

Towards a better consideration of the vulnerability of unaccompanied children within the framework of the asylum procedures

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Structure of the presentation

Part 1

- Examination of the new EU Asylum acquis which seem to take a more substantive account of the vulnerability of asylum seekers and particularly of minors.

Part 2

- Identifying the vulnerability of UAMs: what makes minors so vulnerable?

Part 3

- Responding to vulnerability of UAMs; what should be done?

Unaccompanied asylum-seeking children form part of a (doubly) vulnerable group- children and asylum seekers – as highlighted by the recent Jurisprudence of the ECtHR.

Due to their inherent vulnerability, unaccompanied children require additional special assistance and protection to navigate asylum and migration procedures which are becoming increasingly complex across Europe.

The child's best interests should be applied as a primary consideration while taking into account protection and care necessary for the child's well being as enshrined by Article 24 of the EU Charter and the UN CRC.

Recent **EU legislation** in the field of asylum and migration includes more specific provisions on unaccompanied children than were included in the original EU asylum instruments.

It has created explicit obligations to **identify and respond** to the special needs of vulnerable people and trafficked people.

- explicit obligations concerning the **assessment of the best interest of the child** (e.g the recast Asylum legislation, the Anti-trafficking directive, the return directive)
- Increased emphasis on **child sensitive interviewing** (e.g recast Asylum procedure directive)
- more detailed requirements concerning **representation of children** (e.g recast Asylum legislation contains enhanced provisions on representation for children with indicators on the role of the representative in ensuring the best interest of the child, their qualifications and the fact that they should not have no conflicts of interests; the Anti-Trafficking also contains provisions on guardianship).

- availability of **legal assistance** to a child and their **representative** (e.g. recast asylum legislation)
- **knowledge and training requirements** for actors working with children (e.g. recast asylum legislation)
- an increased focus on **providing tailored assistance(special needs) to vulnerable persons** (e.g. the recast asylum reception and procedures directive, the Anti-trafficking directive)
- **requirements** to take the necessary measures to **find durable solutions** that are in the best interest of the child (the Anti-Trafficking directive)
- Additional **safeguards as regards age- assessment** and affording benefit of the doubt (the recast Asylum procedures directive, the Anti-trafficking Directive)
- clearer information requirements for children (*e.g. Dublin III Regulation requires the use of a specific leaflet for UAC and the need to clarify orally when needed*)

CONNECT

Identifying good practices in, and improving, the connections between actors involved in reception, protection and integration of unaccompanied children in Europe.



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EU REFERENCE DOCUMENT

IDENTIFICATION
RECEPTION &
PROTECTION

OF UNACCOMPANIED
CHILDREN

ON EU MEASURES CONCERNING
UNACCOMPANIED CHILDREN

Factors affecting vulnerability

- Asylum process is seen sometimes as hostile, interrogatory and lacking in adequate procedural safeguards for the child. The Asylum process might be contrary to the children's best interest.
- In many occasions, asylum process fail to gather information relevant to determining children's best interests.
- Significant problems remains with the age – assessment, including assessments which do not appear to comply with legal requirements and lack clarity about the number of assessments and method. Many disputes are arising. MS do not necessary recongnise each other's assessment.

- In a number of Member States, reception and care are not adequate and adapted to the needs of children. Adequate reception is key for UACs to have access to a number of services and for the proper enjoyments of their rights such as: access to health services, education and legal assistance.
- In many occasions in a number of Member States, UACs are facing obstacles to access good quality legal assistance.
- Turning 18: a number of areas where transition to adulthood has a particular significance: psychological impact (more acute); specific guarantees in the asylum procedures (the final determination of their asylum claim lose a series of specific guarantees which may affect their ability to argue their case and therefore the outcome of the procedure), family reunification (losing this right), access to education; appropriate accommodation; health and employment.

Responding to vulnerability!

- Dublin Regulation III: to strongly support the proposal of the Commission for the **principle of non-transfer on an unaccompanied minor** under Dublin Regulation, unless such transfer would be in the best interest of the child.
The extreme vulnerability of minors should be taken into account when discussing the rule 8(4), which might create unnecessary hurdles for children involved.
The obligation for MS to cooperate in order to assess child's best interest should be duly implemented and monitored.
- The full assessment determining child's best interest should rely on the international law and be harmonised across Europe.
- When performing such assessment the MS should guarantee reception conditions adapted to the special needs of children as the effect of conditions on children can amount to inhuman degrading treatment, even where the same treatment would be adequate for an adult.

Responding to vulnerability!

- It is important to conduct a study on the consequences of secondary traumatisation arising out of any difficulties in the reception system and more generally the lack of a clear prospect for the children “within the system”.

The need for MS to tackle these challenges, through involvement of more specialised actors, better training, tools and inter-agency cooperation.

- The children should have access to effective remedies and the information on their rights should be provided to them in a child-friendly- manner.

Responding to vulnerability!

- Child sensitive procedures are crucial safeguards in the information gathering and the BIA assessment process. The practices in this area is developing and the MS should provide training for their officials involved at this stage. Involvement of the child specific experts is also important.
- Empowering the child participation: the need to engage with the child as is often a key source of information.
- Turning 18: existing legal frameworks and practices should be further harmonized in the light of the good practices identified in different recent studies.
- Amend the immigration rules to allow for family reunion for children beneficiaries of the international protection.

Thank you!
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