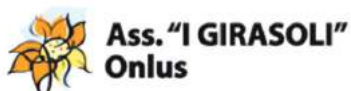




# S a f e G u a r d

SAFER WITH THE GUARDIAN

## TRANSNATIONAL REPORT EUROPE



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With the financial support of the Prevention of  
and Fight against Crime Programme  
of the European Union



*Autorità Garante  
per l'Infanzia e l'Adolescenza*



COMUNE DI CATANIA



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This report has been developed as part of the SafeGuard initiative. The report builds upon the methodology and approach developed by Defence for Children International – Italy. It was essentially informed by the consultative study processes rolled out in Italy, at the regional level in Sicily and at the national level, and integrates the conceptual framework, analysis and outcomes of these components of SafeGuard.

The project team would like to thank all the professionals and officials who participated in the activities of SafeGuard, including the training events and seminars. The key informants who participated in the study process in Italy,

and in Sicily, in Austria, Germany, Greece, Hungary, The Netherlands and Sweden had a central role for the development of the SafeGuard reports. They informed and enriched the process and outcomes of SafeGuard with their professional experience, technical expertise and recommendations. In addition, the Parliamentarians, policy makers, officials from EU Member States, experts and advocates who participated in the SafeGuard seminar in Brussels, 12 July 2016, provided important feedback and reflections that have helped to further refine this report and its recommendations toward a systemic approach to guardianship services.

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# EXECUTIVE SUMMARY

In recent years, the number of persons arriving in the European Union as migrants or asylum seekers has increased significantly. Many are fleeing from contexts characterised by high rates of generalised violence, terrorism or war, from fragile states or from situations of poverty and deprivation. Among them are families with children and unaccompanied children.<sup>1</sup>

Children who migrate and seek asylum alone are considered a particularly vulnerable group. They face high risks of getting exposed to different forms of violence and exploitation, including in

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<sup>1</sup> 'Unaccompanied children' refers to all boys and girls under 18 years of age who move across international borders and who are not accompanied by, or are separated from, their parent(s) or other primary caregiver.

the context of trafficking. Their status as children who lack full legal capacity and as non-nationals without valid travel documents or residence permits often has a disempowering effect and limits their access to services.

International and European standards provide for guardianship services and representation for all unaccompanied children, regardless of the purpose of their migration or their immigration status. Guardianship is recognised as a procedural safeguard as the guardian complements the limited legal capacity of the unaccompanied child. The guardian is supposed to be a key figure in the daily life of an unaccompanied child and all administrative and judicial procedures that the child is involved in.

## SafeGuard

The guardian has been conceived as someone who supports a child to have his or her views heard and taken into account, who promotes the child's best interests and generally acts as an advocate for the rights of the individual child. Guardians are therefore vital and decisive for children to enjoy their rights, to be safe from all forms of violence and guarded against infringements of their human rights.<sup>2</sup>

Although international and regional standards have reached consensus on the right of all unaccompanied children to be supported by a guardian, they remain vague or silent on quality standards of guardianship. Whereas international and European standards have driven significant national law and policy reform within EU Member States, this lacuna remains tangible at the national level and undermines the effectiveness of the reforms undertaken thus far. As a result, all over Europe, there are children who do not benefit from the support of a qualified guardian and this in turn has severe consequences for their safety, well-being and development. In fact, the presence and competent support of a guardian is a key for unaccompanied children to access services and entitlements, such as health care, education and even the asylum procedure.

In many European countries, guardianship for unaccompanied children remains a highly fragmented institution and guardianship services are variable in scope and quality. Monitoring mechanisms are not yet consistently in place. Across Europe, guardians are mandated to promote the best interests of the child, a concept that has been introduced into national and European law but is rarely defined in detail. Where a weak institutional framework and a poorly defined mandate coincide, the ground is prepared for inconsistent and unreliable implementation. As guardianship services are essentially a state responsibility, investing in more clarity and more effective services is an imperative from a human rights, a humanitarian and a socio-political perspective.

Against this background, SafeGuard invites for a reflection on how guardianship services can be integrated more effectively into national systems for childcare, welfare and protection while being prepared to promote the human rights and best interests of children on the move and to bridge all the various agencies, procedures and services whom the child is in contact with. SafeGuard concentrates on the capacity of guardianship services and their preventive, empowering potentials. It targets guardianship services as an institutional entry point for more effective protection of unaccompanied children from all forms of violence, exploitation and abuse, including in the context of trafficking.

SafeGuard was conceived in continuity to previous projects that Defence for Children International - Italy has participated in or led and incorporates their outcomes. They include in particular *Closing a Protection Gap – Core standards for guardians of separated children in Europe* (2011), *GATE – Guardians against child trafficking and exploitation* (2013), *IMPACT – Improving monitoring and protection systems against child trafficking and exploitation* (2014), and *Resiland – Participation, capacities and resilience of children on the move against trafficking and exploitation* (2015).<sup>3</sup> In addition, SafeGuard builds upon the recent guidance and principles for guardianship services developed by the European Union Agency for Fundamental Rights. The Fundamental Rights Agency recognises the importance of quality guardianship services for preventing the exploitation and trafficking of children and for enhancing the early identification and referral of victims.<sup>4</sup>

A central interest of SafeGuard is to inspire a reflection on more systemic approaches to guardianship services. The initiative has engaged leading partners and experts within Italy and throughout Europe in a consultative process to understand better the key elements of a 'guardianship system', the opportunities and challenges that systemic approaches might present, and how these could be translated into effective practice.

A 'systemic' approach is understood to be integrated or linked with mainstream services for childcare, welfare and protection, to be evidence-informed, rights-based and in line with quality standards, to offer important safeguards such as transparency, monitoring and evaluation, mechanisms for reporting gaps or

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<sup>2</sup> See: Council of the Baltic Sea States Children's Unit, Expert Group for Cooperation on Children at Risk, [Guidelines on the Human Rights and Best Interests of the Child in Transnational Situations](#), Council of the Baltic Sea States Children's Unit and Expert Group for Cooperation on Children at Risk, 2015. United Nations High Commissioner for Refugees, United Nations Children's Fund, [Safe and Sound](#), What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe, 2014, pp. 16, 21. United Nations Committee on the Rights of the Child, [General Comment No. 6 \(2005\)](#) on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6.

<sup>3</sup> [Closing a Protection Gap](#), 2011. [GATE](#), 2013. [IMPACT](#), 2014. [RESILAND](#), 2015.

<sup>4</sup> European Union Agency for Fundamental Rights, [Guardianship for Children Deprived of Parental Care, A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking](#), 2014. European Union Agency for Fundamental Rights, [Guardianship systems for children deprived of parental care in the European Union](#), With a particular focus on their role in responding to child trafficking, 2015.

abuses and for holding responsible authorities accountable. Systemic approaches aim to integrate specific measures into a broader system of institutions, services and structures in order to achieve a more holistic perspective of the child's situation and to offer a continuity of services for prevention, protection and empowerment. For the context of guardianship services, a systemic approach would promote the best interests and the well-being of the child, the child's right to be heard and to have his/her views taken into account, within a broader set of measures aimed to ensure the care, protection and development of the children concerned.

An important element of a systemic approach is the appointment of a leading institution that holds the overall political responsibility and accountability for guardianship services. The leading institution should be independent and impartial in the sense that it operates primarily in orientation at the best interests of the child, is institutionally distinct from the agencies and services that provide accommodation, care and social services for unaccompanied children and independent from immigration and law enforcement authorities. Leading institutions have an important role in facilitating the contact of guardians with other institutions and authorities within the country and transnationally. A strong leading institution can make an important difference for ensuring visibility and transparency of guardianship services, bestowing individual guardians with authority in performing their tasks. This gives weight to the role of the guardian and helps to back up the guardian's position vis-à-vis other authorities.

In the context of the SafeGuard initiative, Ombuds Offices for children have had a central role. Indeed, Ombudspersons for children could be well placed to activate the advocate function of guardians and to guarantee that guardianship services are primarily guided by the best interests of the child. In SafeGuard, the close collaboration with the National Authority for Children and Adolescents in Italy and Ombuds Offices for children in the Italian regions has been essential to promote an understanding of the centrality of the child in guardianship services. The involvement of Ombuds Offices aimed also to strengthen their role in safeguarding unaccompanied children and recognising the important potential that these institutions hold for preventing all forms of violence, exploitation and abuse of unaccompanied children, including in the context of trafficking.

This European report is one component within the broader processes and outcomes developed as part of the SafeGuard initiative. It provides an overview of recent trends and statistics related to children seeking asylum alone within the EU as well as their rights and entitlements to guardianship services under international and European standards. The discussion of norms and trends is complemented by a review of guardianship services in several EU Member States that are main countries of arrival of asylum seekers, including unaccompanied asylum seeking children. While the country profiles do not aim to achieve a comprehensive overview of laws, policies and practice of guardianship services, they discuss key questions concerning the way that guardianship services for unaccompanied children are organised.

The leading interest was to understand what a 'systemic' approach to guardianship could all imply and to document achievements and challenges that different countries are facing in their specific approaches to guardianship services. The country profiles are based on a literature review and key informant interviews with leading institutions and experts in each country. The key informants have enriched the national profiles and provided critical input to the discussion of 'systemic approaches' to guardianship services with the related challenges and opportunities.<sup>5</sup>

The methodology and approach of the SafeGuard European study are based on the theoretical and conceptual work developed by Defence for Children International – Italy, partner of the project, in close cooperation and consultation with the Association I Girasoli as the project leader and Nidos, the national guardianship authority in the Netherlands. In addition, the Italian National Authority for Children and Adolescents, the International Social Service, ARCI Sicilia and the Municipality of Catania collaborated in the project activities as associates. As part of SafeGuard, studies were implemented at the regional level in Sicily and at the national level of Italy. They have been decisive for the development of the European report and the overall reflections on systemic approaches to guardianship services.<sup>6</sup> A synergy of the SafeGuard reports on Italy and Sicily is included among the country profiles presented in Part III of this report.

<sup>5</sup> In each country, one to three key informant interviews were conducted as telephone interviews between May and July 2016. The key informant interviews are referenced through half-anonymised citation, as agreed with each key informant. Some of the key informants have responded to the interview questions in writing. All key informants were invited to review the draft report and their comments have been taken into account prior to publication.

<sup>6</sup> All SafeGuard reports are available from [www.defenceforchildren.it/publicazioni](http://www.defenceforchildren.it/publicazioni).



## SafeGuard

The report concludes with a discussion of specific elements that could constitute a guardianship system. The conclusions are based on existing standards, guidelines and principles, consolidate these into a single framework, and integrate the lessons learned from the SafeGuard initiative.

The outcomes of the SafeGuard studies and consultations were presented at the SafeGuard seminar convened in the European Parliament, Brussels, on 12 July 2016. The discussion among the participating Parliamentarians, policy makers, officials from EU Member States, experts and advocates have informed the finalisation of this report, including the call for further authoritative guidance from the European Commission on key principles and quality standards of guardianship services. This call is timely and relevant in the context of the reform of the Common European Asylum System, which is ongoing at the time of the publication of this report.<sup>7</sup>

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<sup>7</sup> See European Commission, Completing the Reform of the Common European Asylum System: Towards an efficient, fair and humane asylum policy, Press Release, Brussels, 13 July 2016, accessed from [http://europa.eu/rapid/press-release\\_IP-16-2433\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2433_en.htm) on 14 July 2016.

# SafeGuard

## SAFER WITH THE GUARDIAN

SafeGuard is an EU co-funded project implemented by the Association 'I Girasoli' and Defence for Children International – Italy, with the advisory support of Nidos, the Netherlands. The initiative is implemented over a two-year project (2014-2016). It aims to promote qualified guardianship services for unaccompanied children on the move. While SafeGuard focuses primarily on the situation in Italy, recent developments in main countries of arrival within the European Union are also taken into consideration.

SafeGuard builds on an approach that is rooted in the UN Convention on the Rights of the Child and promotes the integration of guardianship services for unaccompanied children within existing child protection systems. The initiative's approach is participatory and incorporates multi-disciplinary and inter-agency exchange and cooperation across borders.

The development and implementation of the project was informed by professional guardianship services and other relevant institutions and networks in EU Member States, in particular the Nidos Foundation in the Netherlands, ENGI – the EU Network of Guardianship Institutions and the International Social Service (ISS) with its national branches. The Italian organization ARCI, the Municipality of Catania in Sicily and the Italian National Authority for Children and Adolescents are closely involved, whereas the latter is driving the reform of guardianship services within Italy.

SafeGuard has been rolled out through the following interconnected activities:

**Model definition:** Analysis of the situation in main points of arrival in Italy, combining a desk review and participatory research through consultations with guardians and key stakeholders involved in the provision of guardianship services, unaccompanied children placed in reception centres or shelters, representatives of EU guardianship networks and key actors working in strategic points of arrival. The objective of this broad-based consultative process was to define an operative guardianship model.

**Application of the model at the local level** in Sicily, through the development of structures for referral and protection, including relevant operational routines and procedures, in coordination with local authorities and key actors.

**Capacity building** based on the above activities with the objective to strengthen the role, functions and qualifications of guardians for children on the move. A training module for guardians has been implemented and informed by a professional exchange visit to the Netherlands.

**Dissemination of the model** at the local, national and EU levels. A consolidated report of all project activities, including recommendations for policy and practice, is presented at a national seminar in Italy and a European seminar in Brussels, with the participation of relevant stakeholders, experts, organizations and institutions working with and for unaccompanied children.

**External evaluation** of the project activities, its objectives and the overall implementation process, including the analytical component of the initiative to understand and promote more systemic approaches to guardianship for unaccompanied children.

# PART I

## UNACCOMPANIED ASYLUM SEEKING CHILDREN IN THE EUROPEAN UNION: TRENDS AND STATISTICS

In recent years, the number of persons seeking asylum in the European Union has increased steadily, and the numbers continued to raise significantly through 2015 (see Figure 1). Many of the persons arriving are fleeing from contexts characterised by high rates of generalised violence, terrorism and war, from fragile states and from situations of poverty and deprivation.<sup>8</sup>

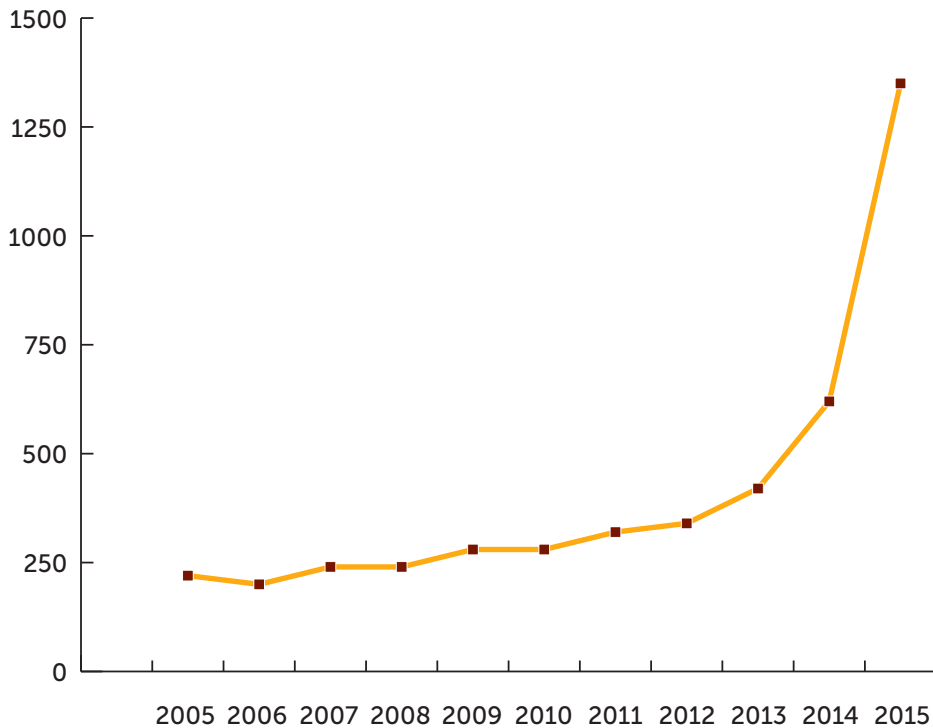
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<sup>8</sup> According to Eurostat data, Syria, Afghanistan, Iraq, Kosovo, Albania, Pakistan, Eritrea and Nigeria were the main countries of origin among registered asylum claims in the 28 EU Member States during 2014 and 2015. See: Eurostat, [Statistics Explained](#), Countries of origin of (non-EU) asylum seekers in the EU-28 Member States, 2014 and 2015.

Among them are families with children and unaccompanied children. In 2015, a total of 88,300 unaccompanied children were registered as asylum seekers in the EU. They were mostly male (91%) and over half of them were between 16 and 17 years old (57%). Half of the unaccompanied asylum seeking children were from Afghanistan, while other main countries of origin include Syria (16%), Eritrea (6%), Iraq (5%) and Somalia (4%).<sup>9</sup>

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<sup>9</sup> Newsletter for the European Union, Eurostat: 90,000 Unaccompanied Minors in the EU in 2015, 4 May 2016, accessed from on 30 May 2016.

FIGURE 1: ASYLUM APPLICATIONS IN THE EU 2005-2015<sup>10</sup>

Source: Eurostat, 2016. Note: Data in thousands.

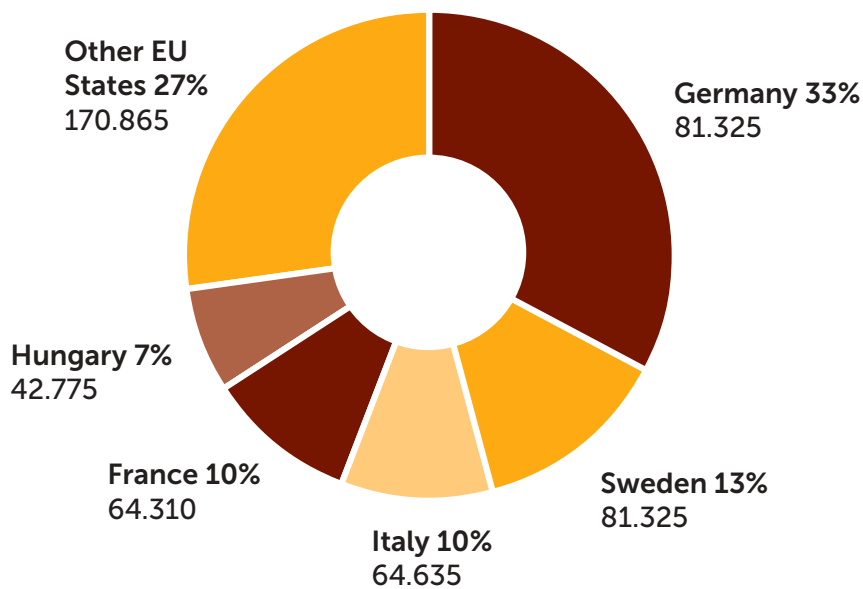
The main migration routes into the European Union lead across the Mediterranean, with Greece, Italy and Spain as the main points of arrival, or across Southeast Europe into Hungary, Slovakia and Slovenia.<sup>11</sup> European asylum statistics demonstrate however, that many of the persons arriving do not file an asylum application in the first country of arrival but continue their movement through to Western or Northern European states. Figure 2 illustrates the countries that received the highest numbers of applications from adults and children in 2014. They include Germany, Sweden, Italy, France and Hungary. Together, these five countries shared 73% of asylum applications while the remaining 23 Member States received 27% of the applications.

When looking at the number of applications registered in relation to each country's population, the ranking changes (see Figure 3). Sweden has been the top receiving country in the EU for several years and registered over 8,000 applications per 1 million inhabitants in 2014. Hungary stood out in 2014 with over 4,000 applications per 1 million inhabitants. In France, Greece and Italy, which also report some of the highest absolute numbers of applications, the proportion of asylum seekers per inhabitants is lower and ranges around 1,000. Thirteen out of 28 EU Member States receive under 500 applications per 1 million inhabitants. The social and economic burden on EU Member States related to the reception of asylum seekers is therefore distributed very unevenly, and the political and humanitarian responsibility of national governments differs significantly.

<sup>10</sup> Eurostat, **Statistics Explained**, Asylum applications (non-EU) in the EU-28 Member States, 2005–15 (thousands).

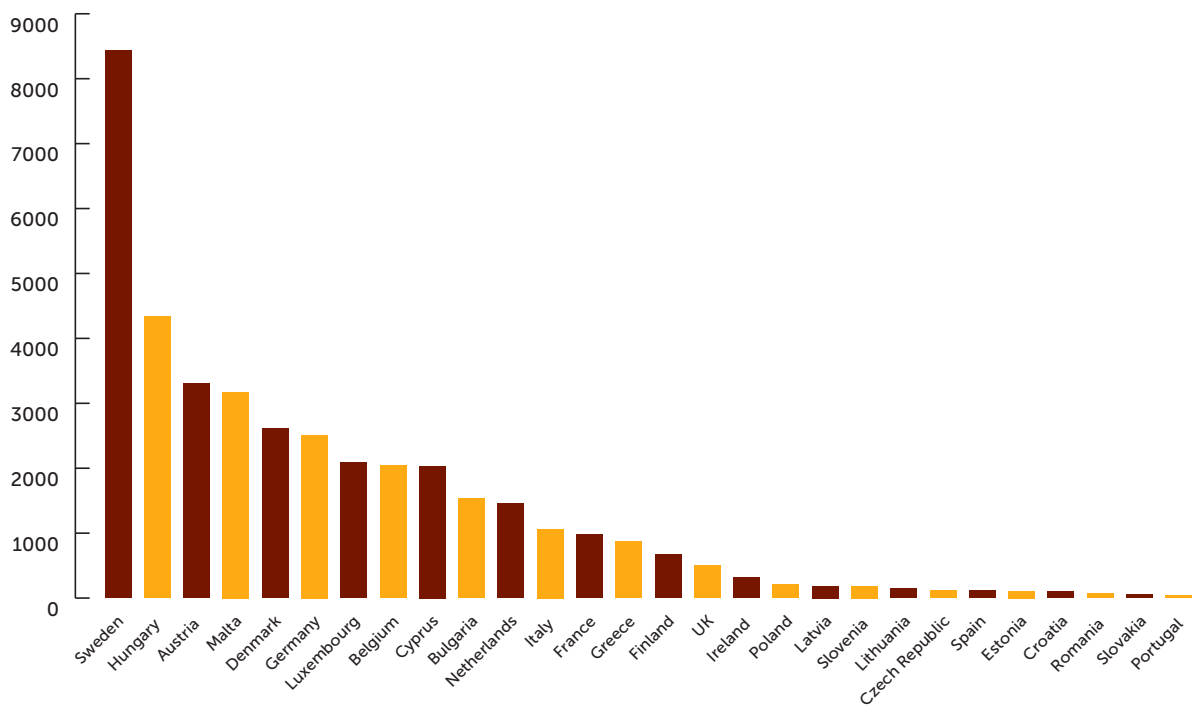
<sup>11</sup> Frontex, **Migratory Routes Map**, 2016.

FIGURE 2: ASYLUM APPLICATIONS IN THE EUROPEAN UNION 2014: DISTRIBUTION BY RECEIVING COUNTRY <sup>12</sup>



Source: European Commission, Eurostat, 9 June 2015.

FIGURE 3: NUMBER OF ASYLUM APPLICATIONS IN EU MEMBER STATES PER 1 MILLION INHABITANTS <sup>13</sup>

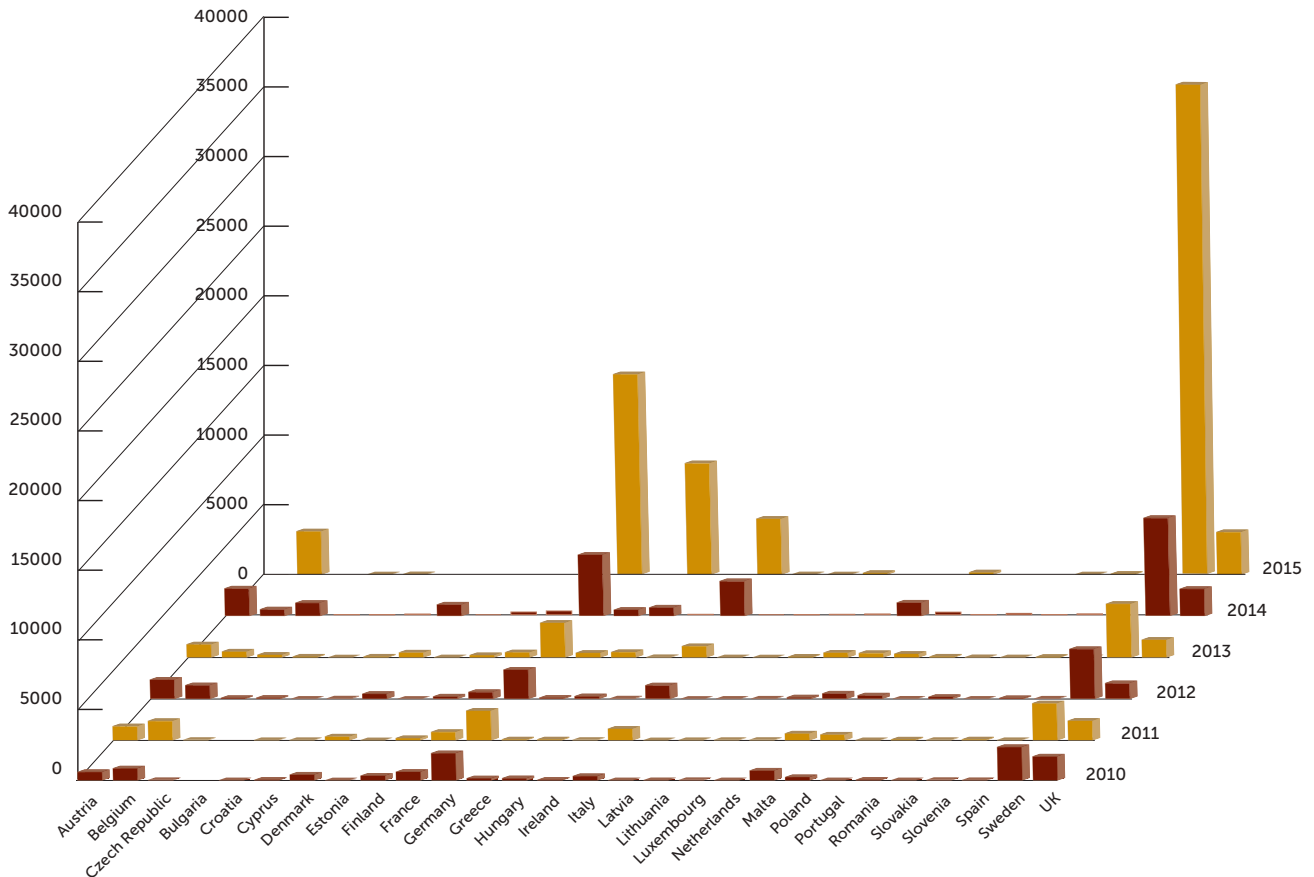


Source: European Commission, Eurostat, 9 June 2015.

