, the Portuguese Refugee Council will share with the lawyer the relevant information to build the appeal. In **Slovakia**, the guardian has an important role to play. Indeed, the lawyer is appointed by the guardian to represent the child, and the latter can disagree with any concrete step and either prevent the lawyer from taking concrete step or waive the authorization.

It is important to underline that in many countries the appointment of the lawyer is facultative, while the appointment of the legal guardian is compulsory. In **France** though, the lawyer is only compulsory for the appeal court (Cour Nationale du Droit d'Asile - CNDA).

### 5.2.3. Assistance of an interpreter during the procedure

Sometimes, children can benefit from a **free interpreter to help them preparing the application**.

In **Belgium**, the guardianship agency may pay the interpreter for preparing the asylum application. In **the United Kingdom** also, an interpreter normally attends all the meetings between the minor and the legal representative.

In practice, even when interpreters are not foreseen to help the minor preparing the application, **NGOs or volunteers can sometimes offer such support**.



In **Latvia** and **Hungary**, if the child wants to add information, he/she may submit any document in his/her mother tongue. It will be the authorities' responsibility to translate them.

**Moreover, in all European countries, unaccompanied minors may have an interpreter during the interview.** In **Greece** though, minors often manage with fellow immigrants for translation.

#### 5.2.4. The role of social workers in supporting asylum applications of unaccompanied children

The role of social workers in supporting asylum applications of unaccompanied children is very important. Most of the time, it is not legal support, but in some situations it can be. Their role within this process is mainly to give unaccompanied minors social and psychological support. They take care of these children, they help them expressing their feelings and building a relationship of trust with them.

It is the case in **Austria, Belgium, Cyprus, the Czech Republic, Finland, France** (in France some legal social workers can also work on the asylum application itself) **Germany, Hungary, Lithuania** and **Portugal**. In Hungary, social workers have no official role in the refugee status determination procedure but they might help unaccompanied minors expressing their feelings and articulating the human rights violations suffered. Sometimes, they might request the assistance of a psychologist.

Before the minor decides to apply for asylum, the social worker can play a role on determining whether a minor should do it or not. It is the case in particular in **Italy** and in **France**.

In **Germany**, if the unaccompanied minor is accommodated in a youth welfare centre, the social worker can play an important role in the asylum procedure. He can even go to the interview, instead of the guardian.

In **Ireland**, social workers are legal guardians. Therefore, their role is important within the asylum procedure.

In **Slovakia**, they can be asked by the decision-maker of the Migration office or by the lawyer to write a statement on the behaviour of the child in the asylum facility and provide the so called “social profile” of the child, which can be useful, for example, for the overall evaluation of the personality of the child. In **Finland** also, such procedure is implemented. Social workers have to write a statement to decision makers in the immigration service about the assessment of the best interest of the child.

In **Estonia** and **Latvia** there is currently no social worker or counsellor in the reception centre.

### 5.3. Medical and psychological support

Due to their specific situation, unaccompanied minors often need medical and psychological care that States should provide<sup>121</sup>. This requirement is stronger when they are asylum seekers because they may have suffered persecutions. Psychological troubles can also result from such persecution and it should receive appropriate treatment.

The European Union has taken into consideration this health issue, stating in the 2003 directive on asylum that “*Member States shall provide, under the same eligibility conditions as nationals of the Member State that has granted the status, adequate health care to beneficiaries of refugee or subsidiary protection status who have special needs*”<sup>122</sup>.

<sup>121</sup> Resolution 1810 (2011), *op.cit.* (Note 40).

<sup>122</sup> Council Directive 2003/9/EC, Art.15.2, *op.cit.*(Note 33).

In **Luxembourg**, unaccompanied children receive the same medical and psychological support as resident children in public care.

In **Malta** also, unaccompanied minors are given similar access to Health Services as Maltese citizens. Since their care falls under the responsibility of the state, they are further provided with free health care. In **France**, unaccompanied children can have access to medical care (universal health insurance), as long as they are taken in charge by the child welfare system. Anyway, before being taken in charge, they can benefit from the free State medical assistance (*aide médicale d'Etat*). In **Ireland**, unaccompanied minors have a medical card that enables them to access the public health care system<sup>123</sup>. In addition, they go through a medical screening on arrival, and a medical check-up is conducted while they are into care. In **Slovenia**, asylum-seeking children have the same rights related to health insurance and services as Slovenians - when studying, they have free basic health insurance until the age of 25.

In **Lithuania**, **Romania** and **Sweden**, unaccompanied asylum seeking minors are entitled to the same level of medical care as national children.

**In some countries, unaccompanied minors have access to the medical care as asylum seekers.**

In **Netherlands**, the “**Centraal Orgaan opvang asielzoekers**” - COA -, which is the Central Agency for the Reception of Asylum Seekers has medical services at each location. In **Poland**, the caretaker organizes specific medical and psychological support when it is requested by the minor or when the caretaker sees such need. Primary and Specialized Healthcare is organized for unaccompanied minors.<sup>124</sup> In **Portugal**, the Asylum Act also guarantees special health care that is suitable for particularly vulnerable individuals on the same terms as Portuguese citizens, namely minors who suffered any form of abuse, negligence, exploitation, torture, cruel, inhuman or degrading treatment, or the effects of an armed conflict. In **Bulgaria**, according to the law, asylum seekers have a right to health insurance and psychological assistance.

**Finally, unaccompanied minors can have access to medical care, as children AND as asylum-seekers.**

In **Spain**, it seems that unaccompanied asylum-seeking children can benefit from health care because they are asylum seekers and because they are children (double status). In Spain, all asylum seekers are entitled to healthcare.<sup>125</sup> Furthermore, foreigners under 18 in Spain are guaranteed universal health coverage, irrespective of their administrative situation. Therefore, these minors receive any healthcare they may require at all times.<sup>126</sup>

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<sup>123</sup> Although access to health services, in practice, may be problematic: this is a general issue for all people living in Ireland.

<sup>124</sup> More information on the medical system available for asylum seekers in Poland can be found in a report „Access to medical and psychological assistance of the vulnerable asylum seekers in Poland” of International Humantiarian Initiative Foundation (published on [www.ihif.eu](http://www.ihif.eu)).

<sup>125</sup> Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria, Art. 18, available at : [http://noticias.juridicas.com/base\\_datos/Admin/l12-2009.t2.html#a18](http://noticias.juridicas.com/base_datos/Admin/l12-2009.t2.html#a18) [accessed 18 June 2012].

<sup>126</sup> “Policies on Reception, Return and Integration Arrangements for Unaccompanied Foreign Minors”, pp 12. Available at: [http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;jsessionid=63087BA5C7CE12B6D449C67B1FE0A5E2?entryTitle=05\\_Reception,\\_Return\\_and\\_Integration\\_Policies\\_for,\\_and\\_numbers\\_of,\\_unaccompanied\\_minorS](http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;jsessionid=63087BA5C7CE12B6D449C67B1FE0A5E2?entryTitle=05_Reception,_Return_and_Integration_Policies_for,_and_numbers_of,_unaccompanied_minorS) [accessed 10 July 2012]

In **reception centres**, unaccompanied asylum-seeking children can have a medical check-up and, if necessary, receive treatment. It is the case in **Denmark, Estonia, Finland, Germany** and **Italy**. In the Czech Republic, unaccompanied minors are normally placed in the Home for Foreign Children of the Ministry of Education, Youth and Sport, and the same rules apply there are in the regular children home for Czech children, which mean that they could benefit from medical care. In **Italy**, in the residential care facilities for children, minors have the right to health care. They are registered in the National Health System and can unconditionally access medical care in a hospital or be examined by a doctor, as well as psychological services.

It seems that unaccompanied asylum-seeking children can benefit, most of the time, of the **support from NGOs**.



In **Finland**, the Immigration Service developed the asylum process for unaccompanied minors in a project led by an NGO *Yhteiset Lapsemme* (All Our Children)<sup>127</sup>. The idea of the project was to develop tools to promote the assessment of the best interests of the child in the Finnish asylum procedure, as well as to improve the assessment of the psychosocial situation and wellbeing of unaccompanied minor asylum seekers during the asylum procedure

In **Latvia**, unaccompanied children can **only benefit from emergency health care**. In **Greece** they have formal access to it but not cost free.

**Concerning the psychological aspect, it seems that support is not provided in all countries.**

In **Ireland**, where the HSE Social Work Team for Separated Children works with a designated psychologist, but specialized organizations working on sexual violence or sexual orientation issues are seldom available out of Dublin. In **Lithuania**, unaccompanied children are provided with psychological assistance at the Refugees' Reception Centre, if suggested by their guardians, who – together with other social workers from the Centre and administration – decide whether there is a need to provide psychologist's help. In **Hungary**, they are entitled to access the psycho-social support from the NGO Cordelia Foundation (financed by the European Refugee Fund's national allocation) if they are torture survivors but it is not the State that provides these services and capacities are limited. In **the United Kingdom**, local authorities have internal children's mental health services where unaccompanied minors may be provided with psychological care. There are a few organizations specialized in mental health issues for migrants and asylum-seekers, like Helen Bamber Foundation, Freedom for torture or Baobab. However, there is long waiting time to access this specific support, and not all unaccompanied children would fit in the criteria<sup>128</sup>.

**Austria** highlights the fact that young asylum seekers represent a high-risk group regarding the risk of disease. Especially the need of psychiatric and psycho-therapeutic treatment is very high. Counselling centres for unaccompanied minors complain that it is very difficult to find adequate psychiatric in-house treatment for adolescents. Sometimes young people are received and accommodated only for one night to be then discharged the next day – without diagnosis.

<sup>127</sup> More information available at : [http://www.yhteisetlapsemme.fi/documents/Unaccompaniedproject2008-2011\\_Projectdescription.pdf](http://www.yhteisetlapsemme.fi/documents/Unaccompaniedproject2008-2011_Projectdescription.pdf) [accessed 10 July 2012].

<sup>128</sup> Interview of Refugee Council's Policy Adviser, 29/11/2011.

## 5.4. Detention of unaccompanied asylum-seeking children

According to the Convention on the rights of the child, “*the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time*”<sup>129</sup>. The UNHCR published guidelines on the specific situation of unaccompanied children seeking asylum stating that “*children seeking asylum should not be kept in detention. This is particularly important in the case of unaccompanied children*”<sup>130</sup>. In this context, the only fact to be unaccompanied minors who seek asylum should not lead to detention.

Concerning this issue in the EU countries, it is possible to distinguish various situations. Some countries always prohibit detention of unaccompanied children, whether they are asylum seekers or not. Others prohibit their detention, only when they have submitted their asylum application. In other countries, detention of unaccompanied minors is allowed, in any situation or in exceptional cases. We can also add that in various countries, unaccompanied children can be detained in practice when there is a doubt on their age. This means that in theory in these countries detention of unaccompanied minors is prohibited, but in practice some of them are placed in detention because they are considered over 18. Prohibition is implemented as long as the person is identified as a minor.

It is interesting to note that the issue of detention is sometimes addressed in a different way whether the minor is with family, unaccompanied, and/or asylum seeker<sup>131</sup>.

A first list of **countries, prohibiting detention of all unaccompanied children on the territory**<sup>132</sup> can be drawn up: **Belgium, Cyprus, Denmark, France, Hungary, Ireland, Italy, Lithuania, Portugal, Romania, Slovakia, Spain, Sweden and the United Kingdom.**

In **France**, detention of minors on the territory is actually prohibited, but unaccompanied minors can be detained at the border (in the so-called “zone d’attente”). Detention in this waiting area is the only exception to the absolute prohibition of unaccompanied minors’ detention.

In **Cyprus** and **Hungary**, detention of unaccompanied minors is prohibited by Law<sup>133</sup>. Nevertheless, some isolated instances of detained unaccompanied minors have been reported, which are mostly owed to a wrongful age determination. In **Cyprus**, we may also add that adult asylum seekers whose application is refused at second instance are automatically detained. In practice, asylum seeking minors will inevitably face this reality, since by the time their application is examined they will be adults and will lose the freedom from detention they enjoyed as minors.

<sup>129</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3. Art. 37, available at: <http://www2.ohchr.org/english/law/crc.htm>

<sup>130</sup> UN High Commissioner for Refugees, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, p.2, *op.cit.* (Note 38).

<sup>131</sup> For a complete comparison on this issue, see ECRE, SAVE THE CHILDREN, *Comparative study in the field of return of minors*, December 2011 - [http://ec.europa.eu/home-affairs/doc\\_centre/immigration/docs/studies/Return\\_of\\_children-final.pdf](http://ec.europa.eu/home-affairs/doc_centre/immigration/docs/studies/Return_of_children-final.pdf) [accessed 10 July 2012].

<sup>132</sup> About detention at the border, see *infra* part 8.4. “detention”.

<sup>133</sup> The Refugee Law (Art.7(4)(c)) contains an absolute prohibition of the detention of minor applicants.



In **Portugal**, minors cannot be subject to a coercive process of removal from Portuguese territory for having violated immigration entry requirements. In fact, such minors cannot be detained<sup>134</sup> for an irregular entry or stay in the country. In this context, the law provides for a special regime which allows the regularization of the situation of such minors in the country.

**Luxembourg** allows detention of unaccompanied asylum seeking children on the territory, but, in the last 7 years, there was only one case of detention of a young boy who stated to be minor but the authorities had doubts about his age. In July 2011, a new detention centre, close to the airport, was opened ("Findel"). It remains to be seen if this will have any impact on the current practice not to detain unaccompanied minors.

A second list of **countries, prohibiting detention of unaccompanied asylum-seeking children** is composed of **Bulgaria** and **Poland**.

In **Bulgaria**, in theory, asylum seeking unaccompanied minors should not be detained, but the deadline to submit an asylum application can be long and during the waiting period, they are considered undocumented migrants and therefore can be detained. The Law on Foreign Nationals states that irregular immigrant children could be detained for up to three months. In practice, after the elapse of this time period, a new detention order might be issued for another three-month period. Once asylum seeking children are registered by the State Agency for Refugees, they are considered asylum seekers and are transferred to an open reception centre. In **Poland** also, unaccompanied minors can be detained before they apply for asylum.

In **Austria, the Czech Republic, Estonia, Finland, Germany, Greece, Latvia, Malta, the Netherlands** and **Slovenia, unaccompanied children can be detained, whether they are asylum seekers or not.** In **Malta**, the law stands that vulnerable persons, by virtue of their age, should not be detained. In practice, all persons are immediately detained upon irregular arrival, including children. Upon entry into Malta, the immigration authorities notify AWAS of the presence of the minor in the detention centre where the minor will remain till a decision on the age assessment and the transfer to the residential homes for minors is taken. Therefore, the minor may be kept in detention for several months. In **Finland**, currently, the detention of unaccompanied minors is possible. Before a child is being placed in detention, a representative of the social welfare authorities should be heard. In practice, a representative of the Police or Border Guard who proposes that a minor be placed in detention, contacts the social welfare services to inform them of this fact and requests their opinion in the matter. This opinion is entered in the detention decision and the representative of the minor must be informed of the grounds for detention. According to the present Government Programme, the detention of unaccompanied minors will be prohibited. The Ministry of Interior has appointed a working group and the work has already begun. Some law changes are expected in late 2012.

In the **Netherlands**, unaccompanied minors can also be detained. However, strong restrictions have been imposed to this detention. The "Kamerbrief" of the Ministry for Immigration and Asylum, published on March 2011, foresees various cases in which minors can be detained: if an unaccompanied minor is suspected or convicted by a criminal offence, if the return of the minor can

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<sup>134</sup> Without prejudice to the criminal responsibility of minors, imputable from the age of 16 onwards.

be organized within 14 days or if the minor has left the reception centre or has ignored restrictive measures concerning his place of residence.

In **the Czech Republic**, unaccompanied minors of the age of 15 and more can be detained up to three months. The police has in general the right to detain an alien older than 15 years of age to whom the notification of the initiation of the administrative expulsion proceedings has been delivered, if there is a risk that the alien might endanger state security, significantly disturb public order, or obstruct or hinder the execution of a decision on administrative expulsion<sup>135</sup>. The only detention centre in the Czech Republic in which unaccompanied minors can be placed is located in *Bela Jezova*.

In **Austria**, the law enables the aliens' Police to detain asylum-seeking minors to assure the detention procedure. In **Estonia**, the law permits detention of unaccompanied asylum-seeking children in the initial reception centre for the time of medical examination.

In **Germany**, national law allows detention of children in exceptional cases and under consideration of the best interest of the child. Federal states are responsible for the execution of detention and some states do not apply the detention of minors.

In **Slovenia**, unaccompanied minors can be detained, if they do not ask for asylum. The period of detention could be up to 1 year but there were no cases reported where the minor was detained for the maximum duration. If an unaccompanied minor asks for asylum, he/she could be detained up to 4 months (3+1), the same as adults. However, the International Protection Act stipulates that unaccompanied asylum seeking children cannot be detained in the Centre for foreigners, but their freedom of movement can only be restricted to the premises of the Asylum home. In practice, this is not applied. The reasons for detention of unaccompanied asylum seeking minors are the same as for adults (if they do not have identity documents, in case of the suspicion of the abuse of the asylum procedure, in case of existence of the compelling reasons for endangering the lives or property of others).<sup>136</sup>

When unaccompanied minors are detained, in general they are **separated from adults**. It is the case in **Austria, Bulgaria, the Czech Republic, Estonia, Finland, Latvia, Netherlands** and **Slovenia**. In **Bulgaria**, unaccompanied minors are placed in a separate big hall together within the detention centre, with other children and families where privacy is an issue. In **Greece**, unaccompanied minors should be detained for only the necessary time till their safe referral to adequate centres for accommodation of minors but there is no provision for separate detention.

In **Bulgaria**, the detention period is normally 3 months maximum, but in practice another period of 3 months can be added. In **the Czech Republic**, the detention period is 3 months maximum. In **Germany**, the detention could be up to 18 months. In practice, there are few cases. In **Greece**, detention may last from a few days up to 90 days. In **Poland**, the maximum length of detention is one year when the child is an irregular migrant not in asylum procedure, no matter if a child is unaccompanied or with family members.

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<sup>135</sup> Act No. 326/1999 Coll., on the Residence of Aliens in the Territory of the Czech Republic, Section 124, available at: [http://ec.europa.eu/ewsi/UDRW/images/items/docl\\_1339\\_966375972.pdf](http://ec.europa.eu/ewsi/UDRW/images/items/docl_1339_966375972.pdf) [accessed 10 July 2012].

<sup>136</sup> *Law on International Protection* [Slovenia], 4 January 2008, Art.51 (1), available at: <http://www.unhcr.org/refworld/docid/47f1fdfc2.html> [accessed 15 June 2012].

In some countries allowing detention of unaccompanied minors, **conditions of detention** are quite bad. In **Austria** first, adolescents in detention have hardly any legal support to fight against their deportation. The only protection that minors get is that the aliens' police is obliged to inform immediately the respective youth welfare office about the detention of the minor. The conditions of detention are also criticized because they are inappropriate regarding the international standards. Juveniles are locked up in a cell alone or they are together with other juveniles but cannot communicate with each other as they come from different countries. In **Estonia**, the detainees are imposed severe restrictions on their freedom of movement. For example, foreign nationals are placed in isolation if they do not respect the centre's rules and visits are limited to one hour and supervised by a member of the centre's staff. In **Germany**, few unaccompanied minors are placed in detention. The conditions of detention vary between the different federal States. There are no possibilities for education in the common deportation prisons. In **Malta**, the detention conditions are of an extremely low standard. They have repeatedly been criticised by various national and regional agencies, including the Council of Europe's Committee for the Prevention of Torture, the Council of Europe's Human Rights Commissioner, UNHCR and several NGOs<sup>137</sup>. Concerns include the arbitrariness of the detention policy, overcrowding, unhygienic conditions, lack of sufficient fresh air, lack of access to outside for leisure and fresh air (couple of hours per day), insufficient provision of clothing, bedding and sanitary materials (shampoo, tooth-paste, soap, etc.), lack of possibility to engage in any meaningful activities.

As we have seen above, the detention of unaccompanied children seeking asylum is not prohibited in all the 27 EU countries. The Jurisprudence of the European Court of Human Rights has yet emphasized the extreme vulnerability of these children in the context of detention<sup>138</sup>. It should be noted that the Court not only found the detention of these children in violation of Article 5 of the European Convention on Human Rights (i.e. the right to liberty and security of person) but also that it amounted to a violation of Article 3 of the Convention (i.e. freedom from torture and inhuman or degrading treatment). We hope that these positive developments will lead to the end of such practices in the coming years.

#### RECOMMENDATION 5 – Support and accommodation

- ▶ Unaccompanied minors should benefit from free legal support at all stages of the procedure to prepare the application.
- ▶ Irrespective of their legal status, unaccompanied minors should be entitled to the necessary protection and basic care, medical and psychological.
- ▶ Unaccompanied asylum seeking children should be placed in accommodation centre for children. Staff working with these children should receive appropriate training concerning their specific needs as asylum seekers and children.
- ▶ Unaccompanied minors should never be detained, whether they are asylum seekers or not.

<sup>137</sup> See for example the Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Malta from 23 to 25 March 2011, available at : <https://wcd.coe.int/ViewDoc.jsp?id=1797917> [accessed 30 July 2012].

<sup>138</sup> ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Application No. 13178/03, Judgment of 12 October 2006, see, inter alia, paras. 55, 101-104 and ECtHR, *Mushkhadzhiyeva and others v. Belgium*, Application No. 41442/07, Judgment of 19 January 2010, para. 63



## 6. Main interview

After the preliminary interview that takes place in some country in order to clarify the identity, family links or migration routes of the minor, national procedures provide a main interview that aims to demonstrate the existence of well-founded fears of persecution.

This main interview is generally the main step of asylum procedure. It is a key moment where the applicant can explain his situation with details. For asylum officers, this step is a good way to see the credibility of the story by asking precise questions about elements contained in the written application.

In 1985, the UNHCR published guidelines on the interview issue<sup>139</sup>. The module “*Interviewing Applicants for Refugee Status*”, of 1995, contains also a chapter on unaccompanied minors<sup>140</sup>. As provided in a 1997 Council of the European Union resolution, “*when an application for asylum from an unaccompanied minor is examined, allowance should be made, in addition to objective facts and circumstances, for a minor's age, maturity and mental development, and for the fact that he/she may have limited knowledge of conditions in the country of origin*”<sup>141</sup>.

Although this step is crucial, some countries provide in their procedures or practice a possibility to process minors' applications without interview. When it takes place, the matter of an interview adapted to the child's situation is asked. In this context, the training and knowledge of asylum officers is one of the main issues.

### 6.1. Holding of an interview

The Convention on the Rights of the Child states that “*the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child*”<sup>142</sup>.

The interview is often considered as a procedural guarantee for the child. That is why it is not possible to process an application without it in many EU countries. However, exceptions provided by national law may be issued when authorities considered that a decision can be issued with the only written application. In other cases, exceptions may have no link with the content of the application but they are founded on personal elements (age, maturity, trauma...).

#### 6.1.1. Countries without exceptions provided by law or practice

In some EU countries as **Austria, Bulgaria, the Czech Republic, Denmark, Finland, Hungary, Latvia, Lithuania, Luxembourg, Poland, Slovakia, Spain** and **Sweden**, it is not possible to process an application without interview, except in the cases where the applicant's file is closed for various reasons before the date of the interview (applicant who disappear shortly after the initiation of the

<sup>139</sup> UN High Commissioner for Refugees, *Guidelines for Interviewing Unaccompanied Minors and Preparing Social Histories*, October 1985, available at: <http://www.unhcr.org/refworld/docid/47fdfae5d.html> [accessed 18 June 2012].

<sup>140</sup> UNHCR, module “Interviewing Applicants for Refugee Status” (RLD4), 1995, Chapter 5 “interviewing children”, available at: <http://www.unhcr.org/publ/PUBL/3ae6bd670.pdf> [accessed 30 July 2012].

<sup>141</sup> Council Resolution 97/C 221/03, Art. 4, *op.cit.* (Note 95).

<sup>142</sup> *Convention on the Rights of the Child*, Art. 12-2, *op.cit.* (Note 129).

asylum procedure, changing of address without informing the migration authorities...). In these countries, all children are interviewed even the youngest.

In **Denmark**, there are several interviews during the process. At the beginning there are short interviews depending on if the asylum seeking child has any ID or papers and how legal they are. Then there is a main interview that takes several hours. Finally, next interviews are taken depending on the asylum process stage.

In **Hungary**, if the unaccompanied minor is over 14 the hearing can only be adjourned to a later date (in case the child suffers from acute trauma or is otherwise unable to participate in the interview) but is still obligatory. In **Lithuania**, there is a possibility to postpone an interview if the child is not psychologically ready to be interviewed.

In **Spain**, the asylum application procedure always begins with a personal interview, even for children<sup>143</sup>. The law foresees further interviews whenever necessary, although in practice, very few are carried out<sup>144</sup>.

### 6.1.2. Countries with exceptions provided by law or practice

In other EU countries as **Belgium, Cyprus, Estonia, France, Germany, Greece, Ireland, Italy, Malta, the Netherlands, Portugal, Romania, Slovenia** and **the United Kingdom**, it is possible to process an application without interview.

**This situation is generally in favour of the child, in order to avoid interview when it seems inappropriate.**

In **Belgium**, the interview of a child severely traumatized or disabled could be cancelled or postponed. The Commission indicates that generally no negative decisions are taken when interview is not possible.

In **Estonia**, the opportunity to be interviewed should only be given to a minor over 10 years old or a younger minor if his/her level of development allows for it. In **the Netherlands**, unaccompanied minors under 6 are not interviewed. In **Slovenia**, it is possible to process applications without a personal interview only if the child is under 15. In case of accelerated procedure, further personal interviews can be omitted under special circumstances for all asylum seekers, including minors. Omitting personal interviews in accelerated procedures is definitely not favourable to a child. Personal interview can be omitted also if the Asylum authority can grant protection already on the basis of evidence and further personal interview is not required. In this case the omission of the interview could be considered as beneficial.

In **the United Kingdom**, only children aged 12 or over have to be interviewed about the substantive matters of their asylum claim<sup>145</sup>. The UKBA states that it is “not recommended” to assess a claim without a main interview being conducted<sup>146</sup>. Children under the age of 12 are not interviewed and

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<sup>143</sup> Law 12/2009, Art. 17, *op.cit.* (Note 125).

<sup>144</sup> *Ibid*, Art. 24.

<sup>145</sup> Immigration Rules, §352 : “any child over the age of 12 who has claimed asylum in his own right shall be interviewed about the substance of his claim unless the child is unfit or unable to be interviewed”, available at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part11/> [accessed 10 July 2012]

<sup>146</sup> Interview of UKBA case owner, 29/11/2011.

their case is processed from the Substantive Evidence Form (and possibly other written evidence). An UNHCR audit highlighted a lack of formal procedure for assessing whether the substantive interview may or may not be in the child's best interests<sup>147</sup>. According to a UKBA representative, no outright refusal would occur without a substantive interview. On the other hand, it is deemed "hard to grant asylum" only relying on the Statement of Evidence Form<sup>148</sup>. As a consequence, the majority of non-interviewed minors (usually minors under 12) are granted discretionary leave.

In **France**, the law provides possibilities to proceed an application without interview: the office intends to issue a positive decision relying on the elements in its possession; the asylum seeker has the nationality of a country covered by the article 1C5 of the Geneva Convention; written elements are manifestly unfounded or the interview cannot be conducted for medical reasons<sup>149</sup>. But in practice, all unaccompanied minors are interviewed. The only known cases without interview are children in resettlement programs (positive decisions were issued). The situation is quite similar in **Malta**, where the Commissioner could make a positive recommendation on the basis of evidence available, could omit interview if he has the essential information regarding the application or, on the basis of an examination of the information provided, he considers the application to be unfounded. In practice, personal interviews are always held. In **Portugal**, the law foresees that the interview might not take place only when there are conditions to decide positively on the international protection claim on the basis of the declarations and documents provided, or when the asylum seeker provided by other means the information on his/her situation; when the claimant is in the absolute incapacity<sup>150</sup>. In **Italy**, all asylum seekers, minors included, have the obligation to be present at the hearing before the Territorial Commissions. However, these commissions may decide to reconsider the cases after having taken a negative decision without hearing due to lack of communication between the asylum seeker and police authorities (*casi di irreperibilità*). These Commissions could decide not to interview those persons that are highly traumatized/sick on the basis of medical/psychological evidence.

In **Ireland**, this is not currently possible to proceed an application without interview. However, the law, which was not into force at the time of the report, provides for exemptions of substantive interview, when the minor is "*of such an age and degree of maturity that an interview would not usefully advance the investigation*"<sup>151</sup>. If an interview is not conducted, this should not "*adversely affect the final determination of the application*"<sup>152</sup>. Nevertheless, the Irish Refugee Council is of opinion that the child's views and wishes should be taken into account when deciding whether an interview should be conducted or not<sup>153</sup>.

**In some countries the possibility to process an application without interview could affect his/her right to asylum.** In **Cyprus**, all asylum seekers including children must be interviewed but no

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<sup>147</sup> UNHCR, *Quality initiative project, Key observations and recommendations, 6<sup>th</sup> report April 2008 – March 2009*, April 2009, p 6, available at: [http://www.unhcr.org.uk/fileadmin/user\\_upload/pdf/6\\_QI\\_Key\\_Observations\\_Recommendations6.pdf](http://www.unhcr.org.uk/fileadmin/user_upload/pdf/6_QI_Key_Observations_Recommendations6.pdf), [accessed 18 June 2012].

<sup>148</sup> Interview of UKBA case owner, 29/11/2011.

<sup>149</sup> Code de l'entrée et du séjour des étrangers et du droit d'asile - CESEDA, Art. L 723-3, available at: [http://www.legifrance.gouv.fr/affichCode.do?sessionid=1E5F7730CBF2F35FDCB88352103C876F.tpdjo13v\\_1?idSectionTA=LEGISCTA000006147799&cidTexte=LEGITEXT000006070158&dateTexte=20120726](http://www.legifrance.gouv.fr/affichCode.do?sessionid=1E5F7730CBF2F35FDCB88352103C876F.tpdjo13v_1?idSectionTA=LEGISCTA000006147799&cidTexte=LEGITEXT000006070158&dateTexte=20120726)

<sup>150</sup> Act 27/2008, Art. 16, *op.cit.* (Note 43).

<sup>151</sup> Immigration, Residence and Protection Bill 2010, Section 83, (10) (b), available at : <http://www.oireachtas.ie/documents/bills28/bills/2010/3810/b3810d.pdf> [accessed 10 July 2012].

<sup>152</sup> *Ibid.*, Section 83, (11) (b).

<sup>153</sup> European Migration Network, Ireland, August 2009, p 52, available at: <http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?directoryID=115> [accessed 10 July 2012].

interviews are carried out in practice before the age of 18 because no legal representative could be appointed, as required under the Refugee Law. Moreover, there have been several complaints of arbitrary closure of files of asylum applications because although the applicants concerned had informed the district migration offices of their change of address, the migration authorities failed to notify the Asylum Service. Other irregular practices of the police and the immigration authorities have in the recent past brought about the termination of the asylum procedure without an interview. In particular, in the recent past, the Ombudswoman repeatedly criticised what appeared to be the practice of the immigration police at the time to force detained asylum seekers to withdraw their asylum application in order to deport them.

In **Germany**, the law states that an asylum-seeker who must not live in a reception centre and who do not attend the interview will get the possibility to comment on their situation in written form<sup>154</sup>. But this is quite unusual. It is unclear what the consequences would be.

In **Greece**, the personal interview may be omitted where it is not reasonably practicable, in particular where the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his/her control<sup>155</sup>. Such incapacity is certified by a relevant medical or psychological certificate from a public hospital. But apart from the provision of the law the practise is that the interview lasts a few minutes so the child often has not the opportunity to give fully explanation about his/her situation.

In **Romania**, interviews with unaccompanied minor asylum seekers should be carried out whenever possible, according to their psychological state of development. His/her intellectual state of development and degree of maturity should be considered<sup>156</sup>. Moreover, the Immigration office can make a favorable decision on the basis of the evidence that is on file. In practice, the application for asylum without a personal interview has negative consequences on the minor asylum claim.

## **6.2. Training and knowledge of asylum officers about child's applications**

### **6.2.1. Training of asylum officers**

Asylum officers usually receive training on different issues related to asylum such as content of eligibility criteria, legal and country conditions research, or cross-cultural communication during the interview. However, processing an application from an unaccompanied minor requires training on specific issues related to this vulnerable population.

In its 1997 guidelines, UNHCR indicated that *"it is desirable that all interviews with unaccompanied children (including the interview for the determination of refugee status) should be carried out by professionally qualified and specially trained persons with appropriate knowledge of the psychological, emotional and physical development and behavior of children"*<sup>157</sup>. This same year, the

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<sup>154</sup> AsylVfG, §25.

<sup>155</sup> Presidential Decree 114/2010, Art 10 § 2, *op.cit.* (Note 52).

<sup>156</sup> Law no. 122/2006, Art. 47. *op.cit.* (Note 48).

<sup>157</sup> UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, *op.cit.* (Note 38), Chapter 5.

European Union stated that *“the interview should be conducted by officers who have the necessary experience or training”*<sup>158</sup>.

The 2005 directive on asylum procedures requires that if an unaccompanied minor has a personal interview on his/her application for asylum (...), that interview is conducted by a person who has the necessary knowledge of the special needs of minors<sup>159</sup>. Finally, the Council of Europe recommended in 2011 to all Member States that *“All interviews with an unaccompanied child concerning his or her personal details and background should be conducted individually by specialized and well-trained staff”*<sup>160</sup>.

Despite this numerous norms and recommendations, training and knowledge of asylum officers dealing with unaccompanied children is not generalized in EU countries.

### 6.2.1.1. Training delivered in practice

In **Austria**, there were some training measures in dealing with minor refugees in asylum procedures for the employees of the Federal Office for Migration in the recent past. These advanced training were executed in cooperation with the UNHCR. For the judges of the Asylum Court of Law no training in dealing with youngsters is foremost provided.

In **Belgium**, asylum officers received a specific training in the framework of the module *“interviewing children”* of the European Asylum Curriculum. At the time of the research, 42 officers received this training.

In **Cyprus**, officers receive training but as they have never interviewed children, they have no hands-on experience. In **the Czech Republic**, the case managers dealing with the cases of unaccompanied minors receive training. However, the final decision comes from the director of the MOI’s asylum department and is rather based on asylum policy grounds than the prudent interpretation of the Geneva Convention grounds.

In **Estonia**, Government officials were trained within the framework of the VARRE project (carried out by International Organization for Migration – IOM – Tallinn) in 2010. Furthermore, additional training sessions on issues regarding vulnerable groups and in-depth training sessions have been planned within Police and border guards’ board for 2012.

In **the United Kingdom**, the officer interviewing the child *“shall have specialist training in the interviewing of children and have particular regard to the possibility that a child will feel inhibited or alarmed”*<sup>161</sup>. The law also stands that *“the decision on the application for asylum shall be taken by a person who is trained to deal with asylum claims from children”*<sup>162</sup>. In its Quality Initiative audit, UNHCR observed *“an encouraging emphasis on wider child protection concerns”*. However, it was noted that the training focused on procedural matters rather than on decision-making<sup>163</sup>. UNHCR

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<sup>158</sup> Council Resolution 97/C 221/03, Art. 4, *op.cit.* (Note 95)

<sup>159</sup> Council directive 2005/85/EC, *op.cit.* (Note 17), Art. 17 – 4a.

<sup>160</sup> Council of Europe’s Parliamentary Assembly, Resolution 1810 (2011), *op.cit.* (Note 40), §5.7.

<sup>161</sup> Immigration rules, § 352, *op.cit.* (Note 145).

<sup>162</sup> *Ibid.*, § 352 ZB.

<sup>163</sup> UNHCR, *Quality initiative project, Key observations and recommendations*, *op.cit.* (Note 147).

suggests that it should include more explanations on taking into account the age and maturity of the child in assessing the credibility of the claim<sup>164</sup>.



In **Ireland**, caseworkers are trained on *interviewing children* by UNHCR office in Dublin. UNHCR provides participants with key principles on interviewing children, and covering the whole protection assessment process (credibility assessment, burden of the proof, child-specific forms of persecution...). The training includes case studies, and the contribution of a child psychologist on interviewing techniques. This training session is not provided on a regular basis, but whenever the need for it arises. To date, according to asylum office, all caseworkers received training on this issue<sup>165</sup>.

In **Malta**, the Office of the Refugee Commissioners assigns the most experienced case workers to lead interviews with unaccompanied minor. According to Refugee Commissioner all members attend twice a year European Asylum Curriculum training and specialized training courses which include also modules on the interview' techniques of minors. In **Hungary**, only a few of the case workers deal with unaccompanied minors and some of them have significant expertise in this field.

In **the Netherlands**, asylum applications of unaccompanied minors are handled by a department that is specialized in such matters: the 'Unit for National UMA tasks' (*Unit Landelijke AMA-taken*). This unit is mainly concerned with interviewing unaccompanied minors and deciding on their asylum applications, with special attention to applications from aliens below the age of 12 years. There are some critical remarks about this topic focusing on the question that it is unclear what the trainings are about.

In **Poland**, the staff interviewing unaccompanied children must go through a specific training to do it.

