



WP6 - Best practice transfer event for european NGOs

Output 1 - Comparative Study on Guardianship in European Union

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Guardianship in Belgium

National Legislation

- Guardianship Act of 24 December 2002, Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002 (Loi sur la tutelle du 24 décembre 2002, Titre XIII, Chapitre VI « Mineurs étrangers non accompagnés », de la loi-programme du 24 décembre 2002), entered into force on 29 January 2004
- Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002 (Arrêté royal du 22 décembre 2003 portant exécution du Titre XIII, Chapitre VI « Tutelle des mineurs étrangers non accompagnés », de la loi-programme du 24 décembre 2002), entered into force on 1 May 2004
- Circular Letter of 15 September 2005 on the stay of unaccompanied minor aliens (Circulaire du 15 septembre 2005 relative au séjour des mineurs étrangers non accompagnés), entered into force on 7 October 2005
- Circular Letter of 2 August 2007 on European unaccompanied minors in a vulnerable condition (Circulaire du 2 août 2007 relative aux mineurs européens non accompagnés en situation de vulnérabilité), entered into force on 17 September 2007

Political framework and general context

Unaccompanied minors in Belgium have a legal status with additional rights. Taking into account the high vulnerability of children, the Royal Decree of 11 July 2003 defining the functions of and the judicial procedures for the Office of the Commissioner General for Refugees and Stateless Persons established a special procedure for dealing with asylum applications from unaccompanied minors.

Guardianship

Belgium knows a system of guardianship since 2004, The services responsible for guardianship are working within the Ministry of Justice (Dienst Voogdij). The service, is responsible for the recognition of guardians. Guardianship in Belgium is a federal responsibility, making arrangements the same throughout Belgium.

According to the Guardianship Act any authority (Police, Immigration Department) that comes to know about the presence of a UM in Belgian territory or arriving at the border is required to inform the Guardianship Service (GS). This should be done by filling out a specific identification form for the UM. From that moment onwards the Guardianship Service, together with the guardian it has appointed, will play an important role in assisting the UM.



Responsibility for care

The Guardianship Service comes under the FPS Justice and not under the FPS Home Affairs in order to guarantee a certain independence regarding questions of residence in the territory.

The responsibility for the daily care of unaccompanied minor asylum seekers lies with Fedasil, the agency for reception of asylum seekers.

Website : <http://fedasil.be/en>

Responsibility for guardianship

The guardianship services under the Ministry of Justice are responsible for guardianship. The Guardianship Service is more in charge of the general coordination and supervision of the guardians, while the guardians are the ones who have direct contact with the UM on a regular basis.

In principle, the Belgian legislator has a preference for voluntary guardianship. However, shortly after implementation of the guardianship law started it turned out not enough voluntary guardians could be found, which led to a mix of voluntary and professional guardianship. Whereas the first is offered by individuals (about 75%), the second is offered by NGO's, having fulltime guardians employed (about 25%). Voluntary guardians are joined in an organization called Gardanto professional guardians are offered by Caritas, the Red Cross, Solidarite Sociale Exile and several other organizations.

Voluntary guardianship

Two types of guardianship exist in parallel in Belgium: the "professionalised system" and the "benevolent or voluntary system".⁴⁴ In the professionalised system there is the so-called 'employee-guardian' who is an employee of an NGO in the social and legal sector. In the voluntary system there are private persons who take up these guardianships as an independent profession ; as well as private persons who take up a few guardianships and are registered as volunteers. In 2008 there were 416 registered guardians of which 233 were on active duty.⁴⁵ The majority of guardians are found in the voluntary system.

Voluntary or independent guardians usually take care of 1 or 2 cases at the same time and are bound to an official maximum of 40 cases. Professional or employed guardians are working on 25 cases at the same time for a full-time guardian, usually someone with an education as social worker.

The independence of a Belgian guardian is high, but knows two constraints. A weak point in the position of the guardian is said to be that the guardian has a duty to represent the child's best interests, yet Belgian law states that all pertinent information must be given to the authorities, which can result in a contradiction of the best interest rule and the guardian's relationship of trust with the child. In practice, immigration authorities do not always appear to follow the guardian's



recommendations in such cases. A second point is practical independency – while guardians have the independent responsibility to make choices in the best interest of the child, their ability to make choices is limited by the possibilities the system offers. The united voice of the guardians would not be strong enough to flag major concerns or trends.

The guardianship will end for instance when the UM reaches the age of 18, or when a durable solution in the best interests of the child has been found.



Guardianship in the Netherlands

National legislation

- Civil Code, Book 1 (Burgerlijk Wetboek, Boek 1) - Art. 1:241, 1:247, 1:253r, 1:303, 1:336
- Youth Care Act (Wet op de jeugdzorg) - Art. 47, 68.2
- Ministry of Justice (Ministerie van Justitie) (2011), Executive Order Youth Care Act (Uitvoeringsbesluit Wet op de Jeugdzorg) - Art. 1h, 44
- Ministry of Justice (2005), Decision on the acceptance of the legal body in Civil Code Book 1 (Besluit aanvaarding rechtspersoon Burgerlijk Wetboek Boek 1), No. 5328240/04/DJJ

Political framework and general context

Particular to the Dutch legal context is that all UAMs have a guardian from Nidos Foundation, the Dutch guardianship institution for unaccompanied minor refugees, asylum seekers and undocumented migrants, which has been given this responsibility by the Ministry of Justice. Nidos has the lawful assignment of exercising the authority of supervising these young people on their path to adulthood and promoting their interests. The guardian provides long-term continued care and has the responsibility for the mental and physical wellbeing of the child and the development of his or her personality.