<sup>12</sup> European Commission, Asylum in the EU, Eurostat 9 June 2015.  
<sup>13</sup> European Commission, Asylum in the EU, Eurostat 9 June 2015.

With regard to children seeking asylum alone in EU Member States, Eurostat data provide a slightly different picture of the main destination countries. In 2014 and 2015, unaccompanied children applied mainly in Sweden, Germany and Italy, while Austria, the UK, the Netherlands, Belgium, Bulgaria, Denmark and Greece are also among the main receiving countries (see Figure 4).

FIGURE 4: UNACCOMPANIED CHILDREN SEEKING ASYLUM IN EU MEMBER STATES 2010-2015 <sup>14</sup>



Source: Eurostat, 2016

These regional trends suggest that the common EU asylum system is not yet entirely regulated by the EU asylum acquis, which foresees that an asylum application is to be assessed in the first country of arrival (Dublin III Regulation, with exceptions for unaccompanied children). They suggest also that the dynamics and priorities of asylum seekers on the one side, and national governments on the other, might influence the European reception map. It is noteworthy, that the reception map of unaccompanied asylum seeking children and their main countries of destination differ from the reception map of asylum seeking adults and families.

**In light of these dynamics, and as the aspiration of the SafeGuard European study is to analyse guardianship services in six main points of arrival within the European Union, the following countries have been selected for the study:**

- >> **AUSTRIA** is a federal state that struggled with a stark increase of asylum applications during 2015 and is one of the main receiving countries in the EU of unaccompanied children. The Government decided in 2015 to apply a quota to regulate the entry of asylum seekers. The

<sup>14</sup> Eurostat, Asylum Applicants Considered to be Unaccompanied Minors - Annual data.

analysis will look into the challenges of the increase on the organisation of guardianship services for unaccompanied asylum seeking children.

- >> **GERMANY** receives high numbers of unaccompanied asylum seeking children within very high absolute and relative rates of asylum seekers. During the stark increase in 2015, the national government reiterated its political commitment to the European asylum acquis and relevant international standards. The federal system constitutes a special context for the reception of unaccompanied children. The analysis will assess how the decentralised system organises guardianship services in times of increasing demand.
- >> **GREECE**, as a main entry point, is known to have a very weak system of protection and reception of asylum seekers, including children. Many asylum seekers used to transit through Greece to apply for asylum in another EU Member States. In the context of the Syrian refugee movements, the situation in Greece has received high media attention and was targeted by many organisation and private initiatives. The economic crisis affecting the Greek people and state is making it even more difficult to build up functioning reception structures that are in line with international and European standards. The analysis will look into the consequences for guardianship services.
- >> **HUNGARY** emerged as a new main entry point and receiving country of asylum seekers in 2015 and reacted openly with deterring measures. Although many incoming persons transited through Hungary into Western and Northern Member States of the EU, a relatively high number of unaccompanied children filed their applications in Hungary. The response to these challenging dynamics, including through guardianship services, will be in the focus of the analysis.
- >> **THE NETHERLANDS** is one of the main receiving countries for unaccompanied asylum seeking children in the EU, although the absolute and relative ratio of asylum seekers per inhabitants ranges in a middle field. The Netherlands stand out in the EU as a country that has dedicated political will and resources to the development of a 'guardianship system' under the leadership of a national guardianship agency. The level of organisation of the guardianship services is advanced. The analysis will aim to understand the how a more systemic approach to guardianship services benefits service providers, the state and the children.
- >> **SWEDEN**, as the country that receives the highest ratio of asylum seekers in absolute and relative terms, including unaccompanied children, has a longer experience than other EU Member States of handling high rates of asylum applications while striving to ensure continuity of services. The Swedish Government has a long-standing tradition of political commitment to children's rights, including in the context of migration and asylum. The analysis will explore the key features of guardianship services in Sweden in the context of the recent increases.

## THE ROLE OF GUARDIANS FOR THE PROTECTION OF CHILDREN FROM VIOLENCE AND EXPLOITATION

Children who migrate and seek asylum alone are considered to be at a particular risk of all forms of violence, exploitation and abuse, including in the context of human trafficking. Experiences of violence and exploitation, or the risk thereof, is driving many children to leave their homes and to embark on a journey to Europe in search of better conditions for their own survival and development. Some forms of violence and exploitation could constitute child specific grounds of asylum, such as early and forced marriage, genital mutilation, exploitation as child labourers or child soldiers and child trafficking. Different forms of violence and exploitation might coincide and continue while the child moves through transit countries and in points of arrival. As the child moves, his or her vulnerability evolves, depending on the risks that a child is exposed to and his or her resilience and access to support.

In the complex interplay of different risk and resilience factors, there is a growing understanding of the structural risks that render unaccompanied children vulnerable to exploitation and trafficking. Infringements against the human rights of unaccompanied children have been vastly documented throughout Europe. They include denied access to the state territory, absent procedures for best interests' determinations and durable solutions, gaps and delays in the appointment of guardians or weak guardianship services.

Vulnerability to violence, exploitation and trafficking can be created by weak protection systems, by exclusion and discrimination or simply by inaction. Lessons learned show that oftentimes children's vulnerability to violence and exploitation, including in the context of trafficking, is caused or increased by the gaps and shortcomings in the national legal framework, insufficient implementation of national laws and policies in practice and highly fragmented institutional mandates with weak accountability for children on the move. Challenges relate to the child's status, precarious living conditions during migration, social and economic marginalisation and exclusion, difficulties of accessing support services, cultural and language barriers to communication, and little trust in the receiving structures.<sup>15</sup>

Guardians are central figures for identifying weaknesses and shortcomings in the way that public authorities and service providers act towards unaccompanied children. Considering their mandate to promote the best interests of the child in relation to all authorities, service providers and other professionals who are in contact with the child, they are well placed to maintain an overview of the child's situation, act as a mediator, as advocate and individual monitoring body on behalf of the child. Qualified guardianship services can make an important difference to foster trust, encourage the child to speak out about his or her experiences and leave abusive or exploitative networks that may have supported them during the migration.

The European Union Fundamental Rights Agency has explored the important role of guardians in preventing the exploitation and trafficking of children and enabling the identification and protection of victims. In this context, as the Agency pointed out, the guardian's tasks include listening to the child, understanding risks and resilience of the child as well as risk and resilience stemming from his or her social contacts, understanding the needs and aspirations of the child and supporting him or her in accessing the right services. The analysis conducted by the Fundamental Rights Agency concluded that the "prompt appointment of a guardian is a key safeguard for a child's rights and overall wellbeing, protecting unaccompanied children and preventing child trafficking and other forms of abuse and exploitation".<sup>16</sup>

Against this background, the SafeGuard initiative takes guardianship services as an entry point for enhancing the protection of unaccompanied children from all forms of violence, exploitation and abuse, including in the context of trafficking. Investing in qualified and effective guardianship services is considered not only a necessity under the human rights obligations of states. It constitutes not only an investment into the safety and development of the children concerned who are contributing, as they grow up, with their resources and potentials to the social, economic and human development of countries of origin and arrival. In the longer-term, investing in qualified and effective guardianship services is also an important contribution to crime prevention, security and social stability.

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<sup>15</sup> See for instance: CARDET, Defence for Children International – Italy et al., IMPACT, Improving Monitoring and Protection Systems Against Child Trafficking and Exploitation, Transnational Report, 2014. UNICEF Innocenti Research Centre, Child Trafficking in the Nordic Countries, Rethinking Strategies and National Responses, Innocenti Insight, 2012. O'Connell Davidson, Julia and Caitlin Farrow, Child Migration and the Construction of Vulnerability, School of Sociology & Social Policy, University of Nottingham, Save the Children Sweden, 2007. See also: Council of Europe, Council of Europe Strategy for the Rights of the Child 2016-2021, Building a Europe with and for children, 2016, p. 9.

<sup>16</sup> European Union Agency for Fundamental Rights, [Guardianship for Children Deprived of Parental Care](#), A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, 2014, p. 55.



## PART II

### GUARDIANSHIP AND REPRESENTATION FOR UNACCOMPANIED CHILDREN

Under international and European law, children who are deprived temporarily or permanently of parental care have a right to be supported by a guardian and/or representative. This fundamental right applies equally to children who are nationals or residents of a state and to children who are entering a state as migrants or asylum seekers. Children who are not accompanied by a primary caregiver, have a right to temporary guardianship in the country of arrival until they are reunited with their parent(s) or caregiver,

wherever this is in the best interests of the child. When the immigration status of the child is regularised, the temporary guardianship is transformed into permanent guardianship until the child turns 18 years old.

Unaccompanied children who are involved in legal and administrative proceedings, for instance as asylum seekers or victims of crime, or who are in conflict with the law, are entitled to legal representation. Legal representation

can be provided by a guardian, often referred to as 'legal guardian' or 'guardian ad litem', or by a legal representative appointed in addition to the guardian.

The overall purpose of guardianship and representation is to promote the best interests and the well-being of the child and to ensure that the child's views are being heard and taken into consideration in all matters concerning the child. Guardians and representatives have an important role in supporting children who are in contact with the authorities. While guardians are usually tasked to promote the well-being and best interests of a child in day-to-day matters, the function of legal representatives is more narrowly focused on representing the child in legal and administrative proceedings. Both figures are therefore important in order to ensure the comprehensive representation of unaccompanied children.<sup>17</sup>

The institutional affiliation of guardianship services in Europe differs from country to country. Thematically, guardianship services are close to national child protection and childcare services as they are targeted at children deprived of parental care. Due to their broad mandate of promoting the best interests of the child, guardians need to be in close contact with the child as well as all relevant agencies, service providers and individual professionals such as care staff, lawyers, doctors or teachers. The guardian is therefore in a good position to maintain an overview of the different actors involved with the child's case and to connect the child with all services, including services for health, education, justice and welfare. At the same time, the guardian can also play a role in promoting family and social contacts of the child and building support networks within the community.<sup>18</sup>

In the cases of children who have ties to more than one country, guardians need to support the child in cross-border matters. The responsibilities of a guardian take a transnational nature in relation to family tracing in another country, when a child goes missing and is identified abroad, when a child is exploited or trafficked across borders, or in the case of transfer or return of a child to another country. Transnational contacts and measures can involve countries within and outside the EU.<sup>19</sup>

## GUARDIANSHIP IN THE EUROPEAN UNION: A REGIONAL OVERVIEW

European laws and regulations provide for the guardianship and representation of unaccompanied children. The models, standards and procedures of guardianship and representation vary however throughout the European Union and unified models or a common terminology are not yet in place.<sup>20</sup>

In 2015, the European Union Agency for Fundamental Rights published the results of an EU wide study of guardianship and representation for children deprived of parental care, with a special focus on child victims of trafficking.<sup>21</sup> The comparative analysis revealed that only few Member States are organising guardianship services from the central level. Guardianship services are usually decentralised and the available services and standards differ therefore not only between countries but also within them.<sup>22</sup> This chapter summarises some of the key findings of the Fundamental Rights Agency's study, which provides the regional context for the six country profiles presented in the second part of this report. This broader regional context is taken into consideration for the conclusions and recommendations discussed in the final chapter.

<sup>17</sup> European Union Agency for Fundamental Rights, [Guardianship for Children Deprived of Parental Care, A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking](#), 2014, p. 15.

<sup>18</sup> European Union Agency for Fundamental Rights, [Guardianship for Children Deprived of Parental Care, A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking](#), 2014, pp. 17-18.

<sup>19</sup> European Union Agency for Fundamental Rights, [Guardianship for Children Deprived of Parental Care, A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking](#), 2014, pp. 22-23.

<sup>20</sup> UNICEF Innocenti Research Centre, [Child Trafficking in the Nordic Countries, Rethinking Strategies and National Responses](#), Innocenti Insight, 2012. European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, [The EU Strategy towards the eradication of trafficking in human beings, 2012–2016](#), 2.1 Priority A (3). European Union Agency for Fundamental Rights, [Guardianship systems for children deprived of parental care in the European Union](#), With a particular focus on their role in responding to child trafficking, 2015, p. 8.

<sup>21</sup> European Union Agency for Fundamental Rights, [Guardianship systems for children deprived of parental care in the European Union](#), With a particular focus on their role in responding to child trafficking, 2015.

<sup>22</sup> European Union Agency for Fundamental Rights, [Guardianship systems for children deprived of parental care in the European Union](#), With a particular focus on their role in responding to child trafficking, 2015, p. 8.

Throughout the EU, guardianship generally can be provided by relatives within the child's extended family, by professional guardians employed by a guardianship authority, a private service provider or other competent body, or by volunteers who offer guardianship services through a responsible authority. In most EU Member States, all three forms of guardians are available. In a few Member States, guardians are always volunteers and some of these countries have developed a system for the recruitment, training and supervision of the volunteer guardians.<sup>23</sup> The independence of guardians or representatives is not yet guaranteed in all EU Member States, as guardians or representatives are, in some countries, assigned to child protection authorities who play a role in providing care for a child, while immigration authorities are involved in others.<sup>24</sup> In most EU Member States, close relatives act as guardians for children deprived of parental care who are nationals or residents of the country. In the cases of unaccompanied children or child victims of trafficking this is rarely possible. In these cases, guardianship is assigned either to employees of child protection service providers or to third persons who would usually be appointed by a court or another competent authority. In many countries, the migration and residence status of the child has an influence on the type of guardianship and representation provided. The standards and regulations applying to non-national children remain however often unclear, including for children migrating within the EU or EFTA region.<sup>25</sup>

Throughout the European Union, the quality and consistency of the training for guardians differs. Participation in training courses is mandatory only in few Member States. While national laws provide commonly that guardians need to be competent and qualified for their roles, little specification is available to understand what this means and how it can be achieved and monitored in practice.<sup>26</sup> The appointment of a guardian is usually done by a court decision or by other competent judicial authorities. In some cases, the court appoints a competent authority or agency for guardianship and it falls then under the responsibility of this institution to nominate a guardian for each child. The duration of the appointment procedure varies between countries and within countries and can take from a few days to several weeks or months and to over one year.<sup>27</sup> The tasks of guardians are often defined only in rather generic terms under national laws. The FRA study found that the "most common tasks that Member States assign to guardians encompass ensuring that the child receives care, accommodation, education and healthcare, and managing the child's finances and the child's legal representation (i.e. complementing the limited legal capacity of the child). How these tasks are performed varies. Guardians of unaccompanied children are to some extent also involved in decisions on long-term solutions for the child."<sup>28</sup>

While guardians complement the child's limited legal capacity in all civil, administrative or judicial proceedings, the child might require also the support of a lawyer. The national laws of EU Member States remain however mostly silent on the relations between the guardian and the lawyer of a child. The guardian can ensure that the competent authorities appoint a lawyer for the child and authorise the lawyer to act on behalf of the child. The assistance of a lawyer is particularly important for child victims of crime, including children who have been exposed to exploitation and trafficking. The appointment of a lawyer for these children is however not always guaranteed under the national laws of EU Member States. Free legal assistance is subject to means testing in some countries.<sup>29</sup> Legal assistance is also important for children in conflict with the law and child asylum seekers, including those who need to appeal against a first instance decision or judgement.

The monitoring of guardianship services throughout the EU is still rather weak. In all Member States, internal structures are in place for the supervision of guardians. External monitoring falls under the responsibility of judicial or other legal authorities, such as prosecution services, remains however of limited efficiency. Easily accessible complaints mechanisms for children and independent monitoring are not yet in place consistently in EU Member States.<sup>30</sup>

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<sup>23</sup> European Union Agency for Fundamental Rights, [Guardianship systems for children deprived of parental care in the European Union](#), With a particular focus on their role in responding to child trafficking, 2015, pp. 8-9.

<sup>24</sup> European Union Agency for Fundamental Rights, [Guardianship systems for children deprived of parental care in the European Union](#), With a particular focus on their role in responding to child trafficking, 2015, p. 8.

<sup>25</sup> The European Free Trade Association (EFTA) is an intergovernmental organisation set up for the promotion of free trade and economic integration to the benefit of its four Member States Iceland, Liechtenstein, Norway and Switzerland. See: EFTA, [The European Free Trade Association](#), 2011.

<sup>26</sup> European Union Agency for Fundamental Rights, [Guardianship systems for children deprived of parental care in the European Union](#), With a particular focus on their role in responding to child trafficking, 2015, p. 9.

<sup>27</sup> European Union Agency for Fundamental Rights, [Guardianship systems for children deprived of parental care in the European Union](#), With a particular focus on their role in responding to child trafficking, 2015, p. 9.

<sup>28</sup> European Union Agency for Fundamental Rights, [Guardianship systems for children deprived of parental care in the European Union](#), With a particular focus on their role in responding to child trafficking, 2015, p. 9.

<sup>29</sup> European Union Agency for Fundamental Rights, [Guardianship systems for children deprived of parental care in the European Union](#), With a particular focus on their role in responding to child trafficking, 2015, p. 10.

<sup>30</sup> European Union Agency for Fundamental Rights, [Guardianship systems for children deprived of parental care in the European Union](#), With a particular focus on their role in responding to child trafficking, 2015, p. 10.

# GUARDIANSHIP AND REPRESENTATION IN INTERNATIONAL AND EUROPEAN STANDARDS

Guardianship and legal representation for children deprived of parental care is provided for under various international and European standards, including special provisions for unaccompanied asylum seeking children, cross-border child protection cases and child victims of trafficking. In addition to the United Nations, the Council of Europe, the European Union and the Hague Convention on Private International Law have developed relevant regulations and guidance.

## THE CONVENTION ON THE RIGHTS OF THE CHILD AND OTHER UNITED NATIONS STANDARDS

### United Nations Convention on the Rights of the Child

The 1989 UN Convention on the Rights of the Child (CRC) makes reference to legal guardianship mainly in the context of childcare and protection. Legal guardians are mentioned alongside parents, indicating that for children who are deprived of parental care, a legal guardian fulfils the same child rearing and childcare roles as a parent. Reference to legal guardians alongside parents is made in the following contexts:

- >> **ARTICLE 2** on non-discrimination,
- >> **ARTICLE 3** on the best interests of the child,
- >> **ARTICLE 5** on the evolving capacities of the child,
- >> **ARTICLE 14** on the freedom of thought, conscience and religion,
- >> **ARTICLE 18** on parental responsibilities,
- >> **ARTICLE 19** on the protection of children from all forms of violence, exploitation and abuse,
- >> **ARTICLE 21** on adoption,
- >> **ARTICLE 40** on juvenile justice.

The Convention underlines that the State shall respect the responsibilities, rights and duties of parents and legal guardians and support them in fulfilling their tasks. Although the concept of a legal guardian is not explicitly defined in the Convention, the tasks and responsibilities of legal guardians are equated with those of parents in that they provide “appropriate direction and guidance” to the child and are responsible for the child’s “upbringing and development”, with the best interests of the child as a primary concern. While the Convention remains silent on the specific organisation of guardianship services, it affords that the State shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities. To this end, states shall take all appropriate legislative and administrative measures and ensure the development of institutions, facilities and services for the care of children (Articles 3, 5 and 18).

## UN CONVENTION ON THE RIGHTS OF THE CHILD

### ARTICLE 3.2

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

### ARTICLE 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

### ARTICLE 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Article 20, which is the main reference in the Convention concerning children deprived of parental care, does not include any specific provisions on guardianship services. It affords that states shall ensure alternative care for children who are deprived of parental care and, “when considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.” With regard to unaccompanied asylum seeking children and refugees, Article 22 provides the following: “In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention”. This provision, in connection with the right to non-discrimination (Article 2) as a general principle of the Convention, can be read to connect Article 22 and 20 and to afford that unaccompanied asylum seeking children shall be placed in alternative care just as national children.

Article 12.2 affords that children be provided the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly or through a representative. This provision is particularly relevant for the hearing and representation of children in asylum proceedings, in formal best interests’ determinations and any other proceedings. While the child’s guardian or representative has a key role in supporting the child to be heard, the child should also be heard in relation to the selection and performance of his or her guardian.

Considering the important role that a guardian has for a child deprived of parental care, guardianship for unaccompanied children is directly or indirectly relevant for the promotion of the general principles of the Convention, the right to non-discrimination (Article 2), the best interests of the child (Article 3), the right to development (Article 6) and the right to be heard (Article 12).

Other international standards and guidance complement these provisions stipulated in the UN Convention on the Rights of the Child and elaborate in more detail on guardianship services for children deprived of parental care: the UN Guidelines on Alternative Care for Children, the General Comment No. 6 of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of residence, and the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime.

## UN Guidelines for the Alternative Care of Children

The UN Guidelines for the Alternative Care of Children provide guidance for policy and practice on the care and protection of children who are temporarily or permanently deprived of parental care. The Guidelines afford that “no child should be without the support and protection of a legal guardian or other recognized responsible adult or competent public body at any time”.<sup>31</sup>

Decision making on alternative care arrangements for a child should involve full consultation with the child and her or his parents or legal guardian. The child and her or his parents or legal guardian have a right to be informed about available care arrangements and the implications of each option as well as their rights and obligations. The parents or legal guardian are also entitled to be heard and consulted in regard to protection measures and decision-making processes concerning care arrangements. When a child is placed in alternative care, the roles and functions of the caregivers shall be clarified and defined, including with respect to those of the child’s parents or guardians.<sup>32</sup> The case records concerning a child in care could be made available to the child and, if and as appropriate, to the child’s parents or legal guardian. In the latter case, the child’s right to privacy and confidentiality has to be respected and appropriate counselling should be made available.<sup>33</sup>

The concept of a ‘legal guardian’ is used in line with the provisions of the UN Convention on the Rights of the Child and therefore in parallel to that of a parent. As the guidelines relate to the placement of children in alternative care when the parents or legal guardians are unavailable or unable to care for the child, the concept of a legal guardian used in the guidelines refers to the person whom the child is removed or separate from while in alternative care. It is therefore a different concept than the guardian who is tasked to promote the best interests of an unaccompanied child in care.

<sup>31</sup> United Nations General Assembly, Human Rights Council, [Guidelines for the Alternative Care of Children](#), A/HRC/11/L.13, 15 June 2009, par. 19.

<sup>32</sup> United Nations General Assembly, Human Rights Council, [Guidelines for the Alternative Care of Children](#), A/HRC/11/L.13, 15 June 2009, par. 57, 64, 65 and 71.

<sup>33</sup> United Nations General Assembly, Human Rights Council, [Guidelines for the Alternative Care of Children](#), A/HRC/11/L.13, 15 June 2009, par. 111.

## Safe Guard

The Guidelines provide further that there is a need to clarify the legal responsibility for a child whose parents are absent or incapable of making day-to-day decisions in the best interests of the child. In these situations, "a designated individual or competent entity should be vested with the legal right and responsibility to make such decisions in the place of parents, in full consultation with the child". This designated individual or competent entity exercising legal responsibility is close to the concept of a 'guardian' as a person or institution who promotes the best interests of an unaccompanied child.<sup>34</sup>

The Guidelines provide that the "legal responsibility should be attributed by the competent authorities and be supervised directly by them or through formally accredited entities, including non-governmental organizations. Accountability for the actions of the individual or entity concerned should lie with the designating body".<sup>35</sup> If legal responsibility is exercised by an individual, this person "should be reputable ... with relevant knowledge of children's issues, an ability to work directly with children and an understanding of any special and cultural needs of the children to be entrusted to them. They should receive appropriate training and professional support in this regard. They should be in a position to make independent and impartial decisions that are in the best interests of the children concerned and that promote and safeguard each child's welfare."<sup>36</sup>

### The role and responsibilities of the designated person or entity are defined as follows:

- >> **Ensuring** that the rights of the child are safeguarded, in particular, with regard to appropriate care, accommodation, health care, developmental opportunities, psychosocial support, education and language support;
- >> **Ensuring** that the child has access to legal and other representation where necessary, consulting with the child so that the child's views are taken into account by decision-making authorities, and advising and keeping the child informed of his/her rights;
- >> **Contributing** to the identification of a stable solution in the best interests of the child;
- >> **Providing** a link between the child and various organizations that may provide services to the child;
- >> **Assisting** the child in family tracing;
- >> **Ensuring** that, if repatriation or family reunification is carried out, it is done in the best interests of the child;
- >> **Helping** the child to keep in touch with his/her family, if and as appropriate.<sup>37</sup>

In transnational cases, the guidelines recommend that states appoint a guardian as soon as a child is identified to be unaccompanied or otherwise deprived of parental care. The guardian or representative shall be appointed by an organisation responsible for the care and well-being of the child and shall accompany the child throughout the status determination and decision making process.<sup>38</sup> Unaccompanied children outside their country of residence should enjoy the same level of protection and care as national children as the Guidelines apply equally to children who need care while they are outside their country of habitual residence. Equal rights do however not imply equal treatment. The Guidelines underline that the diversity of unaccompanied children requires that due consideration be given to their individual situation and background, including the national, ethnic, cultural, religious and migratory background.<sup>39</sup>

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<sup>34</sup> United Nations General Assembly, Human Rights Council, [Guidelines for the Alternative Care of Children](#), A/HRC/11/L.13, 15 June 2009, par. 101.