In **Portugal**, the training of asylum officers includes a chapter on child interviewing techniques. In **Sweden**, there is a manual for officers interviewing children and in **Finland**, good guidelines developed by Immigration Service should be used<sup>166</sup>.

### 6.2.1.2. Training not fully implemented

In **France**, the asylum office states that officers are trained by their supervisors or by other officers but the content of this training is not specified<sup>167</sup>. Moreover, annual training plans can contain training about unaccompanied minor but participation depends on the will of each officer. In practice, applications are processed by trained officer in some geographical department of the Office (e.g. Asia) but not in other where the number of application is too high to assign all unaccompanied minor application to trained officers (e.g. Africa).

<sup>164</sup> UNHCR also recommends: "This training and guidance should include a more thorough explanation in how to best assess both credibility and refugee law concepts in a child sensitive manner, should put more emphasis on the shared burden between Case Owner and asylum applicant to ascertain and evaluate the evidence, should encourage Case Owners to plan focused interviews using subjective and objective evidence, should teach a Case Owner to appropriately and sensitively question on key elements of the claim, and should teach and guide Case Owners in how to incorporate trafficking concerns into assessment of the claim".

<sup>165</sup> Interview of ORAC representatives, 3/11/2011.

<sup>166</sup> Finland: Directorate of Immigration, *Guidelines for Interviewing (Separated) Minors*, March 2002, available at: <http://www.unhcr.org/refworld/docid/430ae8d72.html> [accessed 14 June 2012]

<sup>167</sup> Written interview of Ofpra agents, 25/10/2011.

In **Germany**, the Federal Office has built up a pool of *Sonderbeauftragte* (specialized adjudicators). In every branch one or more members of staff should receive special trainings to interview children. Methods are explained but not always used in practice. There might be some interviewers who are using special means of communication with children on their own impetus, but it is not part of the official trainings. Interviewers are recruited by administrative staff only.

In **Greece**, the law provides that the persons who conduct the interview must be sufficiently competent to take into account the personal or general circumstances surrounding the application, including the applicant's cultural origins or vulnerability<sup>168</sup>. However in practice, several police officers are not properly trained for that.

In **Latvia**, there have been several trainings organized regarding the work with unaccompanied children seeking asylum in Latvia and abroad, but as there are very few unaccompanied children seeking asylum in Latvia, not all units have trained officers.

In **Lithuania**, topics related to work with groups with special needs on the borders, including unaccompanied children, are incorporated into UNHCR, the Lithuanian Red Cross and State Border Guard Service jointly organized trainings, delivered as a part of the Tripartite Memorandum of Understanding (MoU) on Border Monitoring signed in Lithuania in 2010. There are no trainings on unaccompanied children seeking asylum available for border guards outside the MoU. Trainings are usually needs based and mainly cover practitioners from Border Crossing Points responsible for initial contacts with the asylum seekers.

In **Slovakia** and **Luxembourg**<sup>169</sup>, the decision-maker deciding on the asylum application of unaccompanied minor should also have the adequate knowledge on the particular necessities of the unaccompanied minor but this is not always the case in practice. In **Spain**, a Guide recommends that the interview should be carried out by people with specific training or with sufficient experience in dealing with children<sup>170</sup>. The Asylum Office recommends that the officers should be trained in interviewing children, although in practice, this does not always occur.

In **Italy**, no legal provisions foresee the necessity of expertise and training for members of the Commission who deal with minors as well as for police authorities verbalising the asylum requests. The tendency is to let the most experienced member of the Commission or the member who has a better approach to deal with vulnerable persons to interview the unaccompanied minors. In **Bulgaria**, training of asylum is not required by law and no information is available on practice.

In **Romania**, the interview officers are not trained for dealing with vulnerable cases. The training is done by themselves and occasionally by NGOs through training seminars.

In **Slovenia**, Asylum officers are generally not trained in interviewing children. They do not have any special knowledge concerning the treatment of children. However, according to the International Protection Act (amended in February 2011), in proceedings with unaccompanied minors, an official of the Asylum authority conducting the procedure has to have additional capacity to deal with

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<sup>168</sup> Presidential Decree 114/2010, Art.10. 9. a, *op. cit.* (Note 52)

<sup>169</sup> *Loi du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection* [Luxembourg], 5 May 2006, Art. 12 (2), available at: <http://www.unhcr.org/refworld/docid/48ca6fa42.html> [accessed 14 June 2012].

<sup>170</sup> "Guía de Buena Prácticas para la Formalización de Solicitudes de Asilo", Dirección general de Política Interior, Oficina de Asilo y Refugio. Available at: [http://www.icam.es/docs/ficheros/200510210005\\_6\\_16.pdf](http://www.icam.es/docs/ficheros/200510210005_6_16.pdf) [accessed 18 June 2012].

minors. The Ministry of Interior is responsible to organize and conduct regular training for officers who deal with unaccompanied minors. There was one training performed by the UNHCR, which addressed this issue as well, but it was not the main theme of the training.

### 6.2.2. Knowledge of the situation of children in the country of origin

The European Union provides possibilities to collect information of the situation in the country of origin. In fact, European Country of Origin Information (ECOI) network is a tool that assists case officers in answering questions about the political, social, cultural, economic, humanitarian and human rights situation in the applicant's country<sup>171</sup>. In addition, resources are generally available in a specific service within national asylum institutions. Since the specific situation of children is not always included in these data bases, few countries implemented means to collect this information.

In **Belgium**, a specific report on an arising issue concerning children (e.g. witches children) may be issued by the centre of documentation (*'Centre de documentation des instances d'asile'*). This centre can also provide information of the situation of children in the country of origin when processing an individual case.



In **France**, data bases on the situation in the country of origin usually contain a chapter regarding law and practices that could affect children. The centre of documentation (*'Division de l'Information, de la Documentation et des Recherches'*) can also provide information on individual cases. Moreover, specific research are conducted when necessary (e.g. Female genital mutilation in Mali, 2008).

In the **United Kingdom**, the country of origin information (COI) reports and operational guidance notice (OGN) of the UKBA should include specific sections on children. However, according to solicitors, this specific information is often not used<sup>172</sup>. This is corroborated by the quality audit of the UNHCR, concerned that "in a quarter of the decisions assessed, the country of origin information sourced by Case Owners was not child specific. Whilst acknowledging the occasional difficulties in accessing child specific COI, UNHCR observes instances where Case Owners source objective information not relevant to the particular circumstances of the child's case or put excessive weight on insufficient or incomplete COI<sup>173</sup>".

## 6.3. Condition of the interview

Unaccompanied children are not able to express their situation in the same conditions as adults. Due to their particular vulnerability, they need specific conditions of interview. It may be material

<sup>171</sup> See <http://www.ecoi.net/> [accessed 10 July 2012]

<sup>172</sup> Interviews of legal representatives, 28/11/2011 and 29/11/2011.

<sup>173</sup> UNHCR, *Quality initiative project, key observations and recommendations*, p 4, *op.cit.* (Note 147).



arrangement such as specific rooms but the most important is to provide specific procedures and techniques of interview in accordance with the age and maturity of the child.

According to the Committee on the Rights of the Child, the interviews should be conducted by representatives of the refugee determination authority who will take into account the special situation of unaccompanied children in order to carry out the refugee status assessment and apply an understanding of the history, culture and background of the child<sup>174</sup>. In a module on “interviewing applicants for refugee status”, UNCHR states that “*interviewing techniques should be adopted according to the maturity and understanding of the child*”<sup>175</sup>.

In all the EU countries, the child who asks for asylum may benefit from an interpreter. Apart from this requirement available for all asylum seekers, specific conditions of interview for minors are not implemented in all EU countries. Law and practices differ from country to country.

### 6.3.1. Specific conditions implemented in practice



In **Belgium**, the asylum officer should ensure at the beginning of the interview that the minor understands the interpreter. If there is a difficulty on that point, the interview is cancelled or postponed. Unaccompanied minors are interviewed in special rooms. The Commission on asylum has adopted a specific technique called “dialogical communication method”<sup>176</sup>. This technique is designed to be specifically tailored to children's memory. It distinguishes three levels to be approached separately, not simultaneously, during the interview: the factual level (what happened? with whom? when? how?), the contextual level (the environment of the minor) and the emotional level (feeling during and after the events described). Another specificity of the interview technique is to first let the child talk freely about his experiences on a given subject, before asking specific questions. More generally, the asylum commission has a coordinator for unaccompanied minors whose role is to oversee the implementation of the asylum procedures for unaccompanied minors. The legal guardian, the lawyer and a trusted person are authorized to accompany the child. At the end of the interview, they have the possibility to add elements on the case.

In **the Czech Republic**, interviews are often carried out directly in the Home for Foreign Children where the conditions are tailored for unaccompanied minors. However, the interview could also in exceptional cases take place in the detention centre or in the closed reception centre where conditions are not child-specific. The legal guardian is authorized to accompany the child and he/she ensures that the interview is conducted in a fair manner and the interpreter does his/her job correctly. In theory, the child with the consent of the guardian may give his power of attorney to any third person to accompany him/her at the interview but it does not happen in practice.

<sup>174</sup> UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, Chapter 6, *op.cit.* (Note 39).

<sup>175</sup> UNHCR, module “Interviewing Applicants for Refugee Status” (RLD4), 1995, Chapter 5.

<sup>176</sup> CGRA, *Rapport d'activité 2010*, [http://www.cgvs.be/fr/binaries/2010\\_Rapport-Annuel\\_FR\\_tcm126-130185.pdf](http://www.cgvs.be/fr/binaries/2010_Rapport-Annuel_FR_tcm126-130185.pdf) [accessed 11 July 2012]

In **Finland**, children are interviewed in the same rooms as adults. It is up to the persons interviewing children to make the atmosphere child friendlier. Interviews should be conducted according to the guidelines developed by Immigration Service.<sup>177</sup> The law requires that legal representative has to attend the interview, legal aid personnel and child expert, such as psychologist, psychiatrist, or therapist attend an interview in difficult cases, if necessary. In some cases child's personal caregiver from the reception centre or child's relative residing in the country might participate as well. The maximum period of the interview without a break should be a half-hour interview, even less with a small child. The child has to be given a brief recess at appropriate intervals, for example by offering a snack, focusing on a lighter matter, or by directing the attention away from the child for an instant. Young children need to be given the freedom to move about and to play a bit in between the discussion. In **Italy**, the hearing is conducted in a child-friendly manner, breaks are foreseen. Members of the Territorial Commissions should take into consideration the age, the maturity, family situation, specific forms of persecution in the countries of origin and the fact that minors can express their fears in a different manner than adults. The legal guardian must be present during the hearing before the Commission<sup>178</sup>. If the legal guardian is not present the Commission postpones the hearing. Generally are admitted a social workers and psychologists. A lawyer could also be present during the hearing.

In **Latvia** and **Lithuania**, interviews have to be conducted in a child friendly manner and environment but there are few elements on practice. Legal guardian and lawyer are authorized to accompany the child during the interview in these countries.

In **the Netherlands**, there are specific conditions, but only for children under 12. There is a "*Protocol Interviewing Unaccompanied Minor Asylum Seekers for children younger than twelve years old*", in force since 2001. This document could be summarized as follows<sup>179</sup>: Interviews should ideally not be longer than two hours and should include at least one break; the interview should be held in a quiet location; the mentor, guardian or foster parent should be nearby while the interview is being held and the unaccompanied minor should be aware of this; the interview space should be free of noises from outside; the interview space should be child friendly, but not childish, this can be accomplished with friendly colors, plants, posters on the wall, some toys, etc.; the interview space should be decorated like a living-or playroom; there should, for example, be paintings of children on the walls; registration of the interview should be done with a professional video camera with microphone; the camera should be visible, but not too much because the child should not be intimidated by it. The legal guardian or someone from the Dutch Refugee Council are present during the interview. All children have a lawyer, but they rarely attend the interview.

In **Sweden**, staff follows special manuals on how to interview a child. Legal guardian and lawyer accompany the child during the asylum interview. Sometimes there also might be another person present if the child wishes them to be – usually a relative – but this person is instructed not to speak during the interview, usually it is a guardian who plays more active role of supporting the child and his rights, while the lawyer is supporting the child in the asylum claim.

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<sup>177</sup> Guidelines for Interviewing (Separated) Minors, *op.cit.* (Note 166).

<sup>178</sup> Decreto Legislativo 28 gennaio 2008, Art. 26, *op.cit.* (Note 117).

<sup>179</sup> Enhancing Vulnerable Asylum Seekers Protection - EVASP 2010, p.27, available at: <http://www.evasp.eu/dutchReport-.pdf> [accessed 10 July 2012].

In **Poland**, interviews of the children take place in a child friendly environment, always with the legal representative, the psychologist and/or caretaker present as well.

In **Spain**, the asylum law states that the Administration should take the necessary measures to provide a distinguishing treatment according to the sex of the applicant or other circumstances, such as being an unaccompanied child<sup>180</sup>. A working paper, prepared jointly by the Asylum Office and ACNUR (Alto Comisionado de las Naciones Unidas para los Refugiados – UNHCR Spain) and the main NGOs specialized in asylum seeker assistance and aimed at all the actors involved in the process, specifies that in the case of unaccompanied children, the interview should be adapted to the child’s maturity<sup>181</sup>. The lawyer of the child is present during the interview. When circumstances so require, social workers, psychologists or representatives of the bodies or institutions responsible for the guardianship of the child can also attend the interview.

In **Romania**, interviews are generally conducted in practice in a non-threatening atmosphere, with breaks, in a child-friendly manner. However, all asylum officers are not trained<sup>182</sup>. Lawyer and legal guardian can attend the interview, possibly assisted by a professional of UNHCR or NGOs<sup>183</sup>.

### 6.3.2. Specific conditions not fully implemented in practice

In **Ireland**, child-friendly rooms are used for substantive interviews. One of them is designed for young children, with colourful carpets and posters, toys, books and round tables. A second room is designed for older children, with posters, books and less formal furniture than for adults. These rooms are meant to facilitate communication and make children more confident<sup>184</sup>. When a child is particularly vulnerable or worried about going to an unknown place for his or her interview, it is possible to arrange a familiarization visit of the building and interview room for the child, a few days before the interview. According to the asylum office, the structure of the interview is “less formal, more conversational<sup>185</sup>” than adults’. Yet, it seems that efforts are more focused on the interview environment, than on the questioning style and contents. The Irish Refugee Council indeed outlines that young people appeared quite traumatized by substantive interviews. The social worker/legal guardian is authorized to accompany the child to the substantive interview. His role is to ensure the basic needs of the child are met (breaks...) and to read over and sign the interview report. RLS solicitors are also authorized to attend the interview, but in practice they only attend interviews of particularly vulnerable children. Other adults, like Irish Refugee Council staff or a foster parent, may be allowed to attend the interview, but they need to give prior notice and their presence is at the discretion of ORAC.

In **France**, the asylum officers say that interviews are suitable for children, including a longer introduction and explanation of the procedure and a simpler formulation to make the child feel comfortable. However, persons accompanying children during interviews (legal guardian, lawyers or

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<sup>180</sup> Law 12/2009, Art. 17, *op.cit.* (Note 125).

<sup>181</sup> “Guía de Buena Prácticas para la Formalización de Solicitudes de Asilo”, *op.cit.* (Note 170).

<sup>182</sup> See *supra* Part 6.2.1.2. “Training not fully implemented”.

<sup>183</sup> Law no. 122/2006, Art.17, *op.cit.* (Note 48).

<sup>184</sup> Interview of ORAC representatives, 3/11/2011.

<sup>185</sup> Interview with ORAC, 3/11/2011.

social workers) consider that the adaptation is very low. In many cases, children are interviewed as adults<sup>186</sup>.

In **Estonia**, a directive prepared by the Police and Border Guard Board – PBGB – Citizenship and Migration Department requests that during the questioning of the unaccompanied child, his or her age and degree of maturity should be taken into account. The interview should not last more than four hours during one day. The unaccompanied child can be questioned by an official of the same gender. An unaccompanied child can be interviewed only in the presence of the child’s guardian or a lawyer. The role of the legal guardian is to ensure that child feels comfortable during the interview, fully understands questions and his/her rights are ensured. The lawyer can speak with the minor before and after the interview, but not during the interview, the only exception is, if there is a legal question to explain then the lawyer can intervene and help the child to understand the question properly. Due to the small number of unaccompanied minors’ application, there is a lack of practice and we do not know how this directive may be implemented.

In **the United Kingdom**, guidance requires the interview to take place in suitable rooms (for example, rooms with windows). It is also provided that if the child “appears tired or distressed, the interview will be suspended. According to the UKBA, children’s interviews are shorter than adults’: two hours instead of three to four hours. This is justified by the fact that the decision would rely on the Statement of Evidence Form, that children are told not to repeat the contents of their form<sup>187</sup>, and that case owners “do not need to check every fact of the claim, as for adults”<sup>188</sup>. Immigration Rules provide that “the child shall be allowed to express himself/herself in his/her own way and at his/her his own speed<sup>189</sup>”. According to advisers and legal representatives, this is not implemented in practice<sup>190</sup>. Substantive interviews of unaccompanied children are not really conducted in specific conditions. There are no specific interview rooms<sup>191</sup>, or interviewing techniques. In a 2008 audit conducted by the UNHCR, “mixed practice in the tone and style of questioning” of children was reported, as well as detrimental practices, such as denying children the possibility to express their views or not enforcing breaks where necessary<sup>192</sup>. “Responsible adults” are present during the interview. Lawyers may also accompany the child to the interview, but many of them do not, which might be detrimental to the child because no one would then be able to challenge the way the interview was conducted<sup>193</sup>.

In **Luxembourg**, the interviews should (by law) be conducted by specially trained agents, but in practice this is not always the case. Legal guardian (*ad hoc* administrator) and lawyer are authorized to be present during the interview.

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<sup>186</sup> The asylum office explains that special means of communication for children are not necessary appropriate because 95,1% of unaccompanied minor asylum seekers are older than 16.

<sup>187</sup> Which can be very confusing for children, because they are not sure which facts they should mention or not during the interview. This instruction not to repeat the contents of the SEF is also contradictory with the fact that case owners will expect some confirmations and corroboration of the written statement. Interviews of legal representatives, 28/11/2011 and 29/11/2011.

<sup>188</sup> Interview of UKBA case owner, 29/11/2011. This is a consequence of the “benefit of the doubt” principle.

<sup>189</sup> Immigration Rules, §352, *op.cit.* (Note 145).

<sup>190</sup> Interviews of legal representatives and adviser of the Children’s Panel, 28/11/2011 and 29/11/2011.

<sup>191</sup> Specific « child-friendly » rooms are used for screening interviews only. However, these child-friendly facilities are considered unsuitable by some professionals. The rooms are indeed designed for very young children, with “TV shows for 4-years-old” (legal representative, 28/11/2011) and this setting is deemed inadequate for adolescent asylum-seekers.

<sup>192</sup> UNHCR, *Quality initiative project, Key observations and recommendations*, p. 5, *op.cit.* (Note 147).

<sup>193</sup> Interview of a legal representative 28/11/2011.

According to the Asylum Act in **Slovakia**, during the asylum interview, the decision-maker when conducting the interview should take into account the age and the degree of intellectual and volatile development of the child. In practice, however, there are no specific conditions for interviewing children. During the interview, the role of the representative of the department of socio-legal protection of children should be to supervise that the interview is conducted in the best interest of the child and stress or trauma is not caused to the child during the interview. The role of the lawyer - – if appointed by the guardian to represent the child in the asylum procedure - is to support the child from the legal point of view, to ask supplementary questions and to make remarks and recommendations e.g. regarding the evidence, if necessary.

The situation is quite similar in **Slovenia**, where protective measures provided by law<sup>194</sup> are not always implemented in practice. The persons authorized to accompany the child to the interview are the legal guardian, interpreter and the lawyer. According to the Rules of the procedure, it could be anyone else proposed by the child, but usually they do not propose anyone. According to the Rules of the procedure the persons present can also be UNHCR representative, other public officials or employees of the competent authority, scientific staff, students, public workers if it has a meaning for scientific work or institution, but only if the minor agrees to their presence.<sup>195</sup>

In some EU countries as **Austria, Bulgaria, Cyprus, Denmark, Germany, Greece, Hungary, Malta** and **Portugal**, it seems that children are interviewed in the same conditions as adults:

The only specificity may be the presence of a guardian but this requirement does not always provide the necessary conditions for the consideration of specific features related to minority.

In **Austria**, unaccompanied minors are structurally disadvantaged within the framework of the questioning for the asylum procedures tailored to adults. In **Germany**, there are no specific conditions for the interviews of children. Once it was planned to build up rooms in a child-friendly design, but this plan has not turned into practice. In **Greece**, there are several cases where another migrant does the interpretation, due to the lack of qualified interpreter. In **Hungary**, conditions are not too child specific, maybe some colourful drawings are hanging from the walls otherwise the setup is almost the same as for adults. Officers may make use of any form of self-expression but it largely depends on the attitude officer in charge and on the interpreter. In **Malta**, no special arrangements are made for children. In **Portugal**, since most unaccompanied minors that apply for protection in Portugal are 17/18 years of age no specific conditions are put in place regarding interviews determination.

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<sup>194</sup> *Law on International Protection*, Art.45 (2), *op.cit.* (Note 136).

<sup>195</sup> Rules of Procedure for foreigners who express an intention to submit an application for international protection in the Republic of Slovenia and the procedure of taking the application for international protection, Art.16 (3).

**TABLE # 3 – Persons authorized to accompany the child during the interview in 27 EU countries**

	Legal guardian	Legal advisers/lawyer	Other
AUSTRIA	X		
BELGIUM	X	X	Trusted person (social worker...)
BULGARIA	X		
CYPRUS	X		Guardian appointed for the well-being of the child.
CZECH REP.	X		The guardian may give his power of attorney to any third person
DENMARK	X		
ESTONIA	X	X	
FINLAND	X	X	Trusted person (social worker...)
FRANCE	X		Trusted person (social worker...)
GERMANY	X	X	Social worker or family member
GREECE	X	X	
HUNGARY	X	X	UNHCR representative, social worker (if allowed by the asylum authority individually)
IRELAND	X	X	Other adults , like Irish Refugee Council staff or a foster parent
ITALY	X	X	Other persons like social workers and psychologists.
LATVIA	X	X	
LITHUANIA	X	X	
LUXEMBOURG	X		
MALTA	X	X	UNHCR
THE NETHERLANDS	X	X	Someone from the Dutch Refugee Council
POLAND	X		Caretaker, psychologist and a relative or a close person to a child
PORTUGAL	X	X	Representative of United Nations High Commissioner for Refugees or Portuguese Refugee Council
ROMANIA	X	X	UNHCR, NGO
SLOVAKIA	X	X	Relative of the child
SLOVENIA	X	X	UNHCR representative, other public officials or employees of the competent authority, scientific staff, students, public workers if it has a meaning for scientific work or institution
SPAIN	X	X	Lawyer. When circumstances so require, social workers, psychologists or person responsible for the guardianship.
SWEDEN	X	X	Trusted person
THE UNITED KINGDOM		X	Responsible adult

#### RECOMMENDATION 6 – Main interview

- ▶ No negative decision should be issued without an interview, except when the claimant is in an absolute incapacity duly assessed by an independent authority.
- ▶ Interview should be conducted in child-friendly conditions, by specially qualified and trained officials with appropriate knowledge of the psychological, emotional, physical development and behaviour of children. Moreover, EU and national institutions should provide information on the situation of children in the country of origin for asylum officers.

## 7. Decision and its consequences

The specific situation of unaccompanied children seeking asylum requires that the decision process takes into account the minority and vulnerability of the applicant. This implies that refugee status be granted on the basis of child-specific forms of persecution, and that decisions be communicated in the way that children can understand. The steps after the decisions (appeal, outcomes of the procedure, family reunification) are also concerned by that requirement.

### 7.1. Child-specific aspects of the decisions

The positions developed by UNHCR in exercising its supervisory functions under the 1951 Refugee Convention indicate that the refugee definition must be interpreted in an age-sensitive manner<sup>196</sup>. The Committee of the rights of the child has reiterated this requirement<sup>197</sup>. It means in particular that “*the decision on a child's refugee status calls for a liberal application of the principle of the benefit of the doubt*”<sup>198</sup>.

We must note that the decision analysis is difficult because of limited data provided by the authorities on the content of decisions<sup>199</sup>.

#### 7.1.1. Comparison of recognition rates between adults and unaccompanied children.

To determine whether unaccompanied children are treated specifically, it is interesting to compare recognition rate between adults and unaccompanied children. However, this approach is impossible in most countries because detailed statistics are not available (**Austria, Bulgaria, Italy, Luxembourg, the Netherlands, Poland, Romania** and **Spain**), decisions are never issued during the minority (**Cyprus**) or the very low number of applications by unaccompanied children makes comparison irrelevant (**Czech Republic, Estonia...**).

In **Belgium**, the total of recognition rate for refugee status and subsidiary protection in first instance for 2010 (51%) is more than twice as important as for adults (21,4%)<sup>200</sup>. In **France**, the global rate (first instance and appeal) in 2010 was also more important for children (38,5 %) than for adults (27,5%)<sup>201</sup>. Moreover, the part of refugee status (RS) compared to subsidiary protection (SP) is more important for unaccompanied children (RS=87% / PS= 13%) than for adults (RS= 80% / PS= 20%) in positive decisions issued in first instance. According to the statistics in **Hungary**, children are granted protection slightly more often than adults (17% recognition rate in 2010) although the “abscondment

<sup>196</sup> See for example :

Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, *op.cit.* (Note 38), §8.6.; UN High Commissioner for Refugees, *Conclusion on Children at Risk*, 5 October 2007, No. 107 (LVIII) – 2007. (g) viii. available at: <http://www.unhcr.org/refworld/docid/471897232.html> [accessed 18 June 2012].

<sup>197</sup> Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, §74, *op.cit.* (Note 39).

<sup>198</sup> UNHCR, « Children : Guidelines on protection and care », 1994, Chapter 8 (p.99-102), *op.cit.* (Note 38).

<sup>199</sup> See part 2 “Statistics and profiles”.

<sup>200</sup> CGRA, *Rapport d'activité 2010*, *op.cit.* (Note 176), et CCE, *Rapport annuel 2009-2010*, sur la période du 1<sup>er</sup> septembre 2009 au 31 août 2010.

<sup>201</sup> This rate is calculated as follows : it corresponds to the sum of the positive decisions in first instance and in appeal in 2010, compared to the total number of decisions of this year. Yet, the decisions of the appeal do not generally concern the first instance decisions of the same year.



rate” amongst them was also extremely high, around 30% in 2010<sup>202</sup>. It should also be noted that it was reported from Hungary that 47% of the unaccompanied asylum seeking minors were assessed as adults in 2010 (83 persons altogether)<sup>203</sup>. In **Lithuania**, the rate of positive decisions for unaccompanied children and adults are completely different. All unaccompanied children receive positive decision, although it is often not refugee status but subsidiary protection that is granted. In **Portugal** and **Slovenia**, most of the requests by unaccompanied minors are positive and granted subsidiary protection. In **Sweden**, the rate of first instance positive decisions is much more favorable in case of unaccompanied minors than in case of other groups of asylum seekers. In 2010 close to 54 % of unaccompanied minors received positive decisions (for other groups of asylum seekers around 25% got some form of protection). In **Ireland**, the recognition rate for unaccompanied minors is higher than the overall recognition rate but this country has one of the lowest recognition rates among the European Union Member States<sup>204</sup> so the rate remains low (8,8% of refugee status granted in 2010<sup>205</sup>).

These situations suggest that children applications are examined more favourably.

According to asylum authorities in **Germany**, unaccompanied children receive more positive decisions of first instance (32 to 23 per cent positive decisions). However, the refugee status is granted less often, because child-specific persecution is often not recognized. A contrasting situation also occurs in the **United Kingdom**. If we consider both international protection (refugee status or humanitarian protection), and discretionary leave to remain, unaccompanied minors are more likely to be granted a right to stay than adults. But, if we consider international protections only, initial decisions are more favorable to adults than minors. Although 16,9% of all applicants were granted refugee status in 2010, only 13,7% of unaccompanied minors were concerned. Conversely, discretionary leave is granted to unaccompanied minors much more often than to other applicants. The outcome of the claim varies a lot according to the age of the claimant at the time of decision. Most of discretionary leaves are granted to children under 17 – which is consistent since discretionary leave under UASC policy is granted until 17 and a half.

The protection rate for children seems quite similar to those for adults in **Greece, Latvia, Malta, and Slovakia**.

In **Finland**, the rate of positive decisions is quite similar or even lower for unaccompanied minors than for adults but unaccompanied minors are not returned to countries of origin like adults, they are granted some kind of a positive decision.

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<sup>202</sup> In 2010, the application was rejected in only 3 cases out of 150 asylum applications, while 25 were granted protection and many of them left before completing the procedure. Exact figures were not provided by the asylum authority but according to the Hungarian Interchurch Aid absconding UAMs gave 29 % of all UAMs received in the shelter for UAMs in Bicske. 7 UAMs were recognized as refugees, 24 were granted subsidiary protection and 4 received tolerated status. The HIA reported 178 UAMs accommodated in their shelter throughout 2010.

<sup>203</sup> Under Section 33 (4) of the modified Government Decree implementing the Asylum Act the UAMs might only be accommodated in the designated shelter if the asylum authority assessed his/her minority. Such phenomenon fits in the practice of the increased use of age assessment examinations experienced in 2011 and 2012.

<sup>204</sup> See “Asylum lottery in the EU in 2010” at <http://www.ecre.org/component/content/article/56-ecre-actions/246-asylum-lottery-in-the-eu-in-2010.html> [accessed 18 June 2012].

<sup>205</sup> ORAC, *Annual Report 2010*, available at: <http://www.orac.ie/pdf/PDFCustService/AnnualReports/Office%20of%20the%20Refugee%20Applications%20Commissioner%20-%20Annual%20Report%20-%202010.pdf> [accessed 18 June 2012].

## 7.1.2. Taking into account child-specific forms of persecution in the decision process

Some persecutions are suffered specifically by children and can be linked to the legal standards for granting refugee status or subsidiary protection. For example, under-age recruitment (including of girls for sexual services or forced marriage with the military) and direct or indirect participation in hostilities constitutes a serious human rights violation and thereby persecution, and should lead to the granting of refugee status<sup>206</sup>. Female genital mutilation can also be considered a child-specific form of persecution as it disproportionately affects the girl child<sup>207</sup>. Other examples are given by UNHCR such as subjection to forced labour<sup>208</sup> or the trafficking of children for prostitution and sexual exploitation<sup>209</sup>. In addition, children may fear or have been affected by other discriminatory or persecutory measures affecting the entire family<sup>210</sup>.

In many countries, child-specific forms of persecution are not quoted in national law or guidelines and, in practice, no cases where children have been granted protection because of these forms of persecution are known: **Bulgaria, Cyprus, Greece and Portugal**.

In **Belgium**, taking into account child-specific forms of persecution has been required by law since 1980<sup>211</sup>. Positive decisions have been taken in recent year regarding child soldiers, child “witches” or child abused in koranic schools from West Africa<sup>212</sup>. Forced marriage and female genital mutilations are also taken into account but it does not concern only children. These positive decisions usually refer to the “membership of a particular social group”. On appeal, the Court mentioned the obligation to take into consideration the minority of the person in order to appreciate his declarations, and the necessity to apply benefit of the doubt for these applications<sup>213</sup>.

In **France**, the asylum institution mentions examples where the refugee status is granted to child “witches” from Democratic Republic of Congo and subsidiary protection is granted to young girls who are at risk of genital mutilations<sup>214</sup>. There are also cases where child-specific forms of persecution are considered in appeal for forced marriage or female genital mutilation<sup>215</sup>, or for risk of forced recruitment<sup>216</sup>. It is generally considered that the appeal institution is more sensitive to the minority of the applicant than in first instance.

In the **United Kingdom**, it seems that children are not frequently granted refugee status or humanitarian protection at first instance because of child-specific forms of persecution<sup>217</sup>. UNHCR’s

<sup>206</sup> Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, §59, *op.cit.* (Note 39).

<sup>207</sup> UN High Commissioner for Refugees, *Guidance Note on Refugee Claims relating to Female Genital Mutilation*, May 2009, §9, Available at: <http://www.unhcr.org/refworld/docid/4a0c28492.html> [accessed 18 June 2012].

<sup>208</sup> See *ILO Convention No. 182 Worst Forms of Child Labour*, available at: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182> [accessed 18 June 2012].

<sup>209</sup> Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, *op.cit.* (Note 37), §8.7.

<sup>210</sup> *Ibid.*, §8.8.

<sup>211</sup> *Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* [Belgium], 22 September 2011, Art.48/3, §2, available at: <http://www.unhcr.org/refworld/docid/4e803ea82.html> [accessed 9 July 2012].

<sup>212</sup> Interviews with the coordinator of the Belgium asylum office – CGRA and with a lawyer of the UAM pool, 18/10/2011.

<sup>213</sup> Conseil du Contentieux des étrangers, 8 juillet 2008, Arrêt n° 13.854.

<sup>214</sup> Written interview with Ofpra, 25/10/2011.

<sup>215</sup> See for example : CNDA, 28 juillet 2009, 636210/08016675, Mlle D.

<sup>216</sup> See for example : CNDA, décision n°10016190 du 20 décembre 2010.

<sup>217</sup> Interviews of legal representatives, 28/11/2011 and 29/11/2011.

audit of 2009 is rather negative in this respect<sup>218</sup>. On appeal, child-specific forms of persecution are more frequently identified. Cases of female genital mutilation, forced underage military recruitment and children accused of being witches were for instance reported by solicitors<sup>219</sup>.

In **Hungary**, child specific forms of persecution are recognized by the OIN although in practice it is often classified as a “family dispute” as if children could not be targeted by persecution. Also, it is quite frequently used by the OIN as the reasoning for negative decisions that “the persecution would only concern the applicant’s parents/brothers/relatives but not the applicant him/herself...”.

In **Ireland**, it seems that very few refugee statuses are granted on grounds of child-specific forms of persecution<sup>220</sup>, although ORAC states that “*particular policies and practices amounting to violations of specific rights of the minor (for example, the forced recruitment of children into army or rebel groups) may, under certain circumstances, lead to situations that fall within the scope of the 1951 Geneva Convention*”<sup>221</sup>. A few young victims of forced marriage might be concerned<sup>222</sup>. A frequent ground for granting refugee status is the imputation of the parents’ political views<sup>223</sup>.

In **Italy**, international protection has been granted because of child-specific forms of persecution to Afghans in particular because they were without any support from their families and communities and because they were at risk of being forcibly recruited.

In **Romania**, the decisions granting refugee status are not motivated but it is known that in the past, there were cases when the Courts granted a form of protection because of child specific form of persecution (child soldiers, trafficked young girls, female genital mutilation).

In **Austria**, positive asylum decisions because of child-specific reasons occur only in female cases (forced marriage and female genital mutilation). In **the Czech Republic**, only one case is known where an underage asylum seeker was granted refugee status because of female genital mutilation and forced marriage. In **Finland**, forced marriage or a related threat may be grounds for granting international protection. In **Germany**, some forms of child-specific persecution are considered in the decisions: especially female genital mutilation grants protection. A very few child-soldiers are granted protection. In **Slovakia**, there probably have been few single cases when protection was granted because of the child specific or gender specific forms of persecution, but these cases are very rare.

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<sup>218</sup> UNHCR, *Quality initiative project, Key observations and recommendations*, p. 6, *op.cit.* (Note 147).

<sup>219</sup> Interview of legal representative, 28/11/2011.

<sup>220</sup> Interview of IRC representative, 3/11/2011.

<sup>221</sup> E-mail from ORAC representative, 2/09/ 2011.

<sup>222</sup> Interview of RLS solicitor, 2/11/2011.

<sup>223</sup> *Ibid.*

Data on case law is not easily available. Here are some examples of decisions taking into consideration child-specific forms of persecution:

COUNTRY	REFERENCE	DATE (M/D/Y)	TOPIC	COMMENTS
BELGIUM	CCE, judgement ( <i>arrêt</i> ) No. 13.854	07/08/2008	Age-sensitive decision	The Court confirmed the need of a age-sensitive approach in asylum procedure and decision. The benefit of the doubt principle should also be more widely implemented.
	CCE, judgement ( <i>arrêt</i> ) No. 11.831, case No. 21.870	05/27/2008		
	CCE, judgement No. 67.449	07/18/2011	Child-specific persecutions : forced recruitment	
	CCE, judgement No. 64.557	06/09/2011	Child-specific persecutions and gender-specific persecutions	
FRANCE	CNDA, decision No. 636210/08016675	07/28/2009	Fear of female genital mutilation	Refugee status granted on gender ground
	CNDA, decision No. 10016190	12/20/2010	Fear of forced recruitment, Afghanistan	Subsidiary protection granted
HUNGARY	Case no. 6K34223/2009/10. M.A. v. Office of Immigration and Nationality	2009	Well founded fear	The Court ruled that children's fear has to be examined in accordance with the specificities of the applicant's young age and individual circumstances (lack of schooling and being vulnerable).
ROMANIA	Afghanistan / Suceava Tribunal / decision no. 584 - quote the decision no. C465/07 El Gafaji from ECJ	06.04.2011	Granted subsidiary protection because of the general situation in Afghanistan	
	Sudan - / Bucharest, Court sector 4 / decision no. 4207	28.05.2010	Granted subsidiary protection because of the critical situation of the children in Darfur area.	
	Nigeria - / Bucharest, Court sector 4 / decision no. 7269 -	11.12.2009	Granted subsidiary protection because of the trafficked young girls' situation in Nigeria.	
SLOVENIA	Ghana - / Supreme Court / Judgement I Up 466/2009,	12.11.2009	Credibility, contradictory statements of the asylum seeker	The Supreme Court ruled that the Asylum authority should provide additional questions to the minor asylum seeker in order to enable him to clarify his answers (contradictory statements) about the reasons for leaving his country of origin.