Since the beginning of this decade the Netherlands have a more restrictive admission policy, which means for the UAMs that they will only be able to receive temporary residence in the Netherlands, at any rate, until the age of 18 and that they will have to leave the country when coming of age.

In June 2013, the Netherlands implemented a new asylum policy for unaccompanied children. One of the main goals of the newly developed asylum policy is to provide quicker clarity to unaccompanied children on whether a stay in the Netherlands is temporary or not. Procedures were shortened with the aim of reaching a quicker decision, so asylum-seeking children can know their outcome sooner.

In the Dutch legal context, all unaccompanied children have a guardian from Nidos Foundation, the Dutch guardianship institution for unaccompanied child refugees, asylum seekers, and undocumented migrants. Dutch law stipulates that an adult must be assigned to each child to take over parental custody. This adult is the child's parent or, in the absence of a parent, a guardian.

Responsibility for care

The responsibility for the day-to-day care of unaccompanied minor asylum seekers lies in part with youth care organizations or with the foster parents. As a guardian, Nidos is the supervisor.



Reception in the Netherlands : Nidos will accommodate the una's younger than 12 years old in foster homes. The una's between 12 and 18 will be accommodated in small living groups for a period of three months, from the moment of arrival in The Netherlands. During this period the minors will be observed by the juvenile protectors and the mentors, after which they will decide together which continuing accommodation is most suitable for the una in question.

The Children Living Groups are designated for children aged up to and including 15. In the residential units there is 24-hour supervision. These units also host small groups of children who belong together and where the oldest is considered the head of the family but for whom it would be too much to take on the care of the other children. The Small Living Units are designated for young people aged 15 to 18, usually of various nationalities. In a small residential unit, four young people stay under supervision. For each four young people a counsellor is present 28.5 hours per week who counsels and helps them.

Nidos has its own pool of foster families at its disposal, in which it can place its pupils. A number of guardians have been relieved of other obligations in order to recruit and guide families. Presently 1200 children are staying in a foster family.

One of the tasks of the guardian is to ensure education and care and a secure lodging and living situation for the pupils. In the view of Nidos, the most suitable form in the field of foster care, UAMs form a specific group that requires a specific vision and interpretation of foster care. Because of the different backgrounds of these youngsters, Nidos favours reception in families connected with or close to their own ethnic background. These family connections provide the minors with a secure basis from which they can return to their country of origin or integrate in Dutch society, while preserving their own cultural identity. In many cases, the minors are familiar with the idea of living with next of kin because, in most of the countries of origin, it is customary for family members to receive and educate children whose parents are absent.

Responsibility of guardianship

The guardianship of unaccompanied minor asylum seekers is based on one of the basic laws of the Netherlands : The Dutch Civil Code. This Code states that all minors residing in the Netherlands must be provided with legal guardianship. All minors, Dutch or alien, must have a legal guardian. Usually this is a parent, and in the absence of a parent, the government must ensure that a guardian is appointed. Consequently, this also applies to una's. A guardian must therefore be appointed. This takes place by means of legal proceedings resulting in appointing a guardian by the court. Guardianship is therefore always a result of a judicial decision. Usually the judge appoints Nidos as guardian.



Guardianship in Germany

National legislation

- Civil Code (Bürgerliches Gesetzbuch, BGB) - Book IV. 2 and 3
- Social Code (Sozialgesetzbuch, SGB) - Book VIII (Sections 42(3), 53(1) and (3), 72a, 87c(3) and (4)) and Book II. 1
- Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit Familienverfahrensgesetz, FamFG) - Section 151, No. 4, Section 49
- Residence Act (Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz, AufenthG) - Section 80
- Asylum Procedure Act (Asylverfahrensgesetz, AsylVfG) – Section 12
- Act on Senior Judicial Officers (Rechtspflegergesetz, RpfLG) – Section 14 (1), No 10

Political framework and general context

The Youth Welfare Office is both entitled and obliged to take a child or a young person into its care if (...) a foreign child or a foreign young person shall come to Germany unaccompanied and there shall be neither person entitled to care for the said child or young person nor legal guardians resident within the country.

In Germany following child welfare law unaccompanied minors have to be appointed a guardian. A guardian in Germany is responsible for assisting the child in the asylum procedure. In implementation, there are many differences throughout Germany as the separate states have much freedom.

On 1 November 2015, a new law took effect which restructures the reception procedure for unaccompanied children.

Unaccompanied children who are not immediately refused entry or returned after having entered Germany illegally, are taken into provisional care of the youth welfare office (*Jugendamt*) in the municipality in which they have had the first contact with authorities or in which they have been apprehended.