<sup>35</sup> United Nations General Assembly, Human Rights Council, [Guidelines for the Alternative Care of Children](#), A/HRC/11/L.13, 15 June 2009, par. 102.

<sup>36</sup> United Nations General Assembly, Human Rights Council, [Guidelines for the Alternative Care of Children](#), A/HRC/11/L.13, 15 June 2009, par. 103.

<sup>37</sup> United Nations General Assembly, Human Rights Council, [Guidelines for the Alternative Care of Children](#), A/HRC/11/L.13, 15 June 2009, par. 104.

<sup>38</sup> United Nations General Assembly, Human Rights Council, [Guidelines for the Alternative Care of Children](#), A/HRC/11/L.13, 15 June 2009, par. 145.

<sup>39</sup> United Nations General Assembly, Human Rights Council, [Guidelines for the Alternative Care of Children](#), A/HRC/11/L.13, 15 June 2009, par. 140-142.

## Committee on the Rights of the Child: General Comment No. 6 (2005)

In its General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of residence, the Committee on the Rights of the Child calls upon states to appoint a competent guardian for each unaccompanied or separated child as expeditiously as possible. The Committee considers the prompt appointment of a guardian a fundamental measure to protect the child from risks of violence and exploitation and to safeguard thereby the child's rights to life, survival and development as afforded under Articles 19 and 6 of the UN Convention on the Rights of the Child. The appointment of a guardian is also a procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child in all formal decision making processes, administrative and judicial proceedings. A child should be referred to the asylum or other procedures only after a guardian has been appointed. Guardianship shall remain active until the child has reached majority or has permanently left the territory and jurisdiction of the state. In addition to the guardian, a legal representative has to be appointed in all cases where separated or unaccompanied children are involved in asylum procedures or other administrative or judicial proceedings.<sup>40</sup> The task of the legal representative is to represent and promote the interests of the child in administrative or judicial proceedings. Legal representation is therefore often assigned to a lawyer.

### According to the Committee's recommendations, the guardian has the following rights and responsibilities:

- >> **Should be consulted and informed** regarding all actions taken in relation to the child;
- >> **Have the authority** to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution;
- >> **Have the necessary expertise** in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered;
- >> **Act as a link** between the child and existing specialist agencies/individuals who provide the continuum of care as required;
- >> **Be present** during all interviews with the child, together with the child's legal representative.<sup>41</sup>

Children should be informed about guardianship services and the arrangements made for their individual situations and their views should be taken into consideration. Guardianship services need to be subject to review and monitoring to ensure quality.<sup>42</sup> The Committee on the Rights of the Child recognises that it can be difficult to ensure guardianship according to these standards in large-scale emergencies where high numbers of children are deprived of parental care. In cases where individual guardians cannot be appointed promptly, states and organisations working with and for these children should be responsible to safeguard and promote the rights and best interests of the children.<sup>43</sup>

Unaccompanied children are entitled to guardianship not only when referred to reception centres for asylum seekers, shelters for child victims, childcare facilities or foster families, but also in exceptional cases of detention. Unaccompanied children might be referred to administrative detention for immigration reasons, because they are in conflict with the law, or for protection purposes in closed childcare centres. In any context where an unaccompanied child is deprived of his or her liberty, the child should have the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel and from their guardian.<sup>44</sup>

<sup>40</sup> United Nations Committee on the Rights of the Child, [General Comment No. 6 \(2005\)](#) on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, par. 21, 24, 33.

<sup>41</sup> United Nations Committee on the Rights of the Child, [General Comment No. 6 \(2005\)](#) on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, par. 33-38.

<sup>42</sup> United Nations Committee on the Rights of the Child, [General Comment No. 6 \(2005\)](#) on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, par. 33-38.

<sup>43</sup> United Nations Committee on the Rights of the Child, [General Comment No. 6 \(2005\)](#) on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, par. 63.

<sup>44</sup> United Nations Committee on the Rights of the Child, [General Comment No. 6 \(2005\)](#) on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, par. 72.



# UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime

The UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime are rooted in international standards and offer guidance for policymaking and practice in justice matters involving child victims and witnesses. Guardianship for child victims and witnesses is mentioned in the context of the right to information. Child victims or witnesses, their parents or guardian and legal representative have to be duly informed about their rights, the procedures and relevant safeguards such as legal advice or representation as well as services available to them.<sup>45</sup>

## GUARDIANSHIP FOR UNACCOMPANIED CHILDREN IN THE EU ASYLUM ACQUIS

The EU asylum acquis provides for the representation of unaccompanied children. Reference is primarily made to representatives, or legal representatives, although the terms “legal adviser or other counsellor” are also used.

### The 2013 Asylum Procedures Directive defines a representative as follows:

*“Representative’ means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of the representative in respect of the unaccompanied minor, in accordance with this Directive.”<sup>46</sup>*

The **2013 Reception Conditions Directive** and the **2013 Dublin III Regulation** adopt the same definition of a representative, whereas other Directives operate without defining the term.<sup>47</sup>

The **2013 Asylum Procedures Directive** and the **2013 Reception Conditions Directive** afford that a representative represents and assists the unaccompanied child as soon as possible. The Asylum Procedures Directive includes a waiver for cases where a child is expected to turn 18 before the first instance decision is taken. In these cases, states can decide not to appoint a representative. Both Directives provide that the child shall be informed immediately of the appointment of a representative and the person acting as representative shall be changed only when necessary. The Reception Conditions Directive notes that continuity of representation is important to ensure the child’s well-being and social development.<sup>48</sup>

The **Asylum Procedures Directive** provides in Article 25 for the guarantees for unaccompanied asylum seeking children and elaborates in this context on the role of representatives. It is an important point of reference for EU legal standards on the representation of children in the asylum procedure.

The representative shall perform his or her duties in accordance with the principle of the best interests of the child and shall have the necessary expertise to do so. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives. (Article 25.1 and 25.2)

Representatives shall be given the opportunity to inform the unaccompanied child about the meaning

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<sup>45</sup> United Nations Economic and Social Council, **Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime**, ECOSOC Resolution 2005/20, 22 July 2005, see Chapter VII.

<sup>46</sup> Directive **2013/32/EU** of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, Article 2(n).

<sup>47</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Article 2(j). Regulation No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin III Regulation), Article 2(k).

<sup>48</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, Article 25.1 and 25.2. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Article 24.1.

and possible consequences of the personal asylum interview and how to prepare for the interview. Member States shall ensure that a representative and/or a legal adviser or other counsellor are present at the interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview. (Article 25.1)

Under the **Asylum Procedures Directive**, asylum seekers, including children, have a right to free legal assistance and representation (Articles 20-23).

The **2011 Qualification Directive** establishes common grounds to grant international protection, including for unaccompanied asylum seeking children.<sup>49</sup> Article 31 establishes the duty to ensure that unaccompanied children granted protection are represented by a legal guardian or, where necessary, by an organisation responsible for the care and well-being of minors.

The **2013 Dublin III Regulation**<sup>50</sup> provides for the representation of unaccompanied children in Article 6.2: "Member States shall ensure that a representative represents and/or assists an unaccompanied minor with respect to all procedures provided for in this Regulation. The representative shall have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. Such representative shall have access to the content of the relevant documents in the applicant's file including the specific leaflet for unaccompanied minors."

The **2008 Return Directive**<sup>51</sup> establishes common standards and procedures for returning persons who have no legal permit of stay. The Directive does not make any reference to guardianship for unaccompanied children prior to or during the return. Article 10.1 provides that before a decision to return an unaccompanied child is issued, the child shall be assisted by appropriate bodies other than the authorities responsible for enforcing return, with due consideration for the best interests of the child. Article 13.3 and 13.4 afford access to legal representation for returnees, without making special reference to unaccompanied children.

In the context of the **reform of the Common European Asylum System**, which is ongoing at the time of writing of this report, the European Commission has published a package of proposals.

The **Proposal for a Regulation establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU**<sup>52</sup> provides for guardianship services under Article 22 on special guarantees for unaccompanied children. The objective of the proposal is to standardise guardianship services throughout the European Union and to ensure that guardians are promptly available and effective to support unaccompanied children in the asylum procedure. The proposal abandons the concept of a 'representative' as previously defined in the Asylum Procedures and Reception Conditions Directives and the Dublin III Regulation. It introduces instead the concept of a 'guardian', which is defined as "a person or an organisation appointed to assist and represent an unaccompanied minor with a view to safeguarding the best interests of the child and his or her general well-being in procedures provided for in this Regulation and exercising legal capacity for the minor where necessary" (Article 4(2)(f)).<sup>53</sup>

Article 22(1) provides that a guardian should be appointed as soon as possible and no later than five working days after the child has filed an application for international protection. An application is considered to have been made as soon as a third-country national or stateless person expresses a wish to receive international protection from a Member State (Article 25(1)).

<sup>49</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.

<sup>50</sup> Regulation No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin III Regulation).

<sup>51</sup> 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.

<sup>52</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, **COM(2016) 467 final**, Brussels, 13 July 2016.

<sup>53</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, **COM(2016) 467 final**, Brussels, 13 July 2016, pp. 15, 26-27.

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The authority responsible for examining the child's application for international protection shall ensure that the child is informed immediately about the appointment of the guardian, while the guardian shall be informed about "all relevant facts, procedural steps and time-limits pertaining to the unaccompanied minor" (Article 22(1) and (2)).

The proposal aims to limit the caseload of a single guardian and provides that a guardian should not be made responsible for a disproportionate number of minors. In addition, it requires states to appoint entities or persons who are responsible to supervise individual guardians and monitor their performance regularly. These entities or persons are also mandated to receive complaints lodged by unaccompanied children against their guardian. (Article 22(5))

The proposal provides certain conditions for the recruitment of a guardian who shall have the required expertise and shall undergo a vetting procedure. Persons or organisations whose interests could potentially conflict with the interests of the child shall be excluded from acting as a guardian. Guardianship shall be provided with continuity to the point that a child's guardian should only be changed when the responsible authority considers that the guardian has not performed his or her tasks adequately.

The role of the guardian is strictly limited to the procedure for seeking international protection, as provided for under the Regulation, and the child's rights and obligations established under the Regulation. The guardian shall perform her or his duties in accordance with the principle of the best interests of the child. A guardian shall inform the child about the meaning and possible consequences of the asylum interview and be present at the interview. The guardian shall have the right to ask questions or make comments during the interview and be supported by a legal adviser or other counsellor, where applicable. (Article 22(5) and (6))

While the proposal introduces several important provisions that are not currently regulated under EU law, such as matters pertaining to prompt appointment, necessary expertise, information, caseload and continuity of guardianship, it remains limited to the child's representation during the asylum procedure. The relation between the guardianship model afforded for under the proposal and the figure of a guardian or equivalent, as afforded under the CRC General Comment No. 6 and other key reference documents remains unclear. While the proposal is concerned with the prompt appointment of a guardian for children who express the wish to apply for international protection, EU Member States are held, under international law, to ensure guardianship services for all unaccompanied children. The support of a guardian is essential to determine whether it is in the best interests of a child to apply for asylum or not. The appointment of a guardian would therefore generally be required promptly after an unaccompanied child gets in contact with the authorities of the state of arrival, and before a decision about the asylum application is taken. To bridge the time and organisational gap between these different phases and contexts of guardianship remains at the discretion of Member States and could potentially lead to confusion and protection gaps.

The provisions of the Proposal for the Regulation cited above are mirrored also in the Proposal for a Directive laying down standards for the reception of applicants for international protection (recast), and the Proposal for a Regulation 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 and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.<sup>54</sup>

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<sup>54</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council 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 and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, [COM\(2016\) 466 final](#), 13 July 2016. European Commission, Proposal for a Directive of the European Parliament and the Council laying down standards for the reception of applicants for international protection (recast), [COM\(2016\) 465 final](#), 13 July 2016.

## EU GUARDIANSHIP REGULATIONS FOR CHILDREN WHO ARE VICTIMS OF CRIME

The **2012 Victims Directive** establishes minimum standards on the rights, support and protection of victims of crime. It ensures that persons who are victims of crime, including children, are recognised as victims and receive appropriate support, protection and access to justice.<sup>55</sup> The Directive makes reference to the guardian or legal representative of a child victim as a procedural safeguard for the child during criminal investigations. The child victim and the holder of parental responsibility or legal representative of the child have a right to information (Article 1.2). The legal representative may accompany the child during criminal investigations (Article 20c). During criminal investigations and proceedings involving child victims, Member States shall ensure that the competent authorities appoint a special representative for child victims who are unaccompanied or where there is a conflict of interests between the holder of parental responsibility and the child victim (Article 24b). Guardianship and representation can be performed by the same person or by a legal person, an institution or authority (Recital 60).

The **2011 Anti-trafficking Directive**<sup>56</sup> provides for guardianship and representation in the context of assistance for child victims of trafficking. Although the terms are not defined, representation is more narrowly focused on the legal representation of the child in criminal investigations and proceedings. The Directive affords that Member States shall appoint a guardian or a representative for a child victim of trafficking from the moment the child is identified by the authorities. This applies to cases where the child's parents are precluded, due to a conflict of interests, from ensuring the child's best interests and/or from representing the child (Article 14). In the cases of unaccompanied or separated children who are identified as victims of trafficking, Member States shall take the necessary measures to ensure that a guardian is appointed (Article 16.3). The purpose of guardianship and representation is to safeguard the best interests of the child (Recital 23).

Child victims of trafficking who are unaccompanied or whose parents are precluded from exercising legal representation due to a conflict of interests, have a right to have a representative appointed who represents the child in criminal investigations and proceedings (Articles 15.1 and 16.4). Legal representation of child victims of trafficking shall be free of charge (Article 15.2).

As the Victims Directive, also the Anti-trafficking Directive clarifies that guardianship or representation can be exercised by the same person, or by a legal person, an institution or authority (Recital 24).

## GUARDIANSHIP FOR UNACCOMPANIED CHILDREN IN COUNCIL OF EUROPE STANDARDS

The Council of Europe Convention on Action against Trafficking in Human Beings (2005) provides for measures to prevent and identify trafficking in human beings, assist victims and prosecute perpetrators. In the context of victim identification, the Convention affords that unaccompanied children who are identified as victims of trafficking have a right to be represented, and that representation can be exercised by a legal guardian, an organisation or authority, which shall act in the best interests of that child (Article 10(4)(a)).

<sup>55</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JH.

<sup>56</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

# GUARDIANSHIP FOR CHILDREN IN INTERNATIONAL CIVIL LAW AND PRIVATE LAW

International private and civil law applies to transnational cases of child protection and family matters, such as parental responsibility and contact or inter-country parental child abduction. Within the EU, the 2003 Brussels II bis Regulation applies while the Conventions of the Hague Conference on Private International Law provide standards for transnational child protection in the private law field with State Parties all over the world. These instruments provide standards on how to establish or transfer the jurisdiction in cross-border child protection cases. They also regulate the recognition and enforcement of court decisions taken in another country.

The **2003 Brussels II bis Regulation**<sup>57</sup> applies to civil law matters relating to parental responsibility and, in this context, also matters of guardianship, as well as the designation and functions of a person or body who represents or assists the child (Article 1). **The 1996 Hague Convention on Child Protection**<sup>58</sup> defines its scope in analogue terms (Articles 1 and 2). It subsumes guardianship under the concept of parental authority (Article 1(2)). Guardians are therefore understood to exercise the rights and duties of parents.

The Brussels II bis Regulation and the Hague Convention both provide that the country of habitual residence holds the jurisdiction in international child protection and family law cases. The concept of habitual residence has however not been defined and allows therefore a margin of interpretation. Children who are applying for asylum or whose habitual residence cannot be determined are exempted from this rule and the state where the child is identified holds the jurisdiction of the case (1996 Hague Child Protection Convention Article 6 as well as Brussels II bis Regulation, Article 13).

## CONCLUSIONS ON THE INTERNATIONAL AND EUROPEAN NORMATIVE FRAMEWORK ON GUARDIANSHIP AND REPRESENTATION FOR UNACCOMPANIED CHILDREN

International and European standards provide an important normative framework for guardianship services and representation of unaccompanied children. The existing standards and guidance focus mostly on the need to appoint a guardian for an unaccompanied child as well as the guardian's tasks. Some sources provide further details about the supervisory guardianship authority or key principles of guardianship. International and European standards remain however largely silent on quality standards of guardianship, the responsibility of the state in this context and how state authorities and service providers can ensure accountability.

A review of international and European standards and guidance concerning guardianship and representation for unaccompanied children reveals the strong normative power of these standards. While the UN Refugee Convention from 1951 remains silent on guardianship for unaccompanied and separated children, the UN Convention on the Rights of the Child (1989), the General Comment No. 6 (2005) of the Committee on the Rights of the Child and the UN Guidelines for the Alternative Care of Children (2011) have each had an important influence from within the United Nations to strengthen the rights of children who seek asylum alone. They have been significant to raise awareness of the importance of guardianship services within broader standards for childcare and protection, and to develop more specific standards.

Against this background, standards on guardianship and representation have gradually been introduced and strengthened in EU law and policies. This process of law reform has then proceeded at the national

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<sup>57</sup> Council Regulation (EC) No **2201/2003** of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. The Regulation applies in all EU Member States, except Denmark.

<sup>58</sup> **The Hague Convention of 19 October 1996** on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children.

level of EU Member States. The discussion of country examples in Part III will show that the reform promoted within the European asylum acquis has led to significant law reform at the national level of EU Member States who are held to transpose the EU Directives into national law and ensure that relevant Regulations are applied in practice.

The table in the next chapter provides a comparative overview of selected standards and guidance on guardianship for unaccompanied children: From the context of the European civil society advocating for stronger guardianship services, the 10 Core Standards for Guardians developed in 2011 by a group of non-governmental organisations led by Defence for Children International; the key elements of guardianship services defined by the Committee on the Rights of the Child in 2005; relevant guidance from the UN Guidelines for the Alternative Care of Children from 2011; and the Fundamental Principles of Guardianship developed by the European Agency for Fundamental Rights in 2014.

At first sight, the table reveals that each set of standards and principles addresses important elements of guardianship services. When confronting the four sets of standards, none appears to be complete in its own right. Together, they complement each other and create a stronger synergy as each adds important aspects to a more comprehensive picture of the elements required for effective guardianship services.

# INTERNATIONAL GUIDANCE ON GUARDIANSHIP AT A GLANCE:

	10 CORE STANDARDS FOR GUARDIANS <sup>59</sup>	UN GUIDELINES FOR THE ALTERNATIVE CARE OF CHILDREN: Roles and responsibilities of the designated person/entity <sup>60</sup>
TIME OF APPOINTMENT		In transnational cases, the guidelines recommend that states appoint a guardian as soon as a child is identified to be unaccompanied or otherwise deprived of parental care (par. 145).
INSTITUTIONAL RESPONSIBILITY FOR APPOINTMENT		The guardian or representative shall be appointed by an organisation responsible for the care and well-being of the child (par. 145).
SUPERVISION, MONITORING AND ACCOUNTABILITY	Standard 10: The guardian is accountable and is open to supervision and monitoring.	The legal responsibility should be attributed by the competent authorities and be supervised directly by them or through formally accredited entities, including non-governmental organizations. Accountability for the actions of the individual or entity concerned should lie with the designating body (par. 102).
PROMOTING THE BEST INTERESTS OF THE CHILD	Standard 1: The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.	A "designated individual or competent entity should be vested with the legal right and responsibility to make such decisions [in the best interests of the child] in the place of parents, in full consultation with the child" (par. 101). Individuals exercising legal responsibility over a child should be in a position to make independent and impartial decisions that are in the best interests of the child concerned and that promote and safeguard each child's welfare (par. 103). The designated person or entity should ensure that, if repatriation or family reunification is carried out, it is done in the best interests of the child (par. 104(f)).
ENSURE CHILD PARTICIPATION AND THE RIGHT TO BE HEARD	Standard 2: The guardian ensures the child's participation in every decision, which affects the child.	A "designated individual or competent entity should be vested with the legal right and responsibility to make such decisions [in the best interests of the child] in the place of parents, in full consultation with the child" (par. 101). The designated person or entity should ensure that the child has access to legal and other representation where necessary, consult with the child so that the child's views are taken into account by decision-making authorities, and advise and keep the child informed of his/her rights (par. 104(b)).
CHILD PROTECTION	Standard 3: The guardian protects the safety of the child.	

<sup>59</sup> Defence for Children The Netherlands, **Core Standards for Guardians of Separated Children in Europe**, Closing a Protection Gap, 2011, pp. 5-6.

<sup>60</sup> United Nations General Assembly, Human Rights Council, **Guidelines for the Alternative Care of Children**, A/HRC/11/L.13, 15 June 2009, par. 104.

# COMPARATIVE OVERVIEW

## CRC GENERAL COMMENT N° 6: Rights and responsibilities of guardians<sup>61</sup>

Appointment of a competent guardian as expeditiously as possible (par. 21).  
A child should be referred to the asylum or other procedures only after a guardian has been appointed (par. 33).

Guardianship services need to be subject to review and monitoring to ensure quality (par. 35).

The appointment of a guardian is a procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child (par. 33).

Children should be informed of guardianship services and arrangements and their views should be taken into consideration (par. 37). The guardian should be consulted and informed regarding all actions taken in relation to the child. The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution (par. 33).

Practical measures should be taken at all levels to protect children from risks of violence and exploitation or involvement in criminal activities; such measures could include, among others, the prompt appointment of guardians (par. 24).

## FRA Handbook: Fundamental principles of guardianship<sup>62</sup>

Guardianship and legal representation should be regulated by law with clear definition of the duties and functions of guardians and under the leadership of a designated authority or institution. Guardianship should be subject to regular monitoring, including independent monitoring, and the guardianship authority should be held accountable for the performance of guardians.

**Independence and impartiality:** Guardians and legal representatives must carry out their tasks in an impartial and independent way, guided by the best interests of the child.

**Participation:** Services for guardianship and legal representation and the related procedures should ensure that the views of the child are being heard and taken into account and that children are informed about the relevant rights and procedures. Children should be informed and enabled to access suitable complaints mechanisms when guardianship and representation arrangements are not respecting their rights.

### APPOINTMENT OF THE GUARDIAN

### THE ROLE AND RESPONSIBILITIES OF THE GUARDIAN

### PROMOTING THE BEST INTERESTS OF THE CHILD

<sup>61</sup> United Nations Committee on the Rights of the Child, **General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin**, CRC/GC/2005/6, par. 33-38.

<sup>62</sup> European Union Agency for Fundamental Rights, **Guardianship for Children Deprived of Parental Care, A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking**, 2014, pp. 26-28.



## 10 CORE STANDARDS FOR GUARDIANS

## UN GUIDELINES FOR THE ALTERNATIVE CARE OF CHILDREN: Roles and responsibilities of the designated person/entity

CHILD RIGHTS ADVOCATE	Standard 4: The guardian acts as an advocate for the rights of the child.	The designated person or entity should ensure that the rights of the child are safeguarded, in particular, with regard to appropriate care, accommodation, health care, developmental opportunities, psychosocial support, education and language support (par. 104(a)).
LINK BETWEEN CHILD AND AUTHORITIES OR SERVICES	Standard 5: The guardian is a bridge between and focal point for the child and other actors involved.	The designated person or entity should provide a link between the child and various organizations that may provide services to the child; assist the child in family tracing; and help the child to keep in touch with his/her family, if and as appropriate (par. 104(d), (e) and (g)).
DURABLE SOLUTION	Standard 6: The guardian ensures the timely identification and implementation of a durable solution.	The designated person or entity should contribute to the identification of a stable solution in the best interests of the child (par. 104(c)). The guardian or representative shall accompany the child throughout the status determination and decision making process (par. 145).
DIGNITY AND RESPECT	Standard 7: The guardian treats the child with respect and dignity.	
TRUSTED RELATIONSHIP	Standard 8: The guardian forms a relationship with the child built on mutual trust, openness and confidentiality.	
ACCESSIBILITY	Standard 9: The guardian is accessible.	
PROFESSIONAL KNOWLEDGE, SKILLS AND TRAINING	Standard 10: The guardian is equipped with relevant professional knowledge and competences.	If legal responsibility is exercised by an individual, this person "should be reputable ... with relevant knowledge of children's issues, an ability to work directly with children and an understanding of any special and cultural needs of the children to be entrusted to them. They should receive appropriate training and professional support in this regard." (par. 103).
NON-DISCRIMINATION		Unaccompanied children outside their country of residence should enjoy the same level of protection and care as national children and the Guidelines apply equally for children who need care while they are outside their country of habitual residence. The diversity of unaccompanied children requires that due consideration be given to their individual situations and backgrounds, including their national, ethnic, cultural, religious and migratory backgrounds (par. 140-142).
CONTINUITY		
SUSTAINABILITY		
INDEPENDENCE AND IMPARTIALITY		Individuals acting as guardians of unaccompanied children should be in a position to make independent and impartial decisions that are in the best interests of the children concerned and that promote and safeguard each child's welfare (par. 103).

**CRC GENERAL COMMENT N° 6:  
Rights and responsibilities  
of guardians**

**FRA Handbook:  
Fundamental principles  
of guardianship**

The guardian and the legal representative should be present during all interviews with the child (par. 33; 72). The guardian or adviser should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered (par. 33).

The guardian should act as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child (par. 33).

The guardian or adviser should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered (par. 33).

Guardianship shall remain active until the child has reached majority or has permanently left the territory and jurisdiction of the state (par. 33).

**Quality** :Guardians and legal representatives have to be qualified to perform their tasks and receive appropriate training.

**Non-discrimination**: All children deprived of parental care and family environment have the same rights with regard to guardianship and legal representation. Comparable standards of guardianship should be in place in different regions within countries and throughout the EU.

**Sustainability**: Guardianship and legal representation should be integrated into the national child protection system and equipped with sufficient human and financial resources.

**Independence and impartiality** :Guardians and legal representatives must carry out their tasks in an impartial and independent way, guided by the best interests of the child.