### 7.1.3. Consequences of a decision reached after the age of 18.

In most countries, the main consequence of turning 18 before the end of the procedure is that the role of the legal guardian ceases to exist. It could also have an impact on family reunification. More generally, people who have applied as children are treated as adults when the decision is reached after the age of 18. A major change regarding accommodation is that they have to move toward adult accommodation centres. Moreover, in the countries where international protection could be granted just for a reason of being a child, reaching the age of 18 could affect directly the decision.

In **Belgium**, the application is processed by a specific asylum officer for unaccompanied children even if the procedure ends after the age of 18. In **Germany**, the responsibility remains also by the specialized adjudicators. In **Slovenia**, the child turning 18 may ask to extend the mandate of the legal guardian. In **Spain**, being considered an unaccompanied foreign minor is based on the date of the

filing of the application without prejudice to the fact that a child may turn 18 over the course of the procedures<sup>224</sup>. In **Sweden**, applications made by unaccompanied minors are still treated as minors applications even if the child turns 18 during the process while waiting for the decision.

In **Bulgaria**, decisions of 17-year old minors are often delayed in order to treat them as adults. In **France**, the asylum institutions affirm that even if the application is processed after the age of 18, the fact that persecutions were suffered during minority is taken into account. In practice however, it seems not so obvious.

In **Cyprus**, applications are not processed until children become adults. This entails a number of disadvantages. First, the adult applicant is unlikely to remember at the interview the events that led him/her to leave his/her country of origin. Secondly, as an adult he/she may be reluctant to share information about having been sexually abused. Thirdly, the situation in his/her country may have changed in the meantime and the events that caused him/her to flee may no longer be happening or the information about these may no longer be retrievable. Fourthly, s/ he may have lost touch with his/her family because of no prompt tracing. Fifthly, if s/he is a victim of trafficking, s/he will almost certainly disappear in the meantime and will not be around in order for his/her application to be processed when s/he becomes an adult.

In the **United Kingdom**, there are huge consequences on the outcome of the claim if the unaccompanied child ages out before a decision is taken. Decisions taken for 18-year-olds are much less favourable than decisions for under-age minors, but also less favourable than adults' decisions. One reason for that is that, after 17 and a half, unaccompanied minors are not eligible to discretionary leave under unaccompanied asylum seeking children – UASC – policy anymore. Meanwhile, it seems that their need for protection is not assessed as adults', so they are less likely to be granted refugee status. Some NGO consider that this is an alarming observation<sup>225</sup>.

## 7.2. Communication of decisions

The UNHCR states that *“Minors old enough to understand what is meant by status determination should be informed about the process, where they stand in the process, what decisions have been made and the possible consequences”*<sup>226</sup>. The analysis of the issue of communication of decisions in EU implies to study two points: the person to whom the decision is communicated and the way this decision is communicated.

### 7.2.1. The person to whom the decision is communicated

**The decision is mainly delivered to the legal guardian** in some countries.

How the representative informs the minor in **Austria** about the decision is individually different, ranging from “not informing the UMR at all” and “informing and explaining them together with the

<sup>224</sup> European Migration Network, Spain, September 2009, p 32, available at: <http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?directoryID=115> [accessed 18 June 2012].

<sup>225</sup> Interview of Policy Adviser, British Refugee Council, 29/11/2011.

<sup>226</sup> UN High Commissioner for Refugees, *Refugee Children: Guidelines on Protection and Care*, 1994, p 102, *op.cit.* (Note 38).

supervisor and a translator “. In **Lithuania**, the decision is notified to the guardian who is responsible for making sure that the decision was communicated to a child in a proper way and that all unclear information is explained. In **Italy**, the decision is generally notified to the legal guardian. In **Luxembourg**, a letter is sent to the guardian and the lawyer. The guardian then communicates the decision to the child. In **Malta**, the decision should be made in writing and delivered to the legal guardian. In **Spain**, the decisions are communicated in writing to the child or his/her legal guardian, and sent to the address on the file, usually the address of the Child Protection Services where the child is in care<sup>227</sup>.

In **Slovakia**, the decision is communicated to the legal representative, in most cases guardian and in cases when the child was represented by the lawyer in the procedure, then to the lawyer. It is then up to the guardian or to the lawyer to communicate the decision to the minor. There have been many complaints from the children in the previous years that the guardian just informed them about the result of the asylum procedure, but did not translate the decision to them and did not give them reasons.

Previously in the **United Kingdom**, a “decision service event” was to be provided, *i.e.* the decision was served during a meeting with the UKBA, to ensure that the claimant fully understood the decisions and his future options. Currently, most decisions are notified in writing, because the UKBA is confident that the child’s social worker or legal representative will explain the decision to the child<sup>228</sup>. In other countries, **the decision is communicated to both child and legal guardian**.

In **Belgium**, the decision is communicated by mail to the guardian and by fax to the child in the reception centre. In **Bulgaria**, the decision is served to the child in the documented presence (via signature) of the legal representative. In **Cyprus**, the Asylum Service communicates the decision to all stakeholders and all parties concerned. In **Estonia, France, Germany, Hungary, Latvia, and Sweden**, the decision is delivered in written form to the applicant and his or her guardian. In **Ireland**, a letter is sent to the child, to the Health Service Executive (in the person of the child’s social worker), and to the RLS solicitor of the child. In **Finland**, the child and the guardian have to be present at the police when they are informed about the decision. In **the Netherlands**, the decision is sent by letter to the lawyer, to the guardian and to the child.

In **the Czech Republic**, the child and his/her guardian are both informed about the date of delivery of the asylum decision and the MOI official comes to the centre to deliver the decision at the announced day. The guardian must come too, in order to accompany the child.

In **Denmark**, decision is posted by mail and delivered to the asylum seeker. If a child is not able to read it and/or understand the decision, letter is communicated to the child by the legal guardian.

In **Greece**, the law does not mention the guardian and states that “the decision on the application for international protection should be notified to the applicant”<sup>229</sup>.

Finally, **the decision could be communicated to various people** depending on the situation.

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<sup>227</sup> Law 12/2009, Art. 28, *op.cit.* (Note 125).

<sup>228</sup> Interview of UKBA case owner, 29/11/2011.

<sup>229</sup> Presidential Decree 114/2010 Art. 7.1, *op.cit.* (Note 52).

In **Portugal**, the SEF notifies the decision to the unaccompanied minors, as well as to UNHCR and the NGO CPR<sup>230</sup>. In **Romania**, the decision is notified to the minor personally if he/she is above 16 years old (he can make an appeal without the legal guardian). In all the other cases, the decision is communicated to the minor in the presence of the legal guardian. In **Slovenia**, the practice is not consistent, it mostly depends on the decision maker and sometimes the decision is communicated to the lawyer or the legal guardian, sometimes to the child. It is important to note that in Slovenia the first instance decision is always translated in the mother tongue of the applicant in writing.

### 7.2.2. The way the decision is communicated.

In most countries, there is no child-specific language or other tools used to communicate the decision. The situation is the same as for adults and no particular means are implemented. It is sometimes considered that it is the duty of the legal guardian to explain the decision but generally no safeguards are implemented in this way.

In **Belgium**, the only difference with adults is the use of the familiar form of “you” (*tutoiement*). In **Ireland**, the wording of the decision is the same for children and for adults and the Ombudsman for Children’s Office noticed that these letters *“have been described as ‘scary and unfriendly’ by separated children”*<sup>231</sup>. But, according to the same report, *“it seems that where possible, social workers and project workers withhold such letters from separated children until they can be sure to meet with them and go through the correspondence together with the young person”*<sup>232</sup>.

In **Estonia**, if the decision is negative, it is sent by mail in the language the child communicates. If the decision is positive, it is written in Estonian language and translated orally to the child. In **the Netherlands**, everything is written in Dutch and translation is in practice done by the lawyer or the guardian. In **Romania**, the decision is drafted in Romanian and its notification in the language he/she is supposed to know. In **Latvia**, the decision is communicated in the language he or she understands and is either handed in personally to the child, if the child lives in the asylum seekers reception centre, or sent by mail if a child lives outside a reception centre. An interpreter is present if necessary at the time of the communication in **Bulgaria, Czech Republic, Finland, Greece, Hungary, Portugal** and **Sweden**. In **Slovenia**, the decision is written in the mother tongue of the child, however the decision makers often do not care whether the minor is able to read or not.

In **Portugal**, the decision is first communicated by asylum officers of SEF to the minor at SEF’s office. Then, CPR staff also talks to the minor acknowledging the full understanding of the document, replying to any doubts or questions that might exist.

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<sup>230</sup> Law 27/2008, Art.29, .*op.cit.* (Note 43).

<sup>231</sup> Ombudsman for children’s office, *Separated children living in Ireland* (November 2009) p 31, available at: [http://www.oco.ie/assets/files/publications/separated\\_children/SeparatedChildrenProjectReport.pdf](http://www.oco.ie/assets/files/publications/separated_children/SeparatedChildrenProjectReport.pdf) [accessed 18 June 2012]

<sup>232</sup> *Ibid.*

### 7.3. Appeal

According to the United Nations guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum<sup>233</sup>, minimum procedural guarantees should include “possibility to appeal for a formal review of the decision”.

Globally, there are no specific conditions for unaccompanied minors to appeal a negative first decision in the regular procedure, with some exceptions.

The **deadline** to make an appeal varies from country to country.

In **Romania**, the asylum seeker can lodge an appeal against a negative decision issued in the regular procedure within 10 days from the date of receipt of the confirmation of delivery of the decision to the asylum seeker. The same deadline is foreseen in **the United Kingdom**.

In **Poland** and **Lithuania** all the negative decisions of first instance may be appealed by the unaccompanied minors / their legal representative within 14 days from receiving negative decision in writing.

In **Austria, Czech Republic, Hungary, Ireland, Malta, Portugal** and **Slovenia** the appeal may be lodged within 15 days.

In **Sweden**, the appeal must be received by the Swedish Migration Board within 21 days from the date on which the asylum seeker was notified of the decision<sup>234</sup>.

In **the Netherlands**, the deadline for submitting an appeal is 28 days.

In **Belgium, Finland, France, Italy** and **Slovakia**, the deadline for submitting an appeal is 30 days.

**Other deadlines (usually shorter) are implemented when the decision is taken outside of the regular procedure.** For example, in **Germany** and **Greece**, the deadlines are special and depend on the kind of decision being appealed.

In **Germany**, every decision can be appealed. The remaining time to appeal depends on the kind of decision: if the application is declared “*unbeachtlich/unremarkable*” or if the applicant has a permission to stay in safe-third-country or the decision says “*offensichtlich unbegründet / manifestly unfounded*” the time limit is 7 days to file a lawsuit. The time limit is extended to two weeks for all other decisions on basis of the asylum procedure Act. An appeal postpones the time limit to leave the country. There are no specific conditions to children.

In **Greece**, there are no specific conditions for children in order to appeal a negative first decision. Applicants should have the right to appeal before the Appeals’ Board against the following: a) a decision rejecting their application for international protection or withdrawing such status within 30 days after the day of serving of the decision; b) A decision ruling as manifestly unfounded or as inadmissible their application for international protection, within 15 days after the day of serving of

<sup>233</sup> UN High Commissioner for Refugees, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, *op.cit.* (Note 38).

<sup>234</sup> For more information, see: [http://www.migrationsverket.se/info/447\\_en.html#h-Appealingthedecision](http://www.migrationsverket.se/info/447_en.html#h-Appealingthedecision) [accessed 10 July 2012].



the decision; c) A decision rejecting their application for international protection in the cases of article 24 within 10 days after the day of serving of the decision; d) a decision rejecting their subsequent application during the preliminary examination stage within 15 days after the day of serving of the decision.

In **Slovenia**, the deadline for submitting an appeal when the application is rejected in accelerated procedure is 8 days. In **Slovakia**, when the asylum claim was rejected as manifestly ill-founded, the deadline is 20 days.

In **Denmark**, if the Immigration Service believes that an asylum application is manifestly unfounded, the Danish Refugee Council will assess the case. The Danish Refugee Council is a private, independent humanitarian organization. If the Danish Refugee Council does not agree with the ruling of the Immigration Service, the Immigration Service will normally maintain the rejection, but the case will be referred to The Refugee Appeals Board.

### **7.3.1. Special provisions or practices regarding children implemented on appeal**

As well as in first instance, the legal guardian is usually involved in the procedure. In **Austria, Belgium, France, Hungary and Italy**, the **guardian must introduce the appeal** or at least give his/her approval. In Austria, the complaint is lodged by the legal representative of the competent youth welfare centre. In Belgium, the appeal is introduced by the guardian of the minor. In Hungary, the child must have the signature of the legal guardian in order to be able to request the court review since he/she has limited legal capacities, which in some cases resulted in missing the deadline to lodge the appeal since the guardian did not respond to the request of the child on time. In Italy, minors can present an appeal against the negative decision on the asylum request through the legal guardian who has to be authorised by the judge for guardianship, but this rarely happens in practice.

Globally, **there is little difference in practice on appeal, compared to first instance**. It is only the case in **Finland, Germany, Ireland, Latvia, Luxembourg and Sweden**. In Ireland and Finland, some practices implemented on first instance do not appear on appeal. In **Finland**, the court does not always arrange oral hearing for unaccompanied children. In **Germany**, on first instance every minor is interviewed by specialized adjudicators, who should be able to respect child-related issues. The appeal in front of the administrative court is an ordinary trial, child-specific-tools are not common. In **Latvia**, additional guarantee is free legal assistance provided to the unaccompanied child during appeal procedure. In **Sweden**, at the appeal, the child gets an attorney appointed by the Swedish Migration Board. In **Luxembourg**, the procedure for children is accelerated compared to the normal procedure. Moreover, for the appeal, at the tribunal and at the court, there's only the lawyer present, but not the minor. In **Ireland**, it is a matter of concern of several key professionals that the Refugee Appeals Tribunal – RAT – procedure is not child-friendly<sup>235</sup>. Unlike at ORAC, there are no special rooms, or guidelines, or interviewing techniques for unaccompanied minors.

In many other countries, **there can be a difference between the first instance procedure and the appeal, but without any specificity for children**. In **Belgium, Bulgaria, Cyprus, France and Portugal**, the differences between first instance and appeal are the same for adults and minors and may be positive. In **Bulgaria**, the only difference is that upon a pending court case the appellant has a right to

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<sup>235</sup> Although RAT members also attend UNHCR training sessions on interviewing children.

ask to be appointed a lawyer under the Law on Legal Aid. In **Cyprus**, in the case of appeals before the Refugee Reviewing Authority the law specifically states that the applicant may be accompanied by his lawyer or legal advisor, *the guardian of an unaccompanied minor* and the necessary interpreter, unless otherwise requested by the applicant. In **France**, at the appeal procedure, asylum seekers can be assisted of a lawyer and can benefit from legal aid. In **Portugal**, just as adults, and according to Asylum Act, they have access to legal counselling and the right of legal aid. In **Belgium**, both adults and minors do not have interview at the appeal stage.

In some countries, **the right to appeal seems to be threatened**. In **Austria**, until today some youth welfare offices do by conviction not appeal to court against a negative first instance decision. They act explicitly against the wish of the persons concerned and refuse in the worst case even to sign and bring in an appeal written by an NGO. In these cases, minors, who should actually be protected in a special way, are worse off than adults, who at least are free to appeal at court themselves or through a legal representative.

In **Slovakia**, the practice shows that it is a big disadvantage for the child to be represented in the asylum procedure by the public institution or better said by the social worker delegated within the institution instead of the lawyer, because the guardian does not submit appeals at all against the negative administrative decisions of the Migration office (either because the guardian considers the opinion and examination of the Migration office as specialized state authority on asylum issues to relevant and definitive in the asylum procedure or because of the lack of abilities to write and submit the appeal against the decision). Similar shortcomings were revealed in **Hungary** regarding the lack of submitting the appeals in some cases.

In **the United Kingdom**, an important matter of concern is that some unaccompanied minors have **no appeal rights**. This is the case of children who were identified as Dublin II cases, but also for those who were granted discretionary leave for less than 12 months. As a consequence, unaccompanied children who were granted discretionary leave under UASC policy, at 16 and 7 months, would have no appeal rights since their discretionary leave was granted for 11 months only (until 17 and a half). They will be able to appeal the active review of their discretionary leave, but not the initial denial of refugee status. Another matter of concern is that some legal representatives may advise children against appealing their initial decision. Indeed, to have their work funded by the Legal Services Commission, they have to be satisfied that the appeal has 50% chances to succeed, or that it is an important human rights issue. Some legal representatives, however, consider that children cases always comply with these requirements and never advise a child against appealing<sup>236</sup>.

### 7.3.2. Consequences of a negative decision at the appeal stage

In many countries, the judgment of the first court of appeal can be appealed before a **second instance court**, as in **Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Ireland, Italy, Luxembourg, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain** and **the United Kingdom**.

In **Poland**, the second instance negative decision may be appealed within 30 days but placing the second instance appeal to Court does not protect the asylum seeking minor against deportation. In

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<sup>236</sup> Interview of legal representatives, 28/11/2011 and 29/11/2011.

**Lithuania**, the decision of the Vilnius county administrative court can be appealed within 14 days to the Lithuanian Supreme Administrative Court. In **Ireland**, it is possible to ask for judicial review. Judicial review is the process enabling the High Court to review decisions made by administrative bodies<sup>237</sup>. The main issue with judicial review is that it is a long process, which costs might rely upon the claimant if rejected.

In **Malta** though, the decision of the Board should be final and conclusive and may not be challenged and no appeal may lie there from, before any court of law. This is a point lawyers and NGOs are trying to challenge, and the law courts seem to be willing to accept that this legal provision is unconstitutional. The Refugee Appeals Board, as an administrative tribunal, is subject to special laws regulating good administrative practice which however only apply to procedure and not to substance. We can therefore say that in terms of examination of merits, the Refugee Appeals Board is in fact the last body.

In **Denmark, Hungary** and **Latvia**, there is no further possibility to appeal.

**In some countries, there are more than two possibilities of appeal**, as for example the United Kingdom and Sweden.

In **the United Kingdom**, if the first appeal is dismissed, it can be appealed to the Upper Tribunal Immigration and Asylum Chamber only on a point of law. If the Upper Tribunal dismisses the appeal, the appellant may apply for leave to appeal to the Court of Appeal. A final appeal may be made to the Supreme Court.

In **Sweden**, if the Swedish Migration Board does not amend the decision, the appeal will be forwarded to a Migration Court. The determination of the Migration Court can be appealed against to the Migration Court of Appeal. In order for the Migration Court of Appeal to entertain an appeal, leave to appeal must first be granted. If the Migration Court of Appeal does not grant leave to appeal, the decision of the Migration Court will remain in force and it will not be possible to appeal further.

**Sometimes, once all remedies have been exhausted, the asylum seeker can ask for reexamination under certain circumstances.**

In **France**, it is possible to ask for a review of the asylum application on the basis of new facts (facts that the applicant could not know at the moment of the interview, and that are decisive for the asylum request). In **Romania**, if the asylum seeker wants to make a new asylum request with new elements after the denial of protection status by judicial bodies, he/she can make a new request before RIO but he/she must make a specific request to the judge to be allowed to remain legally in Romania.

In some countries, when the final decision is delivered, **the failed unaccompanied asylum-seeking minor has to leave the country**, and a removal order may therefore be issued. It is the case in **Bulgaria, Cyprus, Estonia, Finland, Germany, Luxembourg, the Netherlands, Poland, Slovenia, Spain**

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<sup>237</sup>“The High Court is concerned with how the decision was made and the fairness of it, rather than whether it was the right decision in all the circumstances”, a solicitor’s website precises. “An application is made to the High Court (...) asking the court for permission (termed “leave”) to bring the application looking to challenge the relevant decision. (...) If leave is granted, then the papers are served on the relevant body who is given an opportunity to defend the position and ultimately the case will be heard, usually on the basis of written documents and no oral evidence, in the High Court. That decision may be appealed to the Supreme Court. The outcome of a successful judicial review is usually that the decision is set aside”, available at: <http://www.algoodbody.ie/expertise.jsp?gc=160> [accessed 10 July 2012].

and **Sweden**. In **Estonia**, an unaccompanied minor may be expelled if the guardianship of the minor is organised and the protection of his/her rights and interests is ensured in the admitting country. The expulsion of an unaccompanied minor is organised in cooperation with the competent state authorities of the admitting country and, where necessary, transit country.

In **Germany**, removal can be postponed if the minor gets a “*Duldung*”<sup>238</sup>.

**In some countries, unaccompanied minors have the right to stay in the country till they turn 18.**

In **France**, the unaccompanied minor whose asylum application has been rejected cannot be expelled from the country, as minors do not need residence permit to stay in the country, until they reach 18 years old. In **Slovakia** also unaccompanied minors whose asylum application was rejected are granted tolerated stay *ex officio* until 18 years of age. In **Luxembourg**, although this was not provided expressly by law, in practice unaccompanied minors were granted at least temporary legal residence (“toleration”) until they reached 18. Since October 2011, the “toleration” option has ceased to exist. Now, it is only possible to suspend the deportation (“*sursis à l'éloignement*”), and only for medical reasons.

In **Belgium, the Czech Republic, Italy** and **Portugal**, a **residence permit** can be delivered under certain circumstances. In **Belgium**, in case of final negative decision on the asylum application, the guardian is responsible for searching a durable solution for the minor. According to a circular of the 15<sup>th</sup> of September 2005<sup>239</sup>, three solutions are possible: the return to the country of origin, the family reunification and the durable stay in Belgium. The role of the guardian is to make a proposition to the Aliens Office. In practice, the Aliens Office only grants the right to stay if return or family reunification is impossible. In **the Czech Republic**, in the vast majority of the cases, unaccompanied minors may apply for a permanent resident permit, which would not be the case after they turn 18. In **Italy**, the minor can always get a stay permit for minor age. The law makes it possible for this residence permit to be extended even after a minor comes of age if he/she had been in Italy for at least three years at the time of application and followed a social integration project for at least two years. Rejected unaccompanied asylum seekers who are 16/17 receive the stay permit for minor age. If they do not meet such criteria they can therefore be subject to expulsion when they reach 18. In **Portugal**, under Foreigner’s Act and aside the asylum procedure it is also possible to request for a residence permit that is usually granted.

In the **United Kingdom** and **Sweden**, there is no possibility of getting another form of status for an unaccompanied minor as all varieties of statuses were considered in asylum and appeal procedures simultaneously and all were not granted.

## **7.4. Possible outcomes of the procedure**

The consequences of the asylum process can vary significantly from one country to another.

In some countries, **the possible outcomes of this procedure are** quite simple and consistent with the international and European legal framework on asylum: **rejection; refugee status; subsidiary**

<sup>238</sup> See Part 7.4. “Possible outcomes of the procedure”.

<sup>239</sup> Circulaire du 15 septembre 2005 relative au séjour des mineurs étrangers non accompagnés, available at: <http://www.unhcr.org/refworld/pdfid/44c0a17e4.pdf> [accessed 30 July 2012]. The content of this circular has been transcribed into a law, adopted by the Parliament on June 23<sup>rd</sup> 2011.

**protection.** This is the case in **Belgium, Bulgaria, Czech Republic, France, Portugal, Romania, Slovenia** and **Spain**.

In **Bulgaria**, there is also a discretionary protection that might be granted by the President of the Republic; however so far the President has not used these powers to grant asylum.

**Ireland** has no single determination procedure: if the applicant does not get the refugee status, he/she may apply separately for subsidiary protection<sup>240</sup>.

In other countries, the asylum procedure is the main and sometimes only way to obtain a right to stay in the country. It means that **this procedure can lead to refugee status or subsidiary protection but also to other kind of residence permit**. This is the case in **Austria, Cyprus, Denmark, Finland, Germany, Greece, Hungary, Italy, Malta, the Netherlands, Poland, Slovakia** and **Sweden and the United Kingdom**.

In **Austria**, when the decision is negative regarding refugee status or subsidiary protection, the question is whether or not a deportation – taking account of Article 8th ECHR – can take place. If not, a temporary residence permit can also be granted under circumstances this way. However, the asylum seeker would normally have to leave the country. If this was not possible, a temporary exceptional leave to remain is the alternative choice. Although apart from asylum procedure there are other possibilities to get a residence permit, but these possibilities are rarely used.

In **Cyprus**, it is possible that although an asylum application is rejected, the applicant is granted permit to remain in the country for a period of time, usually for humanitarian reasons. These permits are discretionary; the normal and most frequently applied measure in the post-rejection period is deportation.

In **Denmark**, the Ministry of Refugee, Immigration, and Integration Affairs has the authority, in the framework of asylum procedure, to grant a temporary residence permit on humanitarian grounds to an asylum seeker who has received a final rejection of his or her application for asylum<sup>241</sup>.

In **Finland**, people apply for all kinds of international protection at the same time and can be granted a lower status, which is a migration status in practice.

In **Germany**, there are quite a lot of persons who will have a “*Duldung*”<sup>242</sup> after the procedure. “*Duldung*” means that deportation is temporarily suspended, so it is neither a permission to stay nor a legal status. Persons who live in Germany with a “*Duldung*” often cannot be deported because of health issues or other relevant reasons. A “*Duldung*” is given, when there are any obstacles in law or in fact standing in the way of the subject’s departure, and it cannot be expected that these obstacles

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<sup>240</sup> The Immigration, residence and protection Bill 2010, that introduces a single determination procedure, has not come into force yet, and it is not expected to come into force before the end of 2012.

<sup>241</sup> Aliens Consolidation Act 945 of September 1<sup>st</sup> 2006, art. 9.b.1., available at: <http://legislationline.org/topics/country/34/topic/10> [accessed 30 July 2012].

<sup>242</sup> Residence Act (Aufenthaltsgesetz, AufenthG), Section 60a, available at: <http://www.iuscomp.org/gla/statutes/AufenthG.htm> [accessed 10 July 2012].

will cease to apply within the foreseeable future, and these obstacles have not been caused by the foreign national himself or herself.

In **Greece**, the authorities competent to decide may grant an applicant whose application for international protection they have rejected a leave to remain on humanitarian grounds<sup>243</sup>. Such leave to remain on humanitarian grounds is granted to an applicant in particular taking into account the objective impossibility of removal or return of the applicant to his/her country of origin or usual residence due to force majeure.

In **Hungary**, if the asylum claim is rejected the OIN might grant tolerated status to the unaccompanied minor, which is the prohibition of expulsion (deportation) for 1 year with a temporary residence permit. In **Poland**, a status of tolerated stay can also be an outcome of the asylum procedure. In **Slovakia**, if international protection is not granted to the child, every unaccompanied minor in the territory of Slovakia has the right to tolerated stay, which will be granted and then prolonged to him until the age of 18.

In **Italy**, the Territorial Commissions for the Recognition of International Protection may take any of four decisions: refugee status, subsidiary protection, humanitarian status or failed. Among the so-called humanitarian cases may be included persons with serious health problems, or because of their family or age conditions (e.g. children). The minor whose asylum claim has been rejected obtains a stay permit for minor age in case no other stay permit can be issued.

In **Malta**, together with refugee status and subsidiary protection the Office of the Refugee Commissioner may grant 2 other forms of national protection. Temporary Humanitarian Protection may be granted on humanitarian grounds such as age, disability or medical considerations. Temporary Humanitarian Protection is not part of the asylum procedure and only considered once the latter is fully and finally determined. The Commissioner may grant this protection where return to the country of origin is not possible. This protection may also be granted if these conditions are not present yet the person agrees to make an effort to improve his/her situation within a year.

In **the Netherlands**, if a temporary decision is not effective and the application for an asylum residence permit is refused, an unaccompanied minor may qualify for a temporary regular residence permit subject to a restriction related to a stay as unaccompanied minor (residence permit for unaccompanied minors). The residence permit for unaccompanied minors may also be granted if an asylum residence permit is withdrawn. The residence permit for unaccompanied minors may be extended annually following an assessment of whether the unaccompanied minor still meets the conditions to qualify for this permit. Only unaccompanied minors who have held a residence permit for unaccompanied minors for three years upon reaching the age of 18 years may submit an application for the purpose of 'continued residence'. The number of minors who receive such a residence permit as a minor is between 30-50 kids a year, so it is a really small group.

In **Sweden**, the outcome of the asylum procedure may be: refugee status; subsidiary protection (person in need of protection); humanitarian status; other / temporary permit. The 3 first statuses

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<sup>243</sup> Presidential Decree 114/2010, Art.28, *op.cit.* (Note 52).

result in permanent residence (renewed after 3 or 5 years depending on the country of origin). According to the Swedish Aliens law, persons who are found not to be “convention” refugees under the 1951 Refugees Convention may also qualify for asylum under a category known as ‘persons in need of protection (*‘skyddsbehövande’*). This includes those that have left their native country and have good reason to fear capital punishment, torture, need protection due to war (internal/external) or an environmental disaster in their native country. Other grounds which can allow staying in Sweden are: serious illness which cannot be treated in home countries; adaptation to life in Sweden; situation in home country.

In the **United Kingdom**, the possible outcomes of the asylum procedure are: outright refusal (on substantive matters) or non-compliance refusal (on procedural matters), grant of refugee status, humanitarian protection (=subsidiary protection) or discretionary leave to remain, *i.e.* a residence permit under migration law. This is a crucial aspect of the UK policy towards unaccompanied minors, since most asylum claims from UASCs indeed result in granting discretionary leave. Official policy is to deliver discretionary leave to children if UKBA “*is not satisfied that adequate reception and accommodation arrangements are in place in the proposed country of return*”<sup>244</sup>. Since April 2007 it is granted until the applicant is 17 years and a half, or for three years, whichever is the shorter<sup>245</sup>. Different stakeholders consider that unaccompanied minors are often granted discretionary leave without their need for protection being properly assessed.

## 7.5. Family reunification

Since it is not possible for a child who has been granted protection to come back to his/her country of origin, States have to implement measure ensuring that family of the child can join her/him. It is the issue of family reunification, linked to the right of every child to live with his/her parent provided in the Convention on the rights of the child<sup>246</sup>.

According to EU directive on family reunification, “*if the refugee is an unaccompanied minor, the Member States (...) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line (...) [and] may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced*”<sup>247</sup>.

Regarding asylum procedures, the 2004 qualification directive states that “*Member States shall ensure that family members of the beneficiary of refugee or subsidiary protection status, who do not individually qualify for such status, are entitled to claim the benefits referred to in Articles 24 to 34, in*

<sup>244</sup> UKBA Asylum Policy Unit Notice 3/2007. European Migration Network – EMN – report gives more details : if “the family of the child cannot be traced /adequate reception and care arrangements are not available in the country to which they would be removed / the option of voluntary return has been explored and rejected by the child”.

<sup>245</sup> This change of policy aimed “to ensure that the appeal process is completed by the time an applicant turns 18 years so that arrangements can be made for return to home country as soon as it is safe to do so”; and it is less generous than the previous policy. *R (on the application of A.O.) v. Secretary of State for the Home Department*, [2011] EWHC 110 (Admin), United Kingdom: High Court (England and Wales), 28 January 2011, available at: <http://www.unhcr.org/refworld/docid/4d6395f32.html> [accessed 30 July 2012]

<sup>246</sup> *Convention on the Rights of the Child*, Art.22, *op.cit.* (Note 129).

<sup>247</sup> Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Art. 10(3), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:NOT> [accessed 10 July 2012].

accordance with national procedures and as far as it is compatible with the personal legal status of the family member”<sup>248</sup>. The new directive, adopted in 2011 and that should be translated in national legislations before the end of 2013, contains the same provision<sup>249</sup>.

### 7.5.1. Definition of the family regarding family reunification

The definition of “family members” in the 2004 qualification directive did not include the family of a minor beneficiary of refugee or subsidiary protection<sup>250</sup>, but it is the case in the new directive. Indeed, the 2011 qualification directive defines as member of the family “*the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned, when that beneficiary is a minor and unmarried*”<sup>251</sup>.

The definition of family regarding family reunification varies from country to country. First of all, in some countries, the definition only concerns the family of the adult refugee.

In most countries defining the family of the minor refugee, family is defined as **the parents of the unaccompanied refugee minor**. It is the case in **Austria, Belgium, Cyprus, France, Greece, Ireland** (under certain situations, the definition can be wider), **Italy, Lithuania, Slovakia, Spain** and **Sweden**.

In **Ireland**, the Refugee Act of 1996 provides that unmarried refugees below 18 can apply for family reunification of their parents only<sup>252</sup>. However, under certain circumstances, the unaccompanied minor can apply for family reunification of other members of the family (grandparent, brother, sister...). To do so, the minor has to prove that his/her family members are dependent on him. This involves providing documentary evidence, such as “evidence of financial support provided by the refugee and medical reports attesting to the physical or mental incapacity of the dependent family member”<sup>253</sup>.

The Ombudsman for Children’s Office considers that the principle of family reunification for children can be rendered “meaningless” by the fact that the child must prove that their sibling is dependent on them : “this means that a young person can apply for their parents to be reunified with them, but not their siblings, thereby forcing parents to choose between remaining with their children wherever they may currently be living, or moving to Ireland to join one of their children and thereby abandoning their other children”<sup>254</sup>.

This strict **definition can be extended to the legal representative** as in **the Czech Republic, Finland, Hungary, Latvia** and **Slovenia**.

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<sup>248</sup> Council Directive 2004/83/EC, Art.23, *op.cit.* (Note 3).

<sup>249</sup> Directive 2011/95/EU of the European parliament and of the council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, Art. 23, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF> [accessed 10 July 2012].

<sup>250</sup> The directive only mentions spouses and child of the beneficiary.

<sup>251</sup> Directive 2011/95/EU of the European parliament and of the council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, Art. 2(j), *op.cit.* (Note 249).

<sup>252</sup> *Refugee Act 1996*, Section 18(3) (b) (ii), available at: <http://www.irishstatutebook.ie/1996/en/act/pub/0017/print.html> [accessed 10 July 2012].

<sup>253</sup> Definition of family member and dependent family member for the purposes of family reunification of refugees under section 18 of the Refugee Act, 1996 (as amended), available at: <http://www.orac.ie/pages/FRU/Definition.htm> [accessed 10 July 2012].

<sup>254</sup> Ombudsman for children’s office, p. 50, *op. cit.* (Note 231).



In some other countries, it could be either the parents, or the guardian or another adult from his/her family, as in **Bulgaria, Estonia** and **Portugal**. Romania transposed the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification with Aliens Act no. 157/2011. There is no definition of the “family” in the Law but art. 46 stipulates that:” Unaccompanied minors, beneficiaries of the refugee status or another form of subsidiary protection, may request family reunification for:

- a) first degree relatives in ascending line or legal tutor, or
- b) another relative if those mentioned above do not exist.”

In some countries, unaccompanied refugee minors can be joined by their parents and **also their siblings**, as in **Denmark, Germany, Luxembourg, Netherlands** and **Poland**.

In **the United Kingdom**, family reunion for refugees only applies to dependent children and spouses of refugees, not to their parents. As a consequence, it is hardly possible for an unaccompanied child to apply for family reunion.

### 7.5.2. Potential regularization of the family already in the host country

When the family is already in the country or in the case that the family arrives by its own means, the question is whether the family can be granted a residence authorization. Globally, there is little information on this issue, and anyway, it is not always foreseen by Law.

In many countries, very few data is available on this issue. It is the case in **Belgium, Estonia, Greece, Ireland, Luxembourg, Malta, Poland, Portugal** and **Slovenia**.

In **Estonia**, it is not foreseen by Law. There is no practice on this issue, but parents would have a separate case examined. In **Greece**, nothing is foreseen by Law because the family must live abroad. In **Ireland**, this issue remains unclear. According to ORAC, the parents of the child would not be deported in this case<sup>255</sup>. But no legal provision or practical example can confirm this. In **Malta**, there is no legal provision for family reunification of the parents of the refugee child. In **Luxembourg** and **Poland**, there is no information available on this issue, as well as in **Slovenia**. **Portugal** has not implemented the legislation.

In some countries, the **family can be granted the refugee status or subsidiary protection**. It is the case in **Cyprus, the Czech Republic, Denmark, Hungary** and **Slovakia**.

In **Cyprus**, Law<sup>256</sup> provides that asylum should be granted to members of the family of a refugee who enter the Republic either at the same time as the refugee or thereafter. There is no equivalent provision for applicants enjoying subsidiary protection. In **the Czech Republic**, Law<sup>257</sup> foresees that the parent would have to apply for asylum and would receive the same – positive - decision very quickly. In theory there is no difference if the child receives subsidiary protection. In **Denmark**, if family members arrive, they would normally receive the same status as the minor. In **Hungary**, the

<sup>255</sup> Interview of ORAC representatives, 3/11/2011.

