A STUDY COORDINATED BY FRANCE TERRE D'ASILE

Right to asylum for unaccompanied minors in the European Union

Comparative study in the 27 EU countries

France Terre d'Asile
www.france-terre-asile.org

Hungarian Helsinki Committee

Patvērums DROŠĀ MĀJA

CIR
CONSIGLIO ITALIANO PER I RIFUGIATI

International Humanitarian Initiative

terre des hommes
Hilfe für Kinder in Not

i•RED
Institute for Rights Equality & Diversity

The study has been carried out under the supervision of

Laurent DELBOS (*France terre d'asile*), coordinator of the project

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

Marine CARLIER (*France terre d'asile* - **FRANCE**)
Maria de DONATO (*Consiglio Italiano per i Rifugiati* - **ITALY**)
Julia IVAN (*Hungarian Helsinki Committee* – **HUNGARY**)
Maria KSIAZAK (*International Humanitarian Initiative Foundation* – **POLAND**)
Miltos PAVLOU (*Institute for Rights, Equality & Diversity* - **GREECE**)
Vineta POLATSIDE (*Shelter. Safe house* – **LATVIA**)
Sonja WELP (*Terre des Hommes* – **GERMANY**)

The report has been written in collaboration with **Alix PIERARD**
and **Caroline ROUBLIN** *(France terre d'asile)*

The complete report is available at **http://www.france-terre-asile.org/dam27**

Project co-funded by the European Union's Fundamental Rights and Citizenship Programme

with the support of the Fondation pour l'enfance

CONTENT

ACKNOWLEDGEMENTS

The authors of the report would like to thank the following people and organizations:

Samantha ARNOLD (Irish Refugee Council - IE), Thomas BERTHOLD (Bundesfachverband Unbegleitete Minderjährige Flüchtlinge - DE), Baiba BIEZA (LV), Edita BLAZYTE (LT), Cristina BUCATARU (Consiliul National Roman pentru Refugiati - RO), Elisabetta CUTRALE (IT), Madeleine DE LA SERVETTE (France terre d'asile - FR), Corina DEMETRIOU (Symfiliosi - CY), Judith DENNIS (British Refugee Council - UK), Goran EKMESCIC (Bundesfachverband Unbegleitete Minderjährige Flüchtlinge - DE), Niels ESPENHORST (Bundesfachverband Unbegleitete Minderjährige Flüchtlinge - DE), Neil FALZON (MT), Rafi FAZIL (British Refugee Council - UK), Katja FOURNIER (plateforme mineurs en exil - BE), Antonio GALLARDO (MPDL - ES), Aida HADZIAHMETOVIĆ (Slovenian Philanthropy - SI), Christophe HARRISON (France terre d'asile - FR), Valeria ILAREVA (Legal Clinic for Refugees and Immigrants - BG), Zuzana JEŘÁBKOVÁ (Organization for help to refugees - CZ), Taina MARTISKAINEN (FI), Gruša MATEVŽIĆ (Hungarian Helsinki Committee - HU), Miroslava MITTELMANNOVA (Human Rights League - SK), Mónica d'OLIVEIRA FARINHA (Conselho Português para os Refugiados - PT), Matina POULOU (i-RED - GR), Claude ROMEO (France terre d'asile - FR), Martin ROZUMEK (Organization for help to refugees - CZ), Helika SAAR (EE), Stefanie STUDNITZ (Bundesfachverband Unbegleitete Minderjährige Flüchtlinge - DE), Matthieu TARDIS (France terre d'asile - FR) and all the people who contributed to this project.

LIST OF MAIN ABBREVIATIONS & ACRONYMS

CGRA	Commissariat général aux réfugiés et apatrides/General Commission of Refugees and Stateless Persons (Belgium)
CIR	Consiglio Italiano per i Rifugiati / Italian Council for Refugees (Italy)
CNDA	Cour Nationale du Droit d'Asile (France)
CoE	Council of Europe
CPR	Conselho Português para os Refugiados /Portuguese Refugee Council (Portugal)
CRC	Committee on the Rights of the Child
EU	European Union
Fedasil	Agence fédérale pour l'accueil des demandeurs d'asile /Federal Agency for the reception of asylum seekers (Belgium)
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
HHC	Hungarian Helsinki Committee (Hungary)
HSE	Health Service Executive (Ireland)
NGO	Non governmental organization
OFPRA	Office Français de Protection des Réfugiés et Apatrides/French Office for the Protection of Refugees and Stateless Persons (France)
OPU	Organizace pro pomoc uprchlíkům/Organization for Aid to Refugees (Czech Republic)
ORAC	Office of the Refugee Applications Commissioner (Ireland)
SEF	Servicio de Estrangeiros e Fronteiras/Portuguese Immigration Service (Portugal)
UASC	Unaccompanied Asylum Seeking Children
UKBA	United Kingdom border agency (the United Kingdom)
UNHCR	United Nations High Commissioner for Refugees

INTRODUCTION

Context

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

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

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

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

---

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

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

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

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

[5] For more information, see: **http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm** [accessed 10 July 2012].

Methodology

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

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

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

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

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

[6] For more details on this issue, see the Complete report - Appendix 4 "Elements of methodology".
[7] For a definition of overseas countries and territories, see: **http://europa.eu/legislation_summaries/development/overseas_countries_territories/index_en.htm** [accessed 10 July 2012].

1 GENERAL OVERVIEW OF ASYLUM PROCEDURES FOR UNACCOMPANIED CHILDREN

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

1.1. Obstacles to access to the procedure

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

When they are found inside the port of Dover in **the United Kingdom**, unaccompanied minors may be sent back to France or Belgium if they «*do not claim asylum*[10]». It is not known how the border agency distinguishes between an asylum-seeking and a non-asylum-seeking minor at this point, so it might happen that unaccompanied minors are deported before their need for protection being duly assessed. In **Italy**, once irregular migrants are found hidden in the ferry boats from Greece during the police control at ports they are entrusted to the captain of the same boat and are therefore driven back to Greece without any notification to the authorities.

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

Some aspects of the asylum procedure could dissuade minors to ask for asylum. In some countries, youngsters do not get access to the asylum procedure when they have already applied for asylum in another 'Dublin' state[11].

The length of the procedure is another factor of dissuasion. In the **Czech Republic**, the practice of the Ministry of Interior to extensively prolong the asylum procedure without any relevant reasons, make the asylum seekers tired of waiting in limbo. The role of the guardian is another element which could have a dissuasive effect about asylum application[12]. In **Cyprus**, the legal representation system is defective so child applications are not processed before the age of 18. In some countries, as **Germany**, **Ireland** and **Slovakia**, the asylum application must be submitted in accordance with the guardian and the latter can decide that it is not necessary or not in the best interest of the child, despite the opinion of the child.

In several countries, **informal practices implemented by authorities** may have an effect of discouraging minors to apply for asylum. In **Cyprus**, we noted practices in police station such as refusal to call an interpreter, refusal to hand an application form to the prospective applicant or asking the applicant to come back again and again. In **France**, withdrawal of an application form for asylum in the regional representation of the State (called *Préfecture*) may be very difficult.

The lack of reliability and length of **age assessment** are other points that could prevent people from being considered as unaccompanied children and then to have the benefit of specific procedures. It is a major subject of concern in almost **all EU countries**, where medical examination yet considered as inefficient is the most widespread method[13]. In any case, the "procedure" directive states that *"the decision to reject an application for asylum from an unaccompanied minor who refused to undergo this medical examination shall not be based solely on that refusal"*[14].

[8] For more details on this issue, see part. VIII "Specific aspects of asylum at the border"

[9] *Convention Relating to the Status of Refugees* , Art. 33, *op.cit.* (note 2).

[10] Interview of a UKBA agent (04/2011), in Dover.

[11] For more details about Dublin II procedures, see *infra* Part4 "Dublin II regulation".

[12] For more details on this issue, see *infra* Part 3 «Legal guardianship»

[13] See for example : UNICEF, Age assessment practices: a literature review and annotated bibliography, Terry SMITH, Laura BROWNLEES, 2011, 85 p, available at: http://www.unicef.org/protection/Age_Assessment_Practices_2010.pdf [accessed 10 July 2012].

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

1.2. Child-specific information about the procedure

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

In **Sweden**, Migration Board provides a special document for children containing different general information about the process of applying for refugee status. In addition, the Swedish Red Cross is giving "asylum information workshops" in the youth centres where unaccompanied minors live. That activity is very popular and usually the young people have many questions about the procedure.

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

1.3. Main specificities of asylum procedures regarding unaccompanied children

First, it should be noted that the term 'asylum procedure' does not have the same meaning in all EU countries. In some countries, this procedure can only lead to grant international protection (refugee status or subsidiary protection) while in some others 'seeking asylum' can also lead to get other kind of residence permit[15]. The consequence is that in some countries all unaccompanied children have to start this procedure to stay in the country.

The most widespread specificity in the 27 EU countries is the appointment of a legal guardian[16] to make asylum claim, provided in all countries.

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

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

Regarding the main interview[17], specific procedures or guidelines are included in the legal framework regulating asylum in many countries, such as **Belgium**, **the Czech Republic**, **Finland**, **Germany**, **Hungary**, **Ireland**, **Latvia**, **Luxembourg**, the Netherlands, **Poland**, **Slovakia**, **Slovenia** and **the United Kingdom**. These provisions generally relate to the training of the interviewer and the need that interviews take place in a child friendly environment.

We can also see that unaccompanied children are not always subject to special procedures at the border[18]. However, this is the case in some countries where the only particularity is that they must be accompanied by a legal representative during these procedures. They may also be detained in certain circumstances. Other specificities are also implemented in the field of the best interest determination, right of residence or accommodation during the procedure, prohibition of unaccompanied children's detention or medico-psychological support[19].

RECOMMENDATION 1 -
Access to asylum procedures

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

[15] For more details, see *infra* Part 7 "Decisions and its consequences".
[16] For more details about legal representation, see *infra* Part 3 "legal guardianship".
[17] For more details about the main interview, see *infra* Part 6 "main interview".
[18] For more details, see *infra* Part 8 "Specific aspects of asylum at the border".
[19] For more details, see *infra* Part 5 "Support and accommodation during the procedure".

2 STATISTICS AND PROFILES

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

2.1. Applications

2.1.1. Total number of applications

The table in following pages shows figures available regarding asylum applications for unaccompanied children in 2009 and 2010. People who applied as children but were declared as adults later are not included in these statistics.

In **Malta** and to a lesser extent in **Bulgaria**[20], there is no data regarding asylum applications from 2005 until now. It seems that the situation improved recently in many countries where there were no statistics at the beginning of this period but there are in recent years (**Cyprus**, **the Czech Republic**, **Finland**, **Italy**, **Latvia**, **Romania** and **Spain**). For some of these countries, this can be explained by the entry in the European Union.