**THE GUARDIAN  
AND THE  
SEPARATED CHILD**

**THE  
QUALIFICATION OF  
THE GUARDIAN**

**THE  
ORGANIZATION OF  
THE GUARDIANSHIP  
SERVICE**

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# PART III

## NATIONAL GUARDIANSHIP SERVICES: COUNTRY PROFILES

This chapter provides a brief overview of guardianship services in EU Member States that are main countries of arrival of asylum seekers, including unaccompanied asylum seeking children. The country profiles discuss key aspects of guardianship services for unaccompanied children. The leading interest was to understand what a 'systemic' approach to guardianship could all imply and to document achievements and challenges that different countries are facing in their specific approaches to guardianship.

A 'systemic' approach is understood to be integrated or linked with mainstream services for childcare and protection, to be evidence-informed, rights-based and in line with quality standards, to offer important safeguards such

as transparency, monitoring and evaluation, mechanisms for reporting gaps or abuses and for holding responsible authorities accountable. Systemic approaches aim to integrate specific measures into a broader system of institutions, services and structures in order to achieve a more holistic perspective of the child's situation and to offer a continuity of services for prevention, protection and empowerment. For the context of guardianship services, a systemic approach would promote the best interests and the well-being of the child and the child's right to be heard and to have his/her views taken into account, within a broader set of measures aimed to ensure the care, protection and development of the children concerned.

The country profiles in this chapter are based on a review of reports on guardianship services for unaccompanied children, the protection of migrant children and the reception of asylum seeking children. In addition, key informant interviews with leading institutions and experts in each country have significantly enriched and updated the national profiles.<sup>63</sup>

**The country profiles are deliberately kept short and focused on the following key questions in relation to guardianship services for unaccompanied children:**

- >> Which children are entitled to the support from a guardian?
- >> Who can act as a guardian?
- >> What are the tasks of a guardian?
- >> How appropriate is the training and qualification of guardians?
- >> Have national standards for guardianship been defined?
- >> Are there mechanisms for supervision, monitoring and accountability?
- >> How prompt is the appointment of the guardian and first contact with the child?
- >> To what extent are guardianship services connected to or integrated into mainstream services for childcare, protection and welfare?

An additional interest was to observe if more systemic approaches could make it easier for states to offer guardianship services with continuity even when the number of arriving unaccompanied children increases significantly.

## AUSTRIA

When an unaccompanied child is identified at the border or within Austria, the Children and Youth Service has to be notified immediately. The Children and Youth Service is generally responsible for taking children into care who are deprived of parental care. It acts as a provisional guardian for children under 18 years old who are taken into care, regardless of whether the child is a national or resident of Austria or a non-national.<sup>64</sup> This procedure is however not followed consistently for unaccompanied asylum seeking children.

Upon arrival in Austria, all asylum seekers, including unaccompanied children, are at first referred to a mass accommodation centre operated by the Federal State. During their stay at this large-scale reception centre, the unaccompanied children are registered and many undergo an age assessment. A process follows to determine whether Austria or another state is responsible to receive the asylum application. During their stay in the mass accommodation centres, which can take many months, unaccompanied children are not under the care of the Children and Youth Services and receive only basic services and emergency assistance from the Ministry of the Interior. In the absence of a guardian's support during this period, it is practically impossible for unaccompanied children to access social support services, sports or social activities. The support from a guardian is foreseen only in the context of the asylum procedure. The process for appointing a guardian, assessing the needs and risks of the child and providing appropriate services starts only once that the child is assigned and relocated to one of the federal states, the Bundesländer, where the local Children and Youth Service takes the child into care.<sup>65</sup>

Within eight days after the child has been taken into care within a municipality, the Children and Youth Service has to hand in an application to the competent court to appoint a guardian for the child. As of the age of 14, children are also entitled to apply directly to the court to request the appointment of a guardian. The court appoints usually the Children and Youth Service as guardian, although guardianship, or partial guardianship, could also be assigned to a foster parent or to the child's parents or relatives if they are

<sup>63</sup> In each country, three key informant interviews were conducted as telephone interviews in the period between May and July 2016. The key informant interviews are referenced through half-anonymised citation, as agreed with each key informant, except where agreements were made otherwise. Some of the key informants have responded to the interview questions in writing. All key informants were invited to review the draft report and their comments have been taken into account prior to publication.

<sup>64</sup> Aliens Police Act, Article 12, paragraph 4. Austrian Civil Code, Article 207. See: Koppenberg, Saskia, Unaccompanied Minors in Austria, Legislation, Practices and Statistics, International Organisation for Migration, 2014, p. 35..

<sup>65</sup> Interview Asylkoordination, Austria, 8 June 2016.

## Safe Guard

available and suitable. The appointment procedure can take up to six months as the Children and Youth Service might delay their application to the court when parents or relatives cannot be located or when they are not certain that the child will stay in Austria. Delays can also be caused by the decision making process of the competent court. As the numbers of unaccompanied children seeking asylum has increased notably since 2011, the children spend longer times in the first reception centre before being relocated to the municipalities, which leads to additional delays in the appointment of guardians. In the waiting period, the Children and Youth Service can take measures and decisions related to the care and education of the child only in regard to emergencies or obvious threats to the health and safety of the child. Services that are tailor-made to the specific situation, needs and risks of a boy or girl are not provided in this period. As a result, the child does not have access to critical services in support of her or his well-being, social integration and personal development before a guardian has been appointed.<sup>66</sup>

Under the Austrian Civil Code, the Children and Youth Service responsible to provide guardianship for a child is determined according to the child's place of residence or habitual residence. Habitual residence is understood to have lasted at least for six consecutive months. This condition was sustained by a judgement of the Supreme Court on the basis of the 1996 Hague Child Protection Convention, which determines generally that the state where the child has his or her habitual residence has the jurisdiction over the child's case. In practice, this position leads to difficulties of assigning guardians to unaccompanied children under certain circumstances.<sup>67</sup> Such a limited interpretation of the Hague Convention and its application to asylum seeking children is at least questionable as the cases of refugee children are considered to be exempted from international private law.<sup>68</sup>

The Children and Youth Service is a decentralised authority that operates locally within municipalities or local districts and is regulated by the regional laws of the Bundesländer. As there are no unified national guidelines for guardianship services nor relevant quality standards, the devolution of competences leads to a fragmentation of standards in law and practice and disparities in service provision among the various Bundesländer. In addition, the availability of human and financial resources and the degree of personal engagement of guardians differs from place to place.<sup>69</sup>

Under international and European standards, guardians are mandated to promote the best interests of the unaccompanied child they assist. In order to render this concept more tangible and concrete, the Austrian Civil Code was amended in 2013 by a detailed description of the best interests of the child. Article 138 of the Civil Code affords that in all matters concerning a child, in particular matters of parental responsibility and personal contact, the best interests of the child have to be a primary consideration and are to be promoted the best possible. When assessing and determining the best interests of the child, the following aspects are to be considered:

- »» Appropriate provision of basic services such as accommodation, food, medical and sanitary care and careful upbringing of the child;
- »» Welfare and care for the child, a sense of security and protection of the physical and emotional integrity of the child;
- »» Appreciation and acceptance of the child by the parents;
- »» Promotion of the child's talents, skills and capacities, disposition and potentials for development;
- »» Consideration for the opinion of the child in relation to the child's understanding and capacity to form an opinion;
- »» Preventing that the child experiences harm as a result of measures that are implemented against the child's will;
- »» Preventing the risk that the child gets exposed to acts of violence or assault or witnesses such acts against persons who are important for the child;

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<sup>66</sup> Austrian Civil Code, Article 211, paragraph 1, Articles 209 and 211. Cited in: Koppenberg, Saskia, Unaccompanied Minors in Austria, Legislation, Practices and Statistics, International Organisation for Migration, 2014, p. 36. Fronek, Heinz.

<sup>67</sup> Austrian Civil Code Article 212. Interview Asylkoordination, Austria, 8 June 2016. Koppenberg, Saskia, Unaccompanied Minors in Austria, Legislation, Practices and Statistics, International Organisation for Migration, 2014, p. 36.

<sup>68</sup> 1996 Hague Child Protection Convention Article 6 as well as Brussels II bis Regulation, Article 13.

<sup>69</sup> Fronek, Heinz, Rothkappel, Marie, Implementing the Core Standards for Guardians of Separated Children in Europe Country Assessment: Austria, Defence for Children-ECPAT The Netherlands, 2013, p. 21. Koppenberg, Saskia, Unaccompanied Minors in Austria, Legislation, Practices and Statistics, International Organisation for Migration, 2014, pp. 36-37. Koppenberg, Saskia, Austria, Annual Policy Report 2014, European Migration Network, International Organisation for Migration, 2014, p. 37.

- »» Preventing the risk of illegal removal or retention of the child, or other forms of harm;
- »» Reliable contact between the child and both parents as well as other persons who are important for the child, and safe attachment between the child and these persons;
- »» Preventing that the child experiences conflicts of loyalty or feelings of guilt;
- »» Safeguarding the rights, entitlements and interests of the child; as well as
- »» The living situations and conditions of the child, his or her parents and the environment.<sup>70</sup>

This list of aspects to be taken into consideration, although non-exhaustive, provides a very strong and concrete orientation for guardians, caretakers and decision-makers tasked to promote the best interests of a child.

Further to this overarching framework, the Austrian Civil Code regulates also the specific tasks of guardians. They include ensuring that the child receives care and education, management of the child's property and legal representation.<sup>71</sup> Unaccompanied children are usually accommodated in reception facilities where care and education is provided. As the legal representation requires professional expertise in the area of immigration and asylum law, this task is commonly handed over to professional lawyers.<sup>72</sup> When the Children and Youth Service acts as a guardian, the Service is entitled to hand over certain guardianship tasks to third parties, as for instance the care for the child to a reception centre or care facility. The overall responsibility remains however with the Children and Youth Service.<sup>73</sup>

Since 2014, unaccompanied children who do not apply for asylum are also entitled to legal representation in matters concerning their immigration status when their guardians are not in a position to ensure appropriate representation.<sup>74</sup>

Guardians have no specific reporting obligations to the court, or other competent body, that appointed them. Standards for case documentation by guardians have been introduced only recently since the entry into force of the 2013 revised youth welfare law. Social workers who act as guardians report within their department and are subject to internal supervision. An external monitoring mechanism of guardianship services is not in place, although the competent courts could be approached in cases of inadequate performance of guardians.<sup>75</sup>

Most of the guardians supporting unaccompanied children are professional social workers employed by the Children and Youth Service. Training and capacity building for guardians assisting unaccompanied children is provided but a harmonised approach to the training of guardians has not yet been developed. More training courses would be required, also because the number of unaccompanied children who arrive in Austria has been increasing for some years.<sup>76</sup>

In November 2014, the Austrian Ombudsman Board launched an investigation into the situation of unaccompanied asylum seeking children in Austria. The findings were presented in February 2015 and noted several shortcomings in the care and reception standards. With regard to guardianship, the investigation recommended that guardianship services by the Children and Youth Services is initiated immediately when a child arrives in the mass accommodation of the first reception centre operated by the Federal State. The support of a guardian is essential to safeguard the rights of unaccompanied children from the first contact and before the children are distributed to the municipalities.<sup>77</sup>

The provision of guardianship services in practice is challenged by the limited resources available within the Child and Youth Service to support the guardians in implementing their tasks effectively. The allocated budget differs from place to place and does not suffice to cover prevention and support services for unaccompanied children to the same extent as this would be possible for national and resident children in Austria. The underlying reason is that, as of the age of 14 years, unaccompanied asylum seeking children

<sup>70</sup> The Austrian Civil Code, Article 138.

<sup>71</sup> Austrian Civil Code, Articles 160-169.

<sup>72</sup> Koppenberg, Saskia, Unaccompanied Minors in Austria, Legislation, Practices and Statistics, International Organisation for Migration, 2014, p. 37.

<sup>73</sup> European Union Agency for Fundamental Rights, Guardianship systems for children deprived of parental care in the European Union, With a particular focus on their role in responding to child trafficking, 2015, p. 24.

<sup>74</sup> Federal Office for Immigration and Asylum Procedures Act, Article 10, paragraphs 3 and 4. Koppenberg, Saskia, Austria, Annual Policy Report 2014, European Migration Network, International Organisation for Migration, 2014, p. 37..

<sup>75</sup> Fronek, Heinz, Rothkappel, Marie, Implementing the Core Standards for Guardians of Separated Children in Europe Country Assessment: Austria, Defence for Children-ECPAT The Netherlands, 2013, pp. 18, 22, 26.

<sup>76</sup> Interview Asylkoordination, Austria, 8 June 2016.

<sup>77</sup> Koppenberg, Saskia, Austria, Annual Policy Report 2014, European Migration Network, International Organisation for Migration, 2014, p. 37..

receive only the most basic social welfare benefits, which are lower than the social welfare rates granted as part of the mainstream Child and Youth Welfare Services for national and resident children. Services for preventive health and social care, for social integration, educational support and personal development of unaccompanied children are therefore limited. Children who are younger than 14 years old are however integrated into the mainstream Child and Youth Welfare Services and have therefore access to the same scope and quality of services as national children.<sup>78</sup>

Disparities exist also with regard to the caseload of caretakers for national and resident children (8-10 children per guardian) and those supporting asylum seeking children (approximately 10-20 children per caretaker in the basic care facility).<sup>79</sup> Currently, there are no binding regulations of how often a guardian has to meet with each child.<sup>80</sup> These differences create structural disadvantages for unaccompanied children and their guardians and risk that guardianship services remain overburdened and ineffective specifically in light of the high numbers of unaccompanied children who have arrived in Austria.

Research and consultations with unaccompanied children in Austria revealed that many children are not aware of the fact that they have a guardian nor are they informed about the role and responsibilities of their guardian. There are no reliable mechanisms to ensure that the views of children inform the decisions made by the child's guardian or that guardians inform children about relevant procedures and decisions. Among the children who are in contact with the guardian and aware of his or her role, many feel that their views are not being considered in an appropriate way by their guardians.<sup>81</sup> A positive initiative practiced in some locations is for the guardian to meet the child even before the formal appointment as a guardian. This meeting is arranged together with childcare staff and an interpreter, where necessary. The first contact helps the guardian and the child to get to know each other and for the child to get the contact details of the guardian. It has however also been reported that regular follow-up meetings do not necessarily take place and the first meeting between guardian and child might in fact remain the only one.<sup>82</sup>

Guardianship ends when a child turns 18 years old or leaves the country. For children who remain in Austria after their 18th birthday, the federal law provides the possibility to offer continued educational assistance. While this option is used for national and resident children who leave care, it is hardly applied for unaccompanied children in their transition into adulthood and independent life.<sup>83</sup>



## GERMANY

In Germany, the Youth Office is responsible for childcare and protection, including the care of unaccompanied children. It is a decentralised authority that operates locally as part of municipal administrations. When a non-national child is identified to be unaccompanied, for instance by the police, the local Foreigners' Department or border guards, the first referral is made to the Youth Office, regardless of whether the child is an EU citizen or a third country national and irrespective of whether the child aims to apply for asylum or not.<sup>84</sup> Since October 2005, the Youth Office has been entitled and obliged under the Social Code to take non-national children into care when the child has no accompanying parent or caretaker and when a legal guardian cannot be identified in Germany.<sup>85</sup> Taking the child into care is a temporary protection measure, which is followed by case assessments and the appointment of a guardian without delay is required by law. The competent body for appointing guardians is the Family Court.<sup>86</sup> The approach to guardianship for

<sup>78</sup> Interview Asylkoordination, Austria, 8 June 2016.

<sup>79</sup> Interview Asylkoordination, Austria, 8 June 2016.

<sup>80</sup> Fronek, Heinz, Rothkappel, Marie, Implementing the Core Standards for Guardians of Separated Children in Europe Country Assessment: Austria, Defence for Children-ECPAT The Netherlands, 2013, p. 30.

<sup>81</sup> European Union Agency for Fundamental Rights, Separated, Asylum-Seeking Children in European Union Member States – Comparative Report, 2010, p. 52. Fronek, Heinz, Rothkappel, Marie, Implementing the Core Standards for Guardians of Separated Children in Europe Country Assessment: Austria, Defence for Children-ECPAT The Netherlands, 2013, pp. 23-24. Koppenberg, Saskia, Unaccompanied Minors in Austria, Legislation, Practices and Statistics, International Organisation for Migration, 2014, p. 38.

<sup>82</sup> Fronek, Heinz, Rothkappel, Marie, Implementing the Core Standards for Guardians of Separated Children in Europe Country Assessment: Austria, Defence for Children-ECPAT The Netherlands, 2013, p. 36.

<sup>83</sup> Fronek, Heinz, Rothkappel, Marie, Implementing the Core Standards for Guardians of Separated Children in Europe Country Assessment: Austria, Defence for Children-ECPAT The Netherlands, 2013, p. 32.

<sup>84</sup> Müller, Andreas, **Unaccompanied Minors in Germany**, Focus Study by the German National Contact Point for the European Migration Network (EMN), Federal Office for Migration and Refugees, Working Paper 60, 2014, pp. 15, 16.

<sup>85</sup> Social Code Book VIII, Section 42, subsection 1, sentence 1 (3) 3. Müller, Andreas, **Unaccompanied Minors in Germany**, Focus Study by the German National Contact Point for the European Migration Network (EMN), Federal Office for Migration and Refugees, Working Paper 60, 2014, p. 16.

<sup>86</sup> Social Code Book VIII, Section 42, subsection 3, sentence 4. Müller, Andreas, **Unaccompanied Minors in Germany**, Focus Study by the German National Contact Point for the European Migration Network (EMN), Federal Office for Migration and Refugees, Working Paper 60, 2014, p. 34.

unaccompanied children is therefore embedded into national childcare and welfare policies, although the implementation in practice is challenged in many different ways.

While an unaccompanied child is in temporary care, the Youth Office is entitled and obliged to act as legal representative of the child, with the primary aim to initiate all relevant procedures that are required to promote the best interests of the child. Legal representation must be coordinated with the holder of parental responsibility and has to involve the child him/herself.<sup>87</sup> This phase of temporary care and provisional representation by the Youth Office has been conceived to last only a short time. For unaccompanied children, a period of up to several weeks has been envisaged for the temporary care. During this period, the appointment of a permanent guardian is not necessarily required.<sup>88</sup> The temporary care ends with the child's referral to his/her parent or caretaker, the appointment of a permanent guardian or the redistribution to another location where the child is taken into permanent care.<sup>89</sup>

When an unaccompanied child has parents abroad, the Family Court is obliged under the Civil Code to suspend or limit parental responsibility as a precondition for the appointment of a permanent guardian. This procedure applies to national and non-national children alike. In the cases of non-national children, however, the Youth Office has usually little or no information about the whereabouts of the child's parents or the quality of the family relations. When a child is in good contact with the parents, it can be almost impossible for the Family Court to remove or limit parental responsibility as a precondition for appointing a legal guardian.<sup>90</sup> The appointment of a guardian is easier when a child declares not to have parents or to have lost contact. While this indiscriminate approach to guardianship, as afforded under the Civil Code, foresees the same procedures for each child regardless of the child's nationality and habitual residence, it can create a disadvantage for non-national children. It is nonetheless considered sensible for cases of children who are travelling alone with the consent and support of their parents, as for instance adolescents travelling for study purposes, who do not require guardianship support.

In light of these challenges, Family Courts tend to order a limitation or suspension of parental responsibilities in order to proceed with the appointment of a guardian. In the cases of unaccompanied children, Family Courts might rule that matters of childcare, immigration status and asylum as well as health care fall under the responsibility of the guardian. According to the Civil Code, the parental responsibility of a parent is suspended when the Family Court establishes that the parent is not in a position to exercise parental responsibility for a long period of time due to factual obstacles. The parental responsibility is activated again when the Family Court determines that the ground for suspension is no longer given.<sup>91</sup>

An important precondition for guardians to exercise their mandate is that each child is informed about the purpose of guardianship and has an opportunity to get to know and trust his or her guardian. Children should be able to contact their guardians and need to be informed about the guardian's confidentiality obligations. In practice, this is not always guaranteed and children are not always aware of the fact that they have a guardian. Although children would be entitled to be heard in the selection of their guardian, they are rarely aware of or able to exercise this right.<sup>92</sup>

Many children have to wait before getting in contact with the guardian and before they can count on the guardian's effective support. There are different reasons to this. While the stark increase of cases and the limited capacities of the Youth Offices play a role, there can also be delays in the appointing procedure by the Family Court or Youth Offices struggle to ensure prompt follow-up to the court's decision. A

<sup>87</sup> Bundesfachverband Unbegleitete Minderjährige Flüchtlinge e.V. [Federal Association for Unaccompanied Asylum Seeking Children], *Vorläufige Inobhutnahme – Was ändert sich zum 01.11.2015? Eine Arbeitshilfe des Bundesfachverbands UMF über das Gesetz und die Gesetzesbegründung* [Temporary Care – Changes as of 1 November 2015; A practical guide by the Federal Association to the law and its explanatory memorandum], Berlin, 19 October 2015, pp. 2-3. Katzenstein, Henriette, Nerea González Méndez de Vigo and Thomas Meysen, *Das Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher, Ein erster Überblick* [The law on the improvement, accommodation, care and support of non-national children and adolescents, A first oversight], Jugendamt, Heft 11, 2015, p. 535.

<sup>88</sup> Interview with Henriette Katzenstein, German Institute for Youth and Family Law, 5 July 2016.

<sup>89</sup> Bundesfachverband Unbegleitete Minderjährige Flüchtlinge e.V. [Federal Association for Unaccompanied Asylum Seeking Children], *Vorläufige Inobhutnahme – Was ändert sich zum 01.11.2015? Eine Arbeitshilfe des Bundesfachverbands UMF über das Gesetz und die Gesetzesbegründung* [Temporary Care – Changes as of 1 November 2015; A practical guide by the Federal Association to the law and its explanatory memorandum], Berlin, 19 October 2015, pp. 2-3. Katzenstein, Henriette, Nerea González Méndez de Vigo and Thomas Meysen, *Das Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher, Ein erster Überblick* [The law on the improvement, accommodation, care and support of non-national children and adolescents, A first oversight], Jugendamt, Heft 11, 2015, p. 535.

<sup>90</sup> Civil Code, Sections 1674 and 1773. Müller, Andreas, *Unaccompanied Minors in Germany*, Focus Study by the German National Contact Point for the European Migration Network (EMN), Federal Office for Migration and Refugees, Working Paper 60, 2014, p. 34..

<sup>91</sup> German Civil Code, Section 1674. Interview with Henriette Katzenstein, German Institute for Youth and Family Law, 5 July 2016.

<sup>92</sup> Interview with Karsten Laudien, Protestant University of Applied Sciences, Berlin, Germany, 31 May 2016. Interview Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, Germany, 19 May 2016.



delayed appointment or first contact between the child and the guardian can create obstacles for children to access education, to leave the mass accommodation facilities and move into more child-friendly placements or to receive medical services. Delays in the appointment procedure obstruct also the child's access to the asylum procedure, as guardians are formally responsible for handing in the child's asylum application. The procedure for assessing whether the child should seek asylum and the access to legal advice and assistance in formulating the asylum claim have not been entirely clarified and leave some room for interpretation and discretion. In particular, the Youth Office's role in this context, before and after the appointment of the guardian, could be clarified and strengthened further.<sup>93</sup>

Until October 2015, adolescents aged 16 and 17 years old were considered capable of applying for asylum or regularising their residence status and had to act independently in the relevant proceedings. This provision has now been removed. This reform constitutes an important improvement as adolescents aged 16 and above are now entitled to the support of a guardian. In practice, the delays before they might meet their guardian for the first time can however create a protection gap specifically for this age group. For adolescents, the delay means in some cases that they miss the chance to hand in an asylum application as a child so that they have their applications instead assessed as adults. Child-specific grounds of asylum would then lose their significance.<sup>94</sup>

Guardianship services can be provided in four main forms: by individual volunteers, by individual professionals, by civil society organisations accredited by the Youth Office and by the Youth Office itself. The Civil Code states that the appointment of individual volunteer guardians is preferable while civil society associations, individual professionals and the Youth Office can act as guardians when a volunteer guardian is not available.<sup>95</sup> In practice, especially when high numbers of unaccompanied children are registered, the Youth Office provides however most of the guardians from among its employees. The number of associations and individual volunteers providing guardianship services has also increased with the growing number of cases. This four-fold model of guardianship has potential advantages as the diversity of services can increase the chances to find the most suitable guardian for each child.<sup>96</sup>

When guardianship is provided by civil society associations or organisations, the mandate is assigned usually to an employee or a member of the association or organisation who acts as the guardian.<sup>97</sup> In the case of volunteer guardians, the Youth Office is mandated to provide guidance and supervision to the volunteer, although it can be difficult for local Youth Offices to live up to this responsibility when the caseloads are very high and especially when volunteer guardians are inexperienced. On the other hand, in small municipalities where the experience with unaccompanied children is limited, the Youth Office might struggle to ensure adequate support and supervision for volunteer guardians. When guardianship services are provided by associations or organisations, the relevant expertise is expected to be available within the association and support from the Youth Office is not foreseen to the same extent as for volunteer guardians.<sup>98</sup>

Guardianship standards are primarily defined by law, which regulates who can act as a guardian. The law provides for a maximum number of 50 children whom a guardian can care for at any time and requires that the guardian and the child meet at least once every month. Although the law aimed to bring the caseload down and to strengthen the personal responsibility of the guardian towards child, the number of up to 50 cases has been critiqued as too high to enable a meaningful contact between the guardian and the child. Being responsible for 50 children makes it difficult for a guardian to guarantee continuity of care and to fulfil his or her function as an advocate for the rights and interests of the individual child.<sup>99</sup> Guardians are bound by law and relevant instructions, including mandatory reporting to the Family Court. The qualifications of guardians are however barely regulated. Guardians must be at least 18 years old and need

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<sup>93</sup> Interview Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, Germany, 19 May 2016. Interview with Karsten Laudien, Protestant University of Applied Sciences, Berlin, Germany, 31 May 2016.