The situation in Germany for children under 16 and for 16 and 17 year olds is different. In Germany, 16 and 17 year olds are legally capable of performing acts pertaining to matters of their stay in Germany. As asylum seeking adults are distributed among the states in Germany, this may also apply to 16 and 17 year olds, delaying their access to care as well as guardianship. Although they can take several decision themselves, they do have access to a guardian once in reception (this has not been the case until 2005). For these children, a guardian may be present during interviews with



immigration authorities as well, although it is not required. The Bundesamt für Flüchtlinge (BAMF) does have specifically trained employees for interviewing minors.

The responsibilities in Germany are divided. Where the federal state is in first instance responsible for asylum, the Länder are responsible for youth care. This is finally implemented within local government. The financial responsibility is not completely clear as well: the court is in principle responsible, but for example in Munich the local government pays for service providers of guardianship.

The legal situation of unaccompanied minor refugees is aligned with that of German children orphaned or who have left the family home. They are first considered as minors requiring close care before being refugees.

Responsibility for care

The responsibility for the daily care of a minor lies with the Bundesländer and can be exercised directly or delegated to NGOs.

There are three different types of guardianship available: legal guardianship for minors can be assigned to one person, to civil society associations or to the Youth Welfare Office. As such, preference is given to a voluntary sole guardian over an association or Youth Welfare Office.

Responsibility for guardianship

Upon registration as an unaccompanied minor refugee, all minor children are assigned to a court-appointed legal guardian (Vormundschaftsgericht). This guardian is responsible for taking care of the needs of the minor child throughout the course of the asylum process.

A guardian assists the child in his or her asylum procedure, accompanies the child to interviews and performs any actions needed for family reunification. The guardian oversees health care and schooling and is responsible for all papers that need signing.

It depends on the state and the capacity of service providers at that moment who this guardian will be: Jugendamt employees, NGOs or individual lawyers.

Some children, who have special circumstances, are assigned to private guardians who are directly responsible for taking them through the process of seeking asylum. Private guardians are similar to legal guardians in that both are responsible for the young refugee's welfare.

There is a difference between private and legal guardian: private guardians concentrate on one child, legal guardians cannot put that much attention on one child.

In most cases private guardians have a closer relationship to the child and are generally more aware of the specific situation of the child who they are responsible for.

The private guardians know the child's rights and will make sure that they are enforced in all cases.



Living situation

Upon arrival, the unaccompanied minor will generally live in a “Clearingstelle” for three months and then they will move on to some sort of supervised group housing. In this community housing, the children are supervised by social workers who are experienced in dealing with refugee children’s issues. During this time their expenses are covered by the youth welfare office, which gives them benefits and pays for their expenses. However, the situation changes dramatically once the child turns sixteen.

After turning sixteen, their benefits come from the general Social Welfare Law for Asylum Seekers which offers them fewer benefits than those young refugees under sixteen. For example, the refugees must pay for things like German classes or special lessons.



Guardianship in Spain

National Legislation

- Civil Code (Código Civil), BOE No. 206, 25 July 1889 - Art. 172–174, 222–228
- Organic Act 1/1996 of 15 January on the Legal Protection of Minors, modifying the Civil Code and the Code of Civil Procedure
- Act 13/2009 of 3 November on the reform of the procedural legislation for the purpose of the implementation of the new Judicial Office
- Circular 8/2011 of the General Public Prosecutor's Office on criteria for the unity of the specialised intervention of the Public Prosecutor's Office regarding the protection of minors
- Ministries of Justice, Home Affairs, Employment, Social Security, Health, Social Services, Equality, Public Prosecutor, and General Council of the Judiciary

Legal framework and general context

In Spain guardianship exists by law in the sense of legal responsibility and representation. However, despite the fact that international standards on children's rights are embedded in Spanish legislation, there are significant weaknesses in their practical implementation. As a result, it is at least doubtful whether guardianship exists for all unaccompanied asylum-seeking minors. The whole system of care and services is very young.

On a central level there are three ministries with responsibilities: the Ministry of Labour, the Ministry of Immigration and the Ministry of Interior. Responsibilities are divided between those ministries with the Ministry of Interior as central actor being responsible for asylum, and the autonomous regions, which are responsible for protection of children. Besides those, also the national prosecutor is involved.

Organization of guardianship

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.

Each one of the seventeen autonomous communities that make up the state of Spain has their own authority for child protection. The regional protection services take responsibility of the unaccompanied minors. They enter immediately into a host centre, considering that their situation



corresponds to the definition of neglect established in the Civil Code. This “automatic access” to the measures of protection must subsequently be endorsed by an administrative decision, stating that the child is in the aforementioned situation of helplessness.