In some countries, statistics are unclear or incomplete. For example, annual report of the "Agence fédérale pour l'accueil des demandeurs d'asile" (*Fedasil*) in **Belgium** indicates that 896 unaccompanied children applied for asylum in 2010, while the Immigration office quotes the figure of 860. In **Poland**, official data about unaccompanied minors is lumped together with the data of children born during asylum procedure of their parents and children who individually filled out the asylum request joining parents already in the procedure[21]. In **Germany**, we observe a severe increase of the number of applications since 2009 because only children under 16 were recorded as unaccompanied children before this year.

In total, we count 10,295 asylum applications for unaccompanied minors throughout the European Union in 2010. **Sweden** (2393), **Germany** (1948) and **the United Kingdom** (1595) are the countries with the most important number of application.

Except in the **Czech Republic**[22], there is no data available on appeal cases of unaccompanied children.

[20] The only figure available is total number of unaccompanied minor asylum seekers in 2010.

[21] In the statistic table, we collected data from an orphanage in Warsaw, a place specially contracted in 2005 by the Office of Foreigners for asylum seeking unaccompanied children.

[22] 6 Appeals in 2008, 2 in 2009, 2 in 2010. We have data on appeal for Latvia but only for 2006 (3 cases).

2.1.2. Breakdown by sex, nationalities and age

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

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

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

2.2. Decisions

The majority of the countries do not provide disaggregated data that could show the number of decisions regarding unaccompanied children's asylum applications. We see when these data are available that the rate of positive decision varies from 8% (in **Ireland**) to 61% (in **the United Kingdom**), but the possible outcomes of the procedures are not the same in all countries (a "positive" decision may be issued but with a status less favourable than refugee or subsidiary protection status)[23]. We note that in **Cyprus**, applications are not examined until the applicant reaches 18 so there is no decision regarding unaccompanied children.

RECOMMENDATION 2 – Statistics

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

[23] For more details, see *infra* Part 7 "Decision and its consequences".

COUNTRY CODES used in the statistic tables (see next pages)

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

Other abbreviations used in the statistic tables

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

STATISTICAL DATA – Sources

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

	Total estimated nbr of unaccompanied minors in the country (2010) [24]	33364	2100	2831	N/A	N/A	43	N/A	N/A	6000	4200	N/A	N/A	7112	N/A	N/A	N/A	1500	N/A	N/A	N/A	5500	N/A	70	N/A	N/A	1595
2009	TOTAL	11850	1062	732	N/A	0	12	529	0	447	1304	38	271	56	409	5	3	9	N/A	1039	16	4	30	28	26	19	2250	2990
	Nationalities		AF = 41 % NG = 11 % RU = 6 %	AF = 30 % GN = 19 % IQ = 7 %	N/A	N/A	UA AZ IQ	AF = 73 % IR = 6 % SO = 5 %	0	SO = 36 % IQ = 27 % AF = 15 %	AF IQ VN	N/A	AF = 72 % SO = 6 % KV = 5 %	NG AF SO	AF = 22 % NG = 18 % SO = 10 %	N/A	AF = 67 % RU = 33 %	BY = 33 % CD = 33 %	SO = 34 % AF = 31 % IQ = 6 %	RU = 63 % GE = 35 % GH = 15 %	GN = 50 % CD RU	AF = 43 % PK = 13 % IQ	MD = 54 % AF = 18 %	N/A	CI = 16 % NG GN	SO = 40 % AF = 35 % IQ = 5 %	N/A
	Sex		N/A	F= 23 % M= 77 %	N/A	N/A	F= 42 % M= 58 %	F= 4 % M= 96 %	0	F= 21 % M= 79 %	N/A	N/A	F= 3 % M= 97 %	F= 50 % M= 50 %	F= 1 2 % M= 88 %	N/A	M= 100 %	F= 11 % M= 89 %	N/A	F= 25 % M= 75 %	M= 100 %	N/A	N/A	N/A	F= 31 % M= 89 %	N/A	N/A	N/A
	Age		<14= 4 % >14= 96 %	N/A	N/A	N/A	<15= 42 % >15= 58 %	<15= 12 % >15= 88 %	0	<15= 32 % >15= 58 %	N/A	N/A	<14= 4 % >14= 96 %	<14= 2 % >14= 98 %	<14= 3 % >14= 97 %	N/A	>15= 100 %	<17= 67 % >17= 33 %	N/A	<16= 12 % >16= 88 %	17 (average)	N/A	N/A	N/A	N/A	<13= 33 % >13= 92 %	N/A
2010	TOTAL	10294	687	860	N/A	0	4	432	0	610	1948	47	150	37	306	5	9	19	N/A	701	20	6	24	7	38	13	2393	1595
	Nationalities		AF = 43 % NG = 9 % MD = 6 %	AF = 26 % GN = 25 % IQ = 6 %	N/A	N/A	CD NG SO	AF = 72 % IQ = 7 % SY = 4 %	0	SO = 36 % IQ = 19 % AF = 13 %	AF IQ SO	N/A	AF = 57 % WB = 9 % SO = 7 %	NG CD	AF = 41 % TR = 8 % ER = 5 %	AF	AF = 44 % AF = 33 % GE = 23 %	AF = 26 % CD = 16 % DZ = 16 %	AF = 35 % SO = 17 % GN = 5 %	RU = 45 % AF = 13 % GE =	GN = 100 %	AF = 67 % IQ TR	AF = 29 %	N/A	GN = 46 % CI = 15 % NG = 15 %	AF = 48 % SO = 22 % IQ = 4 %	AF = 32 % IQ = 11 % SY = 8 %
	Sex		F= 35 % M= 65 %	N/A	N/A	N/A	<15= 42 % >15= 58 %	F= 5 % M= 95 %	0	F= 28 % M= 72 %	F= 30 % M= 70 %	N/A	F= 4 % M= 96 %	F= 68 % M= 32 %	F= 8 % M= 92 %	M= 100 %	F= 11 % M= 89 %	F= 5 % M= 95 %	/A	M= 100 %	F= 33 % M= 67 %	N/A	N/A	N/A	N/A	N/A	F= 19 % M= 81 %	F= 18 % M= 82 %
	Age		>14= 100 %	N/A	N/A	N/A	<15= 0 % >15= 100 %	<15= 10 % >15= 90 %	0	<15= 23 % >15= 67 %	<16= 5 % >16= 95 %	N/A	<14= 4 % >14= 96 %	<14= 3 % >14= 97 %	<14= 5 % >14= 95 %	N/A	<15= 32 % >15= 58 %	<17= 58 % >17= 42 %	N/A	<16= 30 % >16= 70 %	17 (average)	N/A	N/A	N/A	N/A	<16= 43 % >16= 57 %	N/A

[24] This gives an order of magnitude of the number of unaccompanied minors (asylum seekers or not) on the territory.

DECISIONS	27 EU countries	AUSTRIA	BELGIUM	BULGARIA	CYPRUS	THE CZECH REPUBLIC	DENMARK	ESTONIA	FINLAND	FRANCE	GERMANY	GREECE	HUNGARY	IRELAND	ITALY	LATVIA	LITHUANIA	LUXEMBOURG	MALTA	THE NETHERLANDS	POLAND	PORTUGAL	ROMANIA	SLOVAKIA	SLOVENIA	SPAIN	SWEDEN	THE UNITED KINGDOM
2009	4684	159	231	N/A	0	3	92	0	247	209	330	N/A	30	3	N/A	N/A	3	N/A	N/A	N/A	1	2	N/A	N/A	4	N/A	1060	2310
		N/A	55,5	N/A	N/A	N/A		N/A	N/A	42,7	N/A	N/A	N/A	4,9	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	65,8
	822	17	189	N/A	0	3	N/A	0	1	N/A	195	N/A	6	3	N/A	N/A	0	N/A	N/A	N/A	N/A	0	N/A	N/A	0	N/A	68	340
	1250	142	42	N/A	0	0	N/A	0	103	N/A	135	N/A	19	N/A	N/A	N/A	3	N/A	N/A	N/A	1	2	N/A	N/A	4	N/A	774	25
	2311	0	0	N/A	0	N/A	N/A	0	143	N/A	N/A	N/A	5	N/A	N/A	N/A	0	N/A	N/A	N/A	N/A	0	N/A	N/A	0	N/A	218	1945
		AF=78 % SO=7 % ER=3 %	GN AF CD			UA=100 %		N/A	SO=64 % IO=19 % AF=11 %	N/A	N/A	N/A	AF=83 % SO=13 % RS=3 %	N/A	N/A	N/A	AF=67 % RU=33 %	N/A	N/A	N/A	RU	N/A	N/A	N/A	AF KV	N/A	N/A	N/A
		F=10 % M=90 %		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	F=7 % M=93 %	N/A	N/A	N/A	M=100 %	N/A	N/A	N/A	N/A	M	N/A	N/A	N/A	17=25 % 16=75 %	N/A	N/A
		N/A		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	17=67 % 16=33 %	N/A	N/A	N/A	N/A	17	N/A	N/A	N/A	N/A	N/A	N/A
2010	4214	N/A	413	N/A	0	5	148	0	262	188	448	N/A	N/A	3	N/A	4	5	N/A	N/A	N/A	N/A	2	N/A	N/A	1	N/A	1285	1450
	(rate) %	N/A	51	N/A	N/A	N/A		N/A	N/A	38,5		N/A	N/A	8,8	N/A	N/A	100	N/A	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A	61
	1006	N/A	290	N/A	0	3	N/A	0	6	149	140	N/A	N/A	3	N/A	0	0	N/A	N/A	N/A	N/A	0	N/A	N/A	0	N/A	90	325
	1613	N/A	123	N/A	0	2	N/A	0	120	39	308	N/A	N/A	N/A	N/A	4	1	N/A	N/A	N/A	N/A	2	N/A	N/A	1	N/A	1003	10
	1447	N/A	0	N/A	0	N/A	N/A	0	136	N/A	N/A	N/A	N/A	N/A	N/A	0	4	N/A	N/A	N/A	N/A	0	N/A	N/A	0	N/A	192	1115
		N/A	AF GN RU			CD=60 % AF CN				SO=55 % AF=17 % IO=16 %	N/A					AF=60 % GE=20 % VN=20 %	M=100 %					GN CD			AF		AF=50 % SO=37 % ER=4 %	N/A
		N/A	F=67 % M=33 %							N/A												M F			M			
		N/A	N/A														17=80 % 16=20 %					17			17			

3 LEGAL GUARDIANSHIP

Terminological clarification:

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

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

In this context, EU directives on asylum provide that "*Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors*"[25]. The directive on minimum standards on procedures provides more details on this requirement. It defines 'representatives' as a "*person acting on behalf of an organization representing an unaccompanied minor as legal guardian, a person acting on behalf of a national organization which is responsible for the care and well-being of minors, or any other appropriate representation appointed to ensure his/her best interests*"[26]. This legal representative must be appointed as soon as possible, to provide information to the minor and to assist him/her during the interview[27]. His/her appointment is not compulsory in some cases :minor who will reach the age of maturity before a decision at first instance is taken, minor with a lawyer, 16 year or older minor able to apply alone, or married minor[28]. The appointment of legal representative at the border is provided by this directive[29].