<sup>256</sup> Refugee Law of 2000 (last amended 2007) [Cyprus], No. 6(I) of 2000, Art.25(1), *op.cit.* (note 41).

<sup>257</sup> Asylum Act (325/1999 Coll.), Art. 13, available at: <http://www.mvcr.cz/mvcren/article/procedure-for-granting-international-protection-in-the-czech-republic.aspx> [accessed 10 July 2012].

easiest is to apply for asylum, as family members are granted the same level of protection in most of the cases (unless exclusion). It is the same for children granted subsidiary protection. In **Slovakia**, parents may be granted asylum and thus receive a permanent resident permit.

In other countries, family can be granted a **residence permit**, as in **France, Belgium, Germany, Ireland, Italy, Latvia, Lithuania** and **Sweden**.

In **Belgium**, there is a possibility for minor's parents to ask for regularization for exceptional circumstances, if they are already residing legally, according to article 9bis of the Law on Foreigners<sup>258</sup>. In **France**, the parents may obtain a 10 years resident permit, but only if they were previously staying under a regular status in France<sup>259</sup>. In practice, this procedure corresponds to the family reunification that French Law foresees for family still in the country of origin. In **Germany**, in accordance with § 36, Paragraph 1 Residence Act, the parents of an underage foreign national – even if these parents do not have an independent means of securing their livelihood or adequate living quarters – must be granted a residence permit, as long as there is no parent already resident within Germany who is entitled to have the care and custody of the minor in question. This is only possible, under the condition that this minor is in possession of a residence permit or a settlement permit, either as a person entitled to asylum or by reason of his or her status as refugee. Equally, other members of the minor's family can be issued with a residence permit for the purposes of family reunification, provided this is necessary for the "avoidance of exceptional hardship". The term "exceptional hardship" should in this context be taken to mean that the child living in Germany is in need of particular care by reason of illness, for example, and that the child's own parents are not available for this purpose. These provisions put the German state in compliance with the EU Directive on the Reunification of Families. In **Ireland**, the family gets a residence permit. In **Italy**, parents of a minor who obtained refugee status obtain a stay permit for family reasons regardless if they have a valid stay permit, unless they are deprived of their parental authority according to the Italian legislation<sup>260</sup>. In **Latvia**, if a child was granted refugee or alternative status and his parents are already on the territory of Latvia, the Head of the Office of Citizenship and Migration affairs or his or her authorised official may permit the submission to the Office of the documents necessary for requesting a residence permit, if it complies with the norms of international law, the State interests of Latvia or is related to reasons of a humanitarian nature. In **Lithuania**, if a child was granted refugee status, his/her family members have to apply for residence permit up to three months after the refugee status was granted. If a child was granted subsidiary protection he/she should have residence permit at least for 2 years for his/her family members to have possibility to apply for residence authorization in the country on the basis of family reunification. In **Sweden**, if the unaccompanied child is granted a refugee status, his/her parents in Sweden would probably be given a permit to stay, same would usually work for the children who get subsidiary protection. In **the United Kingdom**, family reunification seems almost impossible for unaccompanied minors.

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<sup>258</sup> VAN ZEEBROECK C., PLATE-FORME MINEURS EN EXIL, *Aspects législatifs de la situation des mineurs étrangers non-accompagnés en Belgique*, mars 2008, pp.419-444.

<sup>259</sup> Art.L 314-11-8° of the Code de l'entrée et du séjour des étrangers et du droit d'asile, available at : [http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=AA49BE3DFAE817CB6C55AE4D2F65C222.tpdjo08v\\_3?idArticle=LEGIARTI00006335113&cidTexte=LEGITEX000006070158&dateTexte=20120709](http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=AA49BE3DFAE817CB6C55AE4D2F65C222.tpdjo08v_3?idArticle=LEGIARTI00006335113&cidTexte=LEGITEX000006070158&dateTexte=20120709) [accessed 10 July 2012].

<sup>260</sup> Decreto Legislativo 25 luglio 1998, n. 286, "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero", pubblicato nella *Gazzetta Ufficiale* n. 191 del 18 agosto 1998 - Supplemento Ordinario n. 139, Art.30 subsection 1d), available at: <http://www.camera.it/parlam/leggi/deleghe/98286dl.htm>

### 7.5.3. Reunification with the family living in a third country

#### 7.5.3.1. Family tracing for unaccompanied refugee child

The International Convention on the rights of the child foresees that States Parties shall provide measures “to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family”<sup>261</sup>.

Family tracing is thus foreseen by the international instruments. Therefore, it should be also **foreseen by national Laws**. In **Austria**<sup>262</sup>, **Belgium**<sup>263</sup>, **Bulgaria**<sup>264</sup>, **Cyprus**<sup>265</sup>, **the Czech Republic**, **Greece**<sup>266</sup>, **Ireland**<sup>267</sup>, **Latvia**, **Lithuania**, **Luxembourg**, **Poland**<sup>268</sup>, **Portugal**<sup>269</sup>, **Slovenia**<sup>270</sup> and **Sweden**, family tracing is provided by law.

Different organizations or institutions may be in charge of this family tracing. Sometimes, it can be **immigration services**, as in **Denmark**, **Finland**, **Lithuania**, **Poland**, **Portugal** and **Sweden**. In **Denmark**, following the arrival of the unaccompanied minor, the Immigration Service will launch a search of the unaccompanied minor’s parents or other relatives, if their place of residence is unknown. The search may be carried out in collaboration with an organization approved for this task by the Minister of Integration. In **Finland**, the Finnish Immigration Service must, if possible, endeavour without delay to trace the unaccompanied minor's parents or some other person responsible for their guardianship. The Service is entitled to obtain information from the reception centre relating to the date of birth, family members and their whereabouts while endeavouring to do this tracing. To facilitate tracing, the *Finnish Immigration Service* and the NGO *International Social Service (ISS)* entered into a co-operation agreement for the tracing of the guardians of an unaccompanied minor. In **Lithuania**, the Law obliges the Migration Department to immediately organize the search for family members of the unaccompanied minor, together with their guardian. In **Poland**, the Chief of the Office of Foreigner is, according to the Law, responsible for tracing activities, even if in practice this activity is directed to the Polish Red Cross. In **Portugal**, the Law foresees that “the Portuguese Immigration Service, in articulation with other authorities involved in the procedure and the Portuguese Ministry of Foreign Affairs, and with the purpose of protecting the unaccompanied minor’s best interests, should endeavour all efforts to trace the members of his or her family as soon as possible”<sup>271</sup>. In practice, the International Committee of the Red Cross. In **Sweden**, family tracing is an obligation of the state. The Migration Board offers to help carry it out directly while in the same time also informs the unaccompanied children about the possibility to have the tracing of their family members conducted by Swedish Red Cross. In practice more family tracing is performed by Red Cross.

<sup>261</sup> *Convention on the Rights of the Child*, Art. 22, *op.cit.* (Note 129).

<sup>262</sup> Austrian Asylum Law (AsylG § 35 Para 1 & Para 2).

<sup>263</sup> *Loi-programme du 24 décembre 2002 Tutelle des mineurs étrangers non accompagnés*, *op.cit.* (Note 75).

<sup>264</sup> Law for the Asylum and the Refugees (as amended in 2007) [Bulgaria], 16 May 2002, Art. 34, § 9, available at: <http://www.unhcr.org/refworld/docid/47f1faca2.html> [accessed 15 June 2012].

<sup>265</sup> Refugee Law of 2000 (last amended 2007) [Cyprus], No. 6(I) of 2000, 2000, Art.25 (A)(3), *op.cit.* (Note 41).

<sup>266</sup> Presidential Decree 220/2007, art. 19.2.c., *op. cit.* (Note 50)

<sup>267</sup> Child Care Act, Section 4, 1991, *op.cit.* (Note 60).

<sup>268</sup> Act on Aliens of 13 June 2003 [Poland], 1 September 2003, Art. 61 part 3, *op.cit.* (Note 46).

<sup>269</sup> Law 27/2008, Art.79 § 5, *op.cit.* (Note 43).

<sup>270</sup> Law on International Protection, Art.16 (1), *op.cit.* (Note 136).

<sup>271</sup> Law 27/2008, Art.79 § 5, *op.cit.* (Note 43).

In **Cyprus**, according to the Refugee Law, the **competent authorities** should endeavour to trace the members of the minor's family as soon as possible. In practice, the stalemate that resulted from the inability to appoint a legal representative for the minor meant that the refugee status was never granted to a minor and thus family tracing was never conducted.

In **the Czech Republic**, according to the law, the International Child Protection Office in the Czech Republic based in Brno is charged with the duty to trace family members. However, in practice the Office does not really provide any tracing effort. Of course, if the child requests family tracing – all possible support would be granted using the assistance of the Red Cross, the UNHCR, the IOM mission, other NGOs or a Czech Embassy placed in the child's country of origin.

In **Belgium**, in theory, family tracing is undertaken, whether the unaccompanied minor is refugee or not. It is one of the **guardian's missions**.

In **Romania**, in practice, the Ministry of Interior gets contact with the Romanian Minister of Foreign Affairs. Through the Minister of Foreign Affairs, are contacted the Romanian Embassies from the target countries to trace family members in the country of origin.

In many countries, the **Red Cross** is responsible for this research or at least is one of the services that can help tracing family. It is the case in **Bulgaria, Czech Republic, Estonia, France, the United Kingdom, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Poland, Portugal** and **Sweden**. In **Bulgaria**, when the location of the family members is unknown, the State Agency for Refugees should, in cooperation with the United Nations High Commissioner for Refugees, the Bulgarian Red Cross and other organizations, undertake search actions to locate them<sup>272</sup>. In **Romania**, the Red Cross is not involved in tracing. However, ongoing discussion with Ministry of Interior could lead to a specific agreement in this field in the future.

In **France**, there is no legal provision on family tracing for unaccompanied minors who became refugees or obtained subsidiary protection. In practice, social services, associations (as the Red Cross) or social workers working with the minor may do this research. However, it is not systematically done.

Many questions may arise from this, in particular **question of confidentiality, linked to their status as an asylum seeker or refugee**.

In **Cyprus**, in cases where there may be a threat to the life or integrity of this minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis. In **Denmark**, unaccompanied minors can use the search service of the International Red Cross. The International Red Cross can help the unaccompanied minor locate parents and other relatives in confidentiality, that is, without forwarding the result of the search to the authorities. In **Finland**, care is taken not to endanger the safety of the minor or their family and that knowledge of the tracing is not brought to the attention of the authorities in the country of

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<sup>272</sup> Law for the Asylum and the Refugees (as amended in 2007) [Bulgaria], 16 May 2002, Art. 34, Paragraph 9, available at: <http://www.unhcr.org/refworld/docid/47f1faca2.html> [accessed 15 June 2012].

origin. In **Luxembourg**, the Asylum Law<sup>273</sup> states that care should be taken not to endanger the life or physical integrity of a minor or his relatives, in particular if the latter have remained in the country of origin, and to ensure that the gathering, treatment and sharing of information regarding these persons will stay confidential. In **Ireland**, the Irish Refugee Council expresses some concerns about this family tracing always being implemented<sup>274</sup>, although it is potentially damageable for asylum-seeking children. Indeed, it is in contradiction with section 19 of the Refugee Act that provides for the protection of asylum seekers' identity.

In **Italy**, there are no legal provisions on family tracing for unaccompanied minors granted refugee status or subsidiary protection. The Italian Committee for Foreign Minors (CFM) is responsible for family tracing as one of the activities to be carried out under its mandate (art 33 of Law 286/98). The CFM avails itself of IOM for all activities related to family investigations (family, school, social, cultural, etc..) only for foreigner unaccompanied minors for integration or repatriation purpose. Therefore, no family tracing is done for foreigner unaccompanied asylum seeking minors.

On the contrary, in **Finland**, family tracing does not affect the assessment of the need for international protection, and a decision on whether or not to undertake tracing takes place only after an asylum interview.

### 7.5.3.2. Procedure of family reunification

Family reunification is the procedure that allows a refugee or beneficiary of the subsidiary protection to make his/her family come to join him/her in the country where he/she got the international protection.

In some countries, as **Belgium**, **Cyprus**, **France** or **Italy**, the family reunification procedure only applies to refugees, not to subsidiary protection beneficiaries.

No information is available on this issue in **Denmark**, and neither in **Malta**.

**The procedure may be difficult or very long** in some countries. It is the case in **Austria**, **Finland**, **France**, **Hungary** and **Luxembourg**.

In **Austria**, the authorities can demand accredited documents, DNA analysis and age assessment of the family members. If the examined persons were actually family members, the Federal Office for Migration respectively the Asylum Court is obligated to refund the charges for the DNA analysis (cp. AsylG § 18 Para 2). Experience shows that it gets more and more difficult in the last years to bring the families of the UMR to Austria. Problematic are both the duration of proceedings, which often takes longer than a year, as well as the related high charges for the DNA analysis, age assessment, travel costs, documents and their accreditation, etc. In **Finland**, New restrictions by Alien's Act will come into force from the beginning of 2012. It will be no longer possible to submit an application for a family reunification in Finland. It means in practice, that family members in the country of origin will

<sup>273</sup>Loi du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection [Luxembourg], 5 May 2006, Art. 52 (5), available at: <http://www.unhcr.org/refworld/docid/48ca6fa42.html> [accessed 29 June 2012].

<sup>274</sup>Interview of IRC representative, 3/11/2011.

have to arrange several times often expensive and even dangerous travel to the Finnish Embassy, often in another country. Firstly, travelling is needed just to apply for family reunification, then later for interviews and possible DNA-tests. If people are able to go through these travels and succeed to be there on time for interviews, and if they finally get a residence permit, their travel costs are no longer paid by the Government (according to the new Act on Integration that came into force in the beginning of Sept, 2011).

In **France**, family reunification is allowed for parents of the minor, according to the normal procedure of family reunification for refugees<sup>275</sup> : it is necessary to ask for a long stay visa for family reunification from the French embassy in the country of origin and also to make a request to the office of refugees' families (Bureau des familles de réfugiés) in Nantes (city on the west of France). This procedure is quite long, as it often takes more than one year. This procedure normally does not apply to beneficiaries of subsidiary protection. Indeed, for this kind of protection, French Law only foresees a residence permit for children and spouse of the beneficiary. However, the Cour Nationale du Droit d'Asile (appeal court) considered, in March 2009, that the minor who were granted subsidiary protection should make his/her parents come and they should be granted a one year stay permit or subsidiary protection<sup>276</sup>.

In **Hungary**, according to the general rules, refugee children could reunite their parents<sup>277</sup> with no conditions to be proven within 6 months from the final positive decision under Section 19 (2) b) of the TCN Act. However, due to administrative burdens and difficulties imposed by the OIN the HHC is NOT aware of any unaccompanied minor that could successfully reunite with family members between 2008 and 2012. In one case (represented by the HHC) the Supreme Court recently ordered to re-examine the request for family reunification as if the 6 months favourable deadline was respected by the applicants<sup>278</sup>. Another shortcoming of the legislation and the practice is that siblings also fall out from the category as foreseen by the TCN Act (art. 19.), which is again disadvantageous for many unaccompanied minors who only have sisters and brothers left in their home country.

On the contrary, in **the Czech Republic**, procedure seems easier. If the parent is not present in the Czech Republic, he/she would have to use favourable provisions for family reunification under the Aliens Act. The parent may apply at the Embassy for a long-term resident permit for the purpose of family reunification and there are very limited requirements for the supporting documents – in fact only the requirement to have a valid passport, photographs and a proof of family ties in any manner<sup>279</sup>.

In **Ireland**, if a refugee is under 18 and not married, he can apply for family reunification of his/her parents. Applications are made to Irish Naturalization and Immigration Service - INIS of the Minister of Justice, and then passed to ORAC for investigation of family links. Once ORAC has checked the

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<sup>275</sup> This procedure is different from the one called 'regroupement familial', which applies to foreigners who are not refugees.

<sup>276</sup> CNDA, Sections Réunies, 12 mars 2009, 638891, *Mme D. ép. K.*

<sup>277</sup> Or their guardian replacing the parents as foreseen by the Act II of 2007 on the Entry and Stay of Third-Country Nationals, Section 19 (2) b), available at : [http://konzuliszolgalat.kormany.hu/download/7/f9/20000/EN2007evi\\_II\\_trv\\_harmadik\\_orosz\\_allamp\\_beutazas\\_tart.pdf](http://konzuliszolgalat.kormany.hu/download/7/f9/20000/EN2007evi_II_trv_harmadik_orosz_allamp_beutazas_tart.pdf) [accessed 31 July 2012].

<sup>278</sup> In case no. Kfv.IV.37.374/2011/5. before the Supreme Court, the OIN argued that there is no possibility to proceed the family reunification with the favourable conditions within 6 months from the recognition of the family member as a refugee if the applicant (the family member residing outside Hungary) missed this deadline due to the omission or unlawful inactivity of the consular services. On 9 May 2012 the Supreme Court ruled that such a situation should be remedied by applying the favourable rules if the omission was not the fault of the applicant.

<sup>279</sup> Aliens Act No. 326/1999, Art. 42 b), *op.cit.* (Note 135).

family link, a report is submitted to the Minister for Justice, Equality and Law Reform for a final decision.

In **Latvia**, If an unaccompanied minor refugee wishes to reunite with his or her mother and father and an opinion of the Orphan's Court has been received that it is in the interests of the child to reunite with his or her mother and father in the Republic of Latvia, his or her lawful representative should draw up an invitation in the Office of Citizenship and Migration Affairs in accordance with the regulatory enactments regulating the procedures for approval of invitations. All family members wishing to be reunited should be indicated in the invitation. If the mother and father of an unaccompanied refugee child cannot submit any of the documents referred above and have indicated a justified reason in writing, the diplomatic or consular mission of the Republic of Latvia may accept documents for the reunification of a family without the respective document.

The diplomatic or consular mission of the Republic of Latvia should, within a month, send the documents mentioned above to the Office of Citizenship and Migration Affairs.

In **Lithuania**, the family may obtain a visa for family reunification to come and get a residence permit. If a child was granted refugee status, his/her parents can apply for a residence permit for 1 year. After the year, the family members need to reapply for a residence permit. After five years, family members can receive permanent residence permit. If a child was granted subsidiary protection he or she should have residence permit at least for 2 years that his/her family members would have possibility to apply for residence authorization in country on the basis of family reunification.

In **Italy**, law<sup>280</sup> states that the direct ascendants (first degree) of a refugee unaccompanied minor are authorised to enter and sojourn in Italy for family reunification purposes. There are no specific provisions for family reunification concerning unaccompanied minors benefitting from other kind of protection status (subsidiary or humanitarian).

In **the United Kingdom**, under family reunion rules, the parents of a refugee child can not join him/her. However, some new immigration rules provide immigrants with the right to apply for reunion with other members of the family (i.e. parents, brothers and sisters), but they have to pay for this application, and prove that they can financially support their relatives<sup>281</sup>. The relatives have to apply for family reunion by the UK embassy in their country of origin; the application will then be examined by the Home Office. In practice, this provision is not frequently used by unaccompanied minors and their relatives.

In **Romania**, an unaccompanied minor can ask for family reunification **only for his/her parents or legal tutor**<sup>282</sup>. The Romanian Office for Immigration will automatically begin the family reunification procedure. When the procedure to reunite the family is begun automatically, the agreement of the legal representative is requested or, by case, of the unaccompanied minor as well. In all cases the opinion of the unaccompanied minor will be taken into consideration and given the appropriate

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<sup>280</sup> The Directive 2003/86/CE on family reunification has been transposed in the Italian legislation through the Decree n. 5/2007 modified by decree n.160/2008. Through Decree n. 5, subsection 3 has been added to art 29 bis of Law 286/98. Article 29 bis is available at: [http://www.immigrazione.biz/upload/Articolo\\_29\\_bis.pdf](http://www.immigrazione.biz/upload/Articolo_29_bis.pdf) [accessed 31 July 2012].

<sup>281</sup> Immigration Rules, §319, available at: <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part8/> [accessed 10 July 2012].

<sup>282</sup> Law no. 157/2011, Art. 46, Available (in Romanian) at: [http://ori.mai.gov.ro/api/media/userfiles/Legea%20157%202011\(1\).pdf](http://ori.mai.gov.ro/api/media/userfiles/Legea%20157%202011(1).pdf) [accessed 31 July 2012].

importance<sup>283</sup>. There is no difference between a minor with refugee status and one with subsidiary protection<sup>284</sup>.

In **Slovakia**, if a person, younger than 18 years old, is granted asylum, his/her parents may apply for the temporary residence permit at the respective embassy of the Slovak Republic or at the department of foreign police. In case of parents of a child with the subsidiary protection, the possibility to enter the territory is by submitting an application for visa.

In **Sweden**, children granted refugee status have the right to unite with their parents in Sweden. Their parents will get a residence permit. Children who have the subsidiary protection in general also have such right although they were some recent cases where the Migration Board said that the country of origin is safe enough for parents to live there, although it wasn't safe enough for a unaccompanied minor child (there were very few such decisions so far) – in case of such decisions some unassisted minors requesting reunification with parents (whom during the procedure were reported as missing) may be at risk of losing their own subsidiary protection status.

#### RECOMMENDATION 7 – Decision and its consequences

- ▶ Considering vulnerability and special needs of unaccompanied minors, it is essential that every effort be made to reach a decision on asylum promptly and fairly.
- ▶ A liberal application of the principle of the benefit of the doubt should be applied to decisions regarding application of unaccompanied children. Child-specific forms of persecution should be taken into account in the decision process.
- ▶ Unaccompanied minors should never be prevented from appealing a negative decision.
- ▶ The family of unaccompanied children who were granted international protection should be granted a residence permit. Family reunification should apply to families of minors who were granted international protection, in a reunification procedure eased and accelerated.

<sup>283</sup> Law no. 122/2006, Art.72, *op.cit.* (Note 48).

<sup>284</sup> European migration network – Small Scale Study family reunification, Romania, October 2007, available at: <http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?directoryID=105> [accessed 27 July 2012].



## 8. Specific aspects of asylum at the border

According to the European Commission's Action Plan on Unaccompanied Minors (2010 – 2014) "Reception measures and access to relevant procedural guarantees should apply from the moment an unaccompanied minor is detected at external borders or on EU territory, until a durable solution is found. [...]"<sup>285</sup>

### 8.1. Access to the asylum procedure at the border

Not all European countries are Schengen States, as the Schengen area is composed of 22 European member States and 4 non European member States, Liechtenstein, Iceland, Norway and Switzerland. **Bulgaria, Cyprus, the United Kingdom, Ireland** and **Romania** are not Schengen States.

Moreover, some countries share borders with non EU nor Schengen countries as **Lithuania** (borders with Belarus and the Russian Federation) and **Poland** (borders with the Russian federation, Lithuania, Belarus and Ukraine). Due to the very insufficient social support for asylum seekers and not well developed integration policies Poland is considered by many asylum seekers rather a transit country than a final destination. The same situation applies for **Hungary** and **Slovakia** (bordering non-EU countries such as Serbia, Ukraine). The number of unaccompanied minors readmitted from Hungary to Serbia rose significantly in 2011; at least 75 cases could be identified where separated children were sent back to Serbia from Hungary without assessing their individual situation and the care they would receive in Serbia.<sup>286</sup> On the contrary, most countries have borders with other Schengen countries.

"In practice, applications are submitted in **Finland** to the local police in the interior of the country. The Finnish Border Guard no longer carries out checks at ports. At airports border checks are only carried out on passengers coming from outside the Schengen area. At border stations between Finland and Russia checks are carried out routinely. In 2008 only 4 applications for international protection regarding unaccompanied minors were submitted at airports, the remaining 702 being filed with local police around Finland. About half of all the asylum applications regarding unaccompanied minors are filed with the Helsinki Police Department."<sup>287</sup>

In **Ireland**, the policy is that no unaccompanied minor should be refused the entry to the State, as soon as their minority is recognized. Anyway, in terms of statistics, most unaccompanied minors are identified on the territory rather than at the border. According to a 2003 report, "99% of referrals [of unaccompanied minors] come through ORAC"<sup>288</sup>, i.e. when children apply for asylum on the territory.

<sup>285</sup> Communication from the Commission to the European Parliament and the Council: Action Plan on Unaccompanied Minors (2010 – 2014), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF> [accessed 10 July 2012].

<sup>286</sup> According to the HHC's experience in border monitoring in 2011. Hungarian law foresees that unaccompanied minor may only be expelled if family reunification or adequate institutional care is ensured in the destination country. Section 45 (5) of the TCN Act.

<sup>287</sup> Parsons, Annika (2010). The best interests of the child in asylum and refugee procedures in Finland. The office of the Ombudsman for Minorities, p. 33, available at: [http://ec.europa.eu/justice/news/consulting\\_public/0009/contributions/public\\_authorities/042\\_ombudsman\\_for\\_minorities\\_finland\\_report.pdf](http://ec.europa.eu/justice/news/consulting_public/0009/contributions/public_authorities/042_ombudsman_for_minorities_finland_report.pdf) [accessed 10 July 2012].

<sup>288</sup> VEALE A., Irish Refugee Council, *Separated children seeking asylum in Ireland*, 2003, p. 31, available at: <http://ebookbrowse.com/separated-children-seeking-asylum-in-ireland-2003-08-doc-d16745988> [accessed 1 August 2012].

Even if **Spain** has no land border with non European countries, its geographical situation explains that the majority of unaccompanied minors come from Africa, Morocco and sub-Saharan Africa. When the unaccompanied Moroccan minors arrive in Spain, they usually go to the State Security Forces in order to be admitted to a Child Protection Centre, although it is known that an undetermined number of minors are not detected, and do not receive any protection whatsoever. Spain, and more specifically, the Autonomous Community of the Canary Islands, has witnessed in recent years the migratory phenomenon of thousands of unaccompanied minors coming from Senegal, Mali, Guinea Bissau, Guinea, Ghana, Cameroon, Gambia, and Mauritania, among other countries of the Sahel.

**Sweden** is the favourite destination country in the European Union for unaccompanied minors claiming asylum especially the ones from Afghanistan. It is targeted because of its fame about the liberal asylum policy as well as social and legal advantages from which they may benefit.<sup>289</sup> However, unaccompanied minors who do not request asylum are considered illegal migrants.

**Cyprus** is an island close to Turkey, Syria and Egypt. Due to its small size, no part of the asylum procedure takes place at the border, although an applicant is entitled to submit an application to the police at the border. In **Finland**, in 2008 only 4 applications for international protection regarding unaccompanied minors were submitted at airports, the remaining 702 being filed with local police around Finland. About half of all the asylum applications regarding unaccompanied minors are filed with the Helsinki Police Department.<sup>290</sup> At ports, there are no longer checks by the Finnish Border Guards and at the airports, checks are only carried out on passengers coming from outside the Schengen area.

In **France**, at ports of entry (ports, railway stations, airports), foreigners, including unaccompanied minors, can be detained in there are waiting areas (so-called “zones d’attente”), when they are not allowed to enter the territory. The main waiting area is the one of Roissy Charles de Gaulle’s airport. In 2011, 44 unaccompanied children asked for asylum in the so called ‘zones d’attente’ (99 in 2010)<sup>291</sup>. 9 of them have been admitted in the territory in order to make an asylum application.

## 8.2. Guardianship at the border

Not all European countries have procedures at the border.

In **Malta**, procedures at the border are not too relevant, owing to the fact that Malta is a small island. All persons crossing the maritime border are immediately channelled in the regular procedure and conducted in detention centres. In **Romania**, unaccompanied minor asylum-seekers are not subject to the border procedure<sup>292</sup>. Upon asylum request, they are given immediate access to the territory and the ordinary procedure. In **Denmark**, there is no traditional border with traffic control. In **Austria**, there is no border procedure, except for the so called “special transit” at the Vienna airport.

<sup>289</sup> European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), *Unaccompanied Minors in the Migration Process*, Warsaw, December 2010, available at: [http://www.frontex.europa.eu/assets/Publications/Risk\\_Analysis/Unaccompanied\\_Minors\\_in\\_Migration\\_Process.pdf](http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/Unaccompanied_Minors_in_Migration_Process.pdf) [accessed 30 July 2012].

<sup>290</sup> PARSONS, Annika, *op.cit.* (Note 287).

<sup>291</sup> OFPRA, *Rapport d’activité 2011*, p 34, available at: [http://www.nouvellecour.com/espace\\_client/ofpra2/](http://www.nouvellecour.com/espace_client/ofpra2/) [accessed 10 July 2012].

<sup>292</sup> Law 122/2006, Art. 84, *op.cit.* (Note 48).

In **Austria, Bulgaria, Denmark, Estonia, Finland, Italy, Latvia, Lithuania, Poland, Portugal, Slovenia, Sweden** and **the United Kingdom** no guardian is directly appointed at the border when unaccompanied minors are identified there.

In **Austria**, the initial interrogation by the alien police in special transit is normally performed without any legal representative. In **Belgium**, agents at the border must inform the Guardianship Service ('service des tutelles'), as soon as a minor is identified at the border. They have to fill an "unaccompanied minor form" and pass it to the Foreign Office and the Guardianship Service ('service des tutelles'). Then the guardian appointment process starts. The problem is that this process may take some time, which implies that a guardian cannot be appointed while the youngster is still at the point-of-entry. If a minor is considered as such, he/she will be sent to the Centre d'Observation et d'Orientation (centre of observation and counselling), and the guardian designation will only be done there. It means that requirements at the border are done without the presence of a guardian. However, pending the appointment of a guardian, the Guardianship Service ('service des tutelles') can play this role. It means that in practice a decision concerning a minor can be notified directly to the Guardianship Service ('service des tutelles'). If there is a doubt on the minor's age, he/she can be maintained in a closed centre during the age assessment. In this only case, the Guardianship service ('service des tutelles') appoints a temporary guardian, whose mission will be to assist the minor before he/she is clearly identified as minor or of age.

In **Latvia**, after the identification of the unaccompanied child at the border, State Border Guard informs the Orphan's Court, and the court should appoint a guardian. In practice, it is extremely difficult to find a guardian and there have been cases when a guardian was not appointed at all, and during asylum procedure the child was represented by the Orphan's court. Guardian is not appointed during the identification at the border and a child in most cases is not represented at the border neither by a guardian, nor a lawyer.

In **Lithuania**, a lawyer commissioned to provide legal services to asylum seeker and representing interests of an unaccompanied minor and a representative of the territorial child's rights protection agency are present during primary questioning at the border. The person is not officially appointed as a guardian, but nevertheless has the obligation to represent the minor's interests.

In **the United Kingdom**, there is no real guardianship system, whether at the border or in the country. This absence of responsible adult or legal representative may be very damageable to the child. For example, the NGO Refugee and Migrant Justice reported, in 2009, the case of an unaccompanied 8-year-old boy: "On arrival, he was given a screening interview without a legal representative present. He was asked to complete an application stating his case for asylum, but given no legal assistance to do this. He was then refused asylum due to his lack of 'credibility'; this judgment was based solely on a case for asylum made out by an 8 year old boy"<sup>293</sup>.

In **Cyprus**, according to the law, a guardian must be appointed 'as soon as possible' but there is no requirement that this must be done at the border. In practice, as no guardian can be appointed in

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<sup>293</sup>Refugee and Migrant Justice, *Does every child matter?*, 2009, p. 7, available at: [http://s3.amazonaws.com/rcpp/assets/attachments/738\\_746\\_EN\\_original.pdf](http://s3.amazonaws.com/rcpp/assets/attachments/738_746_EN_original.pdf) [accessed 11 July 2012].

Cyprus, unaccompanied minors have to wait until they turn 18 in order to be able to apply for asylum.

In **the Czech Republic, France, Germany, Hungary, Luxembourg, the Netherlands** and **Slovakia** a guardian is appointed for minors arriving at the border.

In **France**, an unaccompanied minor who is identified at the border and has no access to the territory, is detained in the so-called “zone d’attente”. There, a guardian must be appointed. This “*ad hoc administrator*” must be designated without delay. In practice, there are sometimes problems. For example, no guardian was appointed for 53 minors out of 637 who were placed in “zone d’attente” in 2009<sup>294</sup>. In **Luxembourg**, unaccompanied minors who are refused access to the territory must be provided as soon as possible with an *ad hoc* administrator to assist and represent them in the administrative and judicial procedures in relation with their stay at the transit zone of the airport. In **the Czech Republic**, the Aliens Police is not allowed to conduct any legal procedures with an unaccompanied minor without the presence of a guardian. As soon as the police finds out that a child should be removed from the territory or detained or an asylum procedure should be initiated, a guardian must be appointed.

In **Hungary**, the law foresees that a legal guardian has to be immediately appointed to all procedures the unaccompanied minor may be subject to, as soon as the police identify one and do not contest his/her age, but it is rather pure formality and the guardian does not play an active role in practice.

In **the Netherlands**, there is always a guardian. In practice, minors are brought by Nidos to a reception center for minors where their asylum-claim is processed. In a so-called “Kamerbrief” by the Minister for Immigration and Asylum from 10 March 2011, it is clearly stated that minors are transferred to the specialized center in Den Bosch, if there are no doubts about the minority.

In **Slovakia**, when the police finds out that a foreigner is minor they have to stop any other proceedings and without delay contact the local office of labour, social affairs and family, which takes the responsibility for the unaccompanied minor and submits the request to the court to issue an interim measure on the placement of the child to the children home and to appoint a guardian.

In **Germany**, a guardian and additionally a lawyer are appointed for all minors up to 18, but it only applies during border procedure at the airport.

### **8.3. Interview at the border**

When a child arrives at the border and asks for asylum, an interview usually takes place in order to clarify this claim and to examine if the child is eligible for granting refugee status or to be admitted in the territory for this reason. The conditions of this interview are crucial to determine in this specific context, where a child may be deprived of his/her liberty and may be traumatized by his/her arrival in a new country. In this perspective, at the border, the presence of interpreters as well as other services, the sensitivity of agents regarding children’s rights and the content of the interview are the main points analyzed.

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<sup>294</sup> ANAFE, *Rapport d’activité 2009*, p. 20, available at: [http://www.anafe.org/download/rapports/ Rapport%20Activit%20Anaf%202009.pdf](http://www.anafe.org/download/rapports/Rapport%20Activit%20Anaf%202009.pdf) [accessed 11 July 2012].

### 8.3.1. Interpreters

Sometimes, **interpreters are available at the border** when questions are asked to the minor or when information is notified to him/her.

**Interpreters are foreseen** in **Austria, Belgium, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Portugal, Romania, Slovenia, Spain and the United Kingdom.**

In **Germany**, a distinction must be made: at the external border, an interpreter is not systematically present, but during the airport procedure, an interpreter is present. In **Romania**, according to the Asylum Law, the asylum seeker has the right to have an interpreter free of charge in any phase of the asylum procedure. In practice, at the border, police authorities face difficulties in finding interpreters for rare languages such as Somali, Pashto or Hazara. In **Belgium**, interpreters are foreseen at the border, but it seems that it is not systematically provided in practice<sup>295</sup>. In **Italy**, individual agreements concluded every year between Prefectures and NGOs have led to the setting up of “information portals” at ports, airports, and land borders<sup>296</sup>, which provide services such as interpreting services. The beneficiaries of the services are those who lodge an asylum application and foreigners who intend to stay in Italy for over three months. In the absence of clear instruction from the Ministry of Interior to border police, the carrying out of the services depends very much on the individual willingness of local border police authorities.

Even if this service is foreseen by Law, many countries have a **lack of information to evaluate whether it is performed systematically**, as in **Austria** and **Cyprus**. In Cyprus, practices were noted in police stations such as refusal to call an interpreter.

In **Bulgaria**, there is a lack of interpreters. They are rarely present even at the moment of serving deportation and detention orders, and there are no interpreters at the immigration detention centres either. In practice, immigration officers usually carry out the interviews with the detainees with the help of another detainee from the same linguistic group who speaks Bulgarian. In **Estonia**, where interpreters are foreseen, in practice there is a lack of expertise for the most exotic languages. It can be complicated and costly. In Finland also, normally the authority has to provide an interpreter to an asylum seeker who would not speak Finnish or Swedish. In practice, the Police has not always requested or been able to ensure an interpreter, and the asylum form may have been filled in with the help of the police officer’s and the applicant’s often inadequate knowledge of English<sup>297</sup>.

In **France, Cyprus, Ireland and the United Kingdom interpreters are sometimes available on the phone only**. In France, there is an interpreter physically present for some limited languages (Arabic, English, Spanish, Mandarin...) but for other languages the interpreting is done systematically by phone.

<sup>295</sup> Interview with a representative of the NGO “Plate-forme Mineurs en exil”, 14/10/2011.

<sup>296</sup> Art. 11 sub-section 6 of the Immigration Law 286/98 as modified by Law n. 189/02, available at: [http://www.comune.torino.it/stranieri-nomadi/stranieri/servizi/fare/286\\_98.pdf](http://www.comune.torino.it/stranieri-nomadi/stranieri/servizi/fare/286_98.pdf) [accessed 11 July 2012].

<sup>297</sup> Parsons, Annika (2010), p. 34, *op.cit.* (Note 287).

Concerning the **quality of the interpreting**, most countries admit not having enough information. In **France**, according to the Red Cross, the quality of the interpreting during the phase of first contact of the authorities with the minor can be called into question, given the little information the foreigners seem to have. In **the United Kingdom**, interpretation quality might vary from the different ports of entry.