<sup>94</sup> Katzenstein, Henriette, Nerea González Méndez de Vigo and Thomas Meysen, *Das Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher, Ein erster Überblick* [The law on the improvement, accommodation, care and support of non-national children and adolescents, A first oversight], *Jugendamt, Heft 11*, 2015, p. 536. Müller, Andreas, *Unaccompanied Minors in Germany, Focus Study by the German National Contact Point for the European Migration Network (EMN)*, Federal Office for Migration and Refugees, Working Paper 60, 2014, p. 34..

<sup>95</sup> German Civil Code, Sections 1791a subsection 1 and 1791b subsection 1.

<sup>96</sup> Interview Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, Germany, 19 May 2016.

<sup>97</sup> Müller, Andreas, *Unaccompanied Minors in Germany, Focus Study by the German National Contact Point for the European Migration Network (EMN)*, Federal Office for Migration and Refugees, Working Paper 60, 2014, p. 34.

<sup>98</sup> Interview with Karsten Laudien, Protestant University of Applied Sciences, Berlin, Germany, 31 May 2016.

<sup>99</sup> Berthold, Thomas, *Implementing the Core Standards for Guardians of Separated Children in Europe, Country Assessment: Germany*, Bundesfachverband Unbegleitete Minderjährige Flüchtlinge e.V., 2014, p. 37. Interview with Henriette Katzenstein, German Institute for Youth and Family Law, 5 July 2016..

to undergo a vetting procedure.<sup>100</sup> Persons who wish to act as volunteer guardians need to be considered suitable to perform the tasks of a guardian by the Youth Office and the Family Court. Where possible, relatives or other persons who know the unaccompanied child are selected as guardians.<sup>101</sup> The tasks of the guardian are defined under the Civil Code, which applies to all children who are deprived of parental care, including non-nationals. The guardian is entitled and obliged to care for the personal interests of the child and to represent the child. The guardian is tasked to personally ensure and promote the care and upbringing of the child and shall remain in personal contact with the child and visit the child in his or her living environment at least once per month, except where more or less frequent visits or other places of encounter are considered appropriate in the individual case. The guardian is also in charge of determining the child's residence and whereabouts.<sup>102</sup> Volunteers who act as guardians are generally not paid but can request reimbursement and allowances according to common public rates. The allowance is paid out once a year.<sup>103</sup>

In some regional states, the Länder, there was a practice for appointing lawyers as 'supplementary guardians' to assist the child with the asylum application as guardians are not necessarily competent in legal matters, immigration and asylum law.<sup>104</sup> In 2013, the Federal Supreme Court ruled that this practice was not in conformity with the law and shall therefore not be continued. The child's guardian is expected to ensure that the child has access to legal advice and representation through existing legal assistance services, as the parent of a child would likewise be expected to. The appointment of a supplementary guardian is in fact not envisaged if one person holds the full parental responsibility over the child, as a parent or a permanent guardian would.<sup>105</sup> In all other matters as well, where the guardian lacks knowledge or means to support the child adequately, the guardian is responsible for making this assistance available from third parties.<sup>106</sup>

The training and professional qualification of guardians has not yet been regulated from the federal level and standardised training for guardians is currently not available. This is in contradiction to the fact that many guardians exercise their mandate as professionals. Youth Offices are formally responsible for recruiting and training volunteer guardians and for offering supervision and advice. Not all municipalities are however in a position to offer courses for guardians and the training is usually outsourced to third parties or offered at the regional or national level. The quality of training as well as the qualifications and preparedness of guardians differs therefore significantly.<sup>107</sup> Despite the strong demand for training by volunteer guardians and the willingness of private service providers to offer guardianship services, the available courses are not yet sufficient to ensure that all guardians are adequately qualified and prepared to live up to their important mandate. Existing courses are often of short duration and limited to asylum and immigration law, the Youth Office's mandate and the application procedure for the child to receive welfare services.<sup>108</sup> The Protestant University of Applied Sciences in Berlin has integrated guardianship training into its curriculum for social work. While the course comprises a strong component on the legal framework, including asylum and immigration law, it addresses also themes related to developmental psychology; the personal and professional relation between the guardian and the child; family structures, hierarchies and authority; gender issues; inter-cultural communication and mediation; identifying signs of trauma; and understanding the individual background and story of a child.<sup>109</sup> The German Institute for Youth and Family Law offers training for guardians, including joint training of social workers and guardians as well as joint courses of experienced guardians and persons who are new to the job, which constitutes an important support to capacity building and collaboration among guardians.<sup>110</sup>

**100** Interview Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, Germany, 19 May 2016.

**101** German Civil Code Section 1779, subsection 2. Müller, Andreas, Unaccompanied Minors in Germany, Focus Study by the German National Contact Point for the European Migration Network (EMN), Federal Office for Migration and Refugees, Working Paper 60, 2014, p. 34.

**102** See in particular Civil Code Sections 1793, 1800 and 1631..

**103** See in particular Civil Code Sections 1835, 1835a and 1836..

**104** German Civil Code Section 1909.

**105** German Civil Code Section 1775. Supreme Court Decision XII ZB 530/1138 of 29 May 2013. Interview with Henriette Katzenstein, German Institute for Youth and Family Law, 5 July 2016. See also: Rechtslupe, Das Flüchtlingskind und sein Vormund [The refugee child and his/her guardian], 26. Juni 2013. European Union Agency for Fundamental Rights, Guardianship systems for children deprived of parental care in the European Union, With a particular focus on their role in responding to child trafficking, 2015, p. 23.

**106** Rechtslupe, Das Flüchtlingskind und sein Vormund [The refugee child and his/her guardian], 26. Juni 2013. European Union Agency for Fundamental Rights, Guardianship systems for children deprived of parental care in the European Union, With a particular focus on their role in responding to child trafficking, 2015, p. 23.

**107** Interview with Karsten Laudien, Protestant University of Applied Sciences, Berlin, Germany, 31 May 2016. Interview Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, Germany, 19 May 2016.

**108** Interview with Karsten Laudien, Protestant University of Applied Sciences, Berlin, Germany, 31 May 2016. Interview Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, Germany, 19 May 2016.

**109** Interview with Karsten Laudien, Protestant University of Applied Sciences, Berlin, Germany, 31 May 2016..

**110** Interview with Henriette Katzenstein, German Institute for Youth and Family Law, 5 July 2016.

A unified support structure for guardians is not yet in place, although it would be important to offer technical advice and assistance for guardians in exercising their complex role. Particular in times of high arrivals, many guardians have only little professional experience when they take up the mandate. Some guardians seek advice and assistance on their own account, and civil society actors, such as the Federal Association for Unaccompanied Children (BUMF), receive and respond to such requests.<sup>111</sup> The decentralised system leads to differences in the way that guardianship services are provided locally, for instance with regard to the caseload that an individual guardian has to handle.<sup>112</sup> Also the type of support that guardians have access to locally can differ to some degree. Municipal authorities have a certain margin of discretion in the way they organise and provide guardianship services and in the budget allocation. In practice, some local Youth Offices use this margin in a positive and innovative way to create solutions that work, while there are also places where the quality of services and the available capacities and funding would benefit from further investments.<sup>113</sup>

The law on legal representation provides that the Youth Office shall take appropriate measures to prevent conflicts of interests between the Youth Office's role as legal representative of the child and its mandate as service provider for the child's care.<sup>114</sup> In practice, such conflicts of interests can however occur, for instance when the child wishes to appeal against age determinations, decisions on the child's relocation and redistribution within the country or the decision whether or not for the child to apply for asylum. These matters potentially have a direct bearing on the best interests of the child and his or her continued life and development. Where such conflicts occur, it is almost impossible for the child to launch a formal complaint as the child's representative is an employee of the Youth Office, that is the authority against which a complaint might be launched.<sup>115</sup> When the Youth Office takes into care an unaccompanied child, it is obliged to initiate a care plan procedure and to determine what type of services and assistance is needed for the upbringing and education of the child.<sup>116</sup> This obligation applies to all cases in which a child is taken into care irrespective of the child's nationality or immigration status. The Social Code does in fact provide for a broad range of services, as for instance assistance and advice for the upbringing of the child, education, social group work, the appointment of a care assistant, socio-educational family support and individual care, professional day-care support, residential or full-time care. The law affords however that the child's guardian or caretaker needs to apply for these services on behalf of the child. Any obstacles or delays in the appointment of the guardian or the guardian's contact and active support for the child have therefore far-reaching consequences for the child's access to services and assistance that he or she would be entitled to under the Social Code.<sup>117</sup>



## GREECE

In Greece, the guardianship services for national and resident children and unaccompanied non-national children are organised through separate structures and procedures. Guardianship for national children deprived of parental care is usually assigned to a close family member, an institution or the social services. In the cases of unaccompanied children, where family members are not present, the public prosecutors act formally as temporary guardians and have to ensure the appointment of a permanent guardian.<sup>118</sup> At the national level, the leading institution responsible for guardianship services for unaccompanied

<sup>111</sup> Interview Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, Germany, 19 May 2016.

<sup>112</sup> Interview Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, Germany, 19 May 2016. Interview with Henriette Katzenstein, German Institute for Youth and Family Law, 5 July 2016.

<sup>113</sup> Interview Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, Germany, 19 May 2016.

<sup>114</sup> Bundesfachverband Unbegleitete Minderjährige Flüchtlinge e.V. [Federal Association for Unaccompanied Asylum Seeking Children], Vorläufige Inobhutnahme – Was ändert sich zum 01.11.2015? Eine Arbeitshilfe des Bundesfachverbands UMF über das Gesetz und die Gesetzesbegründung [Temporary Care – Changes as of 1 November 2015; A practical guide by the Federal Association to the law and its explanatory memorandum], Berlin, 19 October 2015, pp. 2-3. Katzenstein, Henriette, Nerea González Méndez de Vigo and Thomas Meysen, Das Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher, Ein erster Überblick [The law on the improvement, accommodation, care and support of non-national children and adolescents, A first oversight], Jugendamt, Heft 11, 2015, p. 535.

<sup>115</sup> Katzenstein, Henriette, Nerea González Méndez de Vigo and Thomas Meysen, Das Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher, Ein erster Überblick [The law on the improvement, accommodation, care and support of non-national children and adolescents, A first oversight], Jugendamt, Heft 11, 2015, pp. 533-534. Meysen, Thomas, Hinweise zur Anhörung des BT-Ausschusses Familie, Senioren, Frauen und Jugend am 12. Oktober 2015 [Notes on the hearing of the Committee for Family, Senior Citizens, Women and Youth on 12 October 2015], Deutsches Institut für Jugendhilfe und Familienrecht e.V. [German Institute for Youth and Family Law], 2015, p. 2..

<sup>116</sup> Social Code Book VIII Section 42 subsection 3 sentence 5 and Part 4 of the Social Code Book VIII.

<sup>117</sup> Social Code Book VIII Sections 27-35. Müller, Andreas, Unaccompanied Minors in Germany, Focus Study by the German National Contact Point for the European Migration Network (EMN), Federal Office for Migration and Refugees, Working Paper 60, 2014, p. 35. Interview Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, Germany, 19 May 2016. Interview with Karsten Laudien, Protestant University of Applied Sciences, Berlin, Germany, 31 May 2016..

<sup>118</sup> Greek Civil Code Articles 1589-1654. CARDET, Defence for Children International – Italy et al., IMPACT, Improving Monitoring and Protection Systems Against Child Trafficking and Exploitation, National Report Greece, 2014, p. 125.

children is the Ministry of Justice.<sup>119</sup> Guardianship services are regulated by law, primarily by the Greek Civil Code. The legal framework is overall considered appropriate to ensure that unaccompanied children are supported by a guardian. The implementation of the laws regulating guardianship, care and protection of unaccompanied children remains however a challenge as the required procedures, human resources and other implementation measures are not yet in place or are ineffective. National standards for guardianship have not yet been developed and the law remains silent on the criteria for becoming a guardian, the required qualifications and training. In consequence, the available structures and services are not yet sufficiently developed to guarantee that guardians represent and promote the best interests of unaccompanied children.<sup>120</sup>

When an unaccompanied child is identified, the guardianship is automatically assigned to the public prosecutor responsible for the region, which is commonly the Juvenile Prosecutor or the prosecutor at the court of first instance. The public prosecutor acts as provisional guardian, until the unaccompanied child has received a permanent residence status and would then be entitled to a permanent guardian. This procedure applies to unaccompanied children regardless of whether they apply for asylum or not.<sup>121</sup>

A guardian would be responsible for the care of the child, has to ensure that the child has accommodation and access to health care, education and social welfare services. The guardian is also tasked to provide advice and represent the child in any legal or judicial proceedings and is overall held to act in the best interests of the child.<sup>122</sup> The guardian should therefore be a key figure in the daily life of the child. Without a guardian, a child cannot access school education, health care or sports activities, and the child cannot register to obtain a tax number. These matters are however all relevant for the well-being, development and social integration of the child.<sup>123</sup>

The Greek Civil Code and other relevant regulations provide that the public prosecutor who acts as a provisional guardian is responsible for taking “appropriate measures” for the appointment of a permanent guardian who is suitable for the unaccompanied child. In practice, there is however little clarity about the scope of the prosecutor’s role as provisional guardian and the procedures and timing of the appointment of a permanent guardian. The law remains silent on which institution is responsible to collaborate with the public prosecutors for the appointment of permanent guardians.<sup>124</sup>

Under the Greek Civil Code, the competent court has the possibility to assign the permanent guardianship for an unaccompanied child to an association, a foundation or the social services when a suitable person cannot be identified. The social service responsible for this task has however not yet been established, although the law that establishes it is in force.<sup>125</sup>

Public prosecutors who act as provisional guardians have been reported to be poorly informed about the unaccompanied children they are mandated to support and in many cases, they meet only rarely or never with the children concerned, and rarely participate in the asylum interviews of the unaccompanied children they are supposed to assist. A public prosecutor could assign the legal representation of a child to a lawyer but this option is hardly used in practice.<sup>126</sup>

Considering these structural challenges, the mechanisms for appointing guardians for unaccompanied children has been characterised as dysfunctional.<sup>127</sup>

<sup>119</sup> CARDET, Defence for Children International – Italy et al., IMPACT, Improving Monitoring and Protection Systems Against Child Trafficking and Exploitation, National Report Greece, 2014, pp. 126-127. Greek Council for Refugees, Country Report Greece, Edited by the European Council on Refugees and Exile, Asylum Information Database, 2015, pp. 49, 70-71.

<sup>120</sup> CARDET, Defence for Children International – Italy et al., GATE, Guardians Against Child Trafficking and Exploitation, National Report Greece, 2012, p. 47. CARDET, Defence for Children International – Italy et al., IMPACT, Improving Monitoring and Protection Systems Against Child Trafficking and Exploitation, National Report Greece, 2014, pp. 126-127, 129. Interview with Alekos Anastasiou, Greek Council for Refugees, Greece, 31 May 2016.

<sup>121</sup> Presidential Decree 220/2007161, Article 19. European Union Agency for Fundamental Rights, Guardianship systems for children deprived of parental care in the European Union, With a particular focus on their role in responding to child trafficking, 2015, p. 24. CARDET, Defence for Children International – Italy et al., IMPACT, Improving Monitoring and Protection Systems Against Child Trafficking and Exploitation, National Report Greece, 2014, p. 126.

<sup>122</sup> Greek Civil Code; P.D. 220/2007162 Article 19. CARDET, Defence for Children International – Italy et al., GATE, Guardians Against Child Trafficking and Exploitation, National Report Greece, 2012, p. 46. CARDET, Defence for Children International – Italy et al., IMPACT, Improving Monitoring and Protection Systems Against Child Trafficking and Exploitation, National Report Greece, 2014, p. 127.

<sup>123</sup> CARDET, Defence for Children International – Italy et al., GATE, Guardians Against Child Trafficking and Exploitation, National Report Greece, 2012, p. 47.

<sup>124</sup> P.D. 220/2007 Article 19, par. 1. Greek Civil Code Articles 15891654. CARDET, Defence for Children International – Italy et al., IMPACT, Improving Monitoring and Protection Systems Against Child Trafficking and Exploitation, National Report Greece, 2014, pp. 127- 129.

<sup>125</sup> Greek Civil Code Article 1600; Greek Law 2447/96 Article 49-52. Cited in: European Union Agency for Fundamental Rights, Guardianship systems for children deprived of parental care in the European Union, With a particular focus on their role in responding to child trafficking, 2015, p. 24.

<sup>126</sup> CARDET, Defence for Children International – Italy et al., IMPACT, Improving Monitoring and Protection Systems Against Child Trafficking and Exploitation, National Report Greece, 2014, pp. 127- 129. CARDET, Defence for Children International – Italy et al., GATE, Guardians Against Child Trafficking and Exploitation, National Report Greece, 2012, p. 47.

<sup>127</sup> Greek Council for Refugees, Country Report Greece, Edited by the European Council on Refugees and Exile, Asylum Information Database, 2015,

Although guardianship services for unaccompanied children are regulated by national laws that incorporate key elements of international standards, the relevant procedures and quality standards of guardianship services have not been regulated in detail. The mandate of the public prosecutor as provisional guardian remains largely undefined. The way that guardianship is exercised in practice leaves therefore much room for interpretation and discretion of the responsible prosecutor and the availability and quality of support services at the local level, for the prosecutor and for the child, differ significantly.<sup>128</sup>

In their capacity as provisional guardians, the public prosecutors could delegate certain administrative tasks to social workers employed by an NGO, a reception centre or another institution that provides accommodation and care for the child. In practice, this option is however not yet used effectively as there are few social workers who are prepared and available to take over such functions. Training for guardians and social workers is delivered only sporadically and mostly in the context of projects.<sup>129</sup>

The public prosecutors are struggling with high caseloads and scarce resources. In some cases, a single Juvenile Prosecutor's Office is responsible for around one thousand unaccompanied children and such high a caseload constitutes clearly an overburden that is likely to render this important support structure almost entirely ineffective.<sup>130</sup>

The Greek Civil Code provides for a monitoring mechanism of guardianship services, which should include guardianship services for unaccompanied children. A supervisory council should monitor the situation of each child and ensure that decisions are taken in the best interests of the child. In practice, this monitoring mechanism is however not yet functional and there are no means to hold the responsible authorities accountable for their actions or inaction.<sup>131</sup>

As public prosecutors are neither ensuring active guardianship for unaccompanied children nor delegating certain tasks, specialised organisations and associations take the initiative to approach the responsible public prosecutor with regard to specific requests and needs of the children they assist. The public prosecutor can authorise qualified organisations to represent a child in legal and administrative matters such as school enrolment, access to medical services, family tracing or the representation of the child in the asylum procedure. The organisations have to contact the public prosecutor however on each single matter in order for the public prosecutor to sign an order for the specific action requested. In urgent cases, the order can be requested by phone but the paperwork remains to be done for each step.<sup>132</sup> This level of bureaucracy is burdensome and inefficient for the organisations involved and for the Public Prosecutor's Office. It is also unhelpful for the child, undermines trust and creates many obstacles in accessing services and in the children's social integration. While permanent guardians are rarely appointed and the Juvenile Prosecutors' Offices are inadequately prepared and equipped to act as temporary guardians, many unaccompanied children remain without effective guardianship support.

Several NGOs, Associations and other private initiatives working with and for unaccompanied children in Greece take up important functions of childcare and support that seek to redress, to the extent possible, the gaps created by the ineffective state structures. The Greek NGO Metadrasí, for instance, has taken the initiative to establish a guardianship network for unaccompanied children. The project involves public prosecutors who act as provisional guardians as well as network members who provide guardianship services locally within shelters hosting unaccompanied children and at the borders. The public prosecutors transfer certain guardianship tasks to the network members each of whom provide guardianship services for a small number of children under 15 years of age.<sup>133</sup>

Despite the important initiatives of civil society actors, the scarcity of public funds leads to situations where reception centres are left with insufficient funding and staff salary payments are interrupted for extended periods of time. Funding insecurity makes longer-term planning practically impossible. Much of

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pp. 49, 70-71.

**128** CARDET, Defence for Children International – Italy et al., IMPACT, Improving Monitoring and Protection Systems Against Child Trafficking and Exploitation, National Report Greece, 2014, p. 127.

**129** European Union Agency for Fundamental Rights, Guardianship systems for children deprived of parental care in the European Union, With a particular focus on their role in responding to child trafficking, 2015, p. 24. Interview with Alekos Anastasiou, Greek Council for Refugees, Greece, 31 May 2016.

**130** CARDET, Defence for Children International – Italy et al., GATE, Guardians Against Child Trafficking and Exploitation, National Report Greece, 2012, p. 48.

**131** Greek Civil Code, Article 1634. CARDET, Defence for Children International – Italy et al., IMPACT, Improving Monitoring and Protection Systems Against Child Trafficking and Exploitation, National Report Greece, 2014, p. 127. Interview with ARSIS, Greece, 9 June 2016.

**132** Interview with Alekos Anastasiou, Greek Council for Refugees, Greece, 31 May 2016. Interview with ARSIS, Greece, 9 June 2016.

**133** Greek Council for Refugees, Country Report Greece, Edited by the European Council on Refugees and Exile, Asylum Information Database, 2015, pp. 70-71. See the Guardianship Network's website available at: <http://www.epitropeia.org/>

the budget flow into Greece at the peak of the population movements was earmarked for the emergency response, i.e. providing shelter and emergency assistance. Structural funding in support of creating longer-term perspectives for children, such as education, permanency planning and social integration, is barely available.<sup>134</sup> Childcare staff and child protection workers perform their duties to some extent as volunteers, under difficult conditions, preventing through their own personal commitment the reception conditions from deteriorating further. Overall, the situation is characterised by highly fragmented services and stark differences in the quality of the reception, care and protection of unaccompanied children. Public prosecutors and social services in regions that receive lower numbers of unaccompanied children are even less experienced and prepared to handle the cases.<sup>135</sup>

In the absence of functional guardianship services, no single authority or figure is responsible to maintain the overview of a child's situation, well-being and development. This situation renders children very vulnerable; they might leave reception centres and move on by themselves on highly precarious migration projects or respond to risky propositions from people who might exploit or abuse them.<sup>136</sup>

The weak or absent capacity of public authorities to provide guardianship services for unaccompanied children implies also a weak or absent system for monitoring and oversight. While many competent NGOs, Associations and other private actors perform to high standards of quality and ethics when delivering services and safeguarding children, others might operate with lower standards and a limited understanding of children's rights. Although public authorities condone the fact that private actors complement weak state structures with their own initiative and funding, monitoring mechanisms to ensure children's safety and quality services are not in place. In the context of the Syrian refugee movement and the closure of the Balkan route, concerns are high that the awareness about the weakness of state structures could attract persons who seek out vulnerable children for purposes of violence, abuse and exploitation.<sup>137</sup>

While Greece used to be mainly a country of transit, the number of children arriving in Greece appears to be decreasing since the Balkan routes have been blocked. At the same time, many children are now stuck in Greece with very little support. Smugglers are reported to charge high fees to facilitate the onward journey into other EU Member States, and this renders the children highly vulnerable to exploitation. Sensible and meaningful support from the European Union and Commission is essential to alleviate the emergency situation in Greece and ensure that investments contribute to sustainable change. Within this broader context, investing in effective guardianship services for unaccompanied children is sensible as it can contribute to identifying and implementing durable solutions for the children concerned.<sup>138</sup>

## HUNGARY

Unaccompanied children who are identified by the police at the border or in the country without valid travel or residence permits are taken in by the police and are kept in police custody at the police station for a first period of 12 hours, extendable to 24 hours. At this first contact, their cases are treated under the immigration policing procedure. The detention in police custody is intended to enable the identification of the child, including an age assessment. The age assessment is done by police medical staff and is usually ordered for all adolescents except where the child is visibly under 18 years of age. During the police interview with the child, a legal guardian is present who is however not an individual guardian tasked to promote the best interests of the child but a legal expert specialised in migration law. An individual guardian has not yet been appointed at this point, so that the child loses out the support of a guardian when undergoing the age assessment or seeking to challenge its results.<sup>139</sup> Likewise, the child does not have guardianship support to challenge the 12-24 hours detention in police custody.

When the age assessment concludes that the person is a child, the police place the child in temporary accommodation and initiate the procedures for appointing a guardian and for referring the child to a child protection facility.<sup>140</sup>

<sup>134</sup> CARDET, Defence for Children International – Italy et al., GATE, Guardians Against Child Trafficking and Exploitation, National Report Greece, 2012, pp. 48-49. Interview with ARSIS, Greece, 9 June 2016..

<sup>135</sup> Interview with ARSIS, Greece, 9 June 2016..

<sup>136</sup> Interview with Alekos Anastasiou, Greek Council for Refugees, Greece, 31 May 2016. Interview with ARSIS, Greece, 9 June 2016..

<sup>137</sup> Interview with ARSIS, Greece, 9 June 2016..

<sup>138</sup> Interview with Alekos Anastasiou, Greek Council for Refugees, Greece, 31 May 2016.

<sup>139</sup> Interview with Alekos Anastasiou, Greek Council for Refugees, Greece, 31 May 2016.

<sup>140</sup> Governmental Decree on the Implementation of the Third-Country Nationals Act, Section 72..