The need of legal guardianship is also expressed by the UNHCR[30], the Committee on the rights of the Child[31] and the Council of Europe[32] in many recommendations or guidelines published over the last 20 years.

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

3.1. The different models of legal guardianship

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

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

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

[25] Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Art. 19., available at: **http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0009:EN:HTML** [accessed 11 July 2012]; Council Directive 2004/83/EC of 29 April 2004, Art. 30, *op.cit.* (note 3).

[26] EC, Council Directive 2005/85/EC of 1st December 2005, Art. 2, *op.cit.* (note 13).

[27] *Ibid.,* Art. 17.1.

[28] *Ibid.,* 17.2, Art. 17.3.

[29] *Ibid.,* Art. 35.

[30] UNHCR, «Children : guidelines on protection and care», 1994, Chapter 8, available at: **http://www.unhcr.org/refworld/pdfid/3ae6b3470.pdf** [accessed 11 July 2012] ; UNHCR Guidelines on Policies and Procedures in dealing with unaccompanied children seeking asylum, 1997, Art. 4.2., 5.7 and 8.3, available at: **http://www.unhcr.org/3d4f91cf4.pdf** [accessed 30 July 2012].

[31] UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, §33-38, §69, available at: **http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf** [accessed 5 July 2012]

[32] Council of Europe's Parliamentary Assembly, Recommendation 1703 (2005), Protection and assistance for separated children seeking asylum, §5, §9.d, §9.e, available at: **http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta05/erec1703.htm** [accessed 5 July 2012]; Council of Europe's Parliamentary Assembly, Resolution 1810 (2011), unaccompanied children in Europe: issues of arrival stay and return, §5.5; §6.4, available at: **http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta11/ERES1810.htm** [accessed 11 July 2012]; Council of Europe's Parliamentary Assembly, Recommendation 1985(2011), Undocumented migrant children in a irregular situation : a real cause for concern, §7, available at: **http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta11/EREC1985.htm** [accessed 11 July 2012].

In **Cyprus**, the legal representative who assists the minor with the asylum application and other legal procedure is appointed by the Child Commissioner in accordance with the Refugee Law[33] but since no legal representatives can be appointed, no asylum applications from minors are examined or processed. In the **Czech Republic**, it is usually the same person being appointed as a guardian throughout the procedure, which is mostly a lawyer working with the NGO *Organizace pro pomoc uprchlíkům* (OPU).

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

In **Estonia**, besides a guardian, a child can also be represented, by a guardianship authority, the head of the reception centre or a person authorized by the latter. In the future, the Ministry of Social Affairs plans to introduce a practice of allowing the trained specialists of NGO *Omapäi* to act as guardians.

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

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

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

In **the Netherlands**, a minor who is separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so, gets a guardian appointed to him or her[34]. NIDOS is the Dutch guardianship institution for all separated children[35], financed by the Ministry of Justice.

In some countries as Austria, Hungary, Ireland, Lithuania, Spain and the United Kingdom, the representation is ensured by the reception centre or its staff.

In **Austria**, the local youth welfare institution takes the guardianship and therefore the legal representation of the minor in the asylum system, only after the admission to the procedure[36].

In **the United Kingdom**, the situation is very specific because there is no real guardianship system for unaccompanied minors, whether they are seeking asylum or not. Instead, an unaccompanied child has a variety of contact persons whose duty is to assist him or her in specific issues (social worker, "responsible adult", solicitor, advisers of the British Refugee Council children's panel) but none of these adults is fully responsible for the child's welfare and representation. Many stakeholders insist on the need for an independent adult to represent and advocate for the best interests of the child[37]. But the UK Government considers that the Procedures Directive requirements concerning guardianship are met[38].

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

In **Germany**, minimum of 80% of all unaccompanied minor have a public guardian. It means that an employee of the Youth Welfare Office takes over guardianship. Three other types (private, associational and professional guardianship) are independent from public institutions. Unaccompanied minors above 16 are capable of acting so a guardian is not always appointed for them.

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

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

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

[36] Allgemeines Bürgerliches Gesetzbuch (Austrian civil code) §§ 154, 154a.

[37] UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention : Convention on the Rights of the Child : concluding observations : United Kingdom of Great Britain and Northern Ireland*, 20 October 2008, CRC/C/GBR/CO/4, §71c, available at: **http://www.unhcr.org/refworld/docid/4906d1d72.html** [accessed 10 July 2012].

[38] SEPARATED CHILDREN IN EUROPE PROGRAMME, *Newsletter n°30*, July 2008, p 16, available at: **http://www.separated-children-europe-programme.org/publications/newsletter/index.html** [accessed 24 August 2012].

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

	Specific representation for the asylum procedure	Legal guardianship ensured by			COMMENTS
		Reception centre or its staff	Various persons or institutions	Only one organization or institution	
AUSTRIA		X			In practice there is any personal contact between minor and guardian.
BELGIUM				X	The Ministry of Justice offers a Guardianship service for unaccompanied minor
BULGARIA			X		The legal guardian is appointed in accordance with the general procedure described in the Family Code. It seems that often in practice no legal guardian is appointed at all.
CYPRUS	X			X	A legal representative should be appointed by the Commissioner for the Protection of the Rights of the Child in accordance with the Refugee Law. In practice no representative is appointed and therefore no asylum applications from minors are processed.
CZECH REP.	X			X	There are 4 types of guardian but in practice it is the same NGO lawyer who is appointed as a guardian throughout the procedure.
DENMARK	X			X	The Danish red Cross recommends a representative to the local authority, which hereafter formally appoints the representative. Furthermore, an assessor provided by the Red Cross support the child in his/her contact with authorities.
ESTONIA	X		X		The asylum seekers' reception centre or the local government may be representatives of the child. The government plans to introduce a practice of allowing the trained specialists of a NGO to act as a full guardian.
FINLAND	X		X		A representative should be appointed without delay for an unaccompanied minor who applies for international protection. The reception centre, at which the minor is registered as a resident, requests the court to appoint a guardian.
FRANCE	X		X		A guardian dealing with all matters related to the welfare of the child should be appointed for all children without representatives. If not, a specific guardian for asylum procedure (ad hoc administrator) is appointed.
GERMANY			X		A large majority of unaccompanied children are under public guardianship: an employee of the Youth Welfare Office takes over guardianship. Children above 16 are capable of acting so a guardian is not always appointed for them.
GREECE				X	The public prosecutor acts as temporary guardian and he can propose the appointment of a permanent guardian through the court. This system for guardianship is unfortunately dysfunctional in practice.
HUNGARY		X			The legal guardian is the employee of the accommodation centre. This person is the appointed guardian for all unaccompanied children seeking asylum.
IRELAND		X			Legal guardianship of unaccompanied minor is ensured by the Health Service Executive –HSE – that acts as a legal guardian although its role is not formalized by a Court order.
ITALY			X		Guardians are usually social workers from municipalities. The asylum procedure is suspended till the legal guardian is appointed. It is the only person responsible to reactivate the asylum procedure.
LATVIA				X	Unaccompanied minor should be represented by the Orphan's Court or a guardian appointed thereby, or the head of a child care institution. In practice, it is very difficult to find a legal guardian for unaccompanied child seeking asylum.
LITHUANIA		X			The temporary guardian is appointed by the decision of the Child Rights Protection Service and the municipality to the Refugee Reception centre, as an institution, which appoints the responsible social worker.

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

3.2. Knowledge and qualification of representatives

It is necessary that legal guardians who represent unaccompanied minor during asylum procedures have specific knowledge in the field of law and asylum procedures. The UNHCR recommends that "*the guardian or adviser should have the necessary expertise in the field of child caring, so as to ensure that the interests of the child are safeguarded and that his/her needs are appropriately met*"[39]. This requirement is also expressed by the Committee of the Rights of the child[40] and the Council of Europe[41]. However, the conditions to be appointed as a guardian vary from one country to another.

[39] Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, 1997, Executive Summary p.1, *op.cit.* (note 30).
[40] Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 2005, Chapter 5, op.cit. (note 31).
[41] Council of Europe's Parliamentary Assembly, Resolution 1810 (2011), §5.5, *op.cit.* (note 32).

In **Austria**, **Bulgaria**, **Finland**, **France**, **Germany**, **Greece**, **Hungary**, **Ireland**, **Italy**, **Latvia**, **Lithuania**, **Romania**, **Slovakia**, **Spain** and **the United Kingdom** **there is no formal requirement for any knowledge or training in the field of asylum law**.
A specific expertise is required in few countries as Cyprus, Denmark, Estonia, and the Netherlands.

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

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

In **Belgium**, no specific expertise is required in the field of migration law or asylum law but each guardian is trained during 5 days at the beginning of her/his mandate on different issues. Moreover, in-service trainings are organized each year. Finally, a 400 pages guide presenting all missions and challenges is given to all guardians. In **Malta**, there have been some *ad hoc* training sessions. UNHCR disseminated Guidelines on this issue. However, official training courses are not compulsory. In **Portugal**, the chosen representative does not have specific knowledge about asylum law but the organization Conselho Português para os Refugiados - CPR - ensure the representation in practice due to its expertise in this field.

3.3. Change of representative and monitoring

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

In **Belgium**, a request for mediation may be submitted to the guardianship service. The child may also refer to the judge (*Juge de Paix*) who can stop the mission of the legal guardian[42]. In practice, it seems that unaccompanied minors are not aware about these possibilities[43].

In some countries as **Belgium**, **Bulgaria**, **Denmark**, **Estonia**, **Germany**, **Latvia**, **Lithuania**, **Malta**, **the Netherlands**, **Romania**, and **Sweden**, there is a framework designated to monitor the work of the guardian.

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

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

RECOMMENDATION 3 – Legal guardianship

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

[42] *Loi-programme du 24 décembre 2002 Tutelle des mineurs étrangers non accompagnés* [Belgium], 24 December 2002, Art. 20, available at: **http://www.unhcr.org/refworld/docid/48abd55f0.html** [accessed 9 July 2012].
[43] Defence for children international, *Closing a protection gap*, National report Belgium, 2010-2011, p 50, available at: **http://www.defenceforchildren.nl/images/20/1267.pdf** [accessed 10 July 2012].