The unaccompanied minors stay at reception foster centres for no longer than six months. If they are considered abandoned or neglected children, the autonomous community takes charge of their custody and cares for them until they are 18. If they meet the requirements to take part in the ex-custodial youth programme they can get some protection until they are 21. They live in apartments with other young people supported by social educators. When they are over 18, the current immigration laws are applied to them. If they are not considered underage or abandoned, they are repatriated, or if they stay out of the child protection system as illegal - sometimes with valid passports stating that they are under 18

Responsibility for care

The Spanish autonomous regions are responsible for the care of minors, foreign or Spanish and generally use the same facilities for both groups. Regional governments delegate the care in some cases to private institutes or churches or NGO (the Spanish Refugee Aid Commission (CEAR), the Spanish Catholic Migration Commission Association (ACCEM) and the Red Cross).

Responsibility for guardianship

In Spain there exists a tutorship (tutela) and a guardianship (guardia). Tutorship has more responsibility, whereas guardianship is more temporary and is usually held by the director of a reception centre. Guardianship for Spanish orphans works in the same way. The community is appointed tutorship, which is implemented by a social worker, and the director of an institution is the official guardian.

Legal assistance for asylum may only be provided by the region, as the minors fall under protection of the region. Whereas the care for minors is sometimes delegated, this is not the case for any parental responsibility or legal representation. Tutorship in Spain is not considered as an independent guardian responsible for the well-being of the minor. Tutorship and the care of the child are held by the same state actor. Concerning asylum, no expertise or qualified assistance is guaranteed. This depends on the region and/or the individual professional.



Guardianship in Sweden

National legislation

- The Children and Parents Code 1949:381 (Föräldrabalk, SFS 1949:381), Stockholm: Justitiedepartementet
- The Act on Legal Guardian for Unaccompanied Children 2005:429 (lag om god man för ensamkommande barn, SFS 2005:429) - Art. 3

Political framework

Sweden has signed the UN Convention on the Rights of the Child. This means that Sweden has promised that every child who applies for asylum is to be treated with special consideration to that which is in the best interest of the child and the child's development and health. However, the principles of the convention are not directly effective. They need to be transposed into Swedish law in order for the decision makers to be able to apply them. Not all parts of the convention have been integrated into Swedish law, but the Aliens Act contains a recital (a so-called "portalparagraf") on the best interests of the child:

In cases involving a child, particular attention must be given to what is required with regard to the child's health and development and the best interests of the child in general. **Aliens Act, Chapter 1, Section 10**

Since 1st of July 2006 responsibilities for unaccompanied minors in Sweden have been shifted. The local government is responsible for the care of unaccompanied minors. The Migration Board (Migrationsverket) is responsible for the asylum investigation and to subsidize local governments for their responsibilities. Thirdly, the National Board of Health and Welfare is responsible for supervising the municipalities and developing guidance, recommendations and supervision for the care.

Organization of guardianship for unaccompanied minor asylum seekers

Based on Swedish law, each child (foreign or not) should receive the same level of care. When a child enters Sweden he or she spends at first some time in an arrival centre (of which 4 exist in the whole country), after which a municipality is found to cover reception. During the asylum seeking process all unaccompanied minors get a temporary guardian. If a permanent stay is granted, the child gets a permanent guardian. The young person also move to another institution, or to a more independent home for unaccompanied minors.



In municipalities the social services take care of the living situation around the minors and the daily care.

The Migration Board is responsible for dividing the minors over municipalities having an agreement with the Migration Board or if a minor has a certain connection with relatives somewhere, to that municipality. 130 out of 290 municipalities have some care for unaccompanied minors in Sweden.

This varies from reception in foster families or kinship care to care in different institutes prepared for care for unaccompanied minors. Families come from the same pool of foster families taking care of Swedish children in need.

The majority of the minors are living in small institutes (usually with about 10 children and 24 hours counseling). Until about 15 years old foster care is more common. After being granted a permanent stay, young people over 18 years of old can live independent with 2 -4 other youngsters (and also guardianship ends). After turning 21 a young person goes to adult care, if he or she still needs support of any kind from social welfare.

Responsibility for guardianship

Guardianship is the responsibility of the municipalities as well. A so-called chief guardian is appointed, having the responsibility to supervise the guardians.

Both the Migration Board and social services can ask for a guardian. A guardian is usually appointed within 2 or 3 days of arrival. The guardian works on a voluntary basis.

This guardian is only there for the time the asylum procedure takes, once a child receives a permit he or she gets another guardian. The guardian has parental responsibility over the child. This responsibility covers everything but financial support or responsibility and the daily care. One guardian has usually 1-3 children under his or her guardianship, with a maximum of 8 in rare cases.

The guardian include judging the work of the lawyer and preparing the child for the interview with immigration services. This lawyer, the legal representation of the child, is supplied by the Migration Board, but operates fully independent of immigration services.