## Safe Guard

The District Guardianship Office of the fifth District in Budapest has been designated by a Government Decree as the competent body in charge of appointing guardians for non-national children. Although this District Guardianship Office is a local authority like the Guardianship Offices in other Districts, it is the single authority in charge of guardianship for unaccompanied children and receives special funding for this purpose from the Ministry of National Resources.<sup>141</sup> The District Guardianship Office is responsible, with the funding allocated by the Ministry, for guardianship services for unaccompanied children regardless of whether they apply for asylum or not and the same procedures apply for all.<sup>142</sup>

The main responsibility for organising guardianship services in practice rests with the District Guardianship Offices. The Offices are institutionally located under the Social Welfare and Guardianship Authority and are coordinated by these at the district level. Since 2011, the Child Protection Act has been extended to apply also to unaccompanied migrant and asylum seeking children so that these children have formally the same rights and entitlements to protection and care as Hungarian children.<sup>143</sup>

As of 2014, the guardianship provisions were strengthened by a reform of the Child Protection Act.<sup>144</sup> The revised Act provides that the District Guardianship Office of the fifth District in Budapest appoints a guardian for each unaccompanied child upon the child's referral to temporary placement. The appointed guardian, also referred to as 'child protection guardian' is responsible for the care, legal representation and property management of up to 30 children at the same time.<sup>145</sup>

While previously the heads of the Department of Child Protection Services or of the child protection facility where the child is placed, acted as guardians, the revised Act foresees the appointment of professional guardians who are employed by the Department of Child Protection Services. The law reform aimed to prevent conflicts of interests between the mandates of the child protection services, the facility responsible for childcare and the child represented by his or her guardian. This reform has led to cases where guardians supported children in complaining about matters of accommodation and care and thereby fulfil an important function to promote the child's interests vis-à-vis the childcare facility.<sup>146</sup>

The appointment of the guardian is a precondition for the child to access the asylum procedure as the asylum interview can be conducted only in the presence of the guardian.<sup>147</sup>

In practice, the appointment of the guardian can be a lengthy process that might take up to several months. During the waiting period, the child cannot access the asylum interview. In addition, in cases where there are doubts about the age of the person and where this has previously not been assessed by the police, an age assessment is ordered, which can also take months and cause further delays. During this time, the asylum procedure is suspended. In addition, assessments related to the Dublin III Regulation, to find out if the child has family members living in other EU Member States or if there are other grounds to transfer a child under the Regulation, can lead to delays in the child's asylum procedure. The Asylum Act does however not foresee any means to accommodate such delays. In consequence, adolescents who arrive at the age of 16 or 17 might not have the chance to access the asylum procedure as a child, which can have severe consequences for them, especially in situations where they seek asylum on the basis of child-specific grounds of asylum. When the asylum decision is issued, and a child has come off age by that time, the young adult has no longer a right to access after care or to get other support for his or her transition into adulthood and an independent life. Any return procedures, deportation or expulsion would then be implemented according to the procedures applied for adults.<sup>148</sup>

The Third Country Nationals' Act provides that children who do not qualify for asylum or another residence permit can be granted a residence permit on humanitarian grounds. This applies to children who are born in Hungary to parents who are third country nationals and who left the child behind. The provision applies also to children who are third country nationals and who are unaccompanied in Hungary. Thus

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<sup>141</sup> 331/2006 (XII 23) Government Decree. See: International Organisation for Migration, Overview of Guardianship Systems for Unaccompanied Minor Asylum-seekers in Central Europe, Synthesis Report 2012, p. 42. European Migration Network Hungary, Policies, Practices and Data on Unaccompanied Minors in Hungary, 2014, p. 9..

<sup>142</sup> European Migration Network Hungary, Policies, Practices and Data on Unaccompanied Minors in Hungary, 2014, p. 14.

<sup>143</sup> European Migration Network Hungary, Policies, Practices and Data on Unaccompanied Minors in Hungary, 2014, p. 4..

<sup>144</sup> Child Protection Act, Section 84.1.c..

<sup>145</sup> European Migration Network Hungary, Policies, Practices and Data on Unaccompanied Minors in Hungary, 2014, pp. 11-12..

<sup>146</sup> European Migration Network Hungary, Policies, Practices and Data on Unaccompanied Minors in Hungary, 2014, pp. 11-12.

<sup>147</sup> Government Decree No. 301/2007 on the implementation of the Asylum Act, Section 74 (1).

<sup>148</sup> European Migration Network Hungary, Policies, Practices and Data on Unaccompanied Minors in Hungary, 2014, pp. 4, 11-12.

far, this provision is however only scarcely applied in practice.<sup>149</sup> The support of a qualified guardian could be essential to claim the right of a child that this provision be applied and to regularise the child's stay on humanitarian grounds.

Once that the immigration status of the child has been regularised, the child is referred to permanent care and a permanent guardian is assigned. This process used to take up to several weeks or months. During the waiting time, the child is not supported by a guardian, which is contrary to international and European standards and can result in infringements against the human rights of the child.<sup>150</sup>

By an amendment to the asylum law, the time frame for the appointment of a guardian was reduced to a maximum of 8 days, which is usually respected although there keep being delays. Experience shows, however, that even a waiting period of one week can be long for an unaccompanied child when there are decisions and measures that need to be taken promptly. Some children have their onwards travels already organised with smugglers or other facilitators and by the time they meet the guardian, too little time remains to provide care, to inform the child about the possibility for family reunification through the Dublin procedure, and to establish a trustful relation.<sup>151</sup>

The guardian participates in the care planning for unaccompanied asylum seeking children. The head of the child protection facility where the child is placed, the child's educator and guardian are responsible to work together to prepare a care and education plan for the child. The care planning has to take into account the views of the child.<sup>152</sup>

A guardian reports twice a year to the Guardianship Office on the situation of the child and the activities undertaken. In addition, the guardian has to report regularly on the administration of the child's property. Information from the guardian is to be included in the assessment conducted by the Regional Child Protection Service to review the placement and situation of the child in collaboration with other relevant agencies.<sup>153</sup>

Another task of the guardian is to collaborate with the care facility for unaccompanied children to trace children who are missing from the facility. The guardian is the first person whom the facility has to notify. In cases of children who are under 14 years of age, the facility has to inform the police about the missing child. It has been reported that some children might go missing because they aim to reunite with family members elsewhere within Hungary or in another country. In such cases, the support from a qualified guardian could make a difference to ensure the child is informed about the options available to her or him and that the child understands all relevant procedures. Where access to information in a language that the child understands is missing, as is the case when children are not aware of the transfers available under the Dublin III Regulation, children might be driven into situations where they take uninformed and unsafe decisions. Effective support from a guardian could support children to make better informed decisions and to stay safe.<sup>154</sup>

Guardians of unaccompanied children can seek support and advice from the Regional Child Protection Services, while the Guardianship Office is responsible for the supervision of guardians.<sup>155</sup> In addition, organisations and associations offer advice and technical assistance. The Hungarian Helsinki Committee, for instance, provides legal advice to asylum seekers, including unaccompanied children, and offers information sessions for the child together with her or his lawyer and guardian, and with the involvement of interpreters where necessary. These sessions are important to listen to the child and inform her or him about the asylum procedure. They are likewise important to enhance the guardian's knowledge and understanding of the rights of the child in the asylum procedure and to strengthen the cooperation and trust between the child, the guardian and the lawyer.<sup>156</sup>

<sup>149</sup> Third-Country Nationals' Act, Section 29 (1)(d). European Migration Network Hungary, Policies, Practices and Data on Unaccompanied Minors in Hungary, 2014, pp. 4, 11-12.

<sup>150</sup> Cazenave P., Savai R., National Background Research on Non-Asylum Seeking Foreign Unaccompanied Minors in Hungary, Project Mario, 2012, p. 18.

<sup>151</sup> Interview with Júlia Iván, Hungarian Helsinki Committee, Hungary, 13 June 2016.

<sup>152</sup> Ministerial Decree 15/1998 (IV.30.), Section 84. Cited in: European Migration Network Hungary, Policies, Practices and Data on Unaccompanied Minors in Hungary, 2014, p. 26.

<sup>153</sup> International Organisation for Migration, Overview of Guardianship Systems for Unaccompanied Minor Asylum-seekers in Central Europe, Synthesis Report 2012, pp. 71-72.

<sup>154</sup> European Migration Network Hungary, Policies, Practices and Data on Unaccompanied Minors in Hungary, 2014, p. 28.

<sup>155</sup> International Organisation for Migration, Overview of Guardianship Systems for Unaccompanied Minor Asylum-seekers in Central Europe, Synthesis Report 2012, pp. 71-72.

<sup>156</sup> Interview with Júlia Iván, Hungarian Helsinki Committee, Hungary, 13 June 2016.



## SafeGuard

Guardians are professionals employed by the local child protection authorities. The required professional qualification is regulated by law and demands a degree in law, social work, pedagogy, psychology or sociology. The criteria for becoming a guardian are regulated by the Child Protection Act and specific Government Decrees. Persons who have had their parental rights restricted or terminated by a court of law or whose children have been placed in alternative care combined with a decision by the Guardianship Office to suspend parental rights of the primary caretaker are not eligible to act as guardians.<sup>157</sup>

There is currently no standardised approach to the training and qualification of guardians. Training courses are offered by international and national organisations, associations and foundations working in this area in Hungary.

Guardians usually have a professional background in childcare and social work and are less knowledgeable about legal matters. More training for guardians is needed in particular with regard to immigration and asylum law and the relevant procedures as well as rights and entitlements of unaccompanied children. As guardianship services for national and non-national children are integrated into the same institutional structure, specialised training is important to sensitise and prepare guardians of unaccompanied children in matters of inter-cultural communication and mediation, communicating through an interpreter, identifying trauma and meeting the special needs of the unaccompanied child. In matters of immigration and asylum law, the guardians have often very limited knowledge and little access to free legal advice, assistance and qualified legal representation. It is not common for guardians to seek the support of specialised lawyers to assist the child with the asylum application or other immigration matters. Although guardians would be responsible to support unaccompanied children in family tracing, they are rarely prepared or supported to do so effectively. In addition to training and capacity building, the supervision and monitoring of guardianship services needs to be strengthened.<sup>158</sup>

## ITALY<sup>159</sup>

The legal framework regulating guardianship services in Italy includes two main laws of reference, the Civil Code dating back to 1942 and tailored to the exigencies of that time, and Law No. 184 approved in 1983 on the right of the child to a family. The former represents the main source of law for the guardianship system and addresses the conditions to initiate the guardianship proceeding, the appointment procedure, as well as some characteristics and functions of the guardian.<sup>160</sup>

Under the Civil Code, a guardian is appointed when neither of the parents can exercise their parental responsibilities. In most of the cases, the Tutelary Judge of the Ordinary Court is the judicial authority responsible for appointing the guardian.<sup>161</sup> The judge can request assistance from public bodies or other competent entities. Besides the guardian, the Tutelary Judge should also appoint the so-called "protutore"<sup>162</sup>, a type of proxy guardian conceived as a monitoring mechanism, though in practice this hardly ever happens.

The Civil Code establishes that the judge should appoint the person designated by the parents as guardian or, if not applicable, an individual from the child's family environment. Before appointing the guardian, the judge should convene a hearing. Children over 12 years of age have a right to be heard by the judge, while younger children should be heard depending on the child's capacity for discernment.<sup>163</sup> The guardian must be "a person suitable for the role, with unobjectionable conduct, who must safeguard the child's right to

<sup>157</sup> Interview with Júlia Iván, Hungarian Helsinki Committee, Hungary, 13 June 2016. International Organisation for Migration, Overview of Guardianship Systems for Unaccompanied Minor Asylum-seekers in Central Europe, Synthesis Report 2012, pp. 13, 65.

<sup>158</sup> European Migration Network Hungary, Policies, Practices and Data on Unaccompanied Minors in Hungary, 2014, pp. 4, 12, 14. Interview with Júlia Iván, Hungarian Helsinki Committee, Hungary, 13 June 2016.

<sup>159</sup> This section on Italy is a synergy of the SafeGuard national report Italy and consists of extensive citations from: Pàmias, Júlia, Safeguard – Safer with the guardian, National Report Italy, 2016, available from [www.defenceforchildren.it/publicazioni](http://www.defenceforchildren.it/publicazioni).

<sup>160</sup> See Italian Civil Code Articles 343, 347, 348, 357.

<sup>161</sup> An exception are cases of adoption proceedings and emergency measures for the suspension of the parental responsibility, where the guardian is appointed by the Juvenile Court

<sup>162</sup> The "protutore" represents the child in cases where the interest of the child comes into conflict with the interest of the guardian. If the protutore's interests are also in contrast with those of the child, the tutelary judge should appoint a special curator. The protutore should promote the appointment of a new guardian when the guardian is missing or if he abandons his role. Meanwhile the protutore is responsible for the child's care, represents him and is entitled to issue administrative acts.

<sup>163</sup> Until recently the age limit was 16 years of age but it was modified by the adoption of legislative decree 28/12/2013 n° 154, G.U. 08/01/2014 to introduce the listening of all children who are in a position to form a judgment of their own in any proceeding affecting them.

education and protection and take into account his/her capacities, desires and aspirations”<sup>164</sup>

Apart from these general provisions established in the Civil Code, there are currently no unified eligibility criteria, on which the appointment is based. The appointment decisions are therefore subject to the discretion of the judge and there is no guarantee that the judge’s decision is guided by the best interests of the child. It is also not possible to assess the appropriateness of guardians to represent a child’s best interests when performing their duties.

Public authorities are held to report the presence of an unaccompanied child to the competent judicial authority and to the Public Prosecutor of the Juvenile Court. The judge should appoint a guardian for the unaccompanied child within 48 hours from the reception of the notification. This deadline is however not always respected in Italy. It has been reported that in some cases, the guardian is appointed several months after the identification of the child while some children are never appointed a guardian. Such delays and gaps do not only represent a serious protection gap but also infringe upon the rights of these children as afforded under Italian, European and international laws. The challenges in the appointment procedure could, to some extent, be related to the lack of uniformity of identification and age assessment procedure.<sup>165</sup> Common indications on how to implement these procedures as well as a clear division of tasks among competent authorities are missing. Identification and age assessment are however considered necessary to initiate protection measures, including guardianship.

Guardianship for unaccompanied children can be assigned to private persons who express the willingness and availability to become a guardian on a voluntary basis<sup>166</sup> or to an institutional actor, that is a natural or legal person. Although institutional guardianship should be used as a measure of last resort, the selection of one typology or the other seems to depend on the one hand on the culture and approach resulting from the experience of each single court; and on the other hand on the resources available to the judicial authority. In many instances, both models coexist. This reveals a strong need for standardized integrated procedures in order to overcome differences between regions and even within them. A further institutionalisation of voluntary guardianship could most likely help to mitigate the impact of subjectivity and discretion in the guardian’s appointment. The implications that the choice of the model may have for the child are considerable and may result in different degrees of protection provided to children.

The Civil Code provides for institutional guardianship for those children who have no suitable family members or relatives within Italy to act as guardians, as in the case of the majority of unaccompanied children. In such cases, a public local body or the person holding the legal responsibility of the residential care facility where the child lives are formally appointed as guardians. The guardianship is then assigned to a staff member of these institutions. Article 3 paragraph II of Law 184/1983 prohibits however the appointment of legal representatives of child reception facilities or its staff members as guardians. The same article envisages however that, in order to ensure the implementation of the urgent and necessary protection measures for separated children, private and public reception facilities can provide ‘provisional guardianship’ until a guardian has been appointed.<sup>167</sup>

Under the Civil Code, guardians have three functions, the care of the child, legal representation in civil matters and the administration of the child’s properties. The guardian does not have full decision-taking power as the court has to approve all major decisions affecting the child taken by the guardian. The Civil Code provides that guardianship is free of charge and therefore voluntary. Guardians cannot receive a salary for their work.

The very recent Legislative Decree No. 142, which transposes the European Reception Conditions and Asylum Procedures Directives into national law, addresses specifically guardianship for unaccompanied children seeking international protection. The Decree regulates the procedure for the appointment of guardians for unaccompanied asylum seeking children. It foresees that the prosecutor should immediately notify the presence of an unaccompanied child to the tutelary judge in order to start the appointment procedure. Under Italian law, the appointment of a guardian is a prerequisite to regularize the migration

<sup>164</sup> Italian Civil Code Article 148.

<sup>165</sup> This has been specifically highlighted by the National Authority for Childhood and Adolescence and by the recommendations made by the UN Committee on the rights of the child addressed to Italy.

<sup>166</sup> We will refer to this typology as “voluntary guardianship”.

<sup>167</sup> Defence for Children International – Italy, Implementing the Core Standards for Guardians of Separated Children in Europe, Country assessment: Italy, 2013.

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status of an unaccompanied child and is therefore necessary for a child to apply for any kind of residence permit or international protection.<sup>168</sup> Once appointed, the guardian shall contact the child to inform him or her about the appointment. An important element introduced by this Decree is the explicit reference to the principle of the best interests of the child in Article 18: “the guardian performs his tasks in conformity with the principle of the best interests of the minor”. The Decree mentions some exclusion criteria for the appointment of guardians in order to avoid conflicts of interests.

Draft Law C. 1658 concerning protection measures for unaccompanied children presented in October 2013 and still being reviewed by the Italian Parliament introduces a model of voluntary guardianship services integrated into the reception system. The law proposal provides for the establishment of official registers of available guardians for unaccompanied children. Such registers would include citizens who have been selected and trained by the regional Ombuds Office for children and adolescents, which are bodies specifically mandated to monitor and promote children’s rights. The Ombuds Offices could collaborate with the Courts through institutional agreements to promote the appointment of voluntary guardians. Where a regional Ombuds Office is not in place, the National Authority for Children and Adolescents would be responsible for the institution of the registry with the support of competent associations dealing with migration and children’s issues.

In 2015, a Commission of experts appointed by the National Authority for Children and Adolescents published the proposal “Towards a guardianship system for unaccompanied minors”. This proposal addresses the normative gaps affecting guardianship services in Italy.<sup>169</sup> Based on the UN Convention on the Rights of the Child, international standards and national good practice examples, this guiding document aims at qualifying, harmonising and updating guardianship services for unaccompanied children throughout the country. It defines the role of the guardian and proposes a systemic reasoning on guardianship that includes training requirements, appointment procedures, competences and operational modalities, cooperation and coordination of actors and mandates, monitoring and review mechanisms, all tailored to the specific needs of unaccompanied children.

This document represents an important step forward since it draws up detailed orientations and tools to establish a guardianship system that is substantial, effective, independent and anchored in children’s rights. The proposal structures a model of guardianship that is voluntary,<sup>170</sup> and carried out by trained competent citizens with institutional support. The recruitment of guardians is structured in a first identification stage followed by a training process. Mechanisms for support, monitoring and review that include the participation of children are foreseen to assist guardians in their performance.

Regional legislation also regulates guardianship services for children. Many Italian regions have established regional Ombuds Offices for children and adolescents in recent years through regional laws in line with the 1996 Strasbourg Convention ratified by the Government of Italy in 2003. In most of the cases, the constitutive law of the regional Ombuds Offices includes, as part of the body’s mandate, the institution of a regional register of voluntary guardians to be used by the competent judicial authorities. The recruitment and training of guardians are other tasks usually recognised by the same law. The role of the regional Ombuds Offices in guardianship services emanates directly from their mandate to promote and monitor the respect for the human rights of all children as afforded under the UN Convention on the Rights of the Child. From this perspective, the best interests of the child is the guiding principle in all actions taken by these regional bodies, including with regard to guardianship services.<sup>171</sup>

Despite these important developments in Italy, a review of the legislative framework reveals that a guardianship model that is well defined, structured and homogeneous does not yet exist in Italy. The proposal elaborated under the leadership of the National Authority for Children and Adolescents presents therefore an important momentum for continued debate and reform. Thus far, there are significant differences in how the concept of a guardian is understood and applied. The quality of the services and the

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<sup>168</sup> An not only, it is indispensable to exercise many other rights ranging from the right to health, assisted return, procedural rights in criminal proceedings to other more practical issues such as, for example, the purchase of a scooter.

<sup>169</sup> National Authority for Children and Adolescents, *Verso un Sistema di tutela dei minori stranieri non accompagnati*, Documento di proposta [Towards a Guardianship System for Unaccompanied Minors, A proposal, 2015.

<sup>170</sup> In both senses of the word: done, made, brought about, or performed through or by one’s will or one’s own free choice; and made without payment or recompense in any form in accordance with the national legislation that states that guardianship is free..

<sup>171</sup> Laws establishing the ombudsman for children and adolescents currently exist in 18 Regions and in the two Autonomous Provinces of Trento e Bolzano, yet not all of them have already appointed an ombudsman. For a more in-depth discussion of the role of Ombuds offices in guardianship services for unaccompanied children, see the SafeGuard national report Italy and regional report Sicily available from [www.defenceforchildren.it/publicazioni](http://www.defenceforchildren.it/publicazioni).

degree of protection offered to children under existing guardianship systems may vary considerably even within the same region. Time of appointment, length of procedures, cooperation mechanisms among institutions and actors, the degree of commitment of the single guardians, among others, are some of the factors that often vary from one place to another. Gaps in existing laws strongly determine the system's capacity to turn guardianship into an effective element of child protection.<sup>172</sup>

A specific challenge noted with regard to institutional guardianship is the overlapping of roles and, in consequence, the possibility that confusion over mandates and interests, or outright conflicts of interests, obstruct the guardian in promoting primarily the best interests of the child. In practice, it becomes difficult for an institutional guardian to distinguish the guardianship role of the institutional actor and its role in providing social assistance to the child. Moreover, the mandate and interests of institutional guardians does not necessarily converge with the interests of the child, which should be the primary consideration of a guardian's action. In general, the high number of cases assigned to institutional guardians makes it difficult for them to manage all cases effectively. In some places, the mayor is in charge to provide guardianship services for all unaccompanied children staying within the municipality.

Caseloads tend to be too high to ensure frequent contact between the guardian and the child. Institutional guardianship lacks time and is rarely able to develop a meaningful relationship with the children, providing appropriate support on an individual basis and according to the best interests of each child. Specific training and support is not provided in cases of institutional guardianship. This gap is exacerbated by the lack of procedural safeguards to ensure respect for the rights of children and by the absence of common guidance for guardians, including tools to support them in responding to children's needs. In practice, the role of institutional guardians appears to be insufficient and often inadequate to ensure the child's overall well-being, to promote the child's best interests and to exercise legal representation. In fact, research has evidenced that many unaccompanied children under institutional guardianship do not know who their guardian is and are unaware of the functions of a guardian.<sup>173</sup>

## Guardianship services in the Italian region of Sicily<sup>174</sup>

The SafeGuard analysis of guardianship services in Sicily highlights procedures and practices of guardianship services for unaccompanied children in six main provinces of the island. The analysed territory presents a diversity of experiences, approaches and practices. In some contexts (Catania, Syracuse and to a lesser extent Messina), there is an embryonic stage of guardianship involving the cooperation between guardians, grass-root associations, tribunals, social services, albeit with different degrees, modalities and approaches. In other contexts (Caltanissetta, Palermo, Agrigento) such a process has not been initiated yet due to lack of a sufficient number of independent volunteer guardians. The findings suggest that it is necessary to start a process of identification and training of potential guardians, further training of those already active, and awareness raising of institutional actors on the importance of guardians as a resource in the protection, welfare and development of unaccompanied migrant children.

The analysis of the situation in Sicily was guided by the 10 Core Standards for guardianship services for unaccompanied children and four dimensions concerning 1) **legal/procedural matters**, 2) **psycho-social aspects**, 3) **cultural mediation**, and 4) **coordination between different actors and services**. These standards and dimensions have been identified early on in the SafeGuard initiative as a basis for the elaboration of the elements determining an integrated system of guardianship. An integrated and systemic approach to guardianship for unaccompanied children takes into consideration both the personal relationship between guardians and children and the relationship between guardians and the other actors operating in reception and welfare services for children.

<sup>172</sup> National Authority for Children and Adolescents, Verso un Sistema di tutela dei minori stranieri non accompagnati, Documento di proposta [Towards a Guardianship System for Unaccompanied Minors, A proposal], 2015.

<sup>173</sup> Defence for Children International – Italy, Implementing the Core Standards for Guardians of Separated Children in Europe, Country assessment: Italy, 2013.

<sup>174</sup> This section on Sicily is a synergy of the SafeGuard regional report Sicily and consists of extensive citations from: Testai, Patrizia, Safeguard – Safer with the guardian, Regional Report Sicily, 2016 available from [www.defenceforchildren.it/pubblicazioni](http://www.defenceforchildren.it/pubblicazioni)

## 1. Legal-procedural dimension

In the places where guardians are appointed in a relatively short time, while the children are still in the first reception centres, the guardian has often better chances to establish a trusted relationship with the child so that he/she will understand, which type of second reception structure will best suit the child and support the child in this regard. Children's participation in important choices such as the type of accommodation and whether to apply for asylum or another type of residence permit, depends both on the timing of the guardian's appointment and on whether the latter is an independent figure vis-à-vis the reception structure or the social services.

A difficulty reported by guardians in Sicily is the revocation of their guardianship role when the child is transferred to another town. The Tutelary Judges follow a different approach in the various districts and in some contexts, the Tutelary Judge would approve a revocation only when the guardian identifies another guardian in the new place whom he/she could hand over to.

With regard to the provision of after care for unaccompanied children turning 18 years old, Juvenile Courts pursue different approaches. While some courts, as for instance courts in Catania and Caltanissetta, would carry out a careful assessment prior to taking a decision, others, as for instance in Messina and Palermo, tend to generally refuse requests for extension periods without necessarily investigating the situation of the child.

### **The regional analysis in Sicily has identified the following recommendations to strengthen the legal and procedural framework for guardianship services:**

- It would be important to harmonise the approaches and procedures of Tribunals and Juvenile Courts with regard to the prompt appointment of the guardians.
- Guardians should be enabled to act independently in support of the best interests of the child while being well connected and recognized by other institutions, such as the immigration and judicial authorities.
- Local immigration authorities require clear guidance as to the laws they have to apply when dealing with migrant children, in particular with regard to principles and standards relating to international protection, childcare, protection and welfare.
- There should be more collaboration between judicial authorities, in particular Juvenile Courts, the social services and the guardian with regard to granting after care for children turning 18 years old.

## 2. Psycho-social dimension

In contexts where guardians get in contact with the children early during the first reception phase, they are more likely to have an influence on the choice of accommodation in line with the needs of child. The SafeGuard study revealed that throughout Sicily, there are cases of children in particularly vulnerable conditions, such as children involved in prostitution, victims of sexual violence and trafficking. These situations cause a considerable strain on guardians as they rarely have access to adequate support for particularly vulnerable children or specific services for child victims of trafficking and other crimes. The presence of specific projects or initiatives against child abuse, exploitation or trafficking can offer important support for the children concerned and their guardians.