4 DUBLIN II REGULATION

According to the Council Regulation of 18 February 2003 usually called "Dublin II regulation", *"where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor. In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum"*[44]. It is only possible to take fingerprints of minors over 14 years old. In practice, it means that minors under 14 years old cannot be transferred under Dublin II regulation, except if they have family members in another member State.

The age of the applicant is of high relevance and importance, as these special provisions only apply to minors. In a resolution issued in 2011, the Council of Europe stated that the Dublin II Regulation should only be applied to unaccompanied children if it is in the child's best interests[45].

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

Most European countries **allow the transfer of unaccompanied minors under the Dublin II regulation: Austria**, **Belgium**, **Bulgaria**, **Cyprus**, **the Czech Republic**, **Denmark**, **Estonia**, **Finland**, **Germany**, **Greece**, **Hungary**, **Ireland**, **Latvia**, **Luxembourg**, **Malta**, **the Netherlands**, **Poland**, **Portugal**, **Romania**, **Slovakia**, **Slovenia**, **Spain**, **Sweden** and **the United Kingdom**.

It seems that in **the Czech Republic**, **Germany** and **Slovenia**, minors could be transferred when their fingerprints appear in the EURODAC database, even if they did not apply for asylum in another country.

Most countries allowing transfer under the Dublin II regulation though **suspended transfers to Greece**. Following a 2011 case of the European Court of Human Rights[46], removals to Greece have been on hold in **Austria**, **Belgium**, **Denmark**, **Finland**, **Germany**, **Hungary**, **Italy**, **Luxembourg**, **the Netherlands**, **Poland**, **Portugal**, **Romania**, **Slovenia**, **Sweden** and **the United Kingdom**. Some countries as **Finland**, **Germany**[47], **the Netherlands**, **Sweden** and **the United Kingdom** consider that **transferring to Italy is also problematic** due to the shortcomings in reception conditions and failures of the asylum system in this country. Therefore, transfers to this country are sometimes questioned.

In some countries, **transfer can happen, but it rarely happens in practice**. It is the case in **Luxembourg**, **Romania** and **Slovakia** where transfers under the Dublin II regulation are possible, according to Law, but in practice there is almost no transfer.

In **France**, the French Minister of Immigration declared in 2009 that France, although it is not obliged to by European legislation, *"abstains from transferring unaccompanied minors to member States where they lodged an asylum application before entering France"*[48]. However, in 2011, it seems that France referred to other member States under the Dublin II regulation for 10 unaccompanied minors[49]. Hungary also declares receiving minors transferred from France.

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

[44] Council of the European Union, Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, 18 February 2003, No. 343/2003, Art. 6, available at: **http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ::2003:050:0001:0010:EN:PDF** [accessed 11 July 2012].

[45] Council of Europe's Parliamentary Assembly, Resolution 1810 (2011), § 5.14., *op.cit.* (note 32).

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

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

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

[49] Statistics from the NGO *La Cimade* on the Dublin II regulation's implementation in France in 2011, March 2012, available at: **http://www.cimade.org/nouvelles/3743-Statistiques-sur-l-application-du-r-glement-Dublin-II-en-France-en-2011** [accessed 11 July 2012].

4.2. Implementation of the transfer, when required

According to the EU legal framework on return, *"before removing an unaccompanied minor from the territory of a member State, the authorities of that member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return"*[50]. Although this provision refers to transfers to third country, the same requirements should a fortiori be applied for transfers under the Dublin II Regulation.

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

In some countries, **children are accompanied to the country of transfer**. In **Belgium** for example, the guardian goes to the airport with the child. Some guardians even chose to take the minor to the country of destination and, in this case, the fees (plane tickets) are paid by the Foreign Office. In **Denmark**, the child is escorted to the destination country. In **Estonia**, an official with the Police and Border Guard Board (in civilian clothes) and a representative of the guardianship authority, if necessary, accompany the child.

In other countries, **children are not accompanied to the country of transfer**. It is the case in **Germany**, where the children often do not know who will collect them after the transfer. In Slovenia, the children may be escorted or transferred alone.

One important question is the one of **follow-up after returning**, which seems to be non-existent.

Concerning the **period of time before leaving** and the **conditions before deportation**, it depends on the country deciding the transfer to another member State. In **Austria**, the transfer of an unaccompanied minor seems to happen in the same conditions as the one of an adult. Minors can be detained, pending deportation, at least one day before the transfer. In **Ireland**, a European comparative report on the implementation on Dublin II regulation states that, like adults, minors are *"'generally not informed of the exact date and time that they will be transferred. [They] are generally brought to the airport, where they are kept until their flight departs later that day"*[51]. This lack of information could be very traumatizing for minors, who have to leave to another place they do not know.

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

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

Austria, **Belgium**, **Denmark**, **Hungary**, **Italy**, **Lithuania**, **Malta**, **the Netherlands**, **Poland**, **Portugal**, **Romania**, **Slovakia**, **Slovenia**, **Sweden**, and **the United Kingdom** **receive unaccompanied asylum-seeking children returned under Dublin II regulation**. In theory, **Luxembourg** could receive unaccompanied minors transferred from other countries under the Dublin II regulation, but in practice no such case is known.

If a child declares to be adult in Italy and then minor in the country he/she reaches, he/she will be treated as an adult when returning to Italy on the basis of the Regulation. Consiglio Italiano per Rifugiati – CIR (Italian Council for Refugees) has several times asked the competent authorities to treat them as minors and in case of doubt to submit them to age assessment, but no procedural change has been registered so far. The same problem occurs in Malta and in some cases in Hungary. In Romania, a minor transferred under the Dublin II regulation and still in the asylum procedure will be accommodated in the reception and assistance centre of Romanian Immigration Office. On the contrary, if the minor was already notified with a negative decision, by the Romanian administrative or judicial body, the minor transferred to Romania will be placed in emergency placement centres because he/she will not be considered as an asylum seeker anymore. He/she will be tolerated until voluntary repatriation takes place or until the child becomes an adult.

RECOMMENDATION 4 – Dublin II

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

[50] European Union, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, 16 December 2008, 2008/115/EC, Art. 10-2, available at: **http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF** [accessed 11 July 2012].

[51] FORUM REFUGIES et al., *Projet transnational Dublin, Rapport final*, 2011, p. 67.

5 SUPPORT AND ACCOMMODATION DURING THE PROCEDURE

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

In this context, the article 20 of the International Convention on the Rights of the Child stands that *"A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State"*. Moreover, according to a 1997 Resolution of the Council of the European Union on unaccompanied minors who are nationals of third countries[52], *"Irrespective of their legal status, unaccompanied minors should be entitled to the necessary protection and basic care in accordance with the provisions of national law"*. The need of care, based on the best interest of the child is a principle also expressed by many international organizations, such as the UNHCR[53] and the European Union. The EU directives insist on the necessity of an appropriate placement that could meet the specific needs of unaccompanied minors[54].

5.1. Accommodation for unaccompanied asylum-seeking children

In 2005, the Council of Europe recommended that unaccompanied minors should "*be placed in care and reception structures in keeping with their age and maturity*"[55]. The 2003 directive on asylum is more precise stating that *"Unaccompanied minors who make an application for asylum shall (...) be placed with adult relatives; with a foster-family; in accommodation centres with special provisions for minors; in other accommodation suitable for minors"*[56]. This text provides an exception for children over 16 : Member states may place them in *"accommodation centres for adult asylum seekers"*[57].

The option of **foster family** for unaccompanied asylum-seeking children is sometimes chosen in certain countries, but never widely. In some countries, it depends of the age of the minor. In **Cyprus**, unaccompanied minors under 3 years old are placed in a foster family, whether they are unaccompanied minors or Cypriot children without guardian. In **the Netherlands**, it only concerns children under 13 years of age. In **Estonia**, **France**, **Germany**, **Ireland**, **Italy** and **the United Kingdom** it is sometimes used.

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

In **Cyprus**, the Welfare office will follow the same procedure regarding unaccompanied minors as with Cypriot children who have no guardian. In France, unaccompanied asylum seeking children are generally taken in charge by the child welfare services (*'Aide sociale à l'enfance'*), as other children in need of protection[58] and thus accommodated in reception centres designed for children. In **Hungary**, unaccompanied asylum seeking children are accommodated in *Fót* (a town 20 km from Budapest), in a centre designated for children in state care (both Hungarian and foreigners). They have a separate house within the complex.[59]

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

In **Belgium**, all unaccompanied minors (asylums seekers or not) are normally accommodated by Fedasil. However, due to the increase of the number of unaccompanied minors, only those who apply for asylum are now accommodated there.

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

[53] UNHCR, *Best Interests Determination Children - Protection and Care Information Sheet*, June 2008, available at: **http://www.unhcr.org/refworld/docid/49103ece2.html** [accessed 18 June 2012].

[54] Council Directive 2003/9/EC op.cit. (note 25). ; Council Directive 2004/83/EC, *op.cit.* (note 3).

[55] Council of Europe's Parliamentary Assembly, Recommendation 1703 (2005), §5, *op.cit.* (note 32).

[56] Council Directive 2003/9/EC, Art. 19.2, *op.cit.* (note 25).

[57] *Ibid.*

[58] Art. 375 of the civil code, available at: **http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=48475E9009D5FFD3573D22E62240E798.tpdjo08v_3?idArticle=LEGIARTI000006426776&cidTexte=LEGITEXT000006070721&dateTexte=20120709** [accessed 11 July 2012].

[59] Information available at: **http://www.kigyk.hu/** [accessed 11 July 2012].

In the **Czech Republic**, unaccompanied minors applying for asylum are accommodated in the Home for Foreign Children, with other unaccompanied minors with different legal statuses. In **Finland**, the standards of accommodation for unaccompanied minors are comparable with the Child Welfare Act, but only for children of 15 years old or younger. For unaccompanied minors of 16-17 years old, the standards are lower. In **Denmark**, unaccompanied minors are accommodated in one of the three special centres established by the Red Cross. These centres have facilities adapted to these children and have specialized staff. In France, unaccompanied minors could be accommodated in centres designed for unaccompanied foreign minors, whether they are asylum seekers or not.

In the **United Kingdom**, local authorities are responsible for the reception and care of unaccompanied children. There is huge variation in standards of care and accommodation, depending on local authorities, on the child's age and on the grounds for the child being looked after[60]. According to the level of maturity assessed by social workers, unaccompanied minors may fall under different section of the Children Act[61] and then be accommodated in semi-independent accommodation (in hotels, bed and breakfasts or shared apartments) for the most autonomous youngster and in foster families or residential homes for the others.