Guardianship in France

National legislation

- Civil Code (Code civil) - Art. 375-5, 389-3, 395, 399, 411, 510, 511
- Code of criminal procedure (Code de procédure pénale) - Art. R.53-1, R.53-2
- Code of Social Action and Families (Code de l'action sociale et des familles) - Art. L.223-2, L.226-2-1
- Code of Entry and Stay of Foreigners and of Asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile, CESEDA - Art. L.221-5, L-751-5
- Ministry of Justice (2005), Circular No. CIV/01/05 issued in application of decree No.°2003-841 of 2 September 2003 (Circulaire n° CIV/01/05 prise en application du décret n° 2003-841 du 2 septembre 2003 relatif aux modalités de désignation et d'indemnisation des administrateurs ad hoc institués par l'article 17 de la loi n° 2002305 du 4 mars 2002 relative à l'autorité parentale)

Political framework and general context

The care of unaccompanied minors in France is based on the right of these children to protection. As minors deprived of parental authority and having no adult to care for them on a permanent basis, they enter the legal framework of child protection. This task of protecting foreign isolated minors is devolved to the Child Welfare Service (ASE) of the General Councils, as confirmed by the Child Protection Act 2007.

The ministries of immigration, of family and of justice all have a role concerning unaccompanied minors. The Ministry of Immigration is responsible for reception, asylum, residence and Dublin affairs. Basic aid and short-term reception to unaccompanied minors is mainly provided by different NGOs. Altogether capacity is not large enough for all unaccompanied minors.

In France guardianship for unaccompanied minors is provided on the regional level (departments). Although guardianship is provided in each region, it is not provided at all times for each asylum-seeking child. Besides the services in the departments, France knows administrators ad-hoc, appointed after entering the territory at the airport. These administrators are representing the child, but have very limited powers and possibilities.

A child entering France at the airport (the majority comes by plane) is at first held in the waiting zone (zone d'attente). Minors are sometimes, not always, assisted during the period in the waiting zone by administrators ad-hoc. These administrators can be anyone, in practice many are Red Cross or Terre d'Asile employees.

After minors are past the waiting zone they will meet the immigration court. 80 to 90% of the ones coming before this court are allowed to enter the French territory. Once on French territory, children can stay until their 18th birthday. Children younger than 15 years old can be regularized at their 18th



if they meet certain requirements after staying in France for 3 years (f.e. good behavior, language). The same goes for children who have been in school for over 5 years. To have this declaration of French nationality, a birth certificate is needed (or a replacement if it cannot be acquired due to external circumstances). It does not happen very often as most minors are not under 15 upon entering France, the vast majority of minors are close to 18 years old.

Responsibility for care

After leaving the waiting zone minors are transferred to the care of the ASE of the departments. The ASE is the youth care unit of the regions, responsible for all unaccompanied children, foreign or not. All children who arrive in Paris (most of the children arrive in Paris via the airport) arrive in arrondissement 93. If they enter the territory they are divided by the court among the different departments. The only departments really having minors are the departments in Paris, Lyon, Marseille and Calais. Others have numbers below 10. Departments finance the care of these children in principle, but in Paris much is financed by the state.

The daily care in the departments is arranged within the system of regular youth care or foster families. Foster families are professional.

Responsibility for guardianship

Officially, guardianship (articles 389 and 475 of the French Civil Code) :

- *Guardianship referred to the child welfare department : this guardianship is delegated to the child welfare department (ASE) for unaccompanied minors, whether French or foreign, without any family network. These minors are often already being cared for by child welfare (ASE) under article L223-2 of the French Family and Social Action Code, already quoted and relating to the notification of unaccompanied minors. The children's judge is notified and sends the file to the guardianship judge, who makes the decision regarding organisation of the guardianship.*

Besides the tuteur there is an educateur. The tuteur is the one officially responsible, which is the conseil generale of the department, the educateur is the social worker responsible for the case. An educateur is responsible for about 20 children and usually not specialized in foreign children. They are not asylum specialists.

The administrateur ad-hoc is used to cover the absence of a guardian during the time before the minor is geographically assigned to a part of the French territory. Besides a poor mandate, he has a large problem concerning time. There is only 24 hours available to win trust and look at the best interest of the child, after which a child is free to be interviewed or deported by the police.



Guardianship position in practice

Officially all children in France have guardianship in the form of legal representation, although the system of ad-hoc administrators can hardly claim to be covering all children not under guardianship of an ASE. Responsibility for representation here lies with the individual voluntary administrator, who is under constraints of time and mandate. He can also hardly be held accountable for his or her work, as he does not have any facilitated resources other than access to the child.

For those children reaching the care of the ASE, the same care is available as for French children, which is considered to be generally of good quality by all actors spoken to. NGO's are however worried that the level of service and care to minors is entirely random in France. This is a specific problem regarding asylum procedures, as people responsible in the ASE of departments are no specialists.



Guardianship in Greece

National legislation

- Code of Civil Procedure 16 september 1968 - Art. 681 C
- Law 2447/1996, "Adoption as a code of the draft law on adoption, guardianship, and foster care of minors, judicial assistance, judicial trusteeship of alien property and relating provisions - Art. 49–53
- Law 3386/2005, "Codification of legislation on the entry, residence and social integration of third country nationals in Greek territory
- Presidential Decree 113/2013 (transposing Asylum Procedures Directive 2005/85/EC)
- Presidential Decree 220/2007 (transposing Reception Conditions Directive 2003/9/EC) – Art.19
- Law 3961/2011 "on the amendment of Law 3126/2003 on the criminal liability of Ministers and other provisions – Art. 8(1)

Political framework and general context

Greece has a long tradition of a poorly-developed system for identifying unaccompanied asylum seeking and migrant children. The failures described here are part of a continuum of systemic failures to protect unaccompanied minors in Greece. Despite consistent calls for improvements in its child protection system, the protection of unaccompanied children remains dysfunctional and children continue to be subjected to violence and abuse.