Educational and training programmes or longer-term planning for life projects are often initiated late in the reception process, so that many children turn 18 without having received any education or training. The possibility of guardians to cooperate with schools and educational institutions, social services and the Juvenile Courts, and to get support from these institutions, is of fundamental importance to create longer-term perspectives for children.

Throughout the region, the placement of unaccompanied children in foster families, as an alternative to residential homes, is rarely an option. This is mainly due to cultural obstacles as the number of foster families available for adolescents with a different cultural and religious background is limited.

**With regard to psycho-social issues concerning unaccompanied children and guardians, the following recommendations have been identified:**

- >> It is important that the guardian meets with and listens to the child soon after the child has arrived, so that he/she can make the right decisions with regard to accommodation. The guardian should work closely with the child and social services in making choices concerning the environment, in which the child will live.
- >> Formal agreements between local health authorities and voluntary organisations working for migrants' and children's rights would facilitate the work of guardians in finding safe and appropriate solutions for children. An important consideration in the choice of accommodation is the availability and accessibility of specialised services to protect children's physical and mental health in the communities where they are accommodated.
- >> Social services should elaborate individual life projects for children together with the residential home and care staff, guardians, educational institutions and the child concerned. These projects should be designed to promote the safety, health and well-being of the child and to support the child's development into adulthood and independent life.
- >> Tutelary Judges and Juvenile Courts should coordinate their work to find uniform approaches to the placement of unaccompanied children in appropriate foster care.

### 3. Cultural mediation

Cultural mediators have a key role to support guardians in their communication with children and to enable thus the guardian to exercise his or her role as intermediaries between children, public authorities and service providers. Qualified cultural mediation offers important support for guardians and children to establish a professional and personal relationship characterised by mutual trust and respect.

Cultural mediators and interpreters are not permanently present in reception structures and residential homes but are usually called in and hired upon request. In some local contexts in Sicily, cultural mediation works thanks to specific projects and services operating in the area and run by grass-root migrants rights' organisations. In Syracuse and Messina, guardians collaborate closely with the ARCI group, whereas in Palermo cultural mediation is offered by the 'Medina' project funded by the local administration. Where guardians cannot rely on cultural mediation services, the communication between guardians and children, and between children and local services, can be seriously impaired, in particular in smaller towns.

**In relation to cultural mediation, the analysis identified the following recommendations:**

- >> Guardians should be informed about local projects and groups providing cultural mediation services and the presence of cultural mediators as permanent professional figures in reception structures for migrant children should be encouraged.
- >> The guardian's role as an intermediary between the child, the public authorities and service providers should be recognised by all actors working in the reception and protection system for unaccompanied children.
- >> The relationship between the guardian and the child should be understood and supported in all its dimensions, including with regard to psychosocial, cultural and emotional matters, with a view to achieving a sound balance between the professional and personal dimensions of the relation, whereas at present it is interpreted often in rather narrow bureaucratic, procedural terms or in too personalised ways.
- >> There should be clear rules on the appropriate geographical distance between the child's and the guardian's domiciles.

### 4. Coordination between actors and services

The SafeGuard study revealed that a more intense networking among guardians would be important, at the local or regional and the national level. While the guardianship services for a boy or a girl would always be highly individualised, the integration of guardians into a regional and national network can support the

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development of more systemic approaches. A platform for information exchange, consultation and review of the experience of guardians throughout the country would be essential to understand better the trends as well as concrete challenges and opportunities for guardianship services.

The coordination of guardianship services with all relevant actors involved in the reception and protection of unaccompanied children is an area that requires further development to improve all aspects of guardianship raised above. Quality training courses that are multi-disciplinary in nature can make an important contribution to enhance the cooperation and coordination of all actors involved.

Many actors who were consulted in the context of the SafeGuard regional study in Sicily are in favour of the creation of an independent guardianship authority, which can offer support and supervision to all guardians. Many identified the Authority for Children and Adolescents at the regional and national level as an appropriate body to which the independent guardianship authority could be affiliated. Others suggested that the Tribunals should have a special office that could function as a kind of help desk for guardians of unaccompanied children.

### In relation to coordination, the analysis identified the following recommendations:

- >> Guardianship services should maintain their primary orientation at the best interests of the child, irrespective of the nature of guardianship as professional or volunteer services.
- >> Guardians should be enabled and supported to operate within a network, including through appropriate technological instruments, such as online platforms, so that they can easily identify and communicate with other guardians when a child is transferred. Regional and national networking of guardians and the cooperation between guardians and other actors involved in the reception, care and welfare of unaccompanied children is also important to avoid isolated or individualised performance of guardians.
- >> Training for guardians should be interdisciplinary and offered on a regular basis.
- >> There should be a guardianship authority to which guardians can refer for support and supervision.



## NETHERLANDS

In the Netherlands, Nidos is the national agency responsible for the provision of guardianship services for unaccompanied children. As all other child and youth protection agencies and service providers in the country, the work of Nidos is regulated by the Civil Code and the Youth Care Act. The Youth Care Act provides for quality standards, methods and procedures in service provision as well as conditions for the recruitment of professionals, mechanisms for complaint, reporting and supervision. The law is therefore the main regulatory document that provides national standards for guardianship services.<sup>175</sup>

Institutionally, Nidos is allocated under the Ministry of Justice and is financed by the Ministry. It has no institutional affiliation with the decentralised child and youth care agencies that operate within the municipalities and are responsible to provide care and protection for children. Nonetheless, Nidos is subject to the monitoring of the national Inspectorate for Youth Protection, which oversees all agencies and organisations that provide services to children and youth in the country. Considering the legal and institutional framework that regulates the work of Nidos, the agency can be considered an independent actor within the national system for child and youth care and protection.<sup>176</sup>

This institutional set up allows Nidos to maintain institutional independence when promoting the best interests of the children. This can be an advantage for the cooperation with all relevant agencies involved in a child's case, including child and youth care, reception centres as well as law enforcement and immigration authorities.<sup>177</sup>

<sup>175</sup> Nidos Foundation, Towards a European Network of Guardianship Institutions, 2010, pp. 45, 48. Interview with Nidos, Netherlands, 7 June 2016. Defence for Children International, ECPAT The Netherlands, Guardians Against Child Trafficking and Exploitation, National Report The Netherlands, Extended version, October 2012, pp. 60-61.

<sup>176</sup> Nidos Foundation, Towards a European Network of Guardianship Institutions, 2010, pp. 45, 48. Interview with Nidos, Netherlands, 7 June 2016.

<sup>177</sup> Interview with Nidos, Netherlands, 7 June 2016..

Guardianship is regulated under the Dutch Civil Code, which provides that all children who are deprived of parental care, temporarily or permanently, are entitled to have a guardian appointed. The law applies regardless of the child's national background or residence status in the Netherlands, including for unaccompanied child migrants and asylum seekers. A special article in the Civil Code enables Nidos to provide guardianship services to all unaccompanied children.<sup>178</sup>

Nidos is informed about all cases of unaccompanied children who are identified by the Dutch authorities in the country. The child is usually referred to the application centre for asylum seekers where guardians of Nidos are present and have a first conversation with the child. Nidos applies to the competent family court for the appointment of a guardian, which is usually ordered promptly, possibly even within the same day. The established procedure foresees that the court appoints Nidos as the guardian whereas the agency assigns the active guardianship role to one of its employees. The guardians for unaccompanied children are therefore always professionals employed by Nidos, with a qualification as social workers. In order to ensure that the competence of guardians is adequate and up-to-date, Nidos provides introduction courses to all newly employed guardians and complementary training for all guardians. Since 2014, the regular participation of guardians in training has become mandatory by law, which requires guardians to participate in certified training courses as a minimum once per year.<sup>179</sup>

The training offered by Nidos covers a broad spectrum of themes that are specifically relevant for unaccompanied children. They include how to work and communicate with the children while considering their different cultural backgrounds, their family situations as well as the possibility that the children have been exposed to acts of violence, and how to deal with trauma. Guardians are sensitised to the needs of unaccompanied children that might be different from those of national children, including with regard to religion, accommodation and food. An important component of the training relates to the asylum procedure. While each child who applies for asylum has the right to be assisted by a lawyer, the guardian is tasked to ensure that the lawyer does support the child in the process.<sup>180</sup>

The role and responsibilities of a guardian are comparable to that of a parent as the guardian is tasked to promote the well-being and the best interests of the child. The guardian is responsible for the child's education and care, to support the child in all aspects of her or his personal development and the child's transition into adulthood and independent life. The guardian holds also social and pedagogic tasks vis-à-vis the child and shall support the child in his or her social integration. This includes in particular explaining culture and social norms in the Netherlands, being sensitive to the child's own background, story and needs, supporting the child in his or her social contacts and building social support networks. The guardian needs to be aware of child protection matters and be prepared to identify and report any concerns about the child's experiences of violence, abuse or exploitation, cases of children going missing or who are at risk. In addition, the guardian needs to be knowledgeable about the asylum reception system and relevant support services for the child, which requires an understanding of legal matters and a good network of contacts among the institutions, services and agencies that the child is in contact with. Considering this broad range of tasks, the guardian needs to be in close contact with those who live and work with the child on a daily basis, such as foster families, caretakers, social workers or mentors.<sup>181</sup>

The guardianship service is designed to ensure that a guardian cares for no more than 24 children at any time. This would allow a full-time professional to see each child once per month as a minimum. The guardian's work with an unaccompanied child is guided by an individual action plan that is developed for each child. The plan provides a transparent framework for the guardian's support to the child and is evaluated annually to assess progress made and to make necessary adjustments.<sup>182</sup>

As long as an unaccompanied child stays in the Netherlands, guardianship is provided with continuity and stability, to the extent possible. This entails also that a guardian might accompany a child on a transfer to another EU Member State under the Dublin III Regulation or in the child's return to the home country. The

<sup>178</sup> Interview with Nidos, Netherlands, 7 June 2016. Defence for Children International, ECPAT The Netherlands, Guardians Against Child Trafficking and Exploitation, National Report The Netherlands, Extended version, October 2012, pp. 60-61.

<sup>179</sup> Nidos Foundation, Towards a European Network of Guardianship Institutions, 2010, pp. 47-48. Interview with Nidos, Netherlands, 7 June 2016.

<sup>180</sup> Interview with Nidos, Netherlands, 7 June 2016.

<sup>181</sup> Interview with Nidos, Netherlands, 7 June 2016. Nidos Foundation, Towards a European Network of Guardianship Institutions, 2010, pp. 48-50. Defence for Children International, ECPAT The Netherlands, Guardians Against Child Trafficking and Exploitation, National Report The Netherlands, Extended version, October 2012, pp. 64-65.

<sup>182</sup> Defence for Children International, ECPAT The Netherlands, Guardians Against Child Trafficking and Exploitation, National Report The Netherlands, Extended version, October 2012, pp. 64-65.



aim is for the guardian to ensure the handover to the responsible agency or person abroad, namely the child's parent, caretaker or guardian in another country.<sup>183</sup>

The organisation of guardianship services in the Netherlands offers several opportunities and advantages for children, guardians and the state. The guardians operate within the framework of Nidos as a single national agency, which offers support, ensures professional competence of guardians and quality standards and is subject to monitoring and inspection. This institutional back-up bestows the guardian with a larger authority than a single professional or volunteer might have and which is visible and credible to other agencies and services interacting with the child. This duality of institutional authority combined with the child-centred mandate of the guardian is important for the guardian to advocate for the child's rights, defending and promoting his/her best interests and well-being in close cooperation with all other actors. The guardian has an overview of the child's situation, needs and aspirations and is therefore competent to act as an advocate for the child in relation to the relevant authorities such as law enforcement, immigration and youth care. The guardian is a central figure to ensure that all measures, services and decisions are oriented at the best interests of the child and the identification of a durable solution and are in line with international and national standards that the Dutch state is bound by. This effective and well-connected guardianship model holds therefore also a potential to enhance the efficiency of the reception and care systems for unaccompanied children.<sup>184</sup>



## SWEDEN

In Sweden, the guardianship and care for unaccompanied children is integrated into the mainstream childcare and child protection system. The relevant institutions and services are regulated by law and subject to supervision. The so-called principle of normality foresees that all children in Sweden are provided with care and protection services, including guardianship when required, regardless of their national background or immigration status.<sup>185</sup>

The responsibility for the reception and care for unaccompanied children is divided between different authorities and levels of the public administration. Municipal authorities are responsible for arranging for the placement, childcare and protection of unaccompanied children, while the national Migration Board is in charge of the asylum procedure and the distribution of the children from the first arrival centre to the municipalities. The Migration Board makes available lawyers to act as legal representatives of the children in the asylum procedure. While the Migration Board allocates the budget for municipalities to receive and care for unaccompanied children, the National Board of Health and Welfare is the authority that supervises and supports the social services in the municipalities. The Chief Guardian, a local administrative authority at the municipal level, is responsible for recruiting, training and supervising the guardians. The Swedish Association of Local Authorities and Regions (SALAR) offers support and guidance to the Chief Guardians.<sup>186</sup> A Chief Guardian is either a person, or a board of persons, that is politically elected into this position in a general election.<sup>187</sup> Since 2005, the legal provisions on guardianship for non-national unaccompanied children have been strengthened by the Act on Representation and Custodianship for Unaccompanied Children. While the Care of Young Persons Act, the main national law regulating matters of childcare and protection, applies to all children regardless of their national background or immigration status, this Act was adopted specifically for the target group of unaccompanied asylum seeking children and does not explicitly apply to EU migrant children who are unaccompanied.<sup>188</sup>

The Act strengthened the role of guardians of unaccompanied non-national children under 18 years of age to the effect that a guardian holds parental responsibility over the child like a parent or a guardian of

<sup>183</sup> Council of the Baltic Sea States Children's Unit, Expert Group for Cooperation on Children at Risk, Child Exploitation – Cross-National Child Protection in Practice, Returns and Transfers: International and European standards, procedures and safeguards for children exposed to exploitation, trafficking and children at risk, Summary Report, Second Expert Meeting, Riga, Latvia, 13-14 May 2014, p. 8.

<sup>184</sup> Interview with Nidos, Netherlands, 7 June 2016.

<sup>185</sup> Interview with the Swedish Association of Local Authorities and Regions, 3 June 2016. Nidos Foundation, *Towards a European Network of Guardianship Institutions*, 2010, p. 67.

<sup>186</sup> Nidos Foundation, *Towards a European Network of Guardianship Institutions*, 2010, pp. 67, 69. Interview with the Swedish Association of Local Authorities and Regions, 3 June 2016.

<sup>187</sup> Interview with the Swedish Association of Local Authorities and Regions, 3 June 2016.

<sup>188</sup> Interview with the Swedish Association of Local Authorities and Regions, 3 June 2016. Migrationsverket [Migration Board], European Migration Network, Policies, Practices and Data on Unaccompanied Minors in 2014, Sweden, Report from EMN Sweden 2014:1, 2014, p. 9.

a national child.<sup>189</sup> This includes responsibility for the well-being of the child, taking all relevant decisions on behalf of and with the involvement of the child. As opposed to parents, the guardian is however not responsible for the financial support and daily care of the child.<sup>190</sup> In the context of the asylum procedure, the guardian needs to prepare the child for the asylum interview and be able and competent to ensure that the child's lawyer is adequately representing the child. A guardian used to care for 1-3 children at the time while the maximum of cases was foreseen to be eight children.<sup>191</sup> With the sudden and stark increase of the number of unaccompanied children arriving in Sweden during 2015, the caseload rose and while some guardians might still care for very few children at the same time, others have to care for about twenty children or slightly more.<sup>192</sup>

Considering that Sweden as a relatively small country received over 35,000 unaccompanied asylum seeking children in 2015 (see Part I), the Swedish guardianship system has accommodated this stark increase relatively well. While the strain on the guardianship services and individual guardians is high, the caseload did not go as extremely out of hand as has happened in other countries.

When an unaccompanied child gets in contact with the authorities, the social services are notified about the case and the procedure for appointing a guardian is initiated. As long as the appointment is outstanding, the Migration Board or the police would be in a position to assess whether a public counsel should be appointed for the child. When the immigration status of the child has not been regularised, the guardian or public counsel are required to apply for asylum or a residence permit for the child as a child under 18 years of age does not have the legal capacity to apply by her or himself. Children can hand in an application also before a guardian has been appointed; the Migration Board will however start to assess the application only after the appointment of a guardian or a public counsel.<sup>193</sup> When an age assessment is considered necessary, it is usually delayed until a guardian or a public counsel has been appointed.<sup>194</sup> As long as a decision on the child's application for asylum or other form of residence is pending, the guardian acts in a temporary function. When the child is granted a permanent residence permit or asylum, the responsibility for the child is passed to the Social Welfare Committee in the municipality where the child is staying. They need to assess the child's case and provide permanent guardianship under the same structures responsible for the guardianship of national children.<sup>195</sup>

When an unaccompanied child is identified by municipal authorities or referred from the first arrival centre, the Chief Guardian in the municipality is responsible for the appointment of a guardian for the child. Chief Guardians assess if the candidates are suitable to act as guardians, including a check of the person's background, provide supervision and training for guardians.<sup>196</sup> The appointment of a guardian by the Chief Guardian happens upon application from either the Migration Board or the local social services.<sup>197</sup> While the law provides for the appointment of the guardian as soon as possible after the identification of a child, the requirements in the appointment procedure, including the relevant checks by the Chief Guardian and the training of the guardian, require some time and could delay the appointment by one to several weeks.<sup>198</sup>

While the law foresees that a guardian should be appointed as soon as possible, a specific time frame is not defined and the challenges of prompt appointment have been subject of public debate in Sweden for some time. In 2006, the Swedish Parliament Riksdag proposed to amend the law to provide that a guardian be

<sup>189</sup> The Act is also referred to "Act on Guardians Ad Litem for Unaccompanied Children (2005:429)" Lag (2005:429) om god man för ensamkommande barn, §3, Section 3. Migrationsverket [Migration Board], European Migration Network, Policies, Practices and Data on Unaccompanied Minors in 2014, Sweden, Report from EMN Sweden 2014:1, 2014, p. 9.

<sup>190</sup> Interview with the Swedish Association of Local Authorities and Regions, 3 June 2016.

<sup>191</sup> Nidos Foundation, Towards a European Network of Guardianship Institutions, 2010, pp. 67-68, 113.

<sup>192</sup> Interview with the Swedish Association of Local Authorities and Regions, 3 June 2016.

<sup>193</sup> Aliens Act, Chapter 18, Section 4 and Act on guardians for unaccompanied minors.

<sup>194</sup> Migrationsverket [Migration Board], European Migration Network, Policies, Practices and Data on Unaccompanied Minors in 2014, Sweden, Report from EMN Sweden 2014:1, 2014, pp. 6, 7.

<sup>195</sup> European Migration Network, National Report for Sweden; Policies on reception, return and integration arrangements for, and numbers of, unaccompanied Minors – an EU comparative study, Study 2008 (II), June 2009, p. 4. Migrationsverket [Migration Board], European Migration Network, Policies, Practices and Data on Unaccompanied Minors in 2014, Sweden, Report from EMN Sweden 2014:1, 2014, p. 9. Nidos Foundation, Towards a European Network of Guardianship Institutions, 2010, pp. 67, 69.

<sup>196</sup> The appointment is done under the Children's and Parents' Code, Chapter 11, Sections 12 and 13. United Nations Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Office of the High Commissioner for Human Rights, Geneva, Fourth Periodic Report of States Parties due in 2007: Sweden, CRC/C/SWE/4, 28 January 2008, par. 232. Interview with the Swedish Association of Local Authorities and Regions, 3 June 2016. Nidos Foundation, Towards a European Network of Guardianship Institutions, 2010, p. 69.

<sup>197</sup> Nidos Foundation, Towards a European Network of Guardianship Institutions, 2010, p. 68.

<sup>198</sup> Act on Guardians ad Litem for Unaccompanied Children (205:429) §3. Interview with the Swedish Association of Local Authorities and Regions, 3 June 2016.

appointed within 24 hours after the child comes in contact with authorities. At that time, the Ministry of Justice sent out questionnaires to municipalities to assess how the appointment procedure is handled in practice.<sup>199</sup> The results revealed that although the guardian was often appointed within a few days after the child was identified, it is often not possible to appoint a guardian within 24 hours as a general rule and a stricter legal provision on the time frame for the appointment could not be realistic. Concerns relate to the multiple tasks that need to be performed upon arrival of an unaccompanied non-national child, including to officially establish the child's identity, organise an interpreter, and to understand the child's reasons and motivations for coming to Sweden.<sup>200</sup> Prior to appointing a guardian, the Chief Guardian has to check the background of the candidate and provide training, which requires some time. Especially considering the very high number unaccompanied children who were registered in 2015, delays in the appointment could not always be prevented.<sup>201</sup>

The guardian is expected to remain in regular contact with the child and has a strong say on the placement of the child. When there are risks that the child leaves the accommodation without informing anyone, the guardian can prohibit the child to leave and in cases of children who are traced after having gone missing, the guardian can request a court decision to change the child's placement to a place and form of accommodation that the guardian considers more appropriate. The guardian should support the child in contact with all relevant authorities, institutions, services and individuals and functions thus as an advocate and central person who promotes the child's interests towards all other agencies.<sup>202</sup> When there are suspicions that the child is a victim of crime and an investigation is initiated, a legal/plaintiff guardian is appointed in addition.<sup>203</sup>

Guardians of unaccompanied children act as volunteers and are entitled to compensation for their expenses. According to the law, the Chief Guardian is responsible for determining the compensation of guardians so that the standards and procedures can differ from place to place.<sup>204</sup> Training for guardians is organised locally by the Chief Guardians and has not been harmonised throughout the country. New guardians receive a brochure from the Migration Board that provides information about relevant laws and procedures.<sup>205</sup> The Migration Board, the Social Board of Health and Welfare and the Swedish Authority of Local Authorities and Regions have together developed a website that provides information and advice for guardians and complements the training provided locally by the Chief Guardians.<sup>206</sup>

In general, the Swedish guardianship system does not make a distinction between guardians for national or non-national children and for the elderly. Matters of childcare and protection, child rights in the asylum procedure or transnational child protection are therefore areas where competences require more training and specialisation. Guardians act with a lot of independence. The level of supervision, guidance, preparation and training to ensure consistent quality standards of guardianship services could be strengthened, in particular in view of the important tasks of the guardian for the well-being, development and safety of the child.<sup>207</sup>

The Swedish Association of Local Authorities and Regions advocates for a reform of the guardianship services to promote a model of professional guardians. Considering the complex and sensitive tasks that guardians have to fulfil, they require specialized training, capacities and supervision and professionals might be better equipped to offer a consistent quality of services in this important mandate than volunteers. Especially when confronted with very high numbers of arriving children, a professional guardianship system with adequate financial and institutional support could be better prepared to provide services with more continuity.<sup>208</sup>

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**199** United Nations Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Office of the High Commissioner for Human Rights, Geneva, Fourth Periodic Report of States Parties due in 2007: Sweden, CRC/C/SWE/4, 28 January 2008, par. 232.

**200** United Nations Committee on the Rights of the Child, Written Replies by the Government of Sweden to the List of Issues (CRC/C/SWE/Q/4) Prepared by the Committee on the Rights of the Child in Connection with the Consideration of the Fourth Periodic Report of Sweden (CRC/C/SWE/4), Office of the High Commissioner for Human Rights, Geneva, CRC/C/SWE/Q/4/Add.1, 24 April 2009, p. 12.

**201** Interview with the Swedish Association of Local Authorities and Regions, 3 June 2016.

**202** Migrationsverket [Migration Board], European Migration Network, Policies, Practices and Data on Unaccompanied Minors in 2014, Sweden, Report from EMN Sweden 2014:1, 2014, p. 9.

**203** Act on Plaintiff Guardian (Lag (1988:609) om målsägandebitråde) §1, Section 1.

**204** Nidos Foundation, **Towards a European Network of Guardianship Institutions**, 2010, p. 67. Interview with the Swedish Association of Local Authorities and Regions, 3 June 2016.

**205** Eriksson, Maja K. (Uppsala University), Thematic Study on Child Trafficking: Sweden, European Union Agency for Fundamental Rights and ECPAT Sweden, undated, p. 30.

**206** Interview with the Swedish Association of Local Authorities and Regions, 3 June 2016.

**207** Nidos Foundation, **Towards a European Network of Guardianship Institutions**, 2010, p. 69.

**208** Interview with the Swedish Association of Local Authorities and Regions, 3 June 2016.

# PART IV

## CONCLUSIONS AND RECOMMENDATIONS FOR MORE SYSTEMIC APPROACHES TO GUARDIANSHIP SERVICES

The review of international and European standards concerning guardianship and representation for unaccompanied children has revealed their strong normative power. While the 1951 UN Refugee Convention remains silent on guardianship for unaccompanied children, the adoption of the UN Convention on the Rights of the Child in 1989 initiated important developments to safeguard the human rights of children who seek asylum. As the Convention has gradually been applied for migrant and asylum seeking children, the guardian as a key figure to promote the best interests and the well-being of unaccompanied children has gained more and more attention. The General Comment No. 6 (2005) of the Committee on the Rights of the Child and the UN Guidelines for the Alternative Care of Children (2011) have each had a significant influence from within

the United Nations to strengthen the rights of children who are deprived of parental care while abroad. More recently, the European Union Agency for Fundamental Rights has developed guidance and principles for guardianship services in the EU, recognising the importance of the guardian for protecting unaccompanied children from exploitation and trafficking.<sup>209</sup> Initiatives by NGOs, Ombudspersons for Children, the academia and many others have been critical to develop quality standards for guardians and advocate for their application in policy and practice.

<sup>209</sup> European Union Agency for Fundamental Rights, [Guardianship for Children Deprived of Parental Care, A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking](#), 2014. European Union Agency for Fundamental Rights, [Guardianship systems for children deprived of parental care in the European Union](#). With a particular focus on their role in responding to child trafficking, 2015.

## S a f e G u a r d

As the European Union embarked on a process to develop the Common European Asylum System, the role of the Commission, the Council and the Parliament was decisive to strengthen the law and policy framework at the EU level in relation to the representation of unaccompanied asylum seeking children. In fact, the literature review shows that the legislative reform at EU level has driven law and policy reform at the national level in Member States.