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

Sometimes, their status of asylum seeker takes precedent on their status of minor in the choice of the accommodation. Therefore, they may be placed in **reception centres for asylum seekers with adults** as permitted by European law for children above 16. They thus receive a legal follow-up but their specific needs as minors are not always satisfied. It is the case in **Bulgaria**, **Estonia**, **Italy**, **Lithuania**, **Luxembourg**, **Malta**, **the Netherlands**, **Portugal**, **Romania**, **Slovakia** and **Slovenia**.

In **Bulgaria**, in practice children are often accommodated in one of the two reception centres for asylum seekers, the one of Banya. In **Luxembourg**, unaccompanied minors are received and accommodated in reception centres for asylum seekers run by Caritas and Red Cross, that are not tailored to the specific needs of minors. Only children under 15 years are placed in child and youth welfare facilities.

In **Malta**, unaccompanied minor aged 16 years or over may be placed in accommodation centres for adult asylum seekers where living conditions are very poor and where there is inadequate support[62]. In **Romania**, children over 16 are accommodated in governmental centres for asylum seekers, refugees and beneficiaries of subsidiary protection. These centres do not provide food but only very basic items like soap, toilet paper and toothpaste. Each person receives 108 lei (43 lei corresponding to 10 Euros) per month. In **Slovenia**, asylum-seeking children are received and accommodated in the Asylum home, but have their own section, which is shared between them and single women. In **the Netherlands**, for unaccompanied minors older than 13, the daily care is provided by the Central Agency for the reception of asylum seekers (under 13 years old, they are accommodated in foster families).

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

In **France**, there is one centre at the national level specifically designed for them, which offers legal and educational support and follow-up. This reception centre for minors seeking asylum (called 'CAOMIDA') is allocated near Paris. A psychologist and a legal expert are working within this centre for supporting children during their asylum application. This centre only has 33 places, which means that many other unaccompanied asylum seeking children are not accommodated there.[63]

In **Malta**, there are two centres for unaccompanied asylum-seeking children, *Dar is-Sliem* and *Dar il-Liedna*. In **Portugal**, the CPR's Refugee Reception Centre[64], located in Bobadela, at the outskirts of Lisbon, is the only centre in Portugal designed for housing asylum seekers. There is a room in this centre earmarked specifically for unaccompanied asylum seeking children. A new reception centre for refugee children of the Portuguese Refugee Council opened in 2012. It is also important to mention that, according to Portuguese legislation, unaccompanied minors aged 16 years or

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

[61] Children act (1989), section 17 or 19, available at: **http://www.legislation.gov.uk/ukpga/1989/41/part/III** [accessed 11 July 2012].

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

[63] In 2011, 595 unaccompanied children applied for asylum in France.

[64] For more information, see: **http://www.refugiados.net/_novosite/car/car.pdf** [accessed 11 July 2012] and **http://www.refugiados.net/_novosite/car/car.html** [accessed 11 July 2012].

older can be placed in residential centres for adult asylum seekers[65].

5.2. Legal support to unaccompanied asylum-seeking children

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

5.2.1. Different types of legal support

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

In **Finland**, the NGO Refugee Advice Centre is the biggest office providing legal aid to asylum seekers[66]. In **Ireland**, unaccompanied asylum-seeking minors are entitled free legal support from the Refugee Legal Service, like any asylum seeker. In **Slovenia**, unaccompanied asylum-seeking minors can benefit from free legal support from a lawyer at every stage of the procedure, as all asylum seekers.

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

However, legal aid is not always of high quality and suitable for unaccompanied asylum-seeking children. In **Hungary** for example, lawyers in general are not specialized in asylum law. In **Luxembourg**, on the contrary, lawyers appointed are specialized in asylum matters but they are not specially trained to deal with children. In **the United Kingdom**, findings of a 2011 study on the quality of legal advice provided to unaccompanied minors highlighted the variable quality of legal representation[67]. Nevertheless, there are also excellent legal representatives, providing children with high quality support.

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

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

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

In **Denmark**, the Danish Immigration Service appoints an attorney to represent the child if the child's asylum case is rejected. In **France**, unaccompanied asylum seeking children can benefit from free aid of a lawyer, like adult asylum seekers, during the appeal phase. In **Portugal**, asylum seekers have the right to free legal aid but only during the jurisdictional phase[68].
Besides this, the CPR may provide free legal aid in administrative procedure. In **Italy**, an asylum seeker can be supported by a lawyer before the territorial

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

[66] More information available at : **http://www.pakolaisneuvonta.fi/index_html?lang=eng** [accessed 11 July 2012].

[67] "The number of quality legal representatives who are able to work effectively is limited. Estimates from Advisers are that there are currently fewer than 20 representatives in London who are able to provide the desired standard of service to children and the figure is significantly lower in other areas of England. The majority of legal representatives have limited knowledge of the specific issues that separated children face in the asylum determination procedure and their knowledge of child welfare legislation is extremely limited. Few are knowledgeable in both asylum and child welfare legislation. There are also gaps in current knowledge about the situation for children in countries from which separated children originate and specific issues such as female genital mutilation" (REFUGEE COUNCIL, Lives in the balance, The quality of immigration legal advice given to separated children seeking asylum, February 2011, p 13. Available at: **http://www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/researchreports/Lives%20in%20the%20balance.pdf** [accessed 24 August 2012].

[68] According to Art.39 of Act 34/2004 of July 29th, amended by Act 47/2007 of August 28th, available at: **https://queixaselectronicas.mai.gov.pt/content_images/Lei_34_2004_47_2007.pdf** [accessed 27 July 2012] and according to Art.49, § 1.d) of Asylum Act 27/2008 of June 30th, available at: **http://www.dre.pt/pdf1s/2008/06/12400/0400304018.pdf** [accessed 27 July 2012].

commission at his/her own expenses[69]. In case of judicial appeal there is the possibility for all asylum seekers (minors included) to obtain free legal aid[70].

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

In the **Czech Republic**, all unaccompanied asylum-seeking children benefit from free legal aid provided by an NGO called OPU in all places in which they live (Diagnostic Centre, Home for Foreign Children or even in detention). In **Estonia**, a European project was implemented by the Estonian Human Rights Centre (EHRC). Since January 2011, this project called "Giving Legal Assistance to Asylum Seekers" and funded by the European Refugee Fund, has guaranteed free legal support to asylum seekers including minors. In **Poland**, most of the time unaccompanied minors can benefit from free advice and support of a legal representative which is usually a student of law, but this representative can have free access to lawyers' advice when needed. In **Romania**, minors may obtain for the appeal the support from a *pro bono* lawyer[71]. In **Germany**, in most federal states, there are asylum procedure help desks within reception centres.

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

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

In some countries, the mission of the lawyer and the mission of the legal guardian are **well-defined** and **complementary**, as in **Belgium**, **Cyprus**, **Greece**, **Ireland** and **Sweden**. While the lawyer handles the legal aspect of the case, the guardian handles the social care of the minor. In **Belgium**, it is the guardian who has to find a lawyer for the unaccompanied minor. And after that, both work together. In **Ireland**, the legal guardian gives instruction to the legal counsel on behalf of the child. In **France**, these 2 missions are different.

The guardian only has a mission of representation, as minors do not have legal capacity and the lawyer's mission is to defend the minors' interests. The lawyer and guardian may be the same person, as in the **Czech Republic**.

In any case, there is a **necessity** for the lawyer and the guardian to **cooperate**. In **the Netherlands**, the cooperation is necessarily close, as the guardian has a role to play in the asylum procedure, by preparing the minor for the interview. In **Portugal**, the NGO ensuring legal guardianship (Portuguese Refugee Council) will share with the lawyer the relevant information to build the appeal. In **Slovakia**, the lawyer is appointed by the guardian to represent the child, and the latter can disagree with any concrete step and either prevent the lawyer from taking concrete step or waive the authorization.

5.2.3. Assistance of an interpreter during the procedure

Sometimes, children can benefit from a **free interpreter to help them preparing the application**. For example in **Belgium**, the guardianship agency may pay the interpreter for preparing the asylum application. In **the United Kingdom** also, an interpreter normally attends all the meetings between the minor and the legal representative.

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

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

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

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

Social workers are usually persons who meet the child very often and who better know his/her situation. Their role within this process is mainly to give unaccompanied minors social and psychological support. They take care of these children, they help them expressing their feelings and building a relationship of trust with them.

[69] Decreto Legislativo 28 gennaio 2008, n.25 "Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato", Art. 16-1, available at: **http://www.camera.it/parlam/leggi/deleghe/08025dl.htm** [accessed 11 July 2012].

[70] According to Art. 24 sub-section 3 of the Italian Constitution, available at: **http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf** and D.P.R. n. 115/2002.

[71] Code of Civil Procedure, Art. 74-81, available at: **http://www.lexit.ro/legislatie/codprciv.pdf** [accessed 12 July 2012].

In this context, it is important to analyse the role of this people in supporting asylum applications of unaccompanied children.

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

In some situations social workers may provide legal support or play a role during the procedure. For example in **Hungary**, social workers have no official role in the refugee status determination procedure but they might help unaccompanied minors expressing their feelings and articulating the human rights violations suffered. Sometimes, they might request the assistance of a psychologist. In **Slovakia**, they can be asked by the decision-maker of the Migration office or by the lawyer to write a statement on the behaviour of the child in the asylum facility and provide the so called "social profile" of the child, which can be useful, for example, for the overall evaluation of the personality of the child. In **Finland** also, such procedure is implemented. Social workers have to write a statement to decision makers in the immigration service about the assessment of the best interest of the child.

5.3. Medical and psychological support

Due to their specific situation, unaccompanied minors often need medical and psychological care that States should provide[72]. This requirement is stronger when they are asylum seekers because they may have suffered persecutions. Psychological troubles can also result from such persecution and it should receive appropriate treatment.

In some countries as **France**, **Ireland**, **Lithuania**, **Luxembourg**, **Malta**, **Romania**, **Slovenia** and **Sweden**, unaccompanied **children receive the same medical and psychological support as resident children in public care**. In **Ireland**, unaccompanied minors go through a medical screening on arrival, and a medical check-up is conducted while they are into care. In **Slovenia**, asylum-seeking children studying have free basic health insurance until the age of 25.

In some countries, **unaccompanied asylum seeking minors have access to the medical care as asylum seekers**. It is the case in **Bulgaria**, **the Netherlands**, **Poland**, **Portugal**.

Finally, unaccompanied minors can have access to medical care, as children AND as asylum-seekers (double status). In **Spain** for example, it seems that unaccompanied asylum-seeking children can benefit from health care because they are asylum seekers and because they are children[73].

In reception centres, unaccompanied asylum-seeking children can have a medical check-up and, if necessary, receive treatment. It is the case in **Denmark**, **Estonia**, **Finland**, **Germany** and **Italy**.