Greek law has developed in recent years to provide more protection for unaccompanied migrant children. The integration of unaccompanied minors after they have been granted international protection is regulated by Presidential Decree 141/2013. And a procedure for determining the age of minors in order to recognise their specific needs, as well as the provision of medical services and psychological support (Ministerial Decision no. 92490/2013). In relation to the appointment of a guardian, the decree in question stipulates that the Department for the Protection of Refugees and Asylum Seekers of the Division of Social Awareness and Solidarity at the Ministry of Labour, Social Security and Welfare shall take the necessary measures as soon as possible after international protection has been granted to ensure the representation of unaccompanied minors by appointing a guardian or, where appropriate, assigning the relevant responsibility to an organization responsible for the care and protection of minors, or in other suitable form of representation pursuant to the laws and court decisions (Art. 32 Par. 1 PD 141/2013).

These developments are positive, yet, despite such improvements. Greece still fails to comply with international standards concerning migrant children detention. Article 46 of the Law 4375/2016



provides that unaccompanied children can be detained for up to 25 days, which can be prolonged by 20 days in case of large numbers of arrivals, while they await transfer to children centres.

Organization of guardianship for unaccompanied minor asylum seekers

The Greek legislation provides for the appointment of temporary guardians (Public Prosecutors). Nevertheless, their protection is not guaranteed due to the prosecutors' overwhelming workload and the ever increasing number of minors. As the daily acts that require the consent of a guardian are numerous, the absence of a special body of guardians has been characterised by a variety of human rights organisations to have implications on all aspects of the protection and exercise of their lawful rights, especially for their integration into Greek society.

Responsibility guardianship

The Prosecutor for Minors and in his/her absence the First Instance Prosecutor is by Greek law, the provisional guardian of unaccompanied minors until a permanent guardian can be appointed. However, in Greece, there is no institution or body of guardians who can be appointed to represent the unaccompanied children in any legal action or proceeding that involves them. The reception centres only accept to host the children without undertaking any further responsibility. As a result no permanent guardian is appointed.

Reception centres are required to inform and receive consent of the provisional guardian on every single decision and action concerning children, including enrolment in schools, and social and recreational activities such as swimming and athletic activities.

It should be noted that the Ministry of Justice, Transparency and Human Rights has established a Working Group to review the guardianship system for unaccompanied minors. This group has engaged with national authorities, international organisations and civil society to identify existing gaps and is looking at guardianship schemes elsewhere in Europe in order to make recommendations for improvements in Greece. However, pending the outcomes of this study, the legal guardianship system for unaccompanied minors in Greece remains challenging.

Alternatives

METAdrasi – Action for migration and development

A Greek NGO founded in 2010 that focuses on services not covered by the Public Authorities or other NGOs in Greece and is the only organization that retains a permanent front-line presence in all key entry and exit locations. METAdrasi operates mainly in the following two sectors, interpretation services and the protection of unaccompanied children.



It escorts unaccompanied and separated children (UASC) from border detention centers to appropriate accommodation facilities throughout Greece and operates Transit Accommodation Facilities for UASC. Our work includes two innovative activities that have been implemented for the first time in Greece : Guardianship and placement of children in foster families.



Guardianship in Italy

National legislation

- Civil Code (Codice civile) - Art. 348, 371
- Presidential decree No. 616 of 24 July 1977 - Art. 25 (1)
- Law No. 184/1983 of 4 May 1983, Right of a minor to family (Diritto del minore ad una famiglia - Art. 2, 3 (2)
- Law Decree No. 286 of 25 July 1998, Consolidated text of provisions governing immigration and the status of foreigner – Art.18
- Law No. 228 of 11 August 2003, Measures against human trafficking (Misure contro la tratta di persone) – Art. 13

Political framework and general context

The Italian normative framework concerning unaccompanied minors refers on the one hand to the legislation on children including : the Convention on the Rights of the Child ratified by Italian law in 1991, the Civil Code from 1942 or the law related to child custody and adoption ; on the other hand to migration law such as the Consolidated Law on immigration n° 286/98 ; and finally it includes specific regulations on unaccompanied minors (Comune di Bologna, 2003).

Since according to the CRC and Italian law, all minors should see their rights as children respected irrespective of their status. They should, therefore, be firstly considered according to their age rather than to their immigration condition.

An agreement between State, Regions, and Local authorities was reached following a Joint Conference that took place in July 2014. This agreement aimed at improving the reception system's capacity to manage the arrival of migrants through a stronger involvement of regional and local bodies. The main change introduced by the agreement is the shift from an “emergency approach”, that has characterized the functioning of the Italian reception system for the last years, to a “systemic governance.