In **Malta** and **Poland**, **no interpreter is provided at the border**. In **Malta**, assistance of independent interpreters or cultural mediators is not available upon this first phase of arrival and registration. In order to perform the registration, the police may seek interpretation informally, using the assistance of English-speaking immigrants who are on the same boat. In **Poland**, it seems that because of the language barrier, some children might be provided with a translator and have the opportunity to ask for asylum only after they are placed in the detention centre.

Sometimes, **the interpreter is not always present**. In **Slovakia** for example, when the border police finds out, before the recording of a statement, that foreigner is younger than 18 years (mainly in cases when unaccompanied minor is credible), border police immediately announce the finding of an unaccompanied minor to local office of labor, social affairs and family and do not continue in recording. In such cases, the procedure at the border police does not take a place and unaccompanied minor is taken to the children home. But the practice is not the same at each department of border police. It might be said that after the employee of the local office of labour, social affairs and family comes to the department of border police, the statement of unaccompanied minor is recorded also with the presence of the interpreter.

In **Sweden**, the vast majority of children apply for asylum on the territory. When a child applies at the border he/she is transferred to a location on the territory where an asylum request can be filled out.

### **8.3.2. Other available services at the border**

In some countries, **other services are foreseen at the border to provide assistance to the child**.

In **Bulgaria, Cyprus, Estonia, Germany, Greece, Hungary, Ireland, Latvia, Poland, Portugal, Romania, Slovakia, Slovenia** and **the United Kingdom** there are no other facilities or services providing assistance to children at the border. When such support exists, it is mainly provided by **NGOs**.

In **Austria**, the supervision of the unaccompanied minors as well as the adult refugees in the special transit of the Vienna airport is performed by Caritas Social Care. The accommodation of the refugees takes place in the special transit, which is maintained by the alien police and supplemented by the Caritas' office in the neighboring building as well as a green courtyard.

In **Belgium**, a few NGOs are allowed as « visitors » to enter the closed centres at the border. They can help minors who are detained when there is a doubt on their age. In **France**, the French Red Cross is present in the waiting area (so-called "zone d'attente"). The NGO « Association nationale d'assistance aux frontières pour les étrangers (Anafé) » is also present in the airports and provide

support to minors and adults. In 2010, this association met 53 unaccompanied minors<sup>298</sup>. The Red Cross and the NGO Anafé are not specialized in unaccompanied minors' protection, because they help both adults and minors, but they have a good knowledge of unaccompanied minors' rights. In **Spain**, there are a number of NGOs working at the borders where immigrants enter (Red Cross, Comisión Española de Ayuda al Refugiado - CEAR...). In **Estonia**, due to the very low numbers of unaccompanied children seeking asylum, there are no services or facilities at the border that could assist the child. In the future, the Ministry of Social Affairs plans to introduce a practice of allowing the trained specialists of a non-profit organisation «Omapäi» (a non-profit organisation which was established in 2009 and specializes on the issues of unaccompanied children) to act as (full) guardians. In **Malta** to the contrary, NGOs are not authorised to be present during disembarkation of boats of immigrants. This has been a difficult point for NGOs since they have been advocating for the presence of more qualified persons and cultural mediators/interpreters to be present, also to assist in the identification of specific vulnerabilities such as unaccompanied minors, trauma, pregnancy, disability, etc.

In **Italy**, the beneficiaries of "information portals"<sup>299</sup> are those who lodge an asylum application and foreigners who intend to stay in Italy for over three months. The Decree issued on 2 May 2001 by the Ministry of the Interior states that the assistance to the most vulnerable persons such as the victims of torture, victims of violence, persons in need, unaccompanied minors, is the main aim these services at borders<sup>300</sup> must reach. Beneficiaries of these services are provided with legal and social counselling, interpreting services, search for accommodation, contact with local authorities/services, production and distribution of informative documents on specific asylum issues directed to both asylum seekers and border police.

In the absence of clear instruction from the Ministry of Interior to border police, the carrying out of the services depends very much on the individual willingness of local border police authorities. It is impossible to verify the current practices due to the fact that the rejected migrant (minor included) do not receive a formal negative decision.

Furthermore the project Praesidium "*Potenziamento dell'accoglienza rispetto ai flussi migratori che interessano l'isola di Lampedusa*" with EU funding was initiated in 2005 by the Ministry of Interior to respond to the large influx of migrants arriving by boat on the Island of Lampedusa. The project brings together the Ministry of Interior, the UNHCR, the IOM, the Italian Red Cross and, since 2008, Save the Children – Italy. It currently covers Sicily, Puglia, Calabria, Campania and Marche. This project aims at providing information on asylum procedures, monitoring reception conditions and access to asylum channels, identifying and referring vulnerable individuals, etc.

Another aspect of this question is the one of the **training that agents can receive**. In the **Czech Republic**, detention up to 48 hours is possible at the border. The organization which provides aid to refugees (-OPU) has not been informed about any single case of a minor being placed in these cells, however, it cannot be excluded. As far as OPU knows, the police do not have any trained experts to deal with unaccompanied minors. They have sometimes difficulties to even understand that a

<sup>298</sup> ANAFE, *Rapport d'activité 2010*, p. 18, available at:

<http://www.anafe.org/download/rapports/rapport%20activit%E9%20Anaf%E9%202010.pdf> [accessed 10 July 2012].

<sup>299</sup> See Note 296.

<sup>300</sup> CIR e Commissione Europea, Progetto S.A.B. Servizi alle frontiere: cooperazione pratica. Rapporto finale, 2008, p. 22. Available at : [http://www.cir-onlus.org/SAB\\_CIR\\_servizi\\_alle\\_frontiere\\_italiano.pdf](http://www.cir-onlus.org/SAB_CIR_servizi_alle_frontiere_italiano.pdf) [accessed 10 July 2012].

guardian must be always called. In **Finland**, the Finnish Immigration Service offers training for the police and the border guards on the basis of their internal asylum guidelines.<sup>301</sup> Personnel at the border control undergo training in immigration affairs, but there are no special training on child's rights.

### **8.3.3. Sensitivity of agents at the border regarding children's rights and the right to asylum**

As unaccompanied asylum-seeking children have specific needs, **immigration agents should be sensitive to issues regarding children's rights and the right to asylum for unaccompanied minors.**

Many countries recognize that in theory agents should be trained to such issues but also note that in practice there are failures to respect children's rights.

Sometimes, **they have no specific training.** Some countries also admit that there is no evidence and no independent monitoring of what happens at the border, as in **Cyprus.**

In **Austria**, the official staff of the alien police as well as that of the Federal Office for Migration has no training courses orientated on the rights and needs of the unaccompanied minors. In **Belgium** either, it seems that border agents have no specific training on children's rights or on the specific needs of unaccompanied minors. In **Germany**, there are no guidelines on how to handle unaccompanied minors and no specific trainings concerning children's rights has been held during the last years. In **Hungary**, according to the HHC's experience, immigration agents are rarely child sensitive. With the individual exception of some officers being humane and child friendly it cannot be regarded as a general practice. In **Finland**, guardians and lawyers have experienced that the border guard is more trained and acts accountably in comparison with police officers. Police officers lack training in human rights, especially child friendly practices. In **Poland**, the Border Guard officers are not trained enough in the variety of children rights nor it is required from the Officers at the border to be particularly sensitive to detect the vulnerability of the child who crosses Polish border.

In **Bulgaria**, these children are usually treated as adults<sup>302</sup>. In **the Czech Republic**, it can be generally stated that the officers of the Aliens Police are not child or gender sensitive. It happened that they did not even contact the guardian and initiated the expulsion procedure without the guardian being present. In **Romania**, personnel at the border are not specifically trained.

In some countries, **they receive training or at least follow specific rules to work with children.** In **Estonia**, the Police and Border Guard Board has internal regulation – code of conduct for work with children. In **France**, training for all policemen is normally foreseen to prepare them working with children. According to the Red Cross, it does not seem to be the case currently. Inappropriate treatments have been noticed.

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<sup>301</sup> Formal guidelines on how asylum applications are to be handled at the process (Dnro 109/032/2008), Finnish Immigration Service 2008, 51 p. (in Finnish only.)

<sup>302</sup> Discussion with a representative of the French Red Cross, 10/10/2011.



In **the United Kingdom**, in theory immigration agents at the border should be sensitive to children's rights issues, or at least to children's welfare. This is one of their statutory duties, as stated in section 55 of the Borders, citizenship and immigration Act 2009. There is official guidance in this respect<sup>303</sup>: *Keeping children safe and Arrangements to safeguard and promote the welfare of children for those exercising UK Border Agency functions* (UKBA). In practice, failures to respect children's rights are noticed. In **Slovenia**, it seems that in general, Police at the border is sensitive to the children's rights.

In **Portugal**, according to the Law<sup>304</sup>, training must be provided to personnel working with unaccompanied minors. Recently, in June 2010, there was a training provided by UNHCR / Rome both to SEF asylum officers (that also included officers at borders) and to the legal staff of the CPR. The training included a chapter on child interviewing techniques.

### 8.3.4. Content of the interview at the border

At the border, **unaccompanied asylum seeking children may be interviewed about the substantive matters of their claim.**

In some countries, unaccompanied asylum seeking children must explain at the border why they left their country and why they are asking for asylum. False information or contradictory testimonies may after affect the credibility of their asylum claim.

In other countries, unaccompanied minors are not interviewed on the substantive matters of their claim at the border, but only asked information about their identity. It can also be checked if the country is responsible for the asylum claim.

In most countries, asylum seeking minors are interviewed about the substantive matters of their claim at the border. Indeed, **unaccompanied asylum-seeking children are asked the reasons why they left their country and why they are asking asylum**, and this information might be used afterwards during the examination of their application. In **Greece**, on the contrary, the interview seems very short, only lasting 15 minutes. Therefore, the minor does not have the opportunity to explain the reason for his displacement.

In **Austria**, the answer flows in the asylum procedure and can, in case of contradictory testimonies in the framework of the initial interrogation by the Federal Office for Migration, affect the credibility of the concerning person negatively. In **Poland** also, the information given at the border is later analyzed and the questions of the asylum interview that takes places at the later time on the territory are based on the analysis of the data gathered at the border.<sup>305</sup>

In **Portugal**, a protection determination interview is always done by SEF officers<sup>306</sup>. The law also states that asylum seeker is informed about his rights and duties and about the fact that any

<sup>303</sup> United Kingdom: Home Office, *Every Child Matters: Change for Children*, November 2009, available at: <http://www.unhcr.org/refworld/docid/4b2a23462.html> [accessed 11 July 2012].

<sup>304</sup> Law 27/2008, Art. 79, *op.cit.* (Note 43).

<sup>305</sup> The answer was provided to International Humanitarian Initiative by Polish Border Guard official in a written form.

<sup>306</sup> Law 27/2008, Art. 24 § 3 and Art.16, *op.cit.* (Note 43).

statement can be considered as a preliminary interview<sup>307</sup>. This personal interview intends to know the individual position and personal circumstances of the applicant, so as to assess, on grounds of the personal situation, if he or she has suffered or may suffer serious persecution<sup>308</sup>, therefore all the information provided by the asylum seeker can be used during the substantive examination of the application.

In **the United Kingdom**, when unaccompanied minors are identified at the border, unaccompanied children may be subjected to an “Illegal Entrant Interview”, aiming to establish their identity and route to the United Kingdom. Some NGOs expressed concerns about these interviews which may be conducted without a responsible adult. There are concerns that the contents of this interview might be used in the substantive processing of the asylum claim<sup>309</sup>. When a claim for asylum is lodged at the border, a screening interview must be conducted. Unlike the Illegal Entrant Interview, this is part of the asylum process. Its goal is not to investigate the substantive matters of the claim, and official guidance states that “screening is not the place to explore the claim for asylum<sup>310</sup>”. There is evidence, though, that these interviews are frequently used in the decision-making process. Some refusal letters mention the contents of the screening interview to challenge the credibility of the claim<sup>311</sup>.

In **France**, the interview at the border is in theory only meant at determining if the asylum claim is not manifestly unfounded. The French NGO “Anafé” is worried that agents of the OFPRA at the border ask very accurate questions on the grounds of the asylum claim<sup>312</sup>. In practice, most asylum claims at the border are rejected. In 2011, 44 unaccompanied children asked for asylum in the so called ‘zones d’attente’ (99 in 2010)<sup>313</sup>. 9 of them have been admitted in the territory in order to make an asylum application.

In **Slovenia**, unaccompanied minors explain how they came from their country to Slovenia and very briefly why they seek protection in Slovenia. Records on all this come together with them to the asylum home. They are confronted with this statement during the official submission of the application for asylum.

In **Finland**, NGOs are worried that practices at the police are not totally consistent with the guidelines given by the Finnish Immigration Service. Sometimes too detailed questions can be asked and there are cases where the police have even tried to begin the real asylum investigation at this first point, when an applicant is just leaving the application. In these cases, a guardian – appointed later – can and should act. The interview cannot be taken into consideration if it is done without a guardian. There have been situations at the airport “Helsinki-Vantaa”, when authorities wanted to start the asylum investigation at the point of entry. In Finland also, some lawyers have noticed that

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<sup>307</sup> *Ibid.*, Art. 24 § 2.

<sup>308</sup> *Ibid.*, Art. 18.

<sup>309</sup> Refugee and migrant justice, “Does every child matter?” about a 15-year-old unaccompanied child whose asylum claim was rejected : “In the Reasons for Refusal Letter, the UKBA cited details he had given in the Illegal Entrant interviews to discredit his asylum claim, even though these interviews were not even mentioned in his substantive asylum interview. The UKBA is even refusing to release the transcript of the Illegal Entrant interviews to his carer or legal representatives”, p 8, *op.cit.* (Note 293).

<sup>310</sup> UK BORDER AGENCY, *Guidance for special cases – Processing an asylum application from a child*, §6.2, *op.cit.* –Note 74).

<sup>311</sup> This applies to in-country screening interviews as well, and it is a big matter of concern. Interview of solicitors, 28 and 29/11/2011.

<sup>312</sup> ANAFE, *De l’autre côté de la frontière*, p. 7, available at : <http://www.anafe.org/download/rapports/Anaf%E9%20-%20de%20l%20autre%20c%F4t%E9%20de%20la%20fronti%E8re.%20mai%2010%20pdf.pdf> [accessed 27 July 2012].

<sup>313</sup> OFPRA, Rapport d’activité 2011, p 34, *op.cit.* (Note 291).

there are cases when the information, gathered at the border, has been used later in the process in a way that is not in the best interests of a child.

In **Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Germany, Ireland, Italy, Lithuania, Romania** and **Sweden** unaccompanied minors are not asked about the substantive matters of their claim at the border.

In **Belgium**, since 2007, the eligibility procedure that was meant to check if an asylum claim was not manifestly groundless does not exist anymore. However, at the border, the unaccompanied asylum seeking children have to fill a form and one question concerns the migration grounds. Potentially, this question could be used to assess the fears of the asylum seeker, in case of return but in practice this form is not sent to the CGRA and thus cannot be used during the examination of the asylum application.

In **Sweden**, at the border, agents first determine where the child will be accommodated.

In **Malta**, it seems that no substantive interviews are made. However, NGOs have noticed that the Refugee Commissioner does make use of this early information to assess credibility. This also includes information provided to the immigration police upon disembarkation, without the assistance of interpreters and without having received any information or advice.

In **Latvia**, children are not interviewed at the border. When they express a wish to claim asylum, they are transported to the territorial unit of the State Border Guard. During the initial interview questions regarding the identification of the child are asked, but the asylum seeker is also asked to substantiate shortly an asylum claim. Details of the initial interview are used fully during the substantive examination of the application and have an important role, as the representative of the Office of Citizenship and Migration board compares the answers of the asylum seeker during the initial interview and main interview in order to identify any discrepancies and conflicting information.

#### ***8.4. Detention at the border***

In some countries, minors cannot be detained at the border. Sometimes, even if they cannot be detained, they are in practice when there is a doubt on their age or a wrongful age determination. In other countries, their detention is possible.

In **Austria, the Czech Republic, Finland, France, Germany, Greece, Latvia** and **Malta**, unaccompanied minors may be detained at the border.

In **Austria**, the accommodation in special transit in the framework of the airport procedure, since it involves an imprisonment, can be referred to as detention pending deportation. This detention can be extended up to 6 weeks.

In **Finland**, unaccompanied children seeking asylum can be detained in particular if there are reasonable grounds to believe that the applicant will prevent or considerably hinder decision making

concerning him/her or would go hiding before moving out of the country or if the identity of an applicant is unclear<sup>314</sup>.

In **France**, unaccompanied minors can be detained at the border<sup>315</sup>, in the so called “zone d’attente”. It is the only place where they can be detained (on the territory unaccompanied minors cannot be detained, whether they are asylum seekers or not). They can be released from the “zone d’attente” if they are allowed to enter the territory to ask for asylum. This maintaining in the waiting area (so-called “zone d’attente”) is criticized by many NGOs, considering that this place cannot take into account the child vulnerability. Also it is not the appropriate place to articulate a coherent and detailed asylum claim.

In **Greece**, unaccompanied minors may be detained for several days or months. According to a recent report by the Greek Council for Refugees during the last year only in one detention centre of Fylakio – Orestiada (Thrace borderline with Turkey) at least 572 unaccompanied minors were detained in numbers 55-130 in a cell with a 40 persons capacity. Only after September 2011 the children had the chance to get out of it for at least 15 minutes daily. Before this date detained minors had seen daylight very rarely in a month of detention<sup>316</sup>.

In some countries, **detention is allowed and implemented but only a few hours and under certain circumstances**, as in **Denmark, Estonia, Hungary, Latvia** or **the United Kingdom**.

In **Denmark**, unaccompanied minors can be detained but for a short period of time, before being transferred to the Red Cross centre for minors.

In **Estonia**, unaccompanied asylum-seeking minors are kept at the border for a very short period of time, usually less than 24 hours.

In **Hungary**, detention at the border is possible but only until the transfer is taking place to the shelter if the unaccompanied minor sought asylum, which is usually not more than a few hours in a short-term detention facility at the border. If the unaccompanied minor does not seek asylum, it is most probably that he/she will be expelled and the detention may amount to 72 hours until the readmission takes place to the bordering country. Otherwise, the detention of unaccompanied minors is not allowed under Hungarian law.

In **Latvia**, the State Border Guard has the right to detain an asylum seeker for a period up to seven days and nights, under certain conditions. In practice, unaccompanied children seeking asylum can be detained if they have reached the age of 16.

In **Poland**, according to the law, it is not possible for unaccompanied asylum seeking minors to be detained, but the authority receiving asylum request from the unaccompanied minor (at the border is Border Guard) has an obligation of writing an immediate request to the Court to appoint the legal

<sup>314</sup> *Aliens Act (301/2004, amendments up to 458/2009 included)* [Finland], 30 April 2004, available at: <http://www.unhcr.org/refworld/docid/4b4d93ad2.html> [accessed 18 June 2012].

<sup>315</sup> Art.L.221-1 of the CESEDA, available at : [http://www.legifrance.gouv.fr/affichCode.do;jsessionid=E18F46C906D3AFA1B2684F6709F545B6.tpdjo13v\\_1?idSectionTA=LEGISCTA000006147751&cidTexte=LEGITEXT000006070158&dateTexte=20120727](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=E18F46C906D3AFA1B2684F6709F545B6.tpdjo13v_1?idSectionTA=LEGISCTA000006147751&cidTexte=LEGITEXT000006070158&dateTexte=20120727) [accessed 27 July 2012].

<sup>316</sup> Greek Council for Refugees, Unaccompanied minors at the Greek-Turkish border, March 2011 – March 2012, Report, <http://www.gcr.gr/sites/default/files/evros.pdf> [accessed 10 July 2012].

representative for asylum procedure and place minor in a foster care institution. In the process, the child is temporarily detained by Border Guard.<sup>317</sup>

In **the United Kingdom**, unaccompanied children may be detained in exceptional circumstances and for a very short period of time<sup>318</sup>. When they enter the territory, they might be kept in a “holding room” while waiting for the local authority’s social team to take them in. A major protection gap is that the UKBA is responsible for the first estimation of the young person’s age at port of entry. If the UKBA decides that « their physical appearance / demeanour very strongly suggests that they are significantly over 18 years of age<sup>319</sup> », they will be considered as adults, not even going through a formal age assessment, unlike young people whose age is disputed but who are not considered to be “significantly” over 18.

In some countries, **detention is allowed, but in practice it is rarely implemented**. In the **Czech Republic** for example, in theory it is possible to detain minors between 15 and 18 years old, for a maximum of 3 months when they have no authorization to enter the territory because it is a breach of the aliens act rules. It is detention for the purpose of expulsion. In practice, unaccompanied minors are rarely detained, only if their age is disputed by the authorities. At the airport, almost every asylum seeker is detained, with exception of unaccompanied minors (and families with children). In **Portugal**, the law provides the possibility to be detained at the border during admissibility procedure<sup>320</sup> but in practice, it seems that UAMs are always given permission to enter the national territory, avoiding the permanence at the “Temporary Installation Centre”.

In **Belgium, Cyprus, Ireland, Lithuania, Romania, Slovakia**, **unaccompanied minors cannot be detained at the border**.

In **Belgium**, unaccompanied minors cannot be detained, since a decision of the Council of Ministers of May 19<sup>th</sup> 2006. If their minority is not called into question, they are sent to centre run by Fedasil, on the Belgium territory. However, they keep an extraterritorial status during 15 days, which means that the foreign office can still consider a turning back. In practice, all unaccompanied asylum seeking children can access the territory. In many cases, this detention is possible only when there is a doubt on the minor’s age. It is again the case in Belgium, where minors can be detained when there is a doubt on the minor’s age. In this case, he/she can be detained up to three days, in order to proceed to the age assessment.

In **Cyprus** anyway, the detention system is the same both at the border and in the territory.

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<sup>317</sup> The answer provided to International Humanitarian Initiative by Polish Border Guard official in a written form.

<sup>318</sup> UK BORDER AGENCY, *Enforcement instructions and guidance*, Chapter 55 : Detention and Temporary release, §55.9.3 Young persons, available at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55.pdf?view=Binary> [accessed 10 July 2012].

<sup>319</sup> UK BORDER AGENCY, *Asylum process guidance, Special cases, Assessing age*, available at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/assessing-age?view=Binary> [accessed 10 July 2012].

<sup>320</sup> Law 27/2008, Art. 26, § 3, *op. cit.* (Note 43).



In **Ireland**, unaccompanied minors cannot be detained on immigration grounds, including at the border. All unaccompanied minors, once identified by Immigration services, are referred to the Health Service Executive, which means that they are directed straight away to the single institution that will care for them and represent them. However, NGOs reported cases in which minors were detained on arrival because of a lack of age assessment or because they were assessed over 18. According to the European Migration Network report, “in cases detention lasted possibly for several weeks<sup>321</sup>”.

In **Bulgaria**, the situation is peculiar. The principle is that asylum seekers, including unaccompanied minors, cannot be detained<sup>322</sup>. However, unaccompanied minors who are not asylum seekers can be detained so detention seems possible if the child is not informed about the possibility to ask for asylum or if his/her application is not properly registered. It also seems that those who claim asylum at a later stage will continue to be placed in immigration detention until registered by the State Agency for Refugee.

#### RECOMMENDATION 8 – Asylum at the border

- ▶ Unaccompanied children arriving at the border should be admitted to the territory in order to provide them accommodation and care as other unaccompanied children seeking asylum. They should never be detained at the border.

<sup>321</sup> European migration network, Ireland, p. 56, *op. cit.* (Note 153).

<sup>322</sup> On 09 November 2011 the Council of Ministers adopted amendments to the Ordinance on the Responsibility and Coordination of the State Bodies Realizing the Implementation of Regulation No.343/2003 of the Council of 18 February 2003, Regulation No.1560/2003 of the Commission of 02 September 2003, Regulation No.2725/2000 of the Council of 11 December 2000 and Regulation No.407/2002 of the Council of 28 February 2002.

## Conclusion

The analysis of various issues related to unaccompanied minors seeking asylum highlights many concerns. One of the main findings from this report is the heterogeneity of law and practices in this area, despite the intention to harmonize the implementation of asylum right within the European Union. Overall, the consideration of minority in the application of the fundamental right to seek asylum remains poorly developed within the European Union with regards to the requirements of European and international standards on human rights, especially the Convention on the rights of the child. Statistics are often incomplete, the scope and content of legal representation varies considerably from one country to another, the Dublin II regulation is not always applied in the best interest of the child, support and accommodation during the procedure are generally unsatisfactory (some countries even allowing detention of unaccompanied asylum seeking children), while the treatment of the application and the decision process include few child-friendly specificities.

Thus, the overall picture does not seem very positive. However, this study shows that numerous ways of improvement are possible. In fact, we observe good practices in each issue related to the right to asylum for unaccompanied minors. Comparison of these positive examples should guide the national stakeholders and the European institutions in order to improve the situation of these young people who have suffered and who need now a respect of their fundamental rights to build their life in Europe.

The implementation of a Common European asylum system should particularly take into account the specific situation of unaccompanied children. In this context, it is interesting to see that this issue is taken into account by European institutions and agencies as the Commission<sup>323</sup>, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union - Frontex<sup>324</sup>, European asylum support office<sup>325</sup> and Fundamental rights agency<sup>326</sup>. It is now necessary that this issue be addressed comprehensively and consistently by the European Union in order to implement relevant measures in Member States, with the support of civil society. Although they represent a few part of asylum applicants, unaccompanied children who join Europe to flee persecution are the future of a continent which should ensure they are protected in a high standard basis, in accordance with the commitments and the tradition of the European Union.

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<sup>323</sup> Action Plan on Unaccompanied Minors (2010 – 2014), *op.cit.* (Note 285).

<sup>324</sup> Frontex, *Unaccompanied minors in the migration process*, December 2010, available at: [http://www.frontex.europa.eu/assets/Attachments\\_News/unaccompanied\\_minors\\_public\\_5\\_dec.pdf](http://www.frontex.europa.eu/assets/Attachments_News/unaccompanied_minors_public_5_dec.pdf) [accessed 10 July 2012].

<sup>325</sup> European Asylum Support Office, *Work programme 2012*, September 2011, available at: [http://ec.europa.eu/home-affairs/policies/asylum/docs/easo/EASO\\_2011\\_00110000\\_EN\\_TRA.pdf](http://ec.europa.eu/home-affairs/policies/asylum/docs/easo/EASO_2011_00110000_EN_TRA.pdf) [accessed 10 July 2012].

<sup>326</sup> Fundamental rights agency, *Separated asylum-seeking children in European Union member states*, December 2010. [http://fra.europa.eu/fraWebsite/attachments/SEPAC-comparative-report\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/SEPAC-comparative-report_EN.pdf) [accessed 10 July 2012].





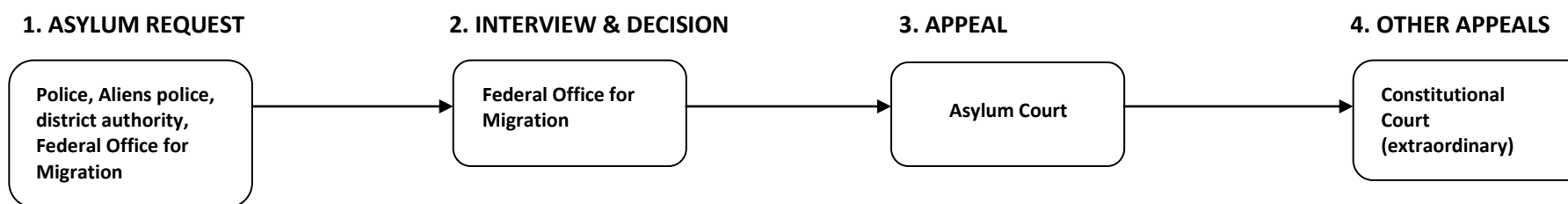
## Appendix 1 – Country fiches

### COUNTRY CARD INDEX: Austria

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Austria\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Austria_en.pdf)

Estimated total UAMs (2010): 2100  
Total asylum applications of UAMs (2010): 687

#### A. General overview of asylum procedure on the territory



Total deadline 1 → 4: no data

**Comments:** The asylum procedure may lead to another kind of residence permit.

#### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*

+	<ul style="list-style-type: none"> <li>✓ In border procedures at the Vienna airport, the UNHCR has the possibility towards rejected asylum applications of unaccompanied children to file a veto and so enable the entry and the approval to asylum procedure.</li> </ul>
✓	<ul style="list-style-type: none"> <li>✓ The local youth welfare institution provides legal representation.</li> </ul>
-	<ul style="list-style-type: none"> <li>✓ No guardian is immediately appointed at the border.</li> <li>✓ During the interview at the border, UAMs are asked the reasons why they left their country, and all this information can be used afterwards during the examination of their application.</li> <li>✓ The guardian's duties and responsibilities are usually performed very deficiently.</li> <li>✓ Some youth welfare offices do by conviction not appeal to court against a negative first instance decision.</li> </ul>

### C. Stakeholders

NAME	MISSIONS
<b>Aliens Police</b>	Deals with the fulfillment of the Aliens Police Law (FPG) and works closely together with the Federal Office for Migration, the Austrian Labor Market Service, and the competent department of the state government for residence permit as well as accreditation of citizenship
<b>Asylum Court (AsylGH)</b>	The court of last resort for all individual complaints against the official notifications of the Federal Office for Migration
<b>Constitutional Court</b>	Appeal (extraordinary cases)
<b>Federal Office for Migration (BAA)</b> – subordinated to the Federal Minister for internal affairs	Processes the applications and decides in the court of first instance about asylum in Austria
<b>Local Welfare Institutions</b>	Guardianship and legal representation

### D. National legal framework

	Legal guardianship	Dublin II	Social & legal support	Main interview	Decision	Border	Other issue
<b>Asylum Act (<i>Asylgesetz</i>)</b>		X	X	X	X	X	X
<b>Aliens Police Act (<i>Fremdenpolizeigesetz</i>)</b>						X	X
<b>Youth Welfare Act (<i>Jugendwohlfahrtsgesetz</i>)</b>			X				
<b>Austrian Civil Code (<i>Allgemeines Bürgerliches Gesetzbuch</i>)</b>	X						



## COUNTRY CARD INDEX: Belgium

Estimated total UAMs (2010): 2831  
Total asylum applications of UAMs (2010): 860

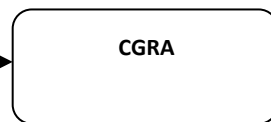
Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Belgium\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Belgium_en.pdf)

### A. General overview of asylum procedure on the territory

#### 1. ASYLUM REQUEST



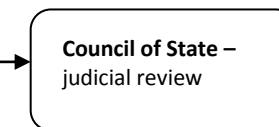
#### 2. INTERVIEW & DECISION



#### 3. APPEAL



#### 4. OTHER APPEALS



Total deadline 1 → 4: no data

### B. Specific aspects for unaccompanied minors highlighted in the report

The issues are appreciated in relation to recommendations of the report

- ✓ Unaccompanied children are not detained as adults at the border.
- ✓ The CGRA published a comic book to present the asylum procedure for unaccompanied children.
- ✓ The French speaking Bar of Brussels has a legal aid office with a pool specialized in cases of unaccompanied minors.
- ✓ Every guardian is trained during 5 days at the beginning of her/his mandate, in-service trainings are organized each year and a 400 pages guide presenting all missions and challenges is given to all guardians.
- ✓ The interview is conducted in conditions adapted to children. The Commission on asylum adopted a specific technique called “dialogical communication method” specifically tailored to children's memory.
- ✓ The interview of a child severely traumatized or disabled could be cancelled or postponed. The Commission indicates that generally no negative decisions are taken when interview is not possible.
- ✓ The application is processed by a specific asylum officer for unaccompanied children even if the procedure ends after the age of 18.
- ✓ Child specific forms of persecution are taking into account by the asylum law.
- ✓ During the main interview, the presence of a legal representative (*tuteur*) is required.
- ✓ Applications must be processed in priority in order to reduce deadlines.

- 
- ✓ No guardian is immediately appointed at the border.
  - ✓ A guardian may be responsible for up to 40 UAMs. The quality of representation varies a lot according to guardians.
  - ✓ Illegal pushbacks might occur when UAMs arrive by sea preventing them from claiming asylum.
-

### C. Stakeholders

NAME	MISSIONS
Aliens Litigation Council / <i>Conseil du contentieux des étrangers</i> (CCE)	First appeal
Aliens Office / <i>Office des étrangers</i> (OE)	Registration of asylum applications, entry and residence issues, entry, durable solutions and return of UAMs
Border Control and Inspection / <i>Inspection des frontières</i>	Border control
Commissioner General for Refugees and Stateless Persons / <i>Commissariat général aux réfugiés et apatrides</i> (CGRA)	Examination of asylum applications, decision on granting protection or not, minors service
Council of State / <i>Conseil d'Etat</i>	Second appeal /judicial review
Fedasil	Accommodation, specific reception centers for UAMs
Guardianship Service / <i>Service des tutelles</i>	Appointment of the guardian
Observation and Counseling Center / <i>Centre d'observation et d'orientation</i>	Accommodation for identified UAMs

### D. National legal framework

	Legal guardianship	Dublin II	Social & legal support	Main interview	Decision	Border	Other issue
Act of 12 January 2007 on reception of asylum seekers and other categories of foreigners			X				X
Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens / <i>Loi du 15 décembre 1980 sur l'entrée au territoire, le séjour, l'établissement et l'éloignement des étrangers</i>		X	X	X	X	X	X
Guardianship of Unaccompanied Foreign Minors Programme Act of 24 December 2002 (Chapter VI), amended by Programme Acts of 22 December 2003 and 27 December 2004 / <i>Loi-programme du 24 décembre 2002 sur la tutelle des mineurs étrangers non accompagnés (chapitre VI), modifiée par les lois-programme du 22 décembre 2003 et du 27 décembre 2004</i>	X						



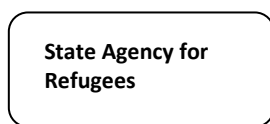
## COUNTRY CARD INDEX: Bulgaria

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Bulgaria\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Bulgaria_en.pdf)

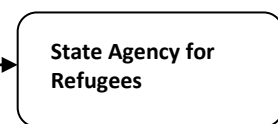
Estimated total UAMs (2010): N/A  
Total asylum applications of UAMs (2010): 22

### A. General overview of asylum procedure on the territory

#### 1. ASYLUM REQUEST



#### 2. INTERVIEW & DECISION



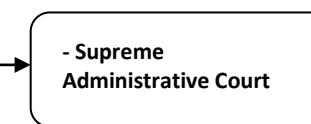
3 to 9 months

#### 3. APPEAL



+/- 6 months

#### 4. OTHER APPEALS



Total deadline 1 → 4: no data


**Comments:** Before their registration by the State Agency for Refugees, asylum seekers who entered the territory of Bulgaria irregularly are under the competence of the Ministry of the Interior, its Migration Directorate and the Border Police.

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*

+	<ul style="list-style-type: none"> <li>✓ Unaccompanied children should always be admitted to the 'regular' procedure.</li> </ul>
-	<ul style="list-style-type: none"> <li>✓ At the border, interpreters are rarely present even at the moment of serving deportation and detention orders, and there are no interpreters at the immigration detention centres either.</li> <li>✓ In accordance with the general procedure, UAMs should be appointed a legal guardian. In practice however no guardian is appointed currently (at the border as well as on the territory).</li> <li>✓ There is a time gap between the submission of the asylum application and its registration by the State Agency for Refugees. During the waiting period, they are</li> </ul>





considered as undocumented migrants and therefore they can be detained.

- ✓ Decisions of 17-year old minors are often delayed in order to treat them as adults.

### C. Stakeholders

NAME	MISSIONS
City Administrative Courts	First appeal
Head of the State Agency for Refugees	Decision-making authority with regard to asylum applications
Ministry of Labor and Social policy (Social assistance agency)	Representation of the child in asylum procedure
Ministry of the Interior, its Migration Directorate and the Border Police	Deals with asylum seekers who entered the territory of Bulgaria irregularly
State Agency for Refugees	Registration application and interview
Supreme Administrative Court	Second appeal

### D. National legal framework

Law on Asylum and Refugees, 2002 (last amended in 2007)

Ordinance No.13-1201, 2010

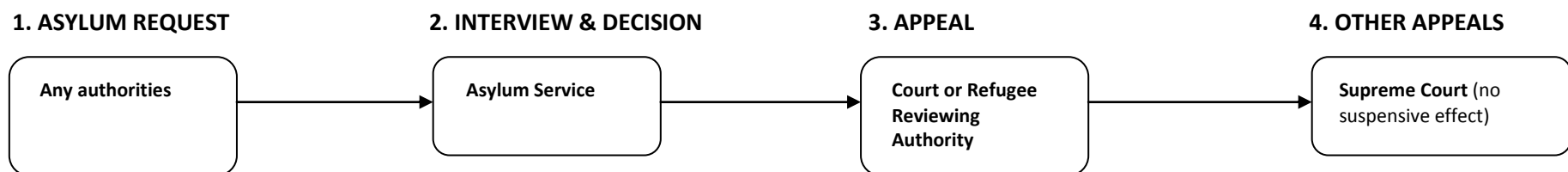
Family Code or the Law on Child Protection

## COUNTRY CARD INDEX: Cyprus

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Cyprus\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Cyprus_en.pdf)

Estimated total UAMs (2010): N/A  
Total asylum applications of UAMs (2010): 33

### A. General overview of asylum procedure on the territory



Total deadline 1 → 4: no data

#### Comments:

- The legal representation is defective so child applications are not processed before the age of 18.
- The asylum procedure may lead to another kind of residence permit.