In addition, unaccompanied asylum-seeking children can benefit, most of the time, of the **support from NGOs**.

In **Finland**, the Immigration Service developed the asylum process for unaccompanied minors in a project led by an NGO *Yhteiset Lapsemme* (All Our Children)[74]. The idea of the project was to develop tools to promote the assessment of the best interests of the child in the Finnish asylum procedure, as well as to improve the assessment of the psychosocial situation and wellbeing of unaccompanied minor asylum seekers during the asylum procedure.

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

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

In **Lithuania**, unaccompanied children are provided with psychological assistance at the Refugees' Reception Centre, if suggested by their guardians, who – together with other social workers from the Centre and administration – decide whether there is a need to provide psychologist's help. In **Hungary**, unaccompanied minors are entitled to access the psycho-social support from the NGO Cordelia Foundation (financed by the European Refugee Fund's national allocation) if they are torture survivors but it is not the State that provides these services and capacities are limited. In **the United**

[72] Council of Europe's Parliamentary Assembly, Resolution 1810 (2011), *op.cit.* (note 32).

[73] Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria, Art. 18, available at : **http://noticias.juridicas.com/base_datos/Admin/l12-2009.t2.html#a18** [accessed 18 June 2012].

[74] More information available at: **http://www.yhteisetlapsemme.fi/documents/Unaccompaniedproject2008-2011_Projectdescription.pdf** [accessed 11 July 2012].

Kingdom, local authorities have internal children's mental health services where unaccompanied minors may be provided with psychological care. There are a few organizations specialized in mental health issues for migrants and asylum-seekers. However, there is long waiting time to access this specific support, and not all unaccompanied children would fit in the criteria[75]. In **Austria**, counselling centres for unaccompanied minors complain that it is very difficult to find adequate psychiatric in-house treatment for adolescents.

5.4. Detention of unaccompanied asylum-seeking children

According to the Convention on the rights of the child, *"the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time"*[76]. The UNHCR published guidelines on the specific situation of unaccompanied children seeking asylum stating that *"children seeking asylum should not be kept in detention. This is particularly important in the case of unaccompanied children"*[77]. In this context, the only fact to be unaccompanied minors who seeks asylum should not lead to detention.

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

It is interesting to note that the issue of detention is sometimes addressed in a different way whether the minor is with family, unaccompanied, and/or asylum seeker[78].

[75] Interview of Refugee Council's Policy Adviser, 29/11/2011.
[76] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3. Art. 37, available at: **http://www2.ohchr.org/english/law/crc.htm**
[77] UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, p 2, *op.cit.* (note 30).
[78] For a complete comparison on this issue, see ECRE, SAVE THE CHILDREN, *Comparative study in the field of return of minors*, December 2011 - **http://ec.europa.eu/home-affairs/doc_centre/immigration/docs/studies/Return_of_children-final.pdf** [accessed 11 July 2012].

A first list of **countries, prohibiting detention of all unaccompanied children on the territory**[79] can be drawn up: **Belgium**, **Cyprus**, **Denmark**, **France**, **Hungary**, **Ireland**, **Italy**, **Lithuania**, **Portugal**, **Romania**, **Slovakia**, **Spain**, **Sweden** and **the United Kingdom**.

In **France**, detention of minors on the territory is actually prohibited, but unaccompanied minors can be detained at the border (in the so-called "zone d'attente").

In **Portugal**, minors cannot be detained[80] for an irregular entry or stay in the country. In this context, the law provides for a special regime which allows the regularization of the situation of such minors in the country.

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

In **Bulgaria**, in theory, asylum-seeking unaccompanied minors should not be detained, but the deadline to submit an asylum application can be long and therefore during the waiting period, they are considered undocumented migrants and can be detained. The detention period is normally 3 months maximum, but in practice another period of 3 months can be added. In **Poland** also, unaccompanied minors can be detained before they apply for asylum. The maximum length of detention is one year when the child is an irregular migrant not in asylum procedure.

In **Austria**, **the Czech Republic**, **Estonia**, **Finland**, **Germany**, **Greece**, **Latvia**, **Malta**, **the Netherlands** and **Slovenia**, **unaccompanied children can be detained, whether they are asylum seekers or not**.

In **Malta**, all persons are immediately detained upon irregular arrival, including children. The minor remains in detention till a decision on the age assessment and the transfer to the residential homes for minors is taken. In **Finland**, a representative of the Police or Border Guard who proposes that a minor be placed in detention, contacts the social welfare services to inform them of this fact and requests their opinion in the matter. In the **Netherlands**, unaccompanied minors can also be detained.

[79] About detention at the border, *see infra* part 8.4. "detention".
[80] Without prejudice to the criminal responsibility of minors, imputable from the age of 16 onwards.

However, strong restrictions have been imposed to this detention[81]. In the **Czech Republic**, unaccompanied minors older than 15 can be detained up to three months, as adults, if there is a risk that the alien might endanger state security, significantly disturb public order, or obstruct or hinder the execution of a decision on administrative expulsion[82].

In **Estonia**, the law permits detention of unaccompanied asylum-seeking children in the initial reception centre for the time of medical examination. In **Germany**, national law allows detention of children up to 18 months in exceptional cases and under consideration of the best interest of the child. Federal states are responsible for the execution of detention and some states do not apply the detention of minors.

In some countries allowing detention of unaccompanied minors, conditions of detention are quite bad. In **Austria** first, adolescents in detention have hardly any legal support to fight against their deportation. Juveniles are locked up in a cell alone or they are together with other juveniles but cannot communicate with each other as they come from different countries. In **Estonia**, the detainees are imposed severe restrictions on their freedom of movement. For example, foreign nationals are placed in isolation if they do not respect the centre's rules and visits are limited to one hour and supervised by a member of the centre's staff. In **Germany**, there is no possibility for education in the common deportation prisons. In **Malta**, concerns include the arbitrariness of the detention policy, overcrowding, unhygienic conditions, lack of sufficient fresh air, lack of access to outside for leisure and fresh air (on average 1 hour per day), insufficient provision of clothing, bedding and sanitary materials (shampoo, tooth-paste, soap, etc.), lack of possibility to engage in any meaningful activities.

When unaccompanied minors are detained, in general they are **separated from adults**. It is the case in **Austria**, **Bulgaria**, **the Czech Republic**, **Estonia**, **Finland**, **Latvia**, **Netherlands** and **Slovenia**. In **Bulgaria** though, privacy is an issue, even if unaccompanied minors are placed in a separate big hall together within the detention centre, with other children and families. In **Greece**, unaccompanied minors should be detained from a few days up to 90 days for only the necessary time till their safe referral to adequate centres for accommodation of minors but there is no provision for separate detention.

As we have seen above, the detention of unaccompanied children seeking asylum is not prohibited in all the 27 EU countries. The Jurisprudence of the European Court of Human Rights has yet emphasized the extreme vulnerability of these children in the context of detention[83]. It should be noted that the Court not only found the detention of these children in violation of Article 5 of the European Convention on Human Rights (i.e. the right to liberty and security of person) but also that it amounted to a violation of Article 3 of the Convention (i.e. freedom from torture and inhuman or degrading treatment). We hope that these positive developments will lead to the end of such practices in the coming years.

RECOMMENDATION 5 – Support and accommodation

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

[81] If an unaccompanied minor is suspected or convicted by a criminal offence, if the return of the minor can be organized within 14 days or if the minor has left the reception centre or has ignored restrictive measures concerning his place of residence ("Kamerbrief" of the Ministry for Immigration and Asylum, published on March 2011).

[82] Act No. 326/1999 Coll.,on the Residence of Aliens in the Territory of the Czech Republic, Section 124, available at: **http://ec.europa.eu/ewsi/UDRW/images/items/docl_1339_966375972.pdf** [accessed 11 July 2012].

[83] ECtHR, Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, Application No. 13178/03, Judgment of 12 October 2006, see, inter alia, paras. 55, 101-104 and ECtHR, Mushkhadzhieyeva and others v. Belgium, Application No. 41442/07, Judgment of 19 January 2010, para. 63

6 MAIN INTERVIEW

After the preliminary interview that takes place in some country in order to clarify the identity, family links or migration routes of the minor, national procedures provide a main interview that aims to demonstrate the existence of well-founded fears of persecution. This main interview is generally the main step of asylum procedure. It is a key moment where the applicant can explain his/her situation with details. For asylum officers, this step is a good way to see the credibility of the story by asking precise questions about elements contained in the written application.

In 1985, the UNHCR published guidelines on the interview issue[84]. The module "*Interviewing Applicants for Refugee Status*", of 1995, contains also a chapter on unaccompanied minors[85]. As provided in a 1997 Council of the European Union resolution, "*when an application for asylum from an unaccompanied minor is examined, allowance should be made, in addition to objective facts and circumstances, for a minor's age, maturity and mental development, and for the fact that he/she may have limited knowledge of conditions in the country of origin*" [86].

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

6.1. Holding of an interview

The Convention on the Rights of the Child states that "*the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child*"[87].

[84] UNHCR, *Guidelines for Interviewing Unaccompanied Minors and Preparing Social Histories*, October 1985, available at: **http://www.unhcr.org/refworld/docid/47fdfae5d.html** [accessed 18 June 2012].
[85] UNHCR, *module "Interviewing Applicants for Refugee Status" (RLD4), 1995, Chapter 5 "interviewing children"*, available at: **http://www.unhcr.org/publ/PUBL/3ae6bd670.pdf** [accessed 30 July 2012].
[86] Council Resolution 97/C 221/03, Art. 4, *op.cit.* (note 52).
[87] *Convention on the Rights of the Child*, Art. 12-2, *op.cit.* (note 76).

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

6.1.1. Countries without exceptions provided by law or practice

In some EU countries as **Austria, Bulgaria, the Czech Republic, Denmark, Finland, Hungary, Latvia, Lithuania, Luxembourg, Poland, Slovakia, Spain** and **Sweden**, it is not possible to process an application without interview, except in the cases where the applicant's file is closed for various reasons before the date of the interview (applicant who disappears shortly after the initiation of the asylum procedure, changing of address without informing the migration authorities…). In these countries, all children are interviewed, even the youngest.

In **Denmark**, there are several interviews during the process. The main interview takes several hours. Next interviews are taken depending on the asylum process stage. In **Hungary**, if the unaccompanied minor is over 14 the hearing can only be adjourned to a later date (in case the child suffers from acute trauma or is otherwise unable to participate in the interview) but is still obligatory. In **Lithuania**, there is a possibility to postpone an interview if the child is not ready psychologically to be interviewed.