The guardianship system

According to the Civil Code a guardian is appointed when both parents are dead or when due to other reasons they cannot exercise their parental responsibilities. Excluding certain exceptions, the Tutelary judge of the Ordinary Court is the judicial authority responsible for appointing the guardian. To this end he can ask assistance to public bodies or other competent entities. Besides the guardian,



the Tutelary Judge should also appoint the so-called “protutore”, conceived as a monitoring mechanism, though in practice this hardly ever happens.

Before appointing the guardian the judge should listen those children over 12 years of age or even less depending on the child’s capacity for discernment. In any case the guardian must be “a person suitable for the role, with unobjectionable conduct, who must safeguard the child’s right to education and protection and take into account his/her capacities, desires and aspirations”.

The civil code prescribes some situations of incompatibility to perform the function of guardianship. It also provides for the institutional guardianship to those children who have no suitable family members or relatives to act as guardians, as in the case of the majority of unaccompanied children. In such cases guardianship is referred to a public local body or to the legal responsible of the residential care facility where the child lives. The practical execution of the guardianship function is then delegated to a member of these institutions. However, Art. 3, para. II of Law 184/1983 prohibits the appointment of legal representatives of child reception facilities or professionals working there as guardians, even if the same article envisages that, in order to ensure the implementation of the urgent and necessary protection measures for separated children, private and public reception facilities can carry out a “provisional guardianship” (so-called “potestà tutelare interinale”), which lasts until the appointment of the guardian (DCI Italy, 2013).

Responsibility for care

The responsibility for guardianship of minor asylum seekers lies at the local level with municipalities, the court responsible for appointing one. For the implementation of their care responsibility a number of the municipalities are working together with the Ministry through ANCI, the Union of municipalities. Together they are working within a national programme that assists minor asylum seekers, the SPRAR-programme (Protection System for Asylum seekers and Refugees).

The Ministry of Interior, department migration and asylum, is responsible for the care of unaccompanied minor asylum seekers. Together with ANCI, the Union of municipalities, have an operational programme for uma’s. The projects aim at services for the target group (language, legal and psychosocial assistance, school and education). In case a child asks for asylum in a municipality working within SPRAR, the programme needs to be notified and places a child in a project. A guardian is appointed by the court at that point as well.

Responsibility for guardianship

It is an obligation by law in Italy to appoint a guardian to a child deprived of parental care. The tutelary judge appoints a guardian according to general rules : a person needs to be of good behaviour and suitable for the task. In practice, guardianship in Italy is, as well as care, arranged differently on a local level. The first guardian appointed by the court is usually the mayor of the municipality where the centre is located. The practical task is then transferred to an official, a volunteer or is limited to signing papers.

To enter the asylum process the child needs a guardian. A child can ask for asylum, but the procedure is put on hold until a guardian is appointed who can handle in the best interest of the child.



Guardian in practice

Guardianship is not handled by professional organizations. The guardians in municipalities lack juridical knowledge and in many cases do not know the asylum process generally.

There are not enough guardians, one of the reasons they are appointed late. As a result a child very rarely has a guardian before the age assessment, if an age assessment is done.



Guardianship in Hungary

National legislation

- Act IV of 1952 on Marriage, Family and Guardianship (1952. évi IV. törvény a házasságról, a családról és a gyámságról)
- Act XXXI of 1997 on the Protection of Children and Guardianship Administration
- Act CXCV of 2012 on the Taking Over of Certain Specialised Social and Child Protection Service Providers
- Government Decree No. 331 of 2006 (XII.23.) on Tasks of Child Protection and Guardianship and Organization of the Guardianship Authority and its Scope
- Government Decree No. 316 of 2012 (XI.13.) on General Directorate of Social Affairs and Child Protection
- Government Decree No. 114 of 2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals
- Act LXXX of 2007 on Asylum

Political framework and general context

the legal representation of unaccompanied minors is a two-part procedure: initially, a temporary legal representative is appointed to represent the child during the specific procedures linked to his application for asylum; thereafter, a permanent guardian is appointed in order to look after the representation and well-being of the youth allowed to stay until coming of age. After the legal representation process during the asylum application⁴³⁷, a guardian must be appointed by the child protection services for any unaccompanied minor who has obtained refugee status or subsidiary protection. While waiting for a permanent guardian, the director of the centre dedicated to receiving unaccompanied minors can fulfil this role for a few months. A professional guardian then takes over. In practice, all children receiving special protection are indeed assigned a guardian⁴³⁸.

The guardians appointed for the legal representation of children during their stay in Hungary are not recruited on the basis of special conditions; they are attached to the ordinary child protection services and can be appointed for either a Hungarian child or a foreign isolated minor. They therefore do not necessarily have expertise or experience in the law pertaining to foreigners, and these shortcomings can be harmful to the performance of their mandate. Also, they can be responsible for a high number of youths at the same time, up to 48. They are furthermore geographically distant from the living site of the unaccompanied minors (most often accommodated at the centre in Bickse⁴³⁹): in practice, this means that their interaction with the youths is limited and that the trusted contacts of the youths tend more often to be members of the reception centre's personnel.



Responsible for care

Upon arrival in Hungary, UAMAS are accommodated in special accommodation facilities within KIGYK, which is one of the few child protection residential institutions operating under the direction and financing of the Ministry of National Resources.