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*



- ✓ According to the law, a legal representative appointed by the Child Commissioner should assist the minor during the asylum application
- ✓ Asylum officers receive training but as they have never interviewed children they have no hands-on experience.



- ✓ In practice, no interviews are carried out before the age of 18 because no legal representative could be appointed, as required under the Refugee Law.
- ✓ There have been several complaints of arbitrary closure of files of asylum applications (e.g. although the applicants concerned had informed the district migration offices of their change of address, the migration authorities failed to notify the Asylum Service).

### C. Stakeholders

NAME	MISSIONS
<b>Asylum Service</b> – Department of the Ministry of Interior	Registration and examination of asylum applications, interviews, first instance decision, handling the ERF program and funds and processing statistical data
<b>Child Ombudsman</b> –also referred as Commissioner for the Rights of the Child	Protection and promotion of the Rights of the child, legal representative of the UAMS seeking asylum, appointment of a representative of the child in judicial proceedings
<b>Equality Body</b>	Examination (with Child Ombudsman) of complaints for discrimination and for maladministration
<b>Legal guardian</b>	Care of unaccompanied minors during the asylum procedure and also pending deportation
<b>United Nations High Commissioner for Refugees</b>	Monitoring of the implementation of the asylum law
<b>Welfare Services</b> – Department of the Ministry of Labour and Social Insurance	Support to families and vulnerable individuals, protection and care to children, responsible for appointing the guardian (Director of Welfare Services)

### D. National legal framework

Refugee Law N. 122(I), 2000 (last amended in 2009)

Law amending the Legal Aid Law 132 (I) 2009

Law N. 163 (I) 2005

Constitution

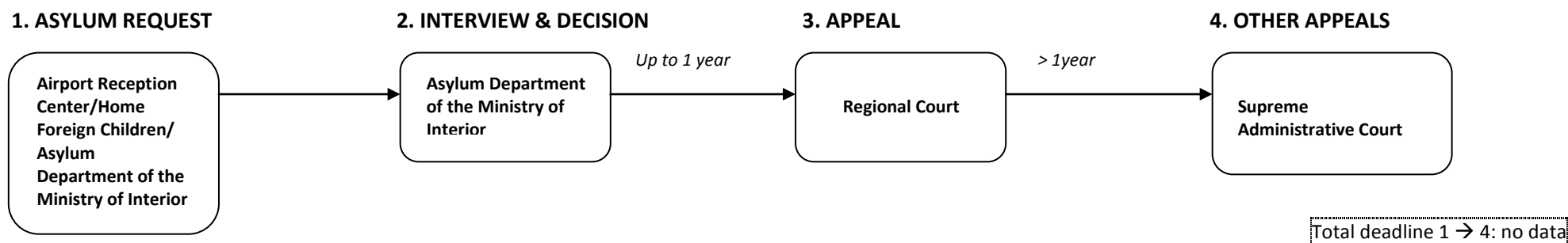
Law on Children Cap. 352

## COUNTRY CARD INDEX: the Czech Republic

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Czech-Republic\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Czech-Republic_en.pdf)

Estimated total UAMs (2010): 43  
 Total asylum applications of UAMs (2010): 4

### A. General overview of asylum procedure on the territory



### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*

+	<ul style="list-style-type: none"> <li>✓ UAMs are placed in the Home that operates under the same rules as children homes for Czech Children.</li> <li>✓ Children can stay in the Home until 18 years of age, and if they study, they can stay until max. 26 years of age.</li> <li>✓ The interview must be conducted by a specifically trained person.</li> </ul>
	<ul style="list-style-type: none"> <li>✓ All procedural steps can be carried out only if a guardian is present. Nevertheless, according to the law, a guardian should be present already at the initiation of the detention and expulsion procedure, which is not always the case in practice.</li> <li>✓ UAMs are not kept at the airport, neither in closed reception center.</li> </ul>
-	<ul style="list-style-type: none"> <li>✓ In practice within the territory of the country, in case of UAMs, very often the first asylum decision is not delivered before the child reaches the age of 18.</li> <li>✓ The final decision come from the Ministry of Interior and is rather on asylum policy ground than on Geneva convention grounds</li> </ul>

### C. Stakeholders

NAME	MISSIONS
Aliens Police	Initiating and completing detention or expulsion procedures, in presence of guardians
Czech Ombudsman Office	Overseeing performance of state authorities, places in which the freedom of movement is restricted and practical implementation of returns
Department for Asylum and Migration Policy of the Ministry of Interior	Asylum procedure, asylum and migration policy, immigration decisions, distributes EU funding in the field of asylum for NGOs, migration and border control
“Guardians for stay”	Child’s protection and well being, discharging their function with the NGO guardian acting in specific procedures on asylum, detention or expulsion
Home for foreign children under the Ministry of Education, Youth and Sport	Accommodation, food, cloth, well-being, and education of UAMs
International Organisation for Migrations (IOM)	Helping in voluntary return, researches
Office for International Legal Protection of Children	Legal responsibility for family tracing in theory
OPU ( <i>Organizace pro pomoc uprchlíkům</i> ) –NGO	Legal and social counselors, often as appointed guardians in the asylum, detention or expulsion procedures, activities and care
Refugee Facilities Administration of the Ministry of Interior	Management of detention centers
Regional Court	Decision on the formal legal guardianship of guardians for stay and reviewing asylum and immigration decisions (first appeal) without the power to grant asylum, subsidiary protection or immigration status.
SIMI (Association for Integration and Migration, former PPU <i>Sdružení pro integraci a migraci</i> )	Providing legal counselling for asylum seekers (although less frequently than OPU)
Supreme Administrative Court	Second appeal

### D. National legal framework

	Legal guardianship	Dublin II	Social & legal support	Main interview	Decision	Border	Other issue
Act No. 325/1999 Asylum Act	X	X	X	X	X	X	



## COUNTRY CARD INDEX: Denmark

Estimated total UAMs (2010): N/A  
Total asylum applications of UAMs (2010): 432

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Denmark\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Denmark_en.pdf)

### A. General overview of asylum procedure on the territory

#### 1. ASYLUM REQUEST



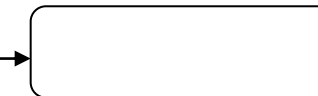
#### 2. INTERVIEW & DECISION



#### 3. APPEAL



#### 4. OTHER APPEALS



Total deadline 1 → 4: The Danish Immigration authorities' treatments of asylum applications from unaccompanied children are generally faster than that of other applicants. On average an unaccompanied child's asylum case has been decided after 6 to 8 months.

**Comments:** The asylum procedure may lead to another kind of residence permit.

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*



- ✓ Unaccompanied children arriving at the border may be detained for a maximum length of 24h, and then they are transferred to the reception center on the territory.
- ✓ Legal representation in the territory is ensured by the Danish Red Cross



- ✓ No guardian is immediately appointed at the border.



### C. Stakeholders

NAME	MISSIONS
Accommodation Centres	Registration of asylum requests
Danish Immigration Service	Asylum request, Case proceeding, appointment of attorneys
Danish Red Cross	Accommodation centers, legal guardians, assessors, health psychological care, relatives search
Danish Refugee Council	Manifestly unfounded procedure
Guardian	Well being of the child
Legal representative	Representation of the child in the asylum procedure
Local authorities	Accommodation: no specialized centers for minors
Police – National Aliens Division	Registration of asylum requests
Red Cross	Organization approved for this task by the Minister of Integration, cooperation with Immigration Service in family tracing
Refugee Appeal Board	First appeal
Regional State Administration	Guardian approval

### D. National legal framework

Aliens (Consolidation) Act, 2009

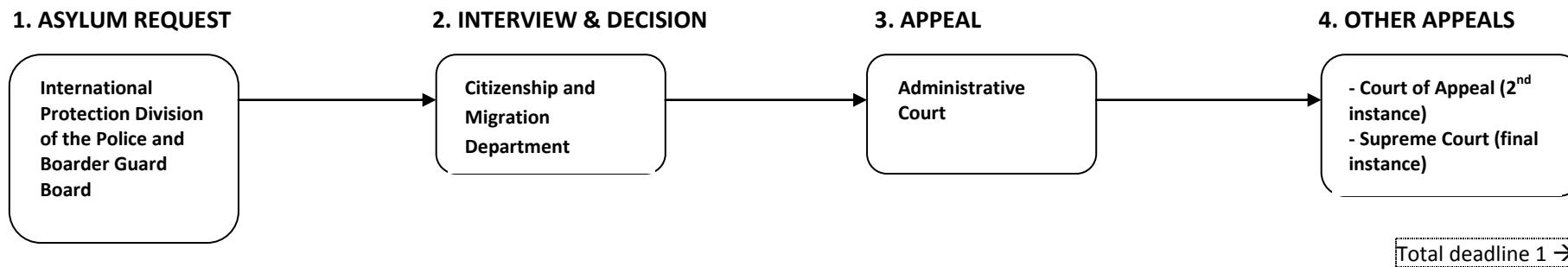
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## COUNTRY CARD INDEX: Estonia

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Estonia\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Estonia_en.pdf)

Estimated total UAMs (2010): N/A  
 Total asylum applications of UAMs (2010): 0

### A. General overview of asylum procedure on the territory



### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*

+	<ul style="list-style-type: none"> <li>✓ Since 2011, a project implemented by the Estonian Human Rights Centre has guaranteed free legal support to asylum seekers during first instance procedures and appeal cases.</li> </ul>
	<ul style="list-style-type: none"> <li>✓ Finger prints are not taken for children under age 15.</li> <li>✓ shouldThe child is represented by the reception centre or a person authorized, or the local government.</li> <li>✓ Police and Border guards should give priority to the application of an unaccompanied child.</li> </ul>
-	<ul style="list-style-type: none"> <li>✓ There is currently no social worker or counsellor in the reception centre.</li> <li>✓ No guardian is immediately appointed at the border.</li> <li>✓ Unaccompanied children can be detained, whether they are asylum seekers or not.</li> </ul>



### C. Stakeholders

NAME	MISSIONS
<b>Citizenship and Migration Board</b>	Asylum procedure
<b>Estonian Human Rights center (<i>Eesti Inimõiguste Keskus</i>)</b>	Provides legal advice, representing asylum seekers in the court hearings and other asylum procedures; helps to apply for free state legal aid
<b>Estonian Red Cross (<i>Eesti Punane Rist</i>)</b>	Mandated for family tracing but lack of practice
<b>International Organization for Migration (IOM) <i>Rahvusvahelise Migratsiooni organisatsiooni Tallinna esindus</i></b>	Works to improve migration-related legislation and technical cooperation. IOM Tallinn offers a voluntary return service.
<b>Johannes Mihkelson (<i>Centre Johannes Mihkelsoni Keskus</i>)</b>	Acclaimed partner for the state, support persons for refugees
<b>Ministry of Foreign Affairs (<i>Välisministeerium</i>)</b>	In co-operation with the Ministry of the Interior develops the visa policy of the country and co-operates with the PBGB in applications for an issue of residence permits and documents in foreign representations of Estonia
<b>Social Welfare Department of the Ministry of Social Affairs (<i>Sotsiaalministeeriumi Hoolekande osakond</i>)</b>	Leading role as the developer of social policy with regard to asylum seekers, coordinating the work of the Illuka Reception Centre for Asylum Seekers, also acts as the contact point for unaccompanied and trafficked children
<b>Ministry of Justice (<i>Justiitsministeerium</i>)</b>	Issues related to human trafficking
<b>Ministry of the Culture (<i>Kultuuriministeerium</i>)</b>	Integration issues
<b>Police and Border Guard Board (PBGB) <i>Politsei- ja Piirivalveamet</i> – International Protection Division</b>	Registration of the asylum applications
<b>Reception Centre for Asylum Seekers at Illuka (<i>Illuka Varjupaigataotlejate Vastuvõtukeskus</i>)</b> – governmental institution administered by the Ministry of Social Affairs	Organise the provision of necessary services to asylum seekers during the asylum proceedings

### D. National legal framework

<b>Act on Granting International Protection to Aliens, 2006</b>	X	X	X	X	X	X	X
<b>Obligation to Leave and Prohibition on Entry Act, 2011</b>							X
<b>Aliens Act, 2010</b>							X
<b>Family Law Act, 2010</b>	X						X
<b>Protocol on the prevention of trafficking in women and children and other trafficking in persons and punishment of such crimes, 2000</b>							X
<b>The guidelines for treatment of children who have committed an offence or need help, Directive No. 265, 2010</b>							X

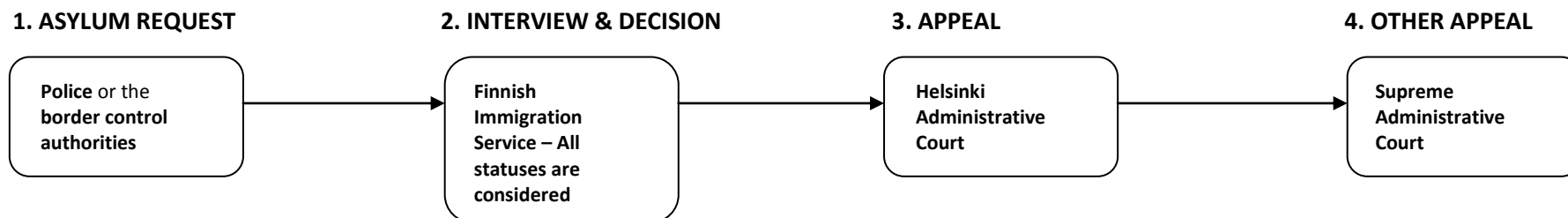


## COUNTRY CARD INDEX: Finland

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Finland\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Finland_en.pdf)

Estimated total UAMs (2010): N/A  
Total asylum applications of UAMs (2010): 329

### A. General overview of asylum procedure on the territory



Total deadline 1 → 4: In 2010, the average processing time for unaccompanied minors was 350 days in the normal procedure (in the accelerated procedure 102 days).

**Comments:** The asylum procedure may lead to another kind of residence permit.

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*

- |   |  |
|---|--|
| + | <ul style="list-style-type: none"> <li>✓ A project led by a NGO developed tools to promote the assessment of the best interest of the child in the asylum procedure, as well as to improve the assessment of the psychological situation and well-being during the procedure.</li> <li>✓ Social workers have to write a statement to decision makers in the immigration service about the best interest's assessment of the child.</li> <li>✓ The Finnish Immigration Service produced guidelines on how to interview children.</li> </ul> |
|   | <ul style="list-style-type: none"> <li>✓ Matters concerning minors should be processed with priority.</li> </ul>   |
| - | <ul style="list-style-type: none"> <li>✓ No guardian is immediately appointed at the border.</li> </ul>  |



### C. Stakeholders

NAME	MISSIONS
Ministry of the Interior ( <i>Sisäasiainministeriö</i> )	Reception policy, provision of general guidelines, and the legislative processes. Decisions concerning the establishment and closure of reception centres
The Finnish Immigration Service ( <i>Maahanmuuttovirasto</i> )	Processing applications and making decisions, management, planning and monitoring of the operation of the reception centres, management of the detention centre, supervision of the implementation of the system of assistance to victims of human trafficking
The regional Centres for Business and Industry, Transport and the Environment ( <i>Elinkeino, liikenne- ja ympäristökeskus, ELY</i> )	Resettlement of the asylum seekers into municipalities
Ingas reception center	Accommodation
Finnish Police ( <i>Polisi</i> )	Informing the applicants about the decision made by the Finnish Immigration Service. Expulsion
Finish Red Cross ( <i>Suomen Punainen Risti ry</i> )	Maintenance of reception centers
Refugee Advice Centre ( <i>Suomen Punainen Risti ry</i> )	Legal services

### D. National legal framework

	Legal guardianship	Dublin II	Social & legal support	Main interview	Decision	Border	Other issue
Aliens Act, 2004		X		X	X	X	X
Act on the Integration of Immigrants and Reception of Asylum Seekers, (266/2010), came into force in September 2011.	X		X				X
Formal guidelines on how asylum applications are to be handled at the process (Dnro 109/032/2008). Finnish Immigration Service, 2008.		X		X		X	X
Guidelines for Interviewing (Separated) Minors. Directorate of Immigration Finland, 2001				X			

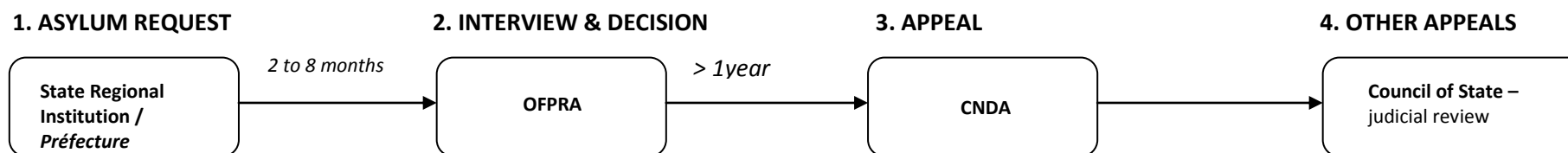


## COUNTRY CARD INDEX: France

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_France\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_France_en.pdf)

Estimated total UAMs (2010): 6000  
Total asylum applications of UAMs (2010): 610

### A. General overview of asylum procedure on the territory



Total deadline 1 → 4: In practice, the asylum procedure takes around one year and half and two years.

**Comments:** If new facts get to be known, the asylum seeker can ask for a reexamination of his/her application to the OFPRA.

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*

- |   |  |
|---|--|
| + | <ul style="list-style-type: none"> <li>✓ Unaccompanied children should always be admitted to the 'regular' procedure.</li> <li>✓ There is one national centre specifically designed for UAMs seeking asylum (33 places), which offers legal, educational and psychological support and follow-up.</li> <li>✓ Data bases on the situation in the country of origin usually contain a chapter regarding law and practices that could affect children. The centre of documentation also provides information on individual cases and specific research are conducted when necessary.</li> </ul>   |
|   | <ul style="list-style-type: none"> <li>✓ A legal representative should be appointed to represent the minor in asylum procedures in the territory and in all procedures at the border.</li> <li>✓ In contrast to adults, children do not have a residence permit during the application because they are in regular situation due to their age.</li> </ul>  |
| - | <ul style="list-style-type: none"> <li>✓ At the port-of-entry, there are waiting areas, and foreigners can be detained when they are not allowed to enter the territory, including unaccompanied minors. Even before being placed in this waiting area, controls may happen while getting off the plane, and unaccompanied minors may be turned back.</li> <li>✓ The interview at the border is in theory only meant at determining if the asylum claim is not manifestly unfounded. In practice, most asylum claims at the border are rejected.</li> <li>✓ The withdrawal of an application form for asylum in the regional representation of the State may be very difficult (waiting time...).</li> </ul> |

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- ✓ The asylum officers say that interviews are suitable for children. However, lawyers or social workers accompanying children during interviews consider that the adaptation is very low.
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### C. Stakeholders

NAME	MISSIONS
Administrative Court / <i>Tribunal administratif</i>	Appeal against decision of the OFPRA to reject the application because considered as “manifestly unfounded”
Asylum at the border Division of the OFPRA	Decision on manifestly unfounded applications
Border Police / <i>Police aux frontières, (PAF)</i>	Immigration control at the border
Council of State / <i>Conseil d’Etat</i>	Supreme Administrative Court, may revoke CNDA decisions
French Office of Protection of Refugees and the Stateless / <i>Office français de protection des réfugiés et des apatrides, (OFPRA)</i>	Administration responsible for examining asylum applications and granting protection
Legal representative / <i>Administrateur ad hoc</i>	Supports and represents the minor in asylum procedure
Liberty and custody judge / <i>Juge des libertés et de la détention</i>	Decides to extend or put an end to detention in transit zones
National Court of Asylum / <i>Cour nationale du droit d’asile, (CNDA)</i>	Appeal of first instance
Public Prosecution Office / <i>Parquet</i>	Appointment of a legal representative to UAMs seeking asylum
Regional State Institution / <i>Préfecture</i> (	Registration of asylum seekers, issuing of residence permits and application forms

### D. National legal framework

	Legal guardianship	Dublin II	Social & legal support	Main interview	Decision	Border	Other issue
Code of Entry and Residence of Aliens and Asylum Right ( <i>Code de l’entrée et du séjour des étrangers et du droit d’asile</i> ), amended by the law No. 2011-672 (2011)	X	X	X	X	X	X	
Family and Social Action Code ( <i>Code de l’action sociale et des familles</i> ) – Article L. 112-3 amended by law No. 2007-293 (2007)	X						X
Circular No. NOR: INT/D/05/00051/C, 2005 –implementing circular of law No. 2003-1176, amending law No. 52-893 relative to asylum right	X	X					
Circular No. CIV/01/05, 2005 – implementing circular of Decree 2003/841	X						

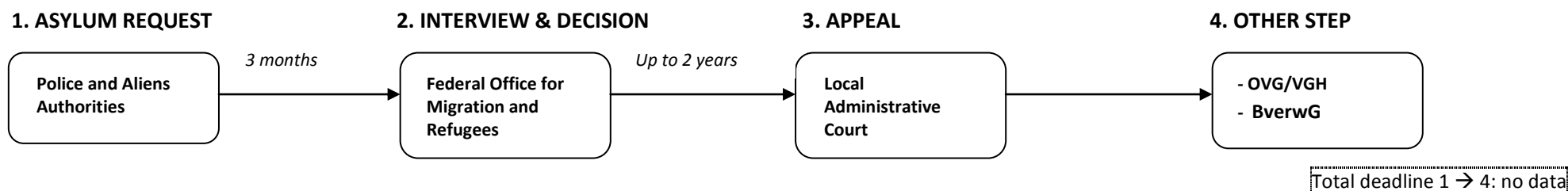


## COUNTRY CARD INDEX: Germany

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Germany\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Germany_en.pdf)

Estimated total UAMs (2010): 4200  
Total asylum applications of UAMs (2010): 1948

### A. General overview of asylum procedure on the territory



#### Comments:

- If in all other instances the case is closed, there is the possibility for constitutional complaint at the *Bundesverfassungsgericht* (Federal Constitutional Court / Supreme Court).
- The asylum procedure may lead to another kind of residence permit.

### B. Specific aspects for unaccompanied minors highlighted in the report

The issues are appreciated in relation to recommendations of the report



- ✓ During the airport procedure, a legal guardian and additionally lawyer are appointed.
- ✓ The law provides that decisions should only be done by special adjudicators who received special training. However, methods of interview are explained but not used in practice.



- ✓ If a minor who is travelling alone is not able to produce the requisite visa at the time of his or her attempt to enter Germany, then the border authorities (the German Federal Police) are entitled to refuse entry. In these cases, as a matter of principle, there will be no notification of the locally responsible Youth Welfare Office.
- ✓ Asylum seekers have to pass through a fast-tracked asylum procedure in the transit area, mainly in Frankfurt Airport. Minors are accommodated at the airport but should not stay there longer than 19 days. If their asylum claim is rejected, they can be returned by force.
- ✓ Interviews should only be scheduled if a guardian is nominated but minors from the age of 16 are considered capable of acting. They are responsible for their asylum-claims themselves.

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- ✓ Minors up to 16 years can only apply for asylum with accordance of their legal guardian so if he/she decides that no asylum claim is necessary the minor has to wait until the age of 16.
  - ✓ No guardian is immediately appointed at the land border.
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## C. Stakeholders

NAME	MISSIONS
Alien-authorities	Documents, initial interview, age assessment
Asylum procedure helpdesk	Charitable organizations which built up helpdesks for asylum-seekers
<i>Bundesverfassungsgericht</i> – Federal Constitutional Court / Supreme Court	Constitutional complaint
Bundesverwaltungsgericht (BverwG) – Federal Administrative Court	Third appeal
Family court	Appointment of a guardian for the minor
Federal Office for Migration and Refugees / Bundesamt für Migration und Flüchtlinge (FedOff/BAMF)	Responsible for the asylum-procedure and Dublin procedure
Guardian	Legal representative of the minor, responsible for all questions which affect the child, in particular for the asylum procedure of minors under 16
Local Administrative Court	First appeal
<i>Oberverwaltungsgericht (OVG) / Verwaltungsgerichtshof (VGH)</i> – Higher Administrative Court	Second appeal
Police/ Federal Police (at the border)	Identity checks and deportation
Youth welfare authorities (part of the municipal self-government)	Well being of minors until a guardian is appointed, financial support

## D. National legal framework

	Legal guardianship	Dublin II	Social & legal support	Main interview	Decision	Border	Other issue
Asylum Procedure Act – <i>AsylVfG Asylverfahrensgesetz</i> , 1993	X	X	X	X	X	X	
Asylum Seekers' Benefit Act – <i>AsylbLG Asylbewerberleistungsgesetz</i> , 1993			X				X
German Code of Social Law, Book VIII – <i>SGB VIII – § 42 SGB VIII – § 42 Sozialgesetzbuch VIII</i> , 1991			X				
German Civil Code – <i>BGB – Bürgerliches Gesetzbuch</i>	X						
Residence Act – <i>AufenthG – Aufenthaltsgesetz</i> , 2005							X





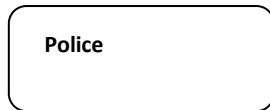
## COUNTRY CARD INDEX: Greece

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Greece\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Greece_en.pdf)

Estimated total UAMs (2010): N/A  
Total asylum applications of UAMs (2010): 47

### A. General overview of asylum procedure on the territory

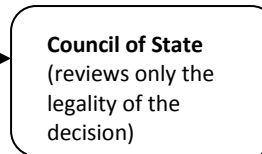
#### 1. ASYLUM REQUEST



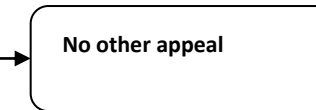
#### 2. INTERVIEW & DECISION



#### 3. APPEAL



#### 4. OTHER APPEALS



**Comments:** The asylum procedure may lead to another kind of residence permit.

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*



✓ When asylum applications are lodged by children, the authorities should treat them as a priority.



✓ Minors should normally benefit from the assistance of interpreters. In practice, they often manage with fellow immigrants for translation.

✓ According to Greek legislation the public prosecutors are tasked to act as temporary guardians for all unaccompanied minors. In practice, this system is dysfunctional.

✓ Unaccompanied children may be detained for several months at the border before released and left unaccompanied with an expulsion order. When arrested in the territory they may be detained again and left unaccompanied again when released with an expulsion order.

✓ .

### C. Stakeholders

NAME	MISSIONS
Greek Council for Refugees	Legal aid
Council of State (Symvoulío Epikrateias)	First appeal (only on the legality of the act)
Ecumenical Refugees program	Legal aid
Greek Ombudsman – Children Rights' Ombudsman	Investigates alleged acts and omissions by individuals and legal entities that violate the rights of children.
UNHCR – United Nations High Commission for Refugees	Monitoring, consultative participation in the asylum application committees
Hellenic Red Cross	Legal aid
Ministry for Citizen's Protection / Public Order	Interview and decision on the application
Omada Dikigoron - Network of pro bono lawyers the group of Lawyers for the rights of refugees and migrants	Supports and represents the minors at the asylum procedure
Police	Registration of the application
Prosecutors for Juveniles	Act as guardian

### D. National legal framework

	Legal guardianship	Dublin II	Social & legal support	Main interview	Decision	Border	Other issue
PD 61/1999	X			X	X	X	X
Art.1589 et.seq. – art.1532,1535 of Civil Code	X						
Law 3226/2004			X				
Law 3907/2011			X	X	X	X	X
Presidential Decree - PD 220/2007 (transposing Dir 2003/9/EC)			X		X		X
PD 167/2008							X
PD 90/2008 (transposing Dir 2005/85/EC, amended by PD 81/2009)	X		X		X		X
PD 96/2008 (transposing Dir 2004/83/EC)							X

<b>PD 81/2009 (amending PD 90/2008)</b>	X	X	X	X
<b>PD 114/2010 (fully transposing Dir 2005/85/EC, amending PD 81/2009)</b>	X	X	X	X

## COUNTRY CARD INDEX: Hungary

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Hungary\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Hungary_en.pdf)

Estimated total UAMs (2010): N/A  
Total asylum applications of UAMs (2010): 150

### A. General overview of asylum procedure on the territory

#### 1. ASYLUM REQUEST

Police, the OIN or any authority – pre-admissibility

#### 2. INTERVIEW & DECISION

OIN – In-merit examination procedure

#### 3. APPEAL

County Court – judicial review

#### 4. OTHER STEP

No possibility to appeal to the Supreme Court

Total deadline 1 → 3: 6-12 months in average

**Comments:** The asylum procedure may lead to another kind of residence permit.

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*



- ✓ The personal hearing is not obligatory under 14 years of age unless it is essential to decide upon the claim (it aims to protect children from re-traumatization). It is not possible to issue a negative decision without a personal interview.
- ✓ UAMs cannot be detained under the Third Country Nationals Act.
- ✓ If the UAM submits an asylum application at the border he or she is directly taken to the Shelter for UAMs in Fót and falls under the scope of the “regular” asylum procedure. UAMs always fall under the scope of the regular asylum procedure.
- ✓ If the child wants to add information, he/she may submit any document in his/her mother tongue. It will be the authorities’ responsibility to translate them.
- ✓ Asylum claims of UAMs are prioritized (not accelerated but dealt with in a faster way).
- ✓ Child specific forms of persecution are recognized by the OIN although in practice it is often classified as a “family dispute” as if children could not be targeted by persecution.
- ✓ Minors may initiate the refugee status determination procedure without an adult relative or a legal representative as well if they are between 14 and 18.
- ✓ An employee of the accommodation centre acts as legal guardian

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✓ Legal guardians did not receive training in asylum law and there are no requirements regarding the legal representatives/guardians' knowledge in refugee law.

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### C. Stakeholders

NAME	MISSIONS
County Court (Budapest, Debrecen, Szeged and Győr)	Appeal
Cordelia Foundation for the Victims of Torture ( <i>Cordelia Alapítvány a Szervezett Erőszak Áldozataiért</i> )	Free of charge psycho-social assistance for survivors of torture
District Guardianship Office	Appointment of the guardian
Hungarian Helsinki Committee (HHC, <i>Magyar Helsinki Bizottság</i> )	Legal assistance
Hungarian Interchurch Aid (HIA, <i>Magyar Ökumenikus Segélyszervezet</i> )	Professional social assistance, care and education, separate reception facility for UAMs until May 2012
Károlyi István Centre for Children (in Fót, <i>Károlyi István Gyermekközpont</i> )	Shelter, guardianship, care
Legal representative	Asylum proceedings – if the UAM and the guardian mandates a lawyer (often the HHC) but also private attorneys
Local guardians	Child well-being
Menedék Association for Migrants ( <i>Menedék Migránsokat Segítő Egyesület</i> )	Free of charge social and integration assistance for asylum seekers, refugees and migrants
Office of Immigration and Nationality (OIN, <i>Bevándorlási és Állampolgársági Hivatal</i> )	Asylum procedure (request, interview, decision)
Police ( <i>Rendőrség</i> )	Asylum request (if the person expresses his/her wish to seek asylum before the Police)
Refugee Mission of the Hungarian Reformed Church ( <i>Református Menekültmisszió</i> )	Education, social and cultural assistance, trainings

### D. National legal framework

	Legal guardianship	Dublin II	Social & legal support	Main interview	Decision	Border	Other issue
Asylum Act – Act No. LXXX, 2007	X	X	X	X	X	X	
Third Country National (TCN) Act – Act No. II, 2007						X	X
Act No. CXL on Administrative Procedures and Services, 2004							X

<b>Government Decree no. 301/2007 (XI.9.) on the implementation of the Asylum Act</b>	X	X	X	X		X
<b>Government Decree no. 114/2007 (V.24.) on the implementation of the TCN Act</b>	X				X	X

## COUNTRY CARD INDEX: Ireland

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Ireland\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Ireland_en.pdf)

Estimated total UAMs (2010): N/A  
Total asylum applications of UAMs (2010): 37

### A. General overview of asylum procedure on the territory

#### 1. ASYLUM REQUEST

ORAC – ASY1 form

#### 2. INTERVIEW & DECISION

ORAC –  
recommendation to  
the Ministry for  
Justice (INIS)

#### 3. APPEAL

Refugee Appeal  
Tribunal (RAT) –  
granting status or  
not

#### 4. OTHER APPEALS

High Court –  
judicial review

Total deadline 1 → 4: According to the Irish Refugee Council, the deadlines are quick both at ORAC and RAT. The main problem lies with subsidiary protection applications – their processing by the Minister lasts, on average, 2 years.

**Comments:** If the RAT does not grant the status, the applicant has the right to apply for subsidiary protection and/or leave to remain by the Ministry for Justice.

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*

- ✓ Initial interviews are not conducted in the same conditions as for adults. Unaccompanied minors are interviewed on appointment (unlike adults, who have to wait in a common room), by trained agents, in specific rooms (while adults are interviewed at “counters” in a common room).
- ✓ Substantive interviews are also conducted in specific conditions for children. Caseworkers are trained on *interviewing children* by UNHCR office in Dublin. It is also possible to arrange a familiarization visit of the building and interview room for the child before the interview.
- ✓ Children are not expected to inform border guards that they are seeking asylum. When an unaccompanied child is identified by an Immigration Officer, he/she must be referred to the Health Social Executive - HSE - immediately.
- ✓ ORAC has specific guidelines concerning the processing of unaccompanied children’s claims. These guidelines are not available to public.
- ✓ Unaccompanied children have a longer deadline to fill in the questionnaire on their grounds for seeking asylum (14 days).



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- ✓ There is no single determination procedure; a separated application must be lodged for subsidiary protection after the refugee status refusal<sup>327</sup>.
  - ✓ The submission of an asylum claim is decided by the HSE. Thus, this is not the child himself/herself who decides whether or not he/she will apply for asylum.
  - ✓ The whole Irish Refugee Council's report on guardianship in Ireland raised the issue of the independence of HSE as a guardian.
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<sup>327</sup> At the time the research was conducted.