6.1.2. Countries with exceptions provided by law or practice

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

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

In **Belgium**, the interview of a child severely traumatized or disabled could be cancelled or postponed. The Commission indicates that generally no negative decisions are taken when interview is not possible. In **Estonia**, the opportunity to be interviewed should only be given to a minor over 10 years old or a younger minor if his/her level of development allows it. In **the Netherlands**, unaccompanied minors under 6 are not interviewed. In **Slovenia**, it is possible to process applications without a personal interview only if the child is under 15. In case of accelerated procedure, further personal interviews can be omitted under special circumstances for all asylum seekers, including minors. Personal interview can be omitted also if the Asylum authority can grant protection already on the basis of evidence and further personal interview is not required. In **the United Kingdom**, only children aged 12 or over have to be interviewed about the substantive matters of their asylum claim[88].

In **France**, all unaccompanied minors are interviewed in practice. The only known cases without interview are children in resettlement programs (positive decisions were issued). The situation is quite similar in **Malta**. In **Portugal**, the law foresees that the interview might not take place only when there are conditions to decide positively on the international protection claim on the basis of the declarations and documents provided, or when the asylum seeker provided by other means the information on his/her situation; when the claimant is in the absolute incapacity[89]. In **Italy**, the Territorial Commissions could decide not to interview persons that are highly traumatized/sick on the basis of medical/psychological evidence. In **Ireland**, this is not currently possible to process an application without interview. However, the law provides for exemptions of substantive interview, when the minor is "of such an age and degree of maturity that an interview would not usefully advance the investigation"[90].

In some countries the possibility to process an application without interview could affect his/her right to asylum.

In **Greece**, apart from the provision of the law[91] the practice is that the interview lasts a few minutes so the child has not the opportunity to give fully explanation about his/her situation. In **Romania**, the intellectual state of development and degree of maturity of the child should be considered[92] but in practice, the application for asylum without a personal interview has negative consequences on the minor asylum claim.

In **the United Kingdom**, the United Kingdom border agency - UKBA - states that it is "not recommended" to assess a claim without a main interview being conducted[93]. Children under the age of 12 are not interviewed and their case is processed from the Substantive Evidence Form (and possibly other written evidence) but it is deemed "hard to grant asylum" only relying on the Statement of Evidence Form[94]. As a consequence, the majority of non-interviewed minors (usually minors under 12) are granted discretionary leave.

6.2. Training and knowledge of asylum officers about children's applications

6.2.1. Training of asylum officers

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

In its 1997 guidelines, UNHCR indicated that "*it is desirable that all interviews with unaccompanied children (including the interview for the determination of refugee status) should be carried out by professionally qualified and specially trained persons with appropriate knowledge of the psychological, emotional and physical development and behavior of children*"[95]. This same

[88] Immigration Rules, §352 : "any child over the age of 12 who has claimed asylum in his own right shall be interviewed about the substance of his claim unless the child is unfit or unable to be interviewed", available at: **http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part11/** [accessed 11 July 2012].

[89] Act 27/2008 (Asylum Act), Art. 16, *op.cit.* (note 65).

[90] Immigration, Residence and Protection Bill 2010, Section 83, (10)(b), available at : **http://www.oireachtas.ie/documents/bills28/bills/2010/3810/b3810d.pdf** [accessed 11 July 2012].

[91] Presidential Decree 114/2010 on the establishment of a single procedure for granting the status of refugee or of beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (L 326/13.12.2005) [Greece], 16 November 2010, Art 10 par. 2 .b, available at: **http://www.unhcr.org/refworld/docid/4cfdfadf2.html** [accessed 14 June 2012].

[92] Law no. 122/2006 on Asylum in Romania [Romania], Law no. 122/2006 , 25 August 2006, Art. 47, available at: **http://www.unhcr.org/refworld/docid/44ace1424.html** [accessed 9 July 2012].

[93] Interview of UKBA case owner, 29/11/2011.

[94] Interview of UKBA case owner, 29/11/2011.

[95] UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, op.cit. (note 30), Chapter 5

year, the European Union stated that "*the interview should be conducted by officers who have the necessary experience or training*"[96]. The 2005 directive on asylum procedures requires that *"if an unaccompanied minor has a personal interview on his/her application for asylum (…), that interview is conducted by a person who has the necessary knowledge of the special needs of minors"*[97]. Finally, the Council of Europe recommended in 2011 to all Member States that *"All interviews with an unaccompanied child concerning his or her personal details and background should be conducted individually by specialized and well-trained staff"*[98].

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

6.2.1.1. Training delivered in practice

In **Austria**, advanced trainings were executed in the past in cooperation with the UNHCR. For the judges of the Asylum Court of Law no training in dealing with youngsters is foremost provided. In **Belgium**, asylum officers are receiving a specific training in the framework of the module "interviewing children" of the European Asylum Curriculum. In **Cyprus**, officers receive training but as they have never interviewed children, they have no hands-on experience. In **the Czech Republic**, the case managers dealing with unaccompanied minors receive training. However, the final decision comes from the director of the MOI´s asylum department and is rather based on asylum policy grounds. In **Estonia**, Government officials were trained within the framework of the VARRE project (carried out by the International Organization for Migration Tallinn) in 2010.

In **Ireland**, UNHCR provides trainings with key principles on interviewing children, and covering the whole protection assessment process (credibility assessment, burden of the proof, child-specific forms of persecution…). The training includes case studies and the contribution of a child psychologist on interviewing techniques. To date, according to asylum office, all caseworkers received training on this issue[99].

In **Malta**, all members attend twice a year European Asylum Curriculum training and specialized training courses which include also modules on the interview' techniques of minors. In **Hungary**, only a few of the case workers deal with unaccompanied minors and they have significant expertise in this field. In **the Netherlands**, asylum applications of unaccompanied minors are handled by a department that is specialized in such matters: the 'Unit for National UMA tasks' (*Unit Landelijke AMA-taken*). In **Poland**, the staff interviewing unaccompanied children must go through a specific training to do it. In **Portugal**, the training of asylum officers includes a chapter on child interviewing techniques. In **Sweden**, there is a manual for officers interviewing children and in **Finland**, good guidelines developed by Immigration Service should be used[100]. In **the United Kingdom**, the officer interviewing the child "*shall have specialist training in the interviewing of children and have particular regard to the possibility that a child will feel inhibited or alarmed*"[101]. While the law states that "*the decision on the application for asylum shall be taken by a person who is trained to deal with asylum claims from children*"[102], it was noted by UNHCR that the training focused on procedural matters rather than on decision-making[103].

6.2.1.2. Training not fully implemented

In **France**, the asylum office states that officers are trained by their supervisors or by other officers but the content of this training is not specified[104]. In practice, applications are processed by trained officers in some geographical department of the Office (e.g. Asia) but not in other where the number of application is too high to assign all unaccompanied minors' applications to trained officers (e.g. Africa). In **Germany**, the Federal Office built up a pool of *Sonderbeauftragte* (specialized adjudicators). Methods are explained but not always used in practice. In Greece, the law provides that people who conduct interviews must be sufficiently competent to take into account the applicant's cultural origins or vulnerability[105]. However in practice, several police officers are not properly trained for that. In **Latvia**, there have been several trainings organized

[96] Council Resolution 97/C 221/03 on unaccompanied minors who are nationals of third countries, Art. 4, *op.cit.* (note 52).
[97] Council Directive 2005/85/EC of 1st December 2005, Art. 17 – 4a, *op.cit.* (note 14).
[98] Council of Europe's Parliamentary Assembly, Resolution 1810 (2011), §5.7, *op.cit.* (note 32).
[99] Interview of Office of the Refugee Applications Commissioner - ORAC - representatives, 3/11/2011.
[100] Guidelines for Interviewing (Separated) Minors. Directorate of Immigration Finland, March 2002, available at : **http://www.unhcr.org/refworld/category,LEGAL,FIN_DI,,,430ae8d72,0.html** [accessed 11 July 2012].
[101] Immigration rules §352, *op.cit.* (note 88).
[102] *Ibid.*, §352 ZB.
[103] UNHCR, *Quality initiative project, Key observations and recommendations, 6th report April 2008 – March 2009*, April 2009, available at: **http://www.unhcr.org.uk/fileadmin/user_upload/pdf/6_QI_Key_Observations_Recommendations6.pdf** , [accessed 18 June 2012].
[104] Written interview of Ofpra agents, 25/10/2011.
[105] Presidential Decree 114/2010, Art.10. 9. A, *op.cit.* (note 91).

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

In **Luxembourg**[106], **Slovakia** and **Spain**, the decision-maker stating on the asylum application of unaccompanied minors should also have the adequate knowledge on the particular necessities of the unaccompanied minor but this is not always the case in practice. In **Italy**, the tendency is to let the most experienced member of the Commission or the member who has a better approach to deal with vulnerable persons to interview the unaccompanied minors. In **Bulgaria**, training of asylum is not required by law and no information is available on practice. In **Romania**, the interview officers are not trained for dealing with vulnerable cases. The training is done by themselves and occasionally by NGOs through training seminars. In **Slovenia**, there was one training performed by the UNHCR, which addressed this issue, but it was not the main theme of the training.

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

The European Union provides possibilities to collect information of the situation in the country of origin. Indeed, European Country of Origin Information (ECOI) network is a tool that assists case officers in answering questions about the political, social, cultural, economic, humanitarian and human rights situation in the applicant's country[107]. In addition, resources are generally available in a specific service within national asylum institutions. Since the specific situation of children is not always included in these data bases, few countries implemented means to collect this information.

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

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

In **the United Kingdom**, the country of origin information (COI) reports and operational guidance notice (OGN) of the UKBA should include specific sections on children. However, according to solicitors, this specific information is often not used[108].

6.3. Condition of the interview

Unaccompanied children are not able to express their situation in the same way as adults. Due to their particular vulnerability, they need specific conditions of interview. It may be material arrangement such as specific rooms but the most important is to provide specific procedures and techniques of interview in accordance with the age and maturity of the child.

According to the Committee on the Rights of the Child, the interviews should be conducted by representatives of the refugee determination authority who will take into account the special situation of unaccompanied children in order to carry out the refugee status assessment and apply an understanding of the story, culture and background of the child[109]. In a module on "interviewing applicants for refugee status", UNCHR states that "*interviewing techniques should be adopted according to the maturity and under-standing of the child*"[110].

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

[106] *Loi du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection* [Luxembourg], 5 May 2006, Art. 12 (2), available at: **http://www.unhcr.org/refworld/docid/48ca6fa42.html** [accessed 14 June 2012].
[107] See **http://www.ecoi.net/** [accessed 11 July 2012]. Immigration rules §352, *op.cit.* (note 85).
[108] Interviews of legal representatives, 28/11/2011 and 29/11/2011.
[109] *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, *op.cit.* (note 31), Chapter 6.
[110] UNHCR, module "Interviewing Applicants for Refugee Status" (RLD4), 1995, Chapter 5, op.cit. (note 85).