The legal guardian is the employee of the accommodation centre. This person is the appointed guardian for all unaccompanied children seeking asylum.

Upon arrival, unaccompanied minors are directed to a reception centre specific to them. They then have access to the Hungarian childhood protection system as a child “deprived of parental care or care by other members of their family”. Two centres receive all of the unaccompanied minors, one of which is dedicated to asylum-seekers, and the other to refugee minors or beneficiaries of subsidiary protection.

In Hungary there is no formal requirement for any knowledge or training in the field of asylum law.

Responsible for guardianship

Guardians appointed for the legal representation of UAMAS and fUAMAS in Hungary are not recruited on the basis of any special condition; they are attached to the ordinary child protection services and can be appointed for either a Hungarian or a foreign child.

The child protection guardian is employed by the Department of Child Protection Services (TEGYESZ) and can ensure the guardianship of a maximum of 30 children. The child protection guardian is a child care professional, who is typically not familiar with asylum law or immigration law.

The role of the child protection guardian consists of supervising the care for the child, following and monitoring his or her physical, mental and emotional development. In order to fulfil his or her duties, the child protection guardian has a mandate to generally substitute the absent parents.

- Is obliged to keep regular personal contact with the child;
- Provides the child with his or her contact details so the child can reach him or her;
- If necessary, supervises and facilitates the relationship and contact with the parents;
- Participates in drafting the child care plan with other child protection officials around the child;
- Participates in various crime prevention measures if the child is a juvenile offender;
- Assists the child in choosing a life-path, schooling and profession;
- Represents the interests of the child in any official proceedings;
- Gives consent when required in medical interventions
- Takes care of the schooling of the child (enrolment, contact with the school and teachers etc.);



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Guardianship in Slovenia

National legislation

- Act No. 99/1963 Coll., Code of Civil Procedure
- Act No. 36/2005 Coll. on Family
- Act No. 305/2005 Coll. on Social and Legal protection of Children and Social Custody

Political framework and general context

With regard to the legal framework, the Aliens Act (2011) (AA) and the international Protection Act (2016) (IPA) are the main laws which define the status, rights and responsibilities of unaccompanied minors in Slovenia. The AA, adopted in 2011 and amended several times defines the condition for and methods of entry into, departure from and residence of in Slovenia. In 2016 a new IPA was adopted (the first version was adopted in 2007) and came into force national legislation.

The latter Act prescribes that the Centre for Social work should appoint a guardian for a minor who is without parents or whose parents are not taking care of him/her. However, there is no separate legislative guardianship instrument in Slovenia that refers only to unaccompanied asylum-seeking children.

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

Responsible for care

According to Article 201 of the Marriage and Family Relations Act, a minor who has no parents, or who is not being taken care of by his/her parents, must be given a guardian, appointed by the Centre for Social Work (CSW), to protect the child's benefits and interests. Article 202 of the same law stipulates that the guardian is responsible for taking care of the child as would a parent. A child in guardianship, who is over 15 years of age, may handle his/ her legal affairs, with the approval of his/her guardian or the CSW.

The role of the Centres for Social Work, which are authorised to work in a certain region (under the authority of the ministry in charge of family and social affairs), is to appoint special case guardians and legal representative to unaccompanied minors.



Legal representatives are appointed to the unaccompanied minor after the application for international protection has been made and they are relocated to the Asylum Home.

The purpose of guardianship is to ensure the protection and development of a child's personal integrity, through the provision of food, medical care and training for self-sufficient living, as well as the protection of the child's financial means, rights and benefits. The guardian should ensure that the child has appropriate care, accommodation, education, language support and provisions for his/her health.

Responsibility for guardianship

Only a small number of NGOs in Slovenia deal with unaccompanied minors, among which Slovene Philanthropy plays the most active role. It advocates for their rights, provides support in searching for appropriate accommodation, education and employment possibilities, and assists with health issues. Another Active NGO is PIC –Legal Information Centre for Non-Governmental Organisations – which offers legal advice during the proceedings. Other associations such as Mozaik or the Institute for African Studies, mainly organise leisure and integration activities for unaccompanied minors.



Guardianship in Croatia

National legislation

- Article 149 of the Family Act regulates guardianship as a form of protection of minors without parental care.⁹
- Article 167, paragraph 1 of the Family Act lays down that a child foreign citizen found on the territory of the Republic of Croatia without a legal guardian shall be appointed with a special guardian by the Center for Social Welfare to protect particular personal and proprietary rights and the interests of the child concerned

General context and political framework

A protocol for Handling Unaccompanied Alien Minors was adopted by the government in July 2013. Unaccompanied minors who ask for asylum are appointed a legal guardian by the Centar za Socialnu Skrb ('Center for Social Care', CZSS) who supports them in the official procedures.

This is generally a social worker. These workers have already been trained by UNHCR Croatia, UNICEF and the Croatian Red Cross on their role and importance in protecting the rights of unaccompanied children. The custodian undertakes all necessary activities to reunite the child with his/her family if this is in the best interests of the child.



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