### C. Stakeholders

NAME	MISSIONS
Garda National Immigration Bureau (GNIB) – part of the police force	Immigration-related operations, border control
Health Service Executive (HSE) – National body	Health and social care, including child protection services and child best interest in the asylum procedure, legal guardianship
High Court	Judicial review in the asylum process
Irish Refugee Council – NGO	Advisory and advocacy role for UAMs seeking asylum
Minister for Justice, Equality and Defence / Department of Justice and Equality / Irish Naturalisation and Immigration Service (INIS)	Decision on protection applications
Office of Refugee Applications Commissioner (ORAC)	Investigation on asylum applications, recommendations to the INIS
Refugee Appeals Tribunal (RAT)	First appeal
Refugee Legal Service (RLS) – part of the Legal Aid Board, Ministry for Justice	Legal support to asylum seekers
United Nations High Commissioner for Refugees (UNHCR)	Supervision, inter-agency training on UAMs

### D. National legal framework

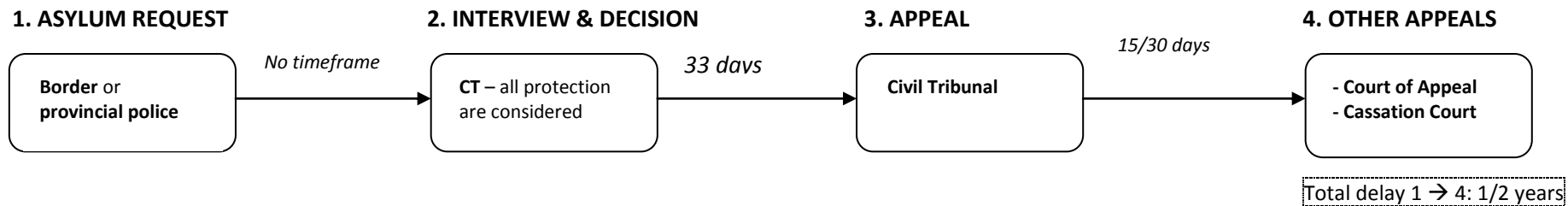
	Legal guardianship	Dublin II	Social & legal support	Main interview	Decision	Border	Other issue
European communities (Asylum procedures) Regulations, 2011				X	X		
Refugee Act, 1996 (amended by Immigration Act, 1999)	X	X	X	X	X	X	
Child Care Act, 1991							X
Child Care (Amendment) Act, 2011	X						X

## COUNTRY CARD INDEX: Italy

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Italy\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Italy_en.pdf)

Estimated total UAMs (2010): 7112  
 Total asylum applications of UAMs (2010): 306

### A. General overview of asylum procedure on the territory



**Comments:** All asylum seekers are admitted to the ordinary procedure: The priority procedure could apply to UAMs. The appeal before the tribunal 15/30 days, 10 days before the Appeal Courts, 30 days before the Cassation court. In practice the decisions taken by the tribunals should be in few months but in reality the processes take ½ years

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*

+	<ul style="list-style-type: none"> <li>✓ UAMs benefit from protective legislation because they are minors and asylum seekers.</li> <li>✓ UAM's cannot be detained</li> <li>✓ UAMs are admitted to the regular procedure and are submitted to the priority procedure (not accelerated but dealt in a faster way)</li> </ul>
	<ul style="list-style-type: none"> <li>✓ Child specific forms of persecution are recognised by the Territorial Commissions</li> <li>✓ A guardian appointed by a judge for guardianship, has the responsibility, inter alia, to accompany the minor during the whole asylum procedure till the age 18..</li> <li>✓ The minor seeking asylum shall benefit from the integrated services of SPRAR (System of Protection for Asylum Seekers and Refugees).</li> <li>✓ UAMs get a stay permit and therefore live regularly on the territory even when they are notified with a negative decision of their asylum claims</li> </ul>
-	<ul style="list-style-type: none"> <li>✓ Guardians are not appointed in due time</li> <li>✓ No BID procedure</li> <li>✓ No protocol for age assessment</li> <li>✓ No legal provisions on the compulsory expertise to interview minors from the members of the Territorial Commissions</li> </ul>

## C. Stakeholders

NAME	MISSIONS
<b>ARCI (associazione di promozione sociale)</b>	ARCI (Italian Cultural and Recreational Association) is an association of social promotion. The Arciragazzi implements projects to enhance and strengthen the social role of children, teenagers and adolescents, especially by supporting the enforcement of their rights in order to promote and implement the UN Convention on the Rights of the Child, especially through direct participation.
<b>Border and provincial police</b>	Registration and identification of migrants and asylum seekers
<b>Italian Committee for Foreign Minors</b>	A national reference institution, the Italian Committee for Foreign Minors (CFM) brings together figures provided by public officials and authorities who have a mission to provide care to unaccompanied children. The Committee is in charge of protecting the rights of both unaccompanied foreign minors present within the national territory and minors accepted into Italy under the Convention on the Rights of the Child adopted by the United Nations in 1989.
<b>Italian Council of Refugees (CIR)</b>	Non-profit organization carrying out advocacy activity at national, European and International level, and legal/social assistance to asylum seekers and refugees in Italy, Algeria and Libya.
<b>Judge for guardianship / <i>giudice tutelare</i></b>	Appointment of the legal guardian
<b>Juvenile Court</b>	All measures to ensure protection and well-being of the minor
<b>Legal guardian</b>	Well being of the minor, assisting inter alia the minor during the asylum procedure
<b>Ministry of Labor</b>	Coordination of inclusion and social cohesion policies
<b>Ministry of the Interior</b>	Migration and asylum, Dublin procedure
<b>National Commission for the policies to asylum</b>	Coordination of the work of the CT, decisions on the cessation and revocation of statuses granted
<b>Save the children – NGO</b>	Save the Children is very active in promoting, lobbying and assisting minors through several projects such as Presidium.
<b>System of Protection for Asylum Seekers and Refugees / <i>Sistema di Protezione per Richiedenti Asilo e Refugiati</i> (SPRAR)</b>	The SPRAR system (System of protection for asylum seekers and refugees), established in 2002, by Law 189, is the central body responsible for coordinating the national transfer of asylum applicants, refugees and beneficiaries of humanitarian protection to the authorized reception centres. This system also enables local entities/NGO's to set up projects of "integrated reception"

**Territorial Commissions for the Recognition of International Protection (CT)**  
**United Nations High Commissioner for Refugees**

for both asylum seekers and beneficiaries of international protection. It is funded by the central government (Ministry of Interior, Department for Civil Liberties and Immigration) and managed by voluntary local authorities (through ANCI- Associazione Nazionale Comuni Italiani).  
 Examination of the international protection requests  
 Member of the Territorial Commissions for the Recognition of International Protection.

#### D. National legal framework

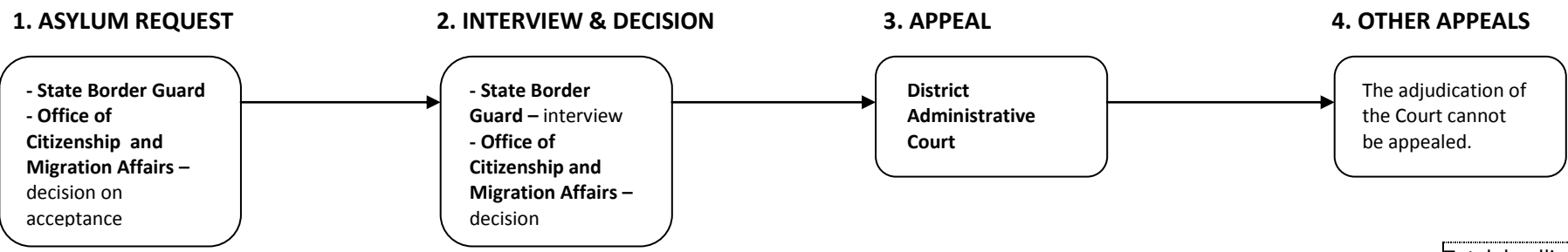
	Legal guardianship	Dublin II	Social & legal support	Main interview	Decision	Border	Other issue
Italian Constitution, art. 10 (3) 1 <sup>st</sup> January 1948					X		
Legislative Decree n. 140/2005 on minimum standards for the reception conditions for asylum seekers	X	X	X	X	X	X	X
Legislative Decree n. 251/2007 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection;							
Legislative Decree n. 25/2008 amended by Legislative Decree n. 159/2008 on minimum standards concerning the procedure for granting and withdrawal of refugee status;							
Legislative Decree n. 5/2007 amended by Legislative Decree n. 160/2008 on family reunification							
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Art. 343 and following articles of the civil code on the appointment of the legal guardian							
Consolidated Act on dispositions concerning the immigrations regulations and stranger conditions norms / "Testo unico", Legislative Decree n. 286/1998						X	X
Law 94/2009							X

## COUNTRY CARD INDEX: Latvia

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Latvia\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Latvia_en.pdf)

Estimated total UAMs (2010): N/A Total asylum applications of UAMs (2010): 4
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### A. General overview of asylum procedure on the territory



Total deadline 1 → 4: no data

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*

+	<ul style="list-style-type: none"> <li>✓ If the child wants to add any information, any document during the asylum procedure, he/she can give them in his language. It is the Office of Citizenship and Migration Affairs' responsibility to translate these documents.</li> </ul>
	<ul style="list-style-type: none"> <li>✓ An interview with a minor has to be conducted by an official who has the necessary knowledge regarding the special needs of minors. In practice border guards lack knowledge.</li> <li>✓ During the asylum procedure the personal and property relations of the unaccompanied minor should be represented by the Orphan's Court or a guardian.</li> </ul>
-	<ul style="list-style-type: none"> <li>✓ No guardian is immediately appointed at the border.</li> <li>✓ When unaccompanied children are accommodated in an asylum seekers reception centres, there are no social workers responsible for them.</li> <li>✓ Only one appeal</li> </ul>

### C. Stakeholders

NAME	MISSIONS
Asylum seekers reception center "Mucenieki" ( <i>Patvēruma meklētāju izmitināšanas centrs "Mucenieki"</i> )	Accommodation of asylum seekers and promotion of integration
District Administrative Court ( <i>Administratīvā rajona tiesa</i> )	Appeal
Latvian center for Human Rights ( <i>Latvijas Cilvēktiesību centrs</i> )	Legal assistance to asylum seekers throughout the entire asylum procedure
Office of Citizenship and Migration Affairs ( <i>Pilsonības un migrācijas lietu pārvalde</i> )	Decision on acceptance, examination and decision on asylum applications
Orphans' Court ( <i>Bāriņtiesa</i> )	Appointment of the guardian and representation of the child's interests in the asylum procedure
Shelter Safe House ( <i>Biedrība "Patvērums "Drošā māja"</i> ) – NGO	Social, psychological and legal assistance to refugees and persons granted alternative status
State Border Guard ( <i>Valsts Robežsardze</i> )	Registration, interview

### D. National legal framework

	Legal guardianship	Dublin II	Social & legal support	Main interview	Decision	Border	Other issue
Immigration Law, 2003						X	X
Asylum Law, 2009	X	X	X	X	X	X	
Procedures for Recognition of Travel Documents of Aliens, Cabinet Regulation No. 215, 2003							X
Regulations regarding Allowances for a refugee and a person who has been granted alternative status, Cabinet Regulation No. 23, 2010			X				X
Regulations regarding the amount of expenses for the purchase of subsistence, hygiene and basic necessities for asylum seekers and the procedures for covering of these expenses, Cabinet Regulation No. 24, 2010							X
Procedures for Reunification of families of refugees or persons having acquired alternative status or temporary protection in the Republic of Latvia, Cabinet Regulation No. 74, 2010							X
Law on Orphan's Court, 2006	X		X				X



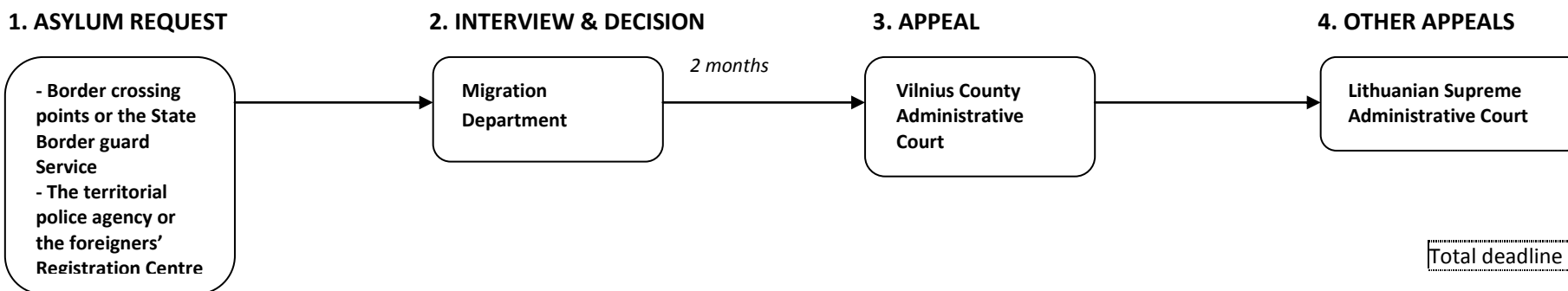


## COUNTRY CARD INDEX: Lithuania

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Lithuania\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Lithuania_en.pdf)

Estimated total UAMs (2010): N/A  
 Total asylum applications of UAMs (2010): 9

### A. General overview of asylum procedure on the territory



### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*

+	✓ An application cannot be considered as manifestly unfounded and unaccompanied children should always be admitted to the 'regular' procedure. Accelerated procedures founded on criteria such as 'third safe country' are not applied.
	✓ Children are placed only in the teenager section of the Refugees reception center.
	✓ A guardian (social worker of the Refugee reception center or guardian independent from authorities) is appointed to unaccompanied child, who would represent legal interests of a minor.
	✓ Cases of unaccompanied children are examined in priority order.
-	✓ No guardian is immediately appointed at the border.



## C. Stakeholders

NAME	MISSIONS
<b>Children Rights Protection Service (<i>Vaiko teisių apsaugos tarnyba</i>)</b>	Represents the child during the primary questioning and appoint temporary guardian
<b>Department of Supervision of Social services (<i>Socialinių paslaugų priežiūros departamentas</i>)</b> – under the Ministry of Social Security and Labor	Provides social programs, monitors the quality of social services provided
<b>International Organization for Migration (<i>Tarptautinė migracijos organizacija</i>)</b>	Integration programs for refugees
<b>Lithuanian Red Cross (LRC) Society (<i>Lietuvos Raudonojo Kryžiaus Draugija</i>)</b>	The lawyer of LRC monitors the state border in order to evaluate the reception conditions of asylum seekers and provides recommendations for state border officers Second appeal
<b>Lithuanian Supreme Administrative Court (<i>Lietuvos vyriausiasis administracinis teismas</i>)</b>	Asylum procedure
<b>Migration Department</b> – under the Ministry of the Interior - The Asylum Affairs Division ( <i>Migracijos Departamentas prie Vidaus reikalų ministerijos</i> )	Identification of asylum seekers
<b>State Border guard Service</b>	Comments legislation, organizes various trainings
<b>United Nations High Commissioner for Refugees' Office in Lithuania (<i>Jungtinių Tautų vyriausiojo pabėgėlių komisaro valdyba</i>)</b>	Integration programs for refugees
<b>Vilnius Archdiocese Caritas (<i>Vilniaus arkivyskupijos Caritas</i>)</b>	First appeal
<b>Vilnius County Administrative Court (<i>Vilniaus apygardos administracinis teismas</i>)</b>	Registration of applications at border crossing points
<b>State Border guard Service (<i>Valstybės sienos apsaugos tarnyba</i>)</b>	

## D. National legal framework

	Legal guardianship	Dublin II	Social & legal support	Main interview	Decision	Border	Other issue
<b>Law on the Legal Status of Aliens, 2004</b>	X	X	X	X	X	X	X
<b>Rules on taking and implementing decisions to oblige foreign nationals to depart, expel, return and travel in transit throughout the territory of the Republic of Lithuania, approved by 24 order of the Minister of the Interior No. 1 V – 429, 2004</b>	X		X	X	X	X	X
<b>Amendments to 15 November 2004 Minister of the Interior order No. 1 V – 361 on Description of procedure on processing of asylum applications lodged by foreign nationals, taking and implementing asylum decisions, 2007</b>	X	X	X	X	X	X	X

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Rules on accommodation of unaccompanied minors seeking asylum at the Refugees Reception Center approved by 2  
February 2005 order of the Interior and the Minister of Social Protection and Labor No. 1 V – 31/A, 2005

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X

X

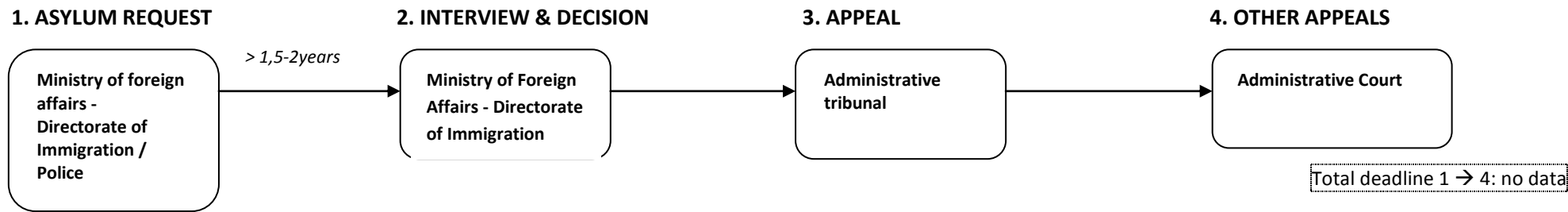
X

## COUNTRY CARD INDEX: Luxembourg

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Luxembourg\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Luxembourg_en.pdf)

Estimated total UAMs (2010): N/A  
Total asylum applications of UAMs (2010): 19

### A. General overview of asylum procedure on the territory



### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*

+	<ul style="list-style-type: none"> <li>✓ The law provides the appointment of a guardian to assist unaccompanied children. Caritas and Red Cross act usually as legal guardians/ <i>ad hoc administrators</i>.</li> <li>✓ The law provides the compulsory presence of the child at all interviews regarding his asylum claim, and obligations for agents conducting interviews to possess sufficient knowledge on the particular needs of children. In practice it is assumed that at least a part of the agents do not possess this specific knowledge.</li> <li>✓ The law provides the obligation of providing information to the child whenever possible.</li> </ul>
-	<ul style="list-style-type: none"> <li>✓ UAMs are accommodated in reception center for asylum seekers that are not tailored to the specific needs of minors. Only children under 15 are placed in youth welfare facilities.</li> </ul>



### C. Stakeholders

NAME	MISSIONS
Administrative Tribunal	First Appeal
Caritas	Guardian/ 'ad hoc administrator'
Guardianship Court	Appointment of the guardian
Lawyer	Asylum procedure, paid by the Luxembourg state
Ministry of foreign affairs – Directorate of Immigration	Asylum claim, decision on asylum applications
Ministry of family affairs and integration (OLAI)	Social welfare benefits
Police (at the Ministry of foreign affairs)	Interview on identity and travel route
Red Cross	Guardian / 'ad hoc administrator'

### D. National legal framework

Asylum law, 2006 – Art. 12, Art. 52

Immigration law (*Loi sur la libre circulation des personnes et immigration*)

2008 – Chapter 5, section 1

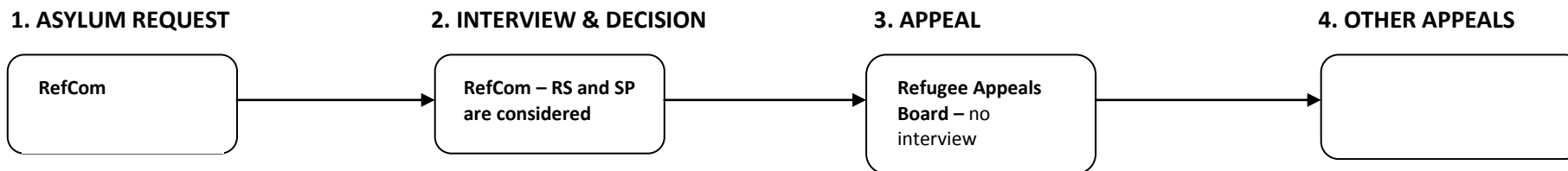
Law on freedom of movement and on immigration and international protection (*Loi sur la libre circulation des personnes et immigration - protection internationale*), 2011

## COUNTRY CARD INDEX: Malta

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Malta\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Malta_en.pdf)

Estimated total UAMs (2010): N/A  
 Total asylum applications of UAMs (2010): N/A

### A. General overview of asylum procedure on the territory



Total deadline 1 → 4: no data

**Comments:** The asylum procedure may lead to another kind of residence permit.

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*

+	<ul style="list-style-type: none"> <li>✓ Pending the outcome of their asylum application, all minors are granted temporary humanitarian protection by the Refugee Commissioner.</li> </ul>
	<ul style="list-style-type: none"> <li>✓ In the absence of a responsible adult, the State, through the issue of a Care Order, assumes legal responsibility for UAMs.</li> <li>✓ There is the possibility for the Refugee Commissioner to prioritize applications from minor asylum-seekers.</li> </ul>
-	<ul style="list-style-type: none"> <li>✓ Unaccompanied minors may remain in detention during several months due to age assessment procedure that lasts several months.</li> <li>✓ The decision of the Board should be final and conclusive and may not be challenged and no appeal may lie there from, before any court of law.</li> <li>✓ No interpreter is provided at the border.</li> </ul>



## C. Stakeholders

NAME	MISSIONS
<b>Aditus foundation</b>	Monitoring, reporting and acting on levels of access to human rights by persons and groups, through advocacy capacity-building, public awareness and legal information and advice.
<b>Agency for the Welfare of Asylum Seekers (AWAS)</b> – under the responsibility of the Ministry of Justice and Home Affairs – MJHA.	Implementation of Age-Assessment team and the residential homes for UAMs
<b>Children and Young Persons’ Advisory Board</b> – under the Ministry for Employment, Education and the Family	Guardianship of UAMs
<b>Detention Service</b> – under the responsibility of the MJHA	Managing the reception of persons who enter the country illegally while their application for asylum are being examined or their return is facilitated, administrative detention
<b>Emigrants’ Commission</b>	Social work, accommodation and other material support to migrants.
<b>Immigration Appeals Board (IAB)</b>	Appeals on detention and removal orders
<b>Jesuit Refugee Service</b>	To accompany, serve and defend the rights of asylum seekers and forcibly displaced persons who arrive in Malta.
<b>Ministry of Health</b>	Health care services (detention and in reception centers)
<b>Office of the Refugee Commissioner (RefCom)</b> – independent body under the responsibility of the MJHA	Receiving and processing the asylum application of all asylum seekers.
<b>Organisation for Friendship in Diversity</b>	Helps cultivate friendship amidst diversity through cultural understanding.
<b>Peace Lab</b>	Accommodation and social support to migrants.
<b>Police immigration department</b> – a part of the Police Special Branch	Irregular immigration and border control
<b>Malta Society of the Red Cross</b>	Psycho-social support to migrants
<b>Refugee Appeals Board (RAB)</b>	Appeal on decision of the RefCom
<b>SOS Malta</b>	Activities supporting migrant integration

## D. National legal framework

	Legal guardianship	Dublin II	Social & legal support	Main interview	Decision	Border	Other issue
<b>The Maltese Refugee Act (Chapter 420), 2001</b>	X	X	X	X	X	X	X

**The Maltese Immigration Act  
(Chapter 217), 1970**

X

The Refugee Act makes reference to **The Children and Young Persons Care Orders  
Act (Chapter 285) 1980**

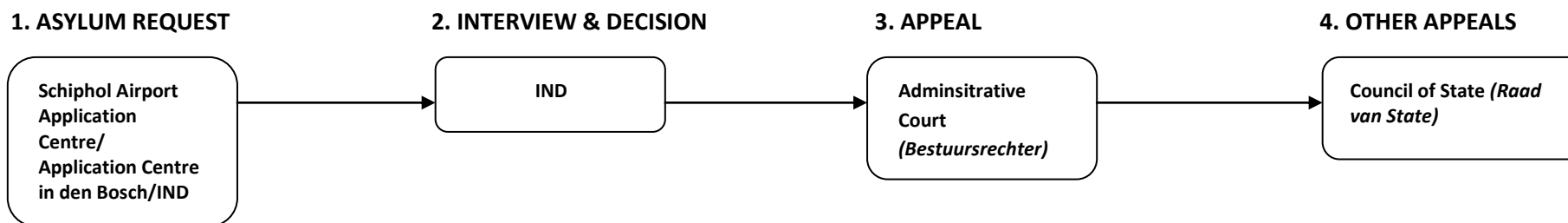
X

## COUNTRY CARD INDEX: Netherlands

Estimated total UAMs (2010): 1500  
Total asylum applications of UAMs (2010): 701

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Netherlands\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Netherlands_en.pdf)

### A. General overview of asylum procedure on the territory



Total deadline 1 → 3: The General Asylum Procedure (*Algemene Asiel Procedure (AA)*) takes eight days, from the first hearing to the decision and can be prolonged to fourteen days in specific cases. When the asylum application cannot be treated in a careful way- for example because of medical reasons - an extended asylum procedure (*Verlengde Asielprocedure (VA)*) can be followed. The long-term procedure can take about six months without appeals.

**Comments:** The asylum procedure may lead to another kind of residence permit.

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*



- ✓ To become a guardian in the Netherlands, a bachelor degree in social work is needed. To support the guardians, workshops and in company courses are organized by NIDOS. The guardians at Schiphol Airport receive information on countries of origin from conferences and cultural mediators.
- ✓ All children under 18 will get a guardian from Nidos within the first few days.
- ✓ Children under the age of 6 are not interviewed. There is a special protocol for kids between 6 and 12 years, there are child-friendly rooms and specially trained officers. Children above twelve are treated in interviews like adults, but also specially trained officers are doing the interview.



✓

### C. Stakeholders

NAME	MISSIONS
Administrative Court ( <i>Bestuursrechter</i> )	Appeal of 1 <sup>st</sup> instance
Application Centre in den Bosch	Registration of asylum applications
Centraal Orgaan opvang asielzoekers (COA)	Accommodation, specialized places for UAMs
Dienst Terugkeer & Vertrek (DT&V)	Return of persons who have no residence permit in the Netherlands
Dutch Refugee Council – NGO	Support to asylum-seekers, especially during the interview
Immigratie- en Naturalisatiedienst (IND)	Asylum procedure
Legal representation	Lawyer in asylum proceedings
Nidos	Guardianship institution
<i>Raad van State</i> / Council of State	Second appeal
Rotterdam-Rijnmond Seaport Police	Coast-border control
Royal Military Constabulary (Kmar)	Border control, assessment of the right of entry (including for asylum seekers)
Schiphol Airport Application Centre	Registration of asylum applications

### D. National legal framework

Aliens Act 2000 (*Vreemdelingenwet, Vw*), 2000

Dutch Civil Code (CC) – (*Burgerlijk Wetboek, BW*)

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## COUNTRY CARD INDEX: Poland

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Poland\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Poland_en.pdf)

Estimated total UAMs (2010): N/A  
Total asylum applications of UAMs (2010): 20

### A. General overview of asylum procedure on the territory

#### 1. ASYLUM REQUEST

Border Guard

#### 2. INTERVIEW & DECISION

Office of Foreigners

#### 3. APPEAL

Refugee Council

#### 4. OTHER APPEALS

Regional  
Administrative Court –  
all protection are  
considered

Total deadline 1 → 4: no data

#### Comments:

- Placing the second instance appeal to Court does not protect the asylum seeking minor against deportation.
- The asylum procedure may lead to another kind of residence permit.

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*



- ✓ An asylum interview of unaccompanied minors following UNHCR guidelines should take place in a child friendly environment.

- 
- ✓ The Border Guard does not inform any foreigners on the border about the possibility of requesting asylum.
  - ✓ Guardian and interpreter are not immediately provided at the border.
  - ✓ During the initial interview, unaccompanied asylum-seeking children are asked the reasons why they left their country and all this information can be used afterwards during the examination of their application.
-

### C. Stakeholders

NAME	MISSIONS
<b>Border Guard / <i>Straż Graniczna</i></b>	Border Control, receiving initial asylum request at the border, detention and deportation
<b>Caretaker / <i>Opiekun</i></b>	Child well being (usually one of the staff at the Orphanage #9 responsible for the particular child)
<b>La Strada – NGO</b>	Identification and assistance to the victims of trafficking
<b>Legal Clinic at Warsaw University –NGO</b>	Helps to provide legal representatives
<b>Legal Representative / <i>Kurator</i></b>	Representation of the child in the legal process of asylum procedure (usually from the Legal Clinic at the Warsaw University)
<b>Office of the Foreigners /<i>Urząd do spraw Cudzoziemców</i></b>	Asylum process as well as funding all social and medical support
<b>Orphanage Number 9 in Warsaw</b>	Housing the children and 24hour a day social care and support
<b>Polish Red Cross</b>	Family tracing
<b>Refugee Counsel</b>	First appeal
<b>Regional Administrative Court</b>	Second appeal
<b>UNHCR Warsaw</b>	Monitoring general procedures concealing access to asylum

### D. National legal framework

**Act on Foreigners (consolidated text Journal of Laws of 2006, No. 234, item 1694 with amendments)**

**Act on granting protection to aliens within the territory of the Republic of Poland (consolidated text Journal of Laws of 2006 r. No. 234, item 1695 with amendments)**

**Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members (Journal of Laws of 2006, No. 144, item 1043 with amendments)**

**Act on Polish Citizenship (Journal of Laws of 2000, No. 28, item 353 with amendments)**

**Act on Passport Documents (Journal of Laws of 2006, No. 143, item 1027)**

**Act on social assistance (Journal of Laws of 2008, No. 115, item 728 with amendments)**

**Ordinance by the Minister of Labour and Social Policy on providing assistance to foreigners who have been granted the status of a refugee in the Republic of Poland or who have received subsidiary protection, (Journal of Laws of 2009, No. 45, item 366)**

**Act on Healthcare Facilities (consolidated text Journal of Laws of 2007 r. No. 14, item 89)**

**Act on Healthcare Services Financed with Public Resources (consolidated text Journal of Laws of 2008 r. No. 164, item 1027)**

**Family and Custody Code (Journal of Laws of 1964, No. 9item 59 with amendments)**

**Ordinance by the Minister of Labour and Social Policy on foster families (Journal of Laws of 2004, No. 233, item 2344 with amendments)**



Act on the Educational System (Journal of Laws of 2004, No. 256, item 2572 with amendments)

Ordinance by the Minister of Labour and Social Policy on educational-care centres (Journal of Laws of 2007, No. 201, item 1455)

International Private Law (Journal of Laws of 1965, No. 46, item 290 with amendments)

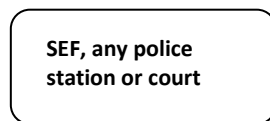
## COUNTRY CARD INDEX: Portugal

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Portugal\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Portugal_en.pdf)

Estimated total UAMs (2010): N/A  
Total asylum applications of UAMs (2010): 6

### A. General overview of asylum procedure on the territory

#### 1. ASYLUM REQUEST



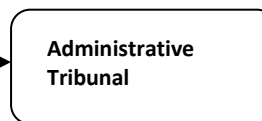
Up to 6 months

#### 2. INTERVIEW & DECISION

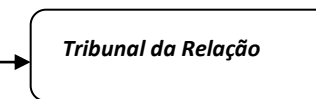


Up to 1 year

#### 3. APPEAL



#### 4. OTHER APPEALS



Total deadline 1 → 4: no data

### B. Specific aspects for unaccompanied minors highlighted in the report

The issues are appreciated in relation to recommendations of the report

- ✓ The decision on granting protection is first communicated by asylum officers of SEF to the minor at SEF's office. Then, CPR staff also talks to the minor acknowledging the full understanding of the document, replying to any doubts or questions that might exist.
- ✓ The law provides a special regime which allows the regularisation of the situation of unaccompanied minors in the country.
- ✓ The law provides the possibility to be detained at the border during admissibility procedure but in practice, it seems that UAMs are always given permission to enter the national territory, avoiding the permanence at the "Temporary Installation Centre"
- ✓ When an unaccompanied minor arrives to Portugal and apply for asylum, authorities inform CPR in order to receive and accomodate this minor. A new reception centre for refugee children of the Portuguese Refugee Council opened in 2012.
- ✓ In practice, CPR is the NGO that provides support and legal representation to UAMs seeking asylum
- ✓ Public Administration should ensure access to rehabilitation services for minors.

- 
- ✓ No guardian is immediately appointed at the border.
  - ✓ An unaccompanied minor aged 16 years or over may be placed in accommodation centres for adult asylum seekers.
  - ✓ During the interview at the border, unaccompanied asylum-seeking children are asked the reasons why they left their country and all this information can be used afterwards during the examination of their application.
-

## C. Stakeholders

NAME	MISSIONS
<b>Administrative Tribunals (Fiscal and Administrative Courts)</b> <b>Border Officers</b> <b>Commissions to Protect Children and Youths at Risk (CPCJRs)</b> – under the National Commission to Protect Children and Youth at Risk (which is jointly under the Ministry of Justice and Ministry Solidarity and Social Security). The Commissions are created at municipal level. They are non-judicial entities with functional autonomy, monitored by the referred national commission. <b>Department of Asylum and Refugees / “Gabinete de Asilo e Refugiados” of SEF</b> <b>Family and Juvenile Courts</b> <b>Ministry of Interior</b> <b>Portuguese Immigration Service (SEF)</b> – Ministry of Interior <b>Portuguese Refugee Council (CPR)</b> – NGO <b>Social Security Institute under the Ministry of Solidarity and Social Security</b> – local representations <b>Tribunal da Relação / Court of Appeal</b> <b>UNHCR</b> – delegation to CPR <sup>328</sup>	Appeal against negative decisions First contact at the border, refer UAMs to SEF Promotion of the rights of children and youths.  Admissibility and eligibility stages as well as the Dublin Regulation procedure)  Ensure rights protecting children and youths at risk  Decision on asylum application Asylum procedure, interview Assistance to asylum seekers and refugees Social support to unaccompanied minors)  Second appeal Following the closing of UNHCR Liaison Office in Portugal in 1998, CPR became its national operational partner. The right of intervention of UNHCR in asylum matters was given legal status by former Asylum Act 15/98 and recognized by Asylum Act presently in force (Law 27/2008). Since this role cannot be currently fulfilled by UNHCR it is therefore delegated to CPR

## D. National legal framework

Other issue  
 Border  
 Decision  
 Main interview  
 Social & legal support  
 Dublin II  
 Legal guardianship

<sup>328</sup> Following the closing of UNHCR Liaison Office in Portugal in 1998, CPR became its national operational partner. The right of intervention of UNHCR in asylum matters was given legal status by former Asylum Act 15/98 and recognized by Asylum Act presently in force (Law 27/2008). Since this role cannot be currently fulfilled by UNHCR it is therefore delegated to CPR.

<b>'Asylum Act', Law No. 27/2008</b>	X	X	X	X	X	X	X
<b>'Foreigners' Act', Law No. 23/2007</b>							X
<b>Law No. 147/99</b>	X						X

## COUNTRY CARD INDEX: Romania

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Romania\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Romania_en.pdf)

Estimated total UAMs (2010): N/A  
Total asylum applications of UAMs (2010): 24

### A. General overview of asylum procedure on the territory

#### 1. ASYLUM REQUEST



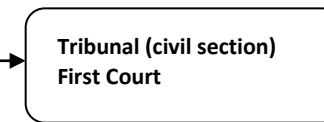
#### 2. INTERVIEW & DECISION



#### 3. APPEAL



#### 4. OTHER APPEALS



Total deadline 1 → 4: Law: 135 days max. Practice: approx. 1 year

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*

✓ Unaccompanied minor asylum-seekers are not subject to border procedure neither to accelerated procedure.

✓ During the whole asylum procedure minors are assisted by the legal guardian which is appointed by General Directorate for Social Assistance and Child Protection.

✓ The asylum request should be examined with high priority under the ordinary procedure.

✓ UAMs are not exempt by law to be sent back to safe third countries but it has never happened in practice.

✓ According to Penal Code, unaccompanied children not seeking asylum are not excluded from being detained for illegal crossing the border.

✓ Children over 16 are accommodated in RIO centres for adults, which do not provide food but only very basic items like soap, toilet paper and toothpaste.

### C. Stakeholders

NAME	MISSIONS
<b>Local Court</b> <b>Tribunal (civil section) First Court / Judecatorie</b> <b>General Directorate for Social Assistance and Child Protection</b> – within the Ministry of Labour, Family and Social Protection <b>ICAR Foundation</b>  <b>IML (Forensic Institute) and its territorial units – Institutul de Medicina Legala</b> <b>Jesuit Service for Refugees Romania (JRS România)</b> – NGO  <b>National Agency against Trafficking in Persons (NAATIP)</b> – under the Ministry of Administration and Interior <b>Romanian Border Police</b> – part of the Ministry of Administration and Interior <b>Romanian Immigration Office (RIO) - Directorate for Asylum and Integration (DAI)</b> – under the Ministry of Administration and Interior <b>Romanian National Council for Refugees (CNRR)</b> – NGO <b>Save the Children</b> – NGO <b>UNHCR</b>  <b>Young Generation / Tanara Generatie</b> – NGO, only in Timisoara	First Appeal Second Appeal Appointment of the legal guardian and emergency placement in specific centers for minors  Medical services; most of the reports ICAR issues are used as supporting documents in national courts to the asylum seekers' claims during the judicial phase of the asylum procedure The only medical institutions which carry out ascertainties, expertise and other forensic activities  Promotion of the fundamental human rights of the refugees and forced migrants especially, counselling, assistance and hosting for finally rejected asylum seekers Co-coordinating, evaluating and monitoring at national level the implementation of anti-trafficking and victims' protection and assistance policies by public institutions. Control of the State borders  Identification, registration, preliminary interview and hearing in the merits of the asylum request  Protection and promotion the refugee's rights Social activities, psychological counseling for UAMs Monitoring of the implementation of the asylum law, assistance to asylum seekers during the interview, documentation for cases Legal, social, medical, psychological services and cultural integration programs for asylum seekers and refugees

### D. National legal framework

	Legal guardianship	Dublin II	Social & legal support	Main interview	Decision	Border	Other issue
Asylum Act 122/2006	X	X	X	X	X	X	X
Romanian Immigration Law no. 157/2011							X

<b>Order 255/2000 for the approval of procedural rules for forensic examinations, investigations and other acts</b>				X
<b>Romanian Law on the Protection and Promotion of the rights of the child 272/2004</b>	X		X	X

## COUNTRY CARD INDEX: Slovakia

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Slovakia\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Slovakia_en.pdf)

Estimated total UAMs (2010): 70  
Total asylum applications of UAMs (2010): 7

### A. General overview of asylum procedure on the territory

#### 1. ASYLUM REQUEST

Asylum  
Department of the  
Aliens Police

#### 2. INTERVIEW & DECISION

Migration Office –  
RS and SP are  
considered

#### 3. APPEAL

Regional Court

#### 4. OTHER APPEALS

Supreme Court

Total deadline 1 → 4: 8 months – 1 year

**Comments:** The asylum procedure may lead to another kind of residence permit.

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*

- |   |   |
|---|---|
| + | <ul style="list-style-type: none"> <li>✓ The asylum application cannot be denied as obviously unfounded in case of unaccompanied minor asylum seeker.</li> <li>✓ Social workers can be asked by the decision-maker of the Migration office or by the lawyer to provide the so called “social profile” of the child, which can be useful for the overall evaluation of the personality of the child.</li> </ul>  |
|   | <ul style="list-style-type: none"> <li>✓ The legal guardian can be either the Local office of labour, social affairs and family (guardian) or the lawyer or attorney if the guardian delegates him/her by power of attorney.</li> <li>✓ The asylum interview with UAMs can be undertaken only in the presence of his/her guardian.</li> <li>✓ The Ministry should provide UAMs with suitable accommodation and treatment in the asylum facilities.</li> <li>✓ Special medical treatment should be provided to minor asylum seekers which are victims of torture or exploitation.</li> </ul> |
| - | <ul style="list-style-type: none"> <li>✓ In practice, substantive interview of UAMs are not really conducted in specific conditions (contrary to what the Asylum Act foresees).</li> <li>✓ Guardian does not submit appeals at all against the negative administrative decisions of the Migration office.</li> </ul>  |



### C. Stakeholders

NAME	MISSIONS
Aliens police officers / Department of Asylum Border police officers	Responsible for accepting UAMs' asylum application First contact with the child at the border, responsible for contacting the relevant local office of labour, social affairs and family
Human Rights League ( <i>Liga za ľudské práva</i> ) – Slovak NGO Legal representative/legal guardian	Legal assistance for asylum seekers Representation of the child in the asylum procedure
Local office of labour, social affairs and family / Department of socio-legal protection of children – local office	Appointed by court as the guardian of the UAM, which is responsible to take all the necessary legal steps for the solution of the UAM's legal situation
Migration office of the Ministry of Interior of the Slovak Republic	Evaluation of the UAM's asylum application, accommodation, medical treatment and well-being of the child during the asylum procedure
Regional court in Bratislava or in Kosice	First appeal
Supreme court of the Slovak Republic	Second appeal

### D. National legal framework

	Legal guardianship	Dublin II	Social & legal support	Main interview	Decision	Border	Other issue
Act No. 480/2002 Collection on Asylum 20 June 2002	X	X	X	X	X	X	
Act No. 305/2005 Coll. on social-legal protection of children and on social custody	X		X				
Act No. 404/2011 Coll. on Stay of Foreigners						X	X

## COUNTRY CARD INDEX: Slovenia

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Slovenia\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Slovenia_en.pdf)

Estimated total UAMs (2010): N/A  
Total asylum applications of UAMs (2010): 38

### A. General overview of asylum procedure on the territory

#### 1. ASYLUM REQUEST

Any authority,  
Asylum authority

#### 2. INTERVIEW & DECISION

Asylum Division of  
the Ministry of  
Interior

*approx. 1 year*

#### 3. APPEAL

Administrative  
Court

#### 4. OTHER APPEALS

- Supreme Court  
- Constitutional Court  
(extraordinary  
remedy)

Total deadline 1 → 2: up to 2-3 years even

**Comments:** No obligatory deadlines are set up for the asylum authority, the 6 months for the first instance is only indicative but not applied in practice.