6.3.1. Specific conditions implemented in practice

In **Belgium**, the asylum officer should ensure at the beginning of the interview that the minor understands the interpreter. Unaccompanied minors are interviewed in special rooms. The Commission on asylum adopted a specific technique called "dialogical communication method"[111]. This technique is designed to be specifically tailored to children's memory. Another specificity of the interview technique is to let the first child to talk freely about his/her experiences on a given subject, before asking specific questions.

In **the Czech Republic**, interviews are often carried out directly in the Home for Foreign Children where the conditions are tailored for unaccompanied minors. However, the interview could also in exceptional cases take place in the detention centre or in the closed reception centre where conditions are not child-specific. In **Finland**, legal guardian is always present during the interview, and it is up to the guardian to ask the lawyer to be present as well. Sometimes there is also a person from the reception centre who is trusted and close to a child. Finally a relative of the child can be present as well, but such cases are not frequent. In **Italy**, the hearing is conducted in a child-friendly manner, breaks are foreseen. Members of the Territorial Commissions should take into consideration the age, the maturity, family situation, specific forms of persecution in the countries of origin and the fact that minors can express their fears in a different manner than adults. In **Latvia** and **Lithuania**, interviews have to be conducted in a child friendly manner and environment but there are few elements on practice.

In **the Netherlands**, there are specific conditions for children under 12. There is a "*Protocol Interviewing Unaccompanied Minor Asylum Seekers for children younger than twelve years old*", in force since 2001[112]: In **Sweden**, staff follows special manuals on how to interview a child. In **Spain**, the asylum law states that the Administration should take the necessary measures to provide a distinguishing treatment according to the sex of the applicant or other circumstances, such as being an unaccompanied child[113].

[111] CGRA, *Rapport d'activité 2010*, available at: **http://www.cgvs.be/fr/binaries/2010_Rapport-Annuel_FR_tcm126-130185.pdf** [accessed 11 July 2012].
[112] Enhancing Vulnerable Asylum Seekers Protection - EVASP 2010, available at: **http://www.evasp.eu/dutchReport-.pdf** [accessed 11 July 2012].
[113] Ley 12/2009, Art. 17, *op.cit.* (note 73).

6.3.2. Specific conditions not fully implemented in practice

In **Ireland**, child-friendly rooms are used for substantive interviews. When a child is particularly vulnerable or worried about going to an unknown place for his/her interview, it is possible to arrange a familiarization visit of the building and interview room for the child, a few days before the interview. It seems that efforts are more focused on the interview environment, than on the questioning style and contents. The Irish Refugee Council indeed outlines that young people appeared quite traumatized by substantive interviews.

In **France**, asylum officers say that interviews are suitable for children, including a longer introduction and explanation of the procedure and a simpler formulation to make the child feel comfortable. However, persons accompanying children during interviews (legal guardian, lawyers or social workers) consider that the adaptation is very low. In many cases, children are interviewed as adults[114]. In **the United Kingdom**, guidance requires the interview to take place in suitable rooms (for example, rooms with windows). Immigration Rules provide that "*the child shall be allowed to express himself/herself in his/her own way and at his/her own speed*[115]". According to advisers and legal representatives, this is not implemented in practice[116]. Substantive interviews of unaccompanied children are not really conducted in specific conditions.

According to the Asylum Act, in **Slovakia**, during the asylum interview, the decision-maker when conducting the interview should take into account the age and the degree of intellectual and volatile development of the child. In practice, however, there are no specific conditions for interviewing children. The situation is quite similar in **Slovenia**, where protective measures provided by law[117] are not always implemented in practice.

In **Romania**, interviews are generally conducted in practice in a non-threatening atmosphere, with breaks, in a child-friendly manner. However, all asylum officers are not trained[118].

[114] The asylum office explains that special means of communication for children are not necessarily appropriate because 95,1 % of unaccompanied minor asylum seekers are older than 16.
[115] Immigration Rules, §352, *op.cit.* (note 88).
[116] Interviews of legal representatives and adviser of the Children's Panel, 28/11/2011 and 29/11/2011.
[117] *Law on International Protection* [Slovenia], 4 January 2008, Art. 45 (2), available at: **http://www.unhcr.org/refworld/docid/47f1fdfc2.html** [accessed 9 July 2012].
[118] See *supra* Part 6.2.1.2. "Training not fully implemented".

In some EU countries as **Austria, Bulgaria, Cyprus, Denmark, Germany, Greece, Hungary, Malta and Portugal**, it seems that children are **interviewed in the same conditions as adults**. The only specificity may be the presence of a guardian but this requirement does not always provide the necessary conditions for the consideration of specific features related to minority.

In **Hungary**, conditions are not too child specific, maybe some colourful drawings are hanging from the walls otherwise the setup is almost the same as for adults. Officers may make use of any form of self-expression but it largely depends on the attitude officer in charge and on the interpreter. In **Portugal**, no specific conditions are put in place regarding interviews determination.

RECOMMENDATION 6 – Main interview

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

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

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

7 DECISION AND ITS CONSEQUENCES

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

7.1. Child-specific aspects of the decisions

The positions developed by UNHCR in exercising its supervisory functions under the 1951 Refugee Convention indicate that the refugee definition must be interpreted in an age-sensitive manner[119]. The Committee of the rights of the child has reiterated this requirement[120]. It means in particular that *"the decision on a child's refugee status calls for a liberal application of the principle of the benefit of the doubt"*[121].

We must note that the decision analysis is difficult because of limited data provided by the authorities on the content of decisions[122].

7.1.1. Comparison of recognition rates between adults and unaccompanied children

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

In **Belgium**, the total of recognition rate for refugee status and subsidiary protection in first instance for 2010 (51 %) is more than twice as important as for adults (21,4%)[123]. In **France**, the global rate (first instance and appeal) in 2010 was also more important for children (38,5 %) than for adults (27,5 %)[124]. Moreover, the part of refugee status (RS) compared to subsidiary protection (SP) is more important for unaccompanied children (RS=87 % / PS= 13 %) than for adults (RS= 80 % / PS= 20 %) in positive decisions issued in first instance. According to the statistics in **Hungary**, children are granted protection slightly more often than adults although the "abscondment rate" amongst them was also extremely high[125]. In **Lithuania**, the rate of positive decisions for unaccompanied children and adults are completely different. All unaccompanied children receive positive decision, although it is often not refugee status but subsidiary protection that is granted. In **Portugal** and **Slovenia**, most of the requests by unaccompanied minors are positive and granted subsidiary protection. In **Ireland**, the recognition rate for unaccompanied minors is higher than the overall recognition rate but this country has one of the lowest recognition rates among the European Union Member States[126] so the rate remains low (8,8 % of refugee status granted in 2010[127]).

These situations suggest that children applications are examined more favourably.

According to asylum authorities in **Germany**, unaccompanied children receive more positive

[119] See for example :
Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, §8.6., *op.cit.* (note 30); UNHCR, *Conclusion on Children at Risk*, 5 October 2007, No. 107 (LVIII) - 2007. (g) viii. available at: **http://www.unhcr.org/refworld/docid/471897232.html** [accessed 18 June 2012]

[120] Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, § 74, *op.cit.* (note 31).

[121] UNHCR, « Children : Guidelines on protection and care », 1994, Chapter 8 (p.99-102), *op.cit.* (note 30).

[122] See *supra* part 2 "Statistics and profiles".

[123] CGRA, *Rapport d'activité 2010*, *op.cit.* (note 111), et CCE, *Rapport annuel 2009-2010*, sur la période du 1er septembre 2009 au 31 août 2010.

[124] This rate is calculated as follows : it corresponds to the sum of the positive decisions in first instance and in appeal in 2010, compared to the total number of decisions of this year. Yest, the decisions of the appeal do not generally concern the first instance decisions of the same year.

[125] In 2010, the application was rejected in only 3 cases out of 270 asylum applications, while 25 were granted protection and many of them left before completing the procedure.

[126] "Asylum lottery in the EU in 2010", available at: **http://www.ecre.org/component/content/article/56-ecre-actions/246-asylum-lottery-in-the-eu-in-2010.html?** [accessed 11 July 2012].

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

decisions of first instance (32 to 23 per cent positive decisions). However, the refugee status is granted less often, because child-specific persecution is often not recognized. A contrasting situation also occurs in **the United Kingdom**. If we consider both international protection (refugee status or humanitarian protection), and discretionary leave to remain, unaccompanied minors are more likely to be granted a right to stay than adults. But, if we consider international protections only, initial decisions are more favourable to adults than minors. Although 16,9 % of all applicants were granted refugee status in 2010, only 13,7 % of unaccompanied minors were concerned. The protection rate for children seems quite similar to those for adults in **Greece, Latvia, Malta, and Slovakia**. In **Finland**, the rate of positive decisions is quite similar or even lower for unaccompanied minors than for adults but unaccompanied minors are not returned to countries of origin like adults, they are granted some kind of a positive decision.

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

Some persecutions are suffered specifically by children and can be linked to the legal standards for granting refugee status or subsidiary protection. For example, under-age recruitment (including of girls for sexual services or forced marriage with the military) and direct or indirect participation in hostilities constitutes a serious human rights violation and thereby persecution, and should lead to the granting of refugee status[128]. Female genital mutilation can also be considered a child-specific form of persecution as it disproportionately affects the girl child[129].Other examples are given by UNHCR such as subjection to forced labour[130] or the trafficking of children for prostitution and sexual exploitation[131]. In addition, children may fear or have been affected by other discriminatory or persecutory measures affecting the entire family[132].

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

In **Belgium**, taking into account child-specific forms of persecution has been required by law since 1980[133]. Positive decisions have been taken in recent year regarding child soldiers, child "witches" or child abused in koranic schools from West Africa[134]. Forced marriage and female genital mutilations are also taken into account but it does not concern only children. In **France**, the asylum institution mentions examples where the refugee status is granted to child "witches" from Democratic Republic of Congo and subsidiary protection is granted to young girls who are at risk of genital mutilations[135]. There are also cases where child-specific forms of persecution are considered in appeal for forced marriage or female genital mutilation[136], or for risk of forced recruitment[137]. In **The United Kingdom**, it seems that children are not frequently granted refugee status or humanitarian protection at first instance because of child-specific forms of persecution[138]. On appeal, child-specific forms of persecution are more frequently identified. In **Hungary**, child specific forms of persecution are recognized by the OIN although in practice it is often classified as a "family dispute" as if children could not be targeted by persecution.

In **Austria**, positive asylum decisions because of child-specific reasons occur only in female cases (forced marriage and female genital mutilation). In