Despite this important progress, guardianship remains one of the main common challenges in the reception and care of unaccompanied children throughout Europe. It has been recognised as a key prevention and protection measures in response to all forms of violence against children, including exploitation and trafficking. International and European standards have thus far concentrated primarily on the need to appoint a guardian and the guardian's tasks. Some standards provide further details about the supervisory guardianship authority or key principles of guardianship. In general, international and European standards remain however largely silent on how guardianship services should be organised, what is the responsibility of the state in this context, what are the minimum quality standards for guardianship services that have to be guaranteed in Europe and how can state authorities and service providers ensure accountability.

In the process of transposing EU Directives and Regulations, not only their important provisions but likewise their limited scope and focus have been translated into national law. The lacuna within international and European standards prevails therefore also within EU Member States. As a result, there remain significant shortcomings and gaps with far-reaching consequences for the quality of guardianship services and the human rights of the children concerned. The discussion of country examples shows however also that it is possible for countries to apply international and European standards within much more comprehensive approaches, especially where national governments have taken the initiative to develop more elaborate provisions on guardianship and a strong institutional framework, as for instance in the Netherlands.

Guardianship services for unaccompanied children have thus far not been considered in the context of 'systemic approaches' to child protection and the implementation of the Convention on the Rights of the Child. While there is consensus that guardianship services should be integrated into national child protection systems, there is little substance to date to elaborate on what that means in practice. In particular, there is limited evidence as to where guardianship services for unaccompanied children require special measures and proactive efforts in order to prevent the exclusion of unaccompanied children from the childcare, protection and welfare services available to national children.

The country examples discussed in this report show that solutions to structural challenges are possible. An innovative development is the initiative led by the Italian National Authority for Children and Adolescents, which tasked an expert commission to develop a proposal "Towards a guardianship system for unaccompanied minors".<sup>210</sup> This proposal, published in 2015, addresses the normative gaps affecting guardianship services in Italy. Based on the UN Convention on the Rights of the Child, international standards and national good practice examples, this guiding document aims at qualifying, harmonising and updating guardianship services for unaccompanied children throughout the country. It represents an important step forward since it presents detailed orientations and tools to establish a guardianship system that is substantial, effective, independent and anchored in children's rights. The proposed model of guardianship is voluntary and carried out by trained competent citizens with institutional support. Mechanisms for training, support, monitoring and review that include the participation of children are foreseen to assist guardians in their performance.<sup>211</sup> It is important to sustain the momentum generated by the National Authority in 2015 in order to ensure that these guidelines are implemented in practice.

Systemic approaches could help to ensure that guardianship services bridge the different systems and structures in place for childcare, protection and welfare, immigration and asylum as well as other relevant areas such as health, education and justice. The discussion of country profiles reveals that guardians often have a social work background and are less prepared to safeguard the rights of the child in asylum and immigration procedures. Access to specialised support services to complement the competences of the guardian wherever needed, remains a challenge.

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<sup>210</sup> National Authority for Children and Adolescents, **Verso un Sistema di tutela dei minori stranieri non accompagnati**, Documento di proposta [Towards a Guardianship System for Unaccompanied Minors, A proposal], 2015.

<sup>211</sup> Citation from: Pàmias, Júlia, *Safeguard – Safer with the guardian*, National Report Italy, 2016, pp. 10-11.

While European advocacy has called consistently for the prompt appointment of guardians, the review of national services for guardianship shows that in some countries, the appointment of a guardian is still being delayed. Where guardians are promptly appointed, this does not necessarily imply that the child can immediately count on the guardian's competent support. There can be significant time lapses between the appointment and the first contact or effective support from the guardian. The experience from Sweden shows that a national inquiry into the process from the identification of the unaccompanied child through to the appointment of the guardian and the first contact with the child can help to obtain clarity of the steps to be taken and the time required for doing it well. The authorities involved in the appointment have to balance the objective of prompt appointment with the procedural and safety requirements of the appointment procedure.

In many European states, guardianship services are tasked to promote the best interests of the child. This central concept has however not been clearly defined or described in the context of guardianship for unaccompanied children. Initiatives to provide more clarity on the concept and the key aspects that need to be considered when promoting the best interests of a child, such as the recent law reform in Austria, present important opportunities to strengthen the role of a guardian as an advocate for the child and her or his interests. The Austrian example is encouraging and would be worthwhile an analytical follow-up to understand how the key aspects of the best interests of the child, as defined by law, are respected in practice, specifically in the collaboration between guardians, children and the relevant authorities involved with the child.

Considering the broad and far-reaching responsibilities of guardians, embedding the service into a single national institution is essential. The Dutch guardianship authority for unaccompanied children Nidos has the expertise and the authority to support its professional guardians in exercising their roles. As a national authority, Nidos provides a clearly regulated professional mandate, continued training and learning, and technical expertise on specific issues where required. Backed up by this institutional framework, the guardians are likely to perform their tasks with more institutional authority than individual volunteers or locally organised professionals might be able to. In particular, the close cooperation of Nidos with a network of institutions and agencies can support the individual guardian in navigating the complex official structures. This could help to maintain an overview of the child's situation and to advocate better for the child's rights and interests even in complex situations and in cases where the interests and mandates of different agencies might appear to be in conflict.<sup>212</sup>

The models of guardianship in place in EU Members States comprise volunteer guardians, professional guardians and guardianship provided by public officials or institutions. In some countries, two or three of these models co-exist. In Germany, the four-fold model of guardianship provided by either the Youth Office, by private associations or by private persons who act as volunteers or as professionals, is considered to have potential advantages as the diversity of services can increase the chances to find the most suitable guardian for each child.<sup>213</sup>

A major gap remains the training of guardians, which is not yet offered systematically and mechanisms for supervision, monitoring and reporting of abuses are scarce. This concerns equally volunteer, professional and official guardians. While structures for guardianship are in place throughout Europe, the limited investment in training and effective support structures undermines their efficiency. In addition to professional guardianship training as part of mainstream professional and academic curricula and on-the-job training, citizens who provide guardianship services as volunteers need to be equally prepared and supervised to fulfil the broad and challenging mandate of a guardian.

Guardians are important for unaccompanied children as they are often the only persons who keep an overview of their situations and support them with continuity during the asylum procedure. For many unaccompanied children, obtaining a permit of stay is one of the main objectives and a precondition for the child's migration project to succeed. The country profiles demonstrate, however, that guardians' knowledge of immigration and asylum law, the relevant procedures and the rights of the child in this context is often limited. Chances for children and guardians to access free legal assistance and legal representation are

<sup>212</sup> Interview with Nidos, Netherlands, 7 June 2016.

<sup>213</sup> Interview Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, Germany, 19 May 2016.

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likewise limited in many countries. The collaboration between the guardian, the legal representative and/or lawyer and the child, is therefore an area that requires more attention.

Training needs to cover a broad range of themes, including legal matters related to childcare and protection as well as immigration and asylum law. Training is important for the guardian to understand the roles and mandates of each actor and to equip the guardian with methods and tools to establish a positive and trusted communication and relationship with the child, so that he/she can understand the perspective, story, views and aspirations of the child and support the child adequately. The reflections and consultations in the context of the SafeGuard initiative have revealed four main competence areas that are critical for the performance of guardians: procedural and legal matters; psycho-social issues concerning the child, including specifically child victims of crime; cultural mediation and effective linkages with all relevant actors and services.<sup>214</sup>

In addition to the training of guardians, it is important to strengthen inter-disciplinary joint training of all relevant actors involved. Joint training is critical to sensitise all agencies, service providers and decision makers and other relevant persons for the role and mandate of the guardian and enable them to establish efficient communication and collaboration. When considering the situation of child victims of trafficking or other crimes, the involvement of law enforcement agencies in multi-disciplinary training can make an important difference to better support these children.

While many guardians in Europe have limited access to training and information, also children lack access to information in a language they understand. Evidence of children's views of guardianship and their recommendations for improvement of the service are scarce. The few existing studies reveal that children are poorly informed about the guardian as an institution, are not aware of the role of a guardian or how to contact him or her. Initiatives to strengthen guardianship services for children should therefore closely involve children and guardians, in addition to the officials and professionals working with and for them.

Children who are not informed about the role of the guardian, the asylum procedure and the options available to them are likely to take uninformed decisions for and by themselves, which might be risky. An example reported from several EU Member States is that children who have family members in another EU Member State decide to leave accommodation centres and move on under precarious conditions, without being aware of, or trusting, the possibility to be transferred under the Dublin III Regulation. Being poorly informed and lacking the support of a trusted guardian, children are considered more vulnerable to risky propositions from persons who might aim to abuse or exploit them, including traffickers.

For transit countries, it is not uncommon that very high percentages of the unaccompanied children leave the accommodation centres and move on. While ensuring referral and care for unaccompanied children causes a bureaucratic effort for the public authorities, the case management itself will then last only very little time. Considered from this perspective, investing in better guardianship services could be seen as counterproductive by the authorities in some transit countries. Main countries of arrival are however witnessing constant high caseloads of unaccompanied children who arrive and stay. From a human rights perspective, the provision of quality guardianship services is an obligation of states under international law. From the perspective of the European Commission and Member States, it is strongly required in order to enable the EU asylum acquis and the Common European Asylum System to function.

Guardianship services as part of childcare, protection and asylum reception systems are also essential to prevent the exploitation and trafficking of unaccompanied children and to enable the identification of victims. Investing in functioning guardianship services is therefore of direct relevance for EU Member States and the Commission to share the responsibility as well as the socio-political and economic costs of the Common European Asylum System. An equal distribution of responsibility is provided for under the Treaty of the European Union (Articles 78 and 80). Overall, quality guardianship services are without doubt a sensible investment in the development of the children who arrive, to prevent harm or crimes against them and the related immense cost for the individual, the societies and states in countries of origin, transit and destination.

Against this background, the emergency in Greece is of concern not only to the persons arriving, the Greek state and people, it is a matter of concern for the European Union and the broader European region. Considering the high numbers of people seeking to enter the EU through Greece, the difficulties of

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<sup>214</sup> For a more detailed discussion, see the SafeGuard Report Sicily available from [www.defenceforchildren.it/publicazioni](http://www.defenceforchildren.it/publicazioni).

reaching safe grounds and the threats of war, terrorism, violence and deprivation driving their movement, investing in social stability, human rights and dignity of the arriving and receiving populations is a political imperative.

In fact, a cost-efficiency analysis of guardianship services in England and Wales has demonstrated the benefits of investing in guardianship services for unaccompanied and separated children, including children who might be victims of trafficking. The analysis was commissioned by UNICEF UK and The Children's Society in 2014. It aimed to assess whether a legal system for guardianship, in line with relevant international standards and guidance, was financially viable. The analysis was based on evidence from Scotland and the Netherlands showing that the qualified support from a guardian improved the quality of decision making processes and led to more positive outcomes in the best interests of the child. The study found that investing in quality guardianship services for unaccompanied children would lead to a positive cost-benefit outcome. The substantive cost benefits become manifest when children age out of care at the age of 18 and transition into adulthood and independent life. In addition, guardians enhance equity of services and assist all authorities and services providers involved with the child's case to live up to their obligations under national, European and international law.<sup>215</sup>

To conclude, the review of international standards and several country examples has revealed that important progress has been made throughout Europe. The Directives and Regulations of the European Commission have had a notable impact on national law reform concerning guardianship for unaccompanied children. As a result, guardianship services have evolved significantly and are today offered in a more reliable way and to higher standards of quality than some 10-15 years ago. There are, however, concerns that the standards achieved thus far are compromised when the number of unaccompanied children arriving within the EU increases significantly.

Notwithstanding this important progress, there remain significant shortcomings, gaps and challenges that the Member States of the European Union, together with the Commission, need to address. Throughout the EU, the services available for children are generally appropriate and useful for unaccompanied children. In practice, however, the appointment and active support of a guardian is essential for the child to access these services. Where guardians are not appointed or active promptly to support children in accessing services, this gap leads to serious infringements and violations of the human rights of the child, including rights to education, medical care and the right to apply for asylum as a child.

The most pressing challenge is therefore to ensure that guardians, once appointed, promptly get in contact with the child and that guardians are sufficiently prepared, qualified and supported to promote the best interests of the child, to support the child's social integration and personal development and to support the child in contact with all relevant authorities and service providers.

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<sup>215</sup> Counter Human Trafficking Bureau, **Cost Benefit Appraisal of Legal Guardianship for Unaccompanied and Separated Migrant Children in England and Wales**, Commissioned by UNICEF UK and The Children's Society, June 2014, pp. 3-4, 49. See also: UNICEF United Kingdom, The Children's Society, **Indicative Costs and Efficiencies of Guardianship**, March 2014.



## CONCLUDING REFLECTIONS AND RECOMMENDATIONS

- >> **Providing guardianship services for unaccompanied children is as a responsibility of states under their existing human rights obligations.** The provision of guardianship services is an inherent component of the state structures for childcare, welfare and protection as well as immigration regime and asylum reception. Being at the intersection of these different policy sectors and institutional mandates, the risk of overlapping or conflicting interests is high. The primary point of reference and guiding interest for guardianship services is their orientation at the best interests of the individual child (UN Convention on the Rights of the Child Article 3 and EU Charter Article 24). As all institutions are bound to abide with international standards, including the UN Convention on the Rights of the Child (CRC) and European Union law, this view of guardianship services could enable a stronger institutional integration and coordination that is rights-based and child-centred. National and regional Ombuds Offices for children can play a key role in guardianship services for unaccompanied children, due to their institutional mandate to promote the best interests of children in line with the Convention and the EU Charter.
- >> If appropriately prepared, equipped and supported, a **guardian is the key figure who would be in a position to act as a link and a hub between the child and all relevant institutions, services and professionals** involved with the child. The guardian could thus act as an advocate of the child and a monitor relevant services and institutions. This role would invariably include the capacity of the guardian to identify risks and gaps and bring them to the notion of the relevant officials and professionals. This perspective envisages the role of a guardian to steer a continuum of services for prevention, protection and empowerment of the unaccompanied child. While guardianship services should be integrated into mainstream structures for childcare, protection and welfare, they must be adequately prepared to respond to the specific situations and needs of non-national children, including with regard to matters of immigration, asylum and justice.
- >> **Guardianship has to be respected and supported by all relevant institutions** from within the childcare, protection and welfare system, the immigration and asylum system as well as law enforcement and the judiciary. There needs to be a common understanding of roles and mandates and allocation of time and space for each actor involved with the child's case to interact with the child and his/her guardian. Professional and volunteer guardians will be stronger when they operate with a strong institutional back-up that gives them weight and authority when representing the child in contact with national or local authorities and service providers.
- >> Existing standards and guidelines on guardianship for unaccompanied children provide an important regulatory framework for guardianship services. They are however still fragmented and leave a considerable margin of interpretation and discretion to those who apply these standards in practice. **More comprehensive regulations and standards are required with regard to the qualification, supervision and monitoring of guardians** – professionals, officials or volunteers – and their working relation with the child they are tasked to assist. Clarity is also needed in the understanding of key concepts that the guardian is tasked to promote, such as the best interests of the child, the right to be heard and child participation. A stand-alone European standard, such as a Regulation or Directive, a Communication or other unified policy document, could provide important orientation for improving guardianship services and harmonising them throughout Europe.
- >> Guardianship services could be conceived as offering a 'third space' within the institutional framework relevant for the reception and care of unaccompanied children. This space is primarily determined by the human rights and the perspectives of the person at its centre. It enables the guardian and other actors to maintain an overview of the rights and interests of the child and to represent these in a holistic way vis-à-vis various authorities. This function is essential to prevent that the child is perceived and treated mainly as a case to be administered, and that the case management is fragmented between different authorities and services providers.

**The guardian's focus on the person offers important opportunities to support the personal development, active citizenship and social inclusion of the child.** The guardian is a key figure to remind all relevant actors to uphold the human rights of unaccompanied children, which derive from international standards and have been enshrined into the EU Charter, Directives and the asylum acquis.

## KEY ELEMENTS OF A 'GUARDIANSHIP SYSTEM'

A leading interest of the SafeGuard initiative was to understand better the elements of a systemic approach to guardianship and what opportunities and challenges such an approach could hold for states, authorities and service providers as well as children and their guardians. The training courses and consultations with partners and participants during the implementation of SafeGuard have resulted in some important hints and reflections in this direction. In addition, the review of international and European standards and the way they are applied in EU Member States points to certain key elements of a 'guardianship system'. These key elements could make guardianship services more reliable, appropriate and effective. They incorporate standards and principles of guardianship services that have previously been elaborated at the European level. They are mutually interrelated and operate within a child-centred and a human rights-based approach that aims primarily to promote the best interests of the child:

### 1. Leading institution oriented at the best interests of the child

Guardianship services should be organised under the **leadership of a public institution**, which could be a national ministry, a regional or specialised institution, or a national or regional Ombuds Office for children. A single institution is recommended to take the national lead, regardless of whether the responsibility for organising the services rests with national, regional or local authorities.

The leading institution should be independent and impartial in the sense that it operates primarily in **orientation at the best interests of the child**, is institutionally distinct from the agencies and services that provide accommodation, care and social services for unaccompanied children and independent from immigration and law enforcement authorities. Ombudspersons for children could indeed be well placed to guarantee that guardianship services are primarily guided by the best interests of the child and to activate the advocate function of guardians.

Leading institutions have an important role to facilitate the contact of guardians with other institutions and authorities within the country and transnationally. A strong leading institution can ensure visibility and transparency of guardianship services and **bestow individual guardians with authority** in performing their tasks. This gives weight to the role of the guardian and helps to back up the guardian's position vis-à-vis other authorities.

The leading institution is overall responsible to ensure that the organisation of guardianship services enables **stability and permanency** for the individual child while it also ensures **continuity** of services, even in times of increasing arrivals.

A clear and unified institutional affiliation of guardianship services enables a better **overview of the performance of guardians** in practice. A single national guardianship authority would be well placed to gather, analyse and communicate lessons learned about the performance of guardians as well as the recommendations of guardians in relevant policy review and planning processes, to **advocate for reforms** and contribute thereby to an ongoing improvement of the service.

Internal mechanisms of **evaluation, monitoring and accountability** are essential and should be embedded into the structures of the leading institution. In addition, the services it provides should be subject to monitoring, auditing and oversight from external and independent bodies.

### 2. Institutional integration and cooperation

Guardianship services should be **integrated into existing services and structures for childcare, protection and welfare**. They need to operate according to the standards regulating childcare, protection and welfare for national children and be prepared, at the same time, to understand and respond to the specific needs of unaccompanied children. Special consideration for the situation of unaccompanied

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children is particularly important in the context of prompt appointment procedures, inter-cultural communication and an understanding of matters of immigration and asylum law.

Guardianship services need to be prepared to monitor and demand the application of **universal standards enshrined in national childcare, protection and welfare laws to non-national children**, giving due account to each child's individual situation and story. This capacity is essential to prevent differential treatment or exclusion of unaccompanied children on the grounds of their immigration status or the fact that they are deprived of parental care.

The leading institution shall support and enable individual guardians **to act as a link – or a hub – between the child and all the relevant authorities, service providers and institutions** involved with the child's case. While acting as a link, the guardian can represent the views of the child in contact with relevant professionals and officials, promote the best interests of the child in relevant decision-making processes and procedures, and keep the child continuously informed about the developments in a language that the child understands. This function of the guardian is essential to enable a child-centred and a holistic approach, to ensure that the guardian maintains an overview of the child's situation and to enable the guardian to **function as an advocate of the child** whom he or she assists.

Institutionally, guardianship services need to be **represented in multi-disciplinary and inter-agency cooperation and coordination mechanisms** at all levels, in policymaking, policy implementation measures and local practice. This is essential to ensure that the specific perspective, needs and experience of guardianship services influences processes of policy review and reform.

The **integration of individual guardians into a regional and national network** can also support the development of more systemic approaches. A platform for information exchange, consultation and review of the experience of guardians throughout the country would be essential to understand better the trends as well as concrete challenges, solutions and opportunities for guardianship services.

### 3. Safe recruitment, appropriate training and supervision

The **recruitment** of professionals and volunteer guardians must be **competence-based** and subject to a reliable and appropriate **vetting procedure**.

Guardians need to have access to **periodic training that is mandatory and appropriate** to the broad-based competences required. Training should be included into the relevant professional and academic curricula and be continued as regular on-the-job training. Initial and continuous training is required also for citizens who provide guardianship services as volunteers. The institutional framework for guardianship services needs to ensure that volunteers are qualified and competent to fulfil the guardianship mandate to the same extent as professionals or officials.

Training shall equip guardians with methods and tools to establish a **positive and trustful communication and relationship with the child**. Training should sensitise guardians to listen to the perspectives, stories and views of the child in order to better understand the child's aspirations, wishes and concerns and to support the child adequately.

Training needs to cover a **broad range of themes** for guardians to be **prepared to fulfil their demanding mandate**. The themes covered should include legal and procedural matters related to childcare and protection as well as immigration and asylum law; psycho-social issues pertaining to the personal development of the child, as well as health and education; understanding the human rights and best interests of a child in transnational situations; supporting the child in his or her social integration and building social support networks; child-sensitive communication, including inter-cultural communication and mediation, working with interpreters and understanding the specific cultural and religious background of a child; understanding the child's family context and origins as well as the motivations for migration, the child's aspirations and expectations from home; understanding trauma and knowing how to refer the child to relevant support services and assistance.<sup>216</sup>

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<sup>216</sup> Interview with Karsten Laudien, Protestant University of Applied Sciences, Berlin, Germany, 31 May 2016. Interview with Nidos, Netherlands, 7 June 2016.

Guardians should also be **trained on key concepts** determining their mandates such as the **best interests** of the child, the **right to be heard** and **child participation**.

Training is important for the guardian to understand the roles and mandates of each actor involved in the child's case, which is a precondition for enabling the guardian to act as a link between the child and the authorities, institutions and service providers. At the same time, it would also be important to put in place **joint training initiatives** for guardians, social workers, care staff, immigration officials, law enforcement officers, medical staff and other relevant officials and professionals working with and for unaccompanied children. The objective is to foster a better understanding among these public and private actors of the role of guardians and to **strengthen multi-disciplinary and inter-agency cooperation**, communication and trust.<sup>217</sup>

**Professional supervision** is essential to support guardians in fulfilling their demanding mandates and needs to be accessible and effectively used by professional, official and volunteer guardians.

#### 4. The professional and personal relationship between guardian and child

Guardianship services should be organised and supported in such a way as to enable a well-balanced professional and personal relation between the guardian and the child. This relation should be based on **respect, dignity and trust**. The appointment procedure of guardians must ensure that **the first and regular contact between the guardian and the child is initiated promptly upon appointment**. Guardians should have a maximum number of cases that enables them to enter into a regular contact and communication with each child and be **easily accessible** for the child or relevant professionals working with and for the child such as care staff, teachers or medical staff.

#### 5. Practical, organisational and financial support

Guardianship services perform better when they operate within a structure that provides for well-defined **organisation, procedures and resources**. Individual guardians and local or regional bodies organising guardianship services should have access to **practical support, working methods and tools**, as well as **technical assistance and advice** when performing their tasks.

Guardians need **access to qualified specialised services**, such as quality interpretation and cultural mediation that is child-sensitive as well as legal assistance, legal and psycho-social counselling for the child. Such services should be available free of charge.

The operation of guardianship services must be guided by **national quality standards** that are applicable to professional, official and volunteer guardians.

Within the structures for guardianship services, individual guardians should have access to a **confidential Ombuds service** where they can report concerns and receive support to address those.

<sup>217</sup> Interview with Júlia Iván, Hungarian Helsinki Committee, Hungary, 13 June 2016. Interview with Nidos, Netherlands, 7 June 2016. Interview with Henriette Katzenstein, German Institute for Youth and Family Law, 5 July 2016.

### 6. Law and policy framework regulating guardianship services

**Guardianship services** should be institutionalised by law and an authoritative policy framework. National laws and policies should establish a legally binding framework for guardianship services as well as measures for its implementation in practice. The relevant laws should be applicable equally for professional, official and volunteer guardianship services. The following matters should be regulated by law and/or by an authoritative policy document:

- >> The institutional responsibility, including with regard to budget allocation, training, supervision and monitoring;
- >> Conditions of recruitment and appointment of guardians with due account to required qualifications and vetting procedures;
- >> The tasks, entitlements and responsibilities of guardians, including provisions for regular contact between the child and the guardian and a maximum number of cases per guardian;
- >> Duties with regard to child protection, including reporting obligations and professional confidentiality, and with regard to the guardian's role in promoting the best interests of the child, hearing and taking the views of the child into account, and the identification of a durable solution;
- >> Procedures for the guardian to hand over certain tasks to qualified experts such as childcare, accommodation or legal representation;
- >> Content and scope of mandatory training for guardians;
- >> A definition of the concept of the best interests of the child or description of its key elements;
- >> Procedures for hearing the views of the child and taking them into account, including a reporting and complaints mechanism for children who are supported by a guardian;
- >> The role of the guardian in respect to the child's transition into adulthood and independent life, including with regard to after-care services, education and access to the labour market;
- >> Clarity about the handover of guardianship in the case of cross-border transfers of the child, return or repatriation, or relocation within the country.<sup>218</sup>

### 7. Data, analysis and research

The organisation and provision of guardianship services should be subject to **data collection and analysis**, using **standardised national indicators**. Data collection and analysis are key to reach a better understanding of how guardianship services are being provided and the impact they have on children, the guardians themselves, as well as relevant institutions and service providers.

**Research and analysis should document and analyse the views of children and guardians as well as professionals and officials working with and for them.** The findings of such research, as well as internal and external evaluations, provide valuable information for the ongoing reform and improvement of the service. The interest is to understand achievements and challenges from a **child rights-based and development oriented perspective**, from a **migration management** point of view and from the perspective of the **efficiency of public spending**.

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<sup>218</sup> This list of issues incorporates aspects cited in: European Union Agency for Fundamental Rights, **Guardianship for Children Deprived of Parental Care**, A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, 2014, p. 28.

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