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*



- ✓ The child turning 18 may ask to extend the mandate of the legal guardian.
- ✓ The NGO "Slovenian Philanthropy" is appointed as guardian for UAMs seeking asylum
- ✓ Authorities should ensure priority treatment of the child's application.
- ✓ Officials from the Asylum authority have to have additional capacity to deal with minors, in particular to provide assistance for effective exercise of minors' rights. In practice this is not really the case.
- ✓ It is possible to process UAM application without a personal interview only if the child is under 15. Personal interview can be omitted also if the Asylum authority can grant protection already on the basis of evidence and further personal interview is not required.

- 
- ✓ Unaccompanied children who ask for asylum do not get a guardian at the border, despite the provision in the Aliens Act.
  - ✓ In case of accelerated procedure, further personal interviews can be omitted under special circumstances for all asylum seekers, including minors.
  - ✓ If an UAM does not express his/her intention to seek asylum upon interception, he/she is firstly transferred to the Center for foreigners in Postojna (immigration jail). In theory, he/she can write his/her intention to seek asylum alone. In practice they must wait for the visit of their guardian.
  - ✓ The first instance procedure may last for up to 2-3 years.
-

## C. Stakeholders

NAME	MISSIONS
<b>Administrative Court</b>	Appeal court of first instance
<b>Amnesty International and Peace Institute</b>	Involved in asylum issues but more on the systematical level and not as direct service providers
<b>Asylum Division of the Ministry of Interior</b>	First instance decision making authority
<b>Constitutional Court</b>	Extraordinary remedy – in case the constitutional rights of the applicant were violated
<b>Guardian</b>	Well being of the child
<b>Institute for African Studies</b>	Provides socio-cultural activities in the Asylum Home
<b>Jesuit Refugee Service</b>	Organisation of different activities in Asylum home (e.g. kindergarten for 2 hrs a day) and also visits Centre for foreigners
<b>Legal representative</b> (the refugee counselors i.e. lawyers appointed by the Ministry of Justice)	Free legal representation in asylum procedures
<b>Ključ</b>	Implementation of mechanisms for identification, help and protection of victims of trafficking in human beings in the asylum procedures
<b>Mozaik</b>	Activities for children in the Asylum home
<b>PIC (Pravno-informacijski center nevladnih organizacij)</b>	Legal assistance to asylum seekers, daily present in the Asylum home and also visits the Centre for foreigners
<b>Police</b>	In charge of the Centre for foreigners in Postojna –detention centre–)
<b>Slovenska filantropija (Slovene Philanthropy)</b>	Providing guardians <sup>329</sup>
<b>Supreme Court</b>	Second instance appeal

## D. National legal framework

	Legal guardianship	Dublin II	Social & legal support	Main interview	Decision	Border	Other issue
<b>International protection Act (Zakon o mednarodni zaščiti), Official gazette RS, No. 11/2011</b>	X	X	X	X	X		
<b>Alien's Act (Zakon o tujcih), Official gazette RS, No. 50/2011</b>	X				X	X	X
<b>Rules on the form, contents and method of reception application for international protection (Pravilnik o postopku s tujcem, ki izrazi namen podati prošnjo za mednarodno zaščito v Republiki Sloveniji ter postopku sprejema prošnje za mednarodno zaščito), Official gazette RS, No. 64/2011</b>							(accommodation in the Asylum Home, procedural rules)
<b>Rules on the rights of applicants for international protection (Pravilnik o pravicah prosilcev za mednarodno zaščito), Official gazette RS, No. 68/2011</b>			X				X (interpretation)
<b>Rules on the implementation of legal representation of unaccompanied minors and the manner of providing adequate accommodation, care and treatment of unaccompanied minors outside Asylum Centre</b>	X		X				

<sup>329</sup> N.B: Centre for Social Work (CSW) is the official guardian provider, but they have an agreement with the SF, so they provide guardians in practice

or its branches (*Pravilnik o načinu izvajanju zakonitega zastopanja mladoletnikov brez spremstva ter načinu zagotavljanja ustrezne nastanitve, oskrbe in obravnave mladoletnikov brez spremstva zunaj azilnega doma ali njegove izpostave*), Official gazette RS, No. 6/2012

## COUNTRY CARD INDEX: Spain

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Spain\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Spain_en.pdf)

Estimated total UAMs (2010): 5500  
Total asylum applications of UAMs (2010): 13

### A. General overview of asylum procedure on the territory

#### 1. ASYLUM REQUEST

Asylum and Refuge Office (OAR)

#### 2. INTERVIEW & DECISION

Asylum Office – interview  
Ministry of Interior – decision

#### 3. APPEAL

Ministry of interior or Administrative Courts

#### 4. OTHER APPEALS

Chamber for Administrative Litigation of the National High Court

Total deadline 1 → 4: 1-2 years

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*

+

- ✓ The asylum law states that the Administration should take the necessary measures to provide a distinguishing treatment according to the sex of the applicant or other circumstances, such as being an unaccompanied child.
- ✓ Being considered an unaccompanied foreign minor is based on the date of the filing of the application without prejudice to the fact that a child may turn 18 over the course of the procedures.

- ✓ Children seeking international protection who have been victims of any kind of abuse, negligence, exploitation, torture, cruel, inhuman or humiliating treatment, or those who have been victims of armed conflict should receive adequate health and psychological care and the qualified assistance they may require.
- ✓ UAMs benefit from the right to urgent processing.
- ✓ A working paper specifies that in the case of unaccompanied children, the interview should be adapted to the child's maturity. Some NGOs, like CEAR, report it is not always implemented.
- ✓ The public entity, entrusted with the protection of minors in its respective territory, assumes by law the guardianship of UAMs.

-

- ✓ At the border, unaccompanied asylum-seeking children are asked the reasons why they left their country and are asking asylum, and all this information can be used afterwards during the examination of their application.

## C. Stakeholders

NAME	MISSIONS
Administrative Courts	First appeal
Asylum and Refugee Office	Asylum matters
Chamber for Administrative Litigation of the National High Court	Second appeal
DG Domestic Policy	Implementation of the International Protection system
DG Police and Guardia Civil	Illegal immigration, border control, removals, EU funds, statistics
Internment Centres for Immigrants (CIE)	Detention
Local authorities	Social services, integration
Ministry of the Interior	The administration ultimately responsible for all the processes related to the right to asylum and subsidiary protection, and the application proceedings
Public Prosecutor's Office	Oversees the guarantee of proceedings and the exercise of their rights
Regional authorities	social services, integration, UAMs

## D. National legal framework

	Other issue	Border	Decision	Main interview	Social & legal support	Dublin II	Legal guardianship
Law 12/2009, regulatory of the right to asylum and subsidiary protection / <i>Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria</i> ) BOE No. 263, 31 October 2009		X	X	X	X	X	
Royal Decree 203/1995, which approves the Regulation implementing Law 5/1984 of March 26, regulating the right to asylum and the refugee status, as amended by Law 9 / 1994 of 19 May. / <i>Real Decreto 203/1995, de 10 de febrero, por el que se aprueba el Reglamento de aplicación de la Ley 5/1984, de 26 de marzo, reguladora del derecho de asilo y de la condición de refugiado, modificada por la Ley 9/1994, de 19 de mayo</i> ) BOE 52 March 1995							
Organic Law 4/2000 on Rights and liberties of aliens in Spain and their social integration / <i>Ley Orgánica 4/2000 de Derechos y libertades de los extranjeros en España y su integración social</i> ) BOE 10 January 2000.	X				X		
Organic Law 1/1996, on the Legal Protection of Minors, partially amending the Civil Code and Civil Procedure Act / <i>Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor, de modificación parcial del Código Civil y de la Ley de Enjuiciamiento Civil</i> ) BOE 15 January 1996.					X		X
Civil Code / <i>Código Civil</i> , BOE 206 July 2011.	X						X





## COUNTRY CARD INDEX: Sweden

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_Sweden\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_Sweden_en.pdf)

Estimated total UAMs (2010): 2393  
Total asylum applications of UAMs (2010): 2393

### A. General overview of asylum procedure on the territory

#### 1. ASYLUM REQUEST



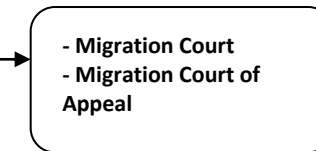
#### 2. INTERVIEW & DECISION



#### 3. APPEAL



#### 4. OTHER APPEALS



Total deadline 1 → 4: no data

**Comments:** The asylum procedure may lead to another kind of residence permit.

### B. Specific aspects for unaccompanied minors highlighted in the report

*The issues are appreciated in relation to recommendations of the report*



- ✓ Migration Board provides a special document for children containing different general information about the asylum procedure. In addition, the Swedish Red Cross is giving “asylum information workshops” in the youth centres where unaccompanied minors live.
- ✓ Legal representatives are lawyers so they are usually well trained and knowledgeable in the field of asylum and children’s rights.
- ✓ Applications made by unaccompanied minors are still treated as minors’ applications even if the child turns 18 during the process while waiting for the decision.

- ✓ At the appeal, the child gets an attorney appointed by Swedish Migration Board.



- ✓ There are many different municipal accommodations where the unaccompanied minors can be placed. Some of these centres used to be centres for youth delinquent and continue to be run by the same staff which may not be prepared for their role with unaccompanied asylum seeking children.
- ✓ No guardian is immediately appointed at the border.

### C. Stakeholders

NAME	MISSIONS
Asylum department	First oral interview; responsible for the asylum procedure and daily allowances for the child during the first step of the asylum procedure
County	Deals with municipalities (since 2011)
Lawyers BAR association	Legal aid during the first step of the asylum procedure
Legal guardian	Role of a foster parent
Legal representative or lawyer	Representation of the child during the asylum procedure
Migration Court	First judicial appeal
Migration Court of Appeal	Second judicial appeal
Municipality	All social issues relating to the reception of the UAMs, social workers and guardians
Save the children	Information support
Swedish Migration Board	Asylum procedure
Swedish Red Cross	Family tracing services, asylum information workshops) aid to the activities of municipalities
Union of municipalities	Assists municipalities with their guardianship

### D. National legal framework

Aliens Act 2005:716

Aliens Act 2005:976

Act 2005:429

Law 2008:344

Law 2003:420

Ordinance 2001:716

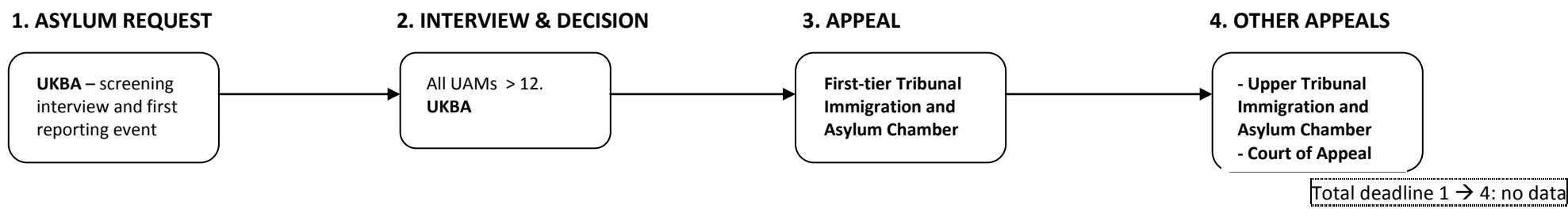
Law 1990:52

## COUNTRY CARD INDEX: the United Kingdom

Factsheet (EU Fundamental rights agency): [http://fra.europa.eu/fraWebsite/attachments/asylum\\_factsheet\\_UK\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/asylum_factsheet_UK_en.pdf)

Estimated total UAMs (2010): 1595  
Total asylum applications of UAMs (2010): 1595

### A. General overview of asylum procedure on the territory



**Comments:** - A final appeal might be made to the Supreme Court.  
- The asylum procedure may lead to another kind of residence permit.

### B. Specific aspects for unaccompanied minors highlighted in the report

*The aspects are appreciated in relation to recommendations of the report*

+	<ul style="list-style-type: none"> <li>✓ The UKBA provides specific written guidance to its staff on the processing of asylum claims from children. This guidance may be used by solicitors to challenge the decision.</li> <li>✓ UAMs are supported by a solicitor as soon as they introduce their application.</li> </ul>
	<ul style="list-style-type: none"> <li>✓ Unlike adults, unaccompanied minors cannot be detained. However, while waiting for the procedures to be undertaken, the minor may be kept in a holding room for a few hours.</li> <li>✓ Prior to substantive interview, the child applicant must complete a statement of evidence form (SEF), relating to the matters of his/her claims. Asylum case owners rely on this written statement as well as on the interview to assess the child’s need for protection.</li> <li>✓ The screening interview of an unaccompanied minor cannot be conducted without an “appropriate adult” being present.</li> <li>✓ The country of origin information (COI) reports and operational guidance notice (OGN) of the UKBA shall include specific sections on children but it is not used enough by the UKBA officers.</li> <li>✓ The UKBA has a policy of granting discretionary leave to UAMs; in theory it is designed to give them a right to stay when they do not fit the refugee status’ criteria.</li> </ul>
-	<ul style="list-style-type: none"> <li>✓ Unaccompanied minors are often granted discretionary leave without their need for protection being properly assessed.</li> <li>✓ There is no real guardianship system for unaccompanied minors. Instead, an unaccompanied child has a variety of contact persons whose duty is to assist him or her in specific issues. None of these adults is fully responsible for the child’s welfare and representation.</li> <li>✓ Decisions taken for 18-year-olds are much less favorable than decisions for under-age minors, but also less favorable than adults’ decisions. One reason for that is that, after 17 and a half, unaccompanied minors are not eligible to discretionary leave under unaccompanied asylum seeking children policy anymore.</li> </ul>

- 
- ✓ Some unaccompanied minors have no appeal rights (e.g. children who were identified as Dublin II cases, but also for those who were granted discretionary leave for less than 12 months).
  - ✓ During the initial interview, unaccompanied asylum-seeking children are asked the reasons why they left their country and are asking asylum, and all this information might be used afterwards during the examination of their application.
-

### C. Stakeholders

NAME	MISSION
Court of Appeal	Third appeal
First-tier Tribunal Immigration and Asylum Chamber	First appeal
Legal representative/solicitor	Legal support during the asylum process (from NGOs or private firms)
Local authorities	Accommodation, daily care and educational support to UAMs
Refugee Council's Children's Panel	Provides assistance to children in asylum process and ensures that they have legal representatives
"Responsible adult"	Attends the substantive asylum interview with the child
Supreme Court	Fourth appeal
United Kingdom Border Agency (UKBA)	Agency of the Home Office in charge with immigration and asylum: request, interview and decision
UKBA Border Guards	Asylum at the border
Upper Tribunal Immigration and Asylum Chamber	Second appeal

### D. National legal framework

	Other issue	Border	Decision	Main interview	Social & legal support	Dublin II	Legal guardianship
Border, Citizen and Immigration Act, 2009		X					
Immigration Rules, 2011	X	X	X	X	X	X	
UKBA Staff Guidance		X	X	X	X		
Children Act, 1989	X						



## Appendix 2 – International and European standards

### *United Nations*

#### UN Conventions

- Convention relating to the Status of Refugees, adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950  
<http://www2.ohchr.org/english/law/refugees.htm>
- Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entry into force 2 September 1990, in accordance with article 49  
<http://www2.ohchr.org/english/law/crc.htm>

#### UN guidelines, comments and reports

- UN High Commissioner for Refugees, *Guidelines for Interviewing Unaccompanied Minors and Preparing Social Histories*, October 1985  
<http://www.unhcr.org/refworld/docid/47fdfae5d.html>
- UNHCR, « Children: Guidelines on protection and care », Genève 1994  
<http://www.unhcr.org/refworld/pdfid/3ae6b3470.pdf>
- UNHCR, module “Interviewing Applicants for Refugee Status” (RLD4), 1995  
<http://www.unhcr.org/publ/PUBL/3ae6bd670.pdf>
- UNHCR, “Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum”. February 1997  
<http://www.unhcr.org/3d4f91cf4.pdf>
- Committee on the Rights of the Child, *General comment N°6*, CRC/GC/2005/6 (2005), Treatment of unaccompanied and separated children outside their country of origin  
<http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>
- UN High Commissioner for Refugees, *Conclusion on Children at Risk*, 5 October 2007, No. 107 (LVIII) – 2007. (g) viii  
<http://www.unhcr.org/refworld/docid/471897232.html>
- UNHCR Guidelines on Determining the Best Interests of the Child, May 2008  
<http://www.unhcr.org/4566b16b2.html>
- UN High Commissioner for Refugees, *Guidance Note on Refugee Claims relating to Female Genital Mutilation*, May 2009  
<http://www.unhcr.org/refworld/docid/4a0c28492.html>
- UNHCR, Training Manual for European Border and Entry Officials, 1<sup>st</sup> April 2011  
<http://www.unhcr.org/4d948c736.html>

## ***European Union***

- Council Resolution 97/C 221/03 of 26 June 1997 on unaccompanied minors who are nationals of third countries  
[http://eurlex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31997Y0719\(02\)&model=guichett](http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31997Y0719(02)&model=guichett)
- The Charter of Fundamental Rights of the European Union, (2000/C 364/01)  
[http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)
- Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention  
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## Appendix 4 – Elements of methodology

### *General overview of the project methodology*

The project was coordinated by *France terre d'asile*, with 6 partners. One researcher was involved in each organization, each conducting a research within 3 to 4 countries:

France terre d'asile (France): France, Ireland, The United Kingdom, Belgium

Consiglio Italiano per i Rifugiati (Italy): Italy, Malta, Portugal, Romania

Institute for Rights, Equality and Diversity (Greece): Greece, Cyprus, Spain, Bulgaria

Helsinki Committee (Hungary): Hungary, Slovakia, Slovenia, the Czech Republic

Terre des Hommes (Germany): Germany, The Netherlands, Austria, Luxembourg

Shelter Safe house (Latvia): Lithuania, Latvia, Estonia, Finland

International Humanitarian Initiative Foundation (Poland): Poland, Sweden, Denmark

The main steps of the project were:

#### **1. January – March 2011: Establishing a common methodology**

A common questionnaire was established and the main points of the methodology were discussed during the kick off meeting in Paris on the 17<sup>th</sup> of March 2011 (coordination meeting #1)

#### **2. April – September 2011: First phase of the research (desk based research)**

Each of the six partners provided answers to the questionnaire regarding 3 to 4 countries. National stakeholders and relevant sources were identified. All relevant information was gathered in the questionnaire.

#### **3. September 2011: Coordination meeting #2**

All the partners met in Paris to discuss the development of the project (past and upcoming steps) on the 30<sup>th</sup> of September 2011.

#### **4. September – December 2011: Second phase of the research (field research)**

Travel in the studied countries with the support of local partners (national contact points) in order to complete the questionnaire with new elements based on field research (interviews with national stakeholders - institutions, NGO, experts).

#### **5. January – May 2012: Final report and summary**

On the basis of the 27 questionnaires filled out by the partners, the coordinator prepares a draft report of 150 pages and a summary of 50 pages. A first draft of the final report was discussed with all partners at the 3<sup>rd</sup> coordination meeting in Paris (13 April 2012). The final report and synthesis were finished in May 2012.



## 6. June – October 2012: Dissemination of the results

The final stage of the project was to share the results of the comparative study and its findings in two European conferences in Paris (June 2012) and Budapest (October 2012).

### *Questionnaire used for research*

The same questionnaire was used during the research for all countries:

1. What detailed statistical data are available regarding unaccompanied children seeking asylum?
2. What is the total number of unaccompanied children on the territory of the country studied? What is the proportion of unaccompanied children seeking asylum related to their total number? How can this ratio be interpreted?
3. What detailed statistical data is available concerning unaccompanied children granted refugee status or another type of international protection (subsidiary protection, etc.) (Age/sex/nationality/place of residence)?
4. Give a brief description of the asylum procedure for unaccompanied children (including steps of the procedure that also apply for adults). List all legal provisions – law, regulation... - that are mentioned in this questionnaire and that could be useful to understand the national context.
5. Does the asylum procedure include some specific measures for unaccompanied children? (e.g. : exemption of certain procedures ; supplementary guarantees, etc.)
6. What is the average deadline between the different steps of the asylum procedure, in law and in practice? (Written asylum claim / interview / decision of first instance / and the same steps on appeal) If you don't have details between different steps, indicate the total duration of the procedure.
7. How are unaccompanied children informed of their right to claim asylum? Are they aware of the possibility to ask for asylum? Who provides this information? When is this information provided? In which language? Is this information complete (e.g.: possibility of Dublin reunification...)?
8. Are there practices from authorities that could dissuade or prevent minors to apply for asylum? (E.g. systematic refoulement at the border, excessive waiting time to obtain a folder...)
9. List the different stakeholders involved in the asylum procedure for unaccompanied children (institutions, jurisdictions, legal representatives, etc.) and briefly describe their role.
10. When an unaccompanied child is identified at the border, is a guardian appointed? Give a brief description of this system of legal representation at the border.
11. When an unaccompanied child is identified by immigration authorities at the point of entry, is an interpreter systematically present while questions are asked/information is notified to the child?
12. Are there other services or facilities at the border that could provide assistance to the child? Have the persons who provide this assistance received specific training on this issue?

- 13.** Are immigration agents at the border sensitive to issues regarding children's rights and the right to asylum for unaccompanied children? Is there some evidence of unaccompanied children being treated in an inappropriate manner, or failure to respect children's rights at the border?
- 14.** When they claim asylum at the border, are unaccompanied children interviewed about the substantive matters of their claims? Can these details be used during the substantive examination of their application?
- 15.** May unaccompanied asylum-seeking children be detained while accessing the territory? Explain in which circumstances this detention is possible, and describe the conditions of detention. If the detention system is the same in the territory, mention it in this question and do not answer to question 34
- 16.** What are the positive aspects, and what are the protection shortcomings in the asylum procedure at the border? (*Only describe issues that were not mentioned in other answers*)
- 17.** In which circumstances can an age assessment procedure be undertaken for an unaccompanied child seeking asylum? When does this assessment occur?
- 18.** What method(s) is/are used for assessing age? (*Brief answer: medical or skeletal assessment only / social or psychological interview only / medical + social and psychological interview / ...*) Is there a protocol at national level that describes the age assessment procedure?
- 19.** What are the consequences of age assessment on the asylum procedure? What right of appeal for the person considered as an adult and therefore subject to an asylum procedure for adults?
- 20.** Is legal guardianship ensured for unaccompanied children during their asylum claim? Does this system of legal guardianship stand for asylum procedures only?
- 21.** What conditions must an adult fulfil to be appointed legal guardian for an unaccompanied asylum-seeking child? Is any knowledge or training in the field of law and asylum required? Is any expertise in the field of children's rights or childcare required?
- 22.** Is the legal representative independent from authorities or can he belong to a public institution? Is there any conflict of interests between the legal representative and the institutions in charge of processing asylum applications?
- 23.** Is it possible for the child to ask for another guardian if he is not agreeing with him?
- 24.** What is the length and mandate of the legal guardian? (e.g. : complement the child's legal capacity and/or assist the child in expressing his asylum claim and/or ensure the child's well-being in areas such as healthcare and education...) Does this mandate allow building a relationship of trust with the child? Is the role of the legal guardian to determine the best interest of the child?
- 25.** Is there any monitoring system for guardians?
- 26.** What are the positive aspects and protection shortcomings in the legal representation system for unaccompanied asylum-seeking children? (*only describe issues that were not mentioned in other answers*)
- 27.** Can unaccompanied asylum-seeking children benefit from free legal support from a lawyer? What are the conditions for accessing this support? At what step(s) of the asylum procedure is this legal support available?
- 28.** How is the mission of the legal counsel/lawyer combined with the mission of the legal guardian?

- 29.** Can an asylum-seeking child benefit from other services of legal counsel during his or her asylum procedure?
- 30.** Can unaccompanied children benefit from the assistance of interpreters to express their asylum claim? At what step and under which conditions can these interpreters be called upon?
- 31.** What is the role of social workers in supporting asylum applications of unaccompanied children?
- 32.** Can unaccompanied asylum-seeking children access specific medical and psychological support? Under what conditions?
- 33.** Where are unaccompanied asylum-seeking children received and accommodated? Are they accommodated in centers specifically designed for children seeking asylum?
- 34.** Does national law allow the detention of unaccompanied asylum-seeking children on the territory (*for the point of entry, see question 16*)? In which cases is this detention possible? If the detention system is the same at the border (question #15), mention it in this question and do not answer here.
- 35.** What are the conditions of detention (*separate areas for adults and children / length of detention, etc.*)?
- 36.** Are unaccompanied children transferred to other Member States under the Dublin II regulation (if their fingerprints appear in the Eurodac file or if they have already lodged an asylum application or for family reunification)? Is there any exception to this provision (*e.g.: no transfer to Greece*)?
- 37.** If the transfer is required, how is it implemented?
- 38.** Does the studied country receive some unaccompanied children transferred from other countries under the Dublin II regulation? If this occurs, are the transferred children included in the reception and assistance services like other unaccompanied asylum-seeking children?
- 39.** Could you indicate specific issues related to transfers from other countries?
- 40.** Are unaccompanied children systematically (= apply to all children) interviewed during the asylum determination procedure?
- 41.** Is it possible to process their application without a personal interview? Is this possibility usually favorable or unfavorable to the child?
- 42.** Is an interpreter always present during the interview when necessary? Are interviews conducted in specific conditions for children?
- 43.** If children have difficulty articulating their claim, are there special means designed to help them expressing their views (*e.g. non-verbal communication, such as drawings, etc.*)?
- 44.** Are child asylum claims processed by asylum officers trained in interviewing children?
- 45.** Are asylum officers informed of the situation of children in the country of origin, in order to appreciate the existence of child-specific forms of persecution?
- 46.** Who are the persons authorized to accompany the child to the interview? (*Legal guardian, lawyer, social worker, relative...*) What is their role during the interview?

- 47.** Are the rate of positive decisions and the share of refugee status/other types of protection similar for unaccompanied children and for adults? If these figures are very different, how can this difference be interpreted? (*e.g.: liberal application of the benefit of the doubt, etc.*)
- 48.** Are children sometimes granted refugee status or subsidiary protection because of child-specific forms of persecution? (*E.g. forced marriage, child labor, child trafficking, female genital mutilation...*) More generally, what are the grounds given for granting protection to minors? How credibility and evidence are assessed for minors (if different from adults)?
- 49.** If the unaccompanied person is still a minor when a decision is reached, who is the decision communicated to (child, legal representative) and how?
- 50.** When a decision on asylum is communicated to the child, is it expressed in a way that facilitates understanding (*language, manner, environment...*)?
- 51.** If an unaccompanied minor turns 18 before a decision on his application is reached, what are the possible consequences for the processing of his claim?
- 52.** What are the possible outcomes of the asylum procedure (*refugee status, subsidiary protection, discretionary leave, humanitarian status...*)? Apart from refugee status and subsidiary protection, can the asylum procedure lead to another form of residence permit under migration law?
- 53.** Under what conditions can a negative first decision be appealed (deadline, ground for appeal)? Are some of these conditions specific to children?
- 54.** Are there some special provisions or practices regarding children implemented on appeal, which do not exist on first instance? Conversely, are there some special provisions implemented on first instance which do not appear on appeal? (Legal guardian, legal counsel, etc.)
- 55.** What happens when the decision is negative? (*Is it possible to refer the case to the Supreme Court? Is it possible to ask for another status? Is a removal decision taken following a negative decision? ...*)
- 56.** What are the main decisions/jurisprudence related to asylum claims of unaccompanied minors (decisions on appeal, positive and negative decisions)? (*Quote the reference of decision-date/authority/decision number- and the decision or principle they contain*).
- 57.** How is defined “family” regarding the family reunification of refugee children?
- 58.** Is family tracing provided by law for an unaccompanied child who was granted refugee status or subsidiary protection? How is it implemented in practice?
- 59.** If a child was granted refugee status, under what conditions can his parents (or other relatives) be granted residence authorization, if they are already on the territory of the host country? Is there a difference if the child was granted subsidiary protection?
- 60.** If a child was granted refugee status, under what conditions can his parents (or other relatives) be authorized to enter the host country and reunite with the child if they were living in a third country? Is there a difference if the child was granted subsidiary protection?

## Summary of field visits

In the framework of the research, some field visits were organized with the cooperation of national contact points in countries where partners of the project are not implemented. The aim of these visits was to complete the questionnaire with new elements (interviews with national stakeholders - institutions, NGO, experts).

The following table presents a summary of field visits. In addition, interviews and field visits have been implemented in the 7 countries of the researchers (France, Germany, Greece, Hungary, Italy, Latvia, and Poland).

COUNTRY VISITED	DATES OF VISIT	INSTITUTIONS OR INDIVIDUALS INTERVIEWED
<b>Austria</b>	31 Oct – 1 Nov 2011	Mrs EITZENBERGER (UNHCR) Mr FRONEK (Asylkoordination Osterreich)
<b>Belgium</b>	14-18 Oct 2011	Anja DE WILDE (Commissariat général aux réfugiés et apatrides) Katja FOURNIER (Plate forme mineurs en exil) Cécile GHYMERS (Lega laid board, Brussels) Rimo OUAGHLI (Office des étrangers) Isabelle PLUMAT (Centre d'observation et d'orientation MENA) Renée RAYMAEKERS (Office des étrangers)
<b>Estonia</b>	22-23 Nov 2011	Egert BELITSEV (Citizenship and migration department) Anneli CHHABRA (Citizenship and migration department) Johannes MIHKELSON Juhan SAJAROV Kristi TOODO (Estonian Human rights center)
<b>Finland</b>	19-20 Jan 2012	Reeta HELANDER (Finnish refugee advice center) Jukka KURSULA (guardian) Marjaana LAINE (Finnish refugee advice center) Anna MIKKONEN (guardian)
<b>Ireland</b>		Samantha ARNOLD (Irish Refugee Council) Representatives of the Office of the refugee applications Commissioner Thomas DUNNING (Health executive service) Sophie MAGENNIS (UNHCR) Representative of the Legal aid board
<b>Lithuania</b>	9-10 Nov 2011	Laurynas BIEKSA (Lithuanian Red Cross society) Gabriele BRUZAITE (Lithuanian Red Cross society) Neringa GAUCIENE (Refugees reception center) Dalia KAUKENIENE (Migration department) Renata KULES (UNHCR) Lucija VOISNIS (Migration department)
<b>Luxemburg</b>	22-23 Nov 2011	Cristina LOPES (Caritas) Karine PREYVAL (Ministry of foreign affairs)
<b>Malta</b>	5-7 Dec 2011	Mario FRIGGIERI (Refugee Commissioner) Jon HOISAETER (UNHCR)

		Sara MALLIA (Red Cross) Stefania PISCOPO (Children and Young Persons Advisory Board) Kristina ZAMMIT (Jesuit Refugee Service)
<b>The Netherlands</b>	30 Nov – 1 Dec 2011	DEFENCE FOR CHILDREN INTERNATIONAL DUTCH REFUGEE COUNCIL
<b>Portugal</b>	14-16 Dec 2011	Cristina BARATEIRO (Asylum and Refugees Departement) Maria Emilia LISBOA, (Ministry of Interior) Maria Teresa MENDES (Portuguese Refugee Council)
<b>Romania</b>	9-11 Nov 2011	Furtuna ANDREEA (Youth and volunteers project manager) Claudia BEZDADEA (Romanian Immigration Office) Cristina BUCATARU (Council national Romanian of refugees) Sorina CHIVOIU (Pinocchio Center) Nadina MORARESCU (Council national Romanian of refugees) Rodica PETROI (Red Cross) Florin TISMAS (Save the children) Lavinia VARODI (Save the children)
<b>The United Kingdom</b>		Liz BARRATT (Bindman solicitors) Judith DENNIS (British refugee council) Chris EADES (Asylum aid) Helen JOHNSON (British refugee council) A representative of the UKBA A representative of a local authority's social service

## Appendix 5 – Recommendations of the report

### RECOMMENDATION 1 – Access to asylum procedure

- ▶ Children should always have access to asylum procedures, regardless of their age.
- ▶ Public authorities should take measures to ensure that all unaccompanied children are always informed about their right to seek asylum and the details of such a procedure in a child friendly manner tailored to the needs of children.

### RECOMMENDATION 2 – Statistics

- ▶ Each State should collect and provide data on asylum applications and decisions related to unaccompanied minors, with breakdown by sex, nationality and age in order to improve knowledge on this phenomenon and to design adapted policies.

### RECOMMENDATION 3 – Legal guardianship

- ▶ A legal guardian should be appointed for all unaccompanied children during all the asylum procedure.
- ▶ The guardian should have specific knowledge in the field of law and asylum procedures and he/she should have experience in the field of child rights and child protection. He should be independent from public authorities.
- ▶ A monitoring system should be implemented in order to evaluate the work of the legal guardian. In accordance with the age and maturity of the child, he should be given the opportunity to be heard on the appointment and the work of the guardian.

### RECOMMENDATION 4 – Dublin II

- ▶ The Dublin II regulation should not be applied to unaccompanied minors, except for the purpose of family reunification if it is in the best interest of the child. In this case, minors should be properly informed and accompanied during the transfer.

### RECOMMENDATION 5 – Support and accommodation

- ▶ Unaccompanied minors should benefit from free legal support at all stages of the procedure to prepare the application.
- ▶ Irrespective of their legal status, unaccompanied minors should be entitled to the necessary protection and basic care, medical and psychological.
- ▶ Unaccompanied asylum seeking children should be placed in accommodation centre for children. Staff working with these children should receive appropriate training concerning their specific needs as asylum seekers and children.
- ▶ Unaccompanied minors should never be detained, whether they are asylum seekers or not.

### RECOMMENDATION 6 – Main interview

- ▶ No negative decision should be issued without an interview, except when the claimant is in an absolute incapacity duly assessed by an independent authority.
- ▶ Interview should be conducted in child-friendly conditions, by specially qualified and trained officials with appropriate knowledge of the psychological, emotional, physical development and behaviour of children. Moreover, EU and national institutions should provide information on the situation of children in the country of origin for asylum officers.

#### RECOMMENDATION 7 – Decision and its consequences

- ▶ Considering their vulnerability and special needs of unaccompanied minors, it is essential that every effort be made to reach a decision promptly and fairly.
- ▶ A liberal application of the principle of the benefit of the doubt should be applied to decisions regarding application of unaccompanied children. Child-specific forms of persecution should be taken into account in the decision process.
- ▶ Unaccompanied minors should never be prevented from appealing a negative decision.
- ▶ The family of unaccompanied children who were granted international protection should be granted a residence permit. Family reunification should apply to families of minors who were granted international protection, in a reunification procedure eased and accelerated.

#### RECOMMENDATION 8 – Asylum at the border

- ▶ Unaccompanied children arriving at the border should be admitted to the territory in order to provide them accommodation and care as other unaccompanied children seeking asylum. They should never be detained at the border.



# LES CAHIERS DU SOCIAL N°33

FRANCE TERRE D'ASILE



Siège social  
24, rue Marc Seguin  
75 018 PARIS  
Tél. : 01 53 04 39 99  
Fax : 01 53 04 02 40

e-mail : [infos@france-terre-asile.org](mailto:infos@france-terre-asile.org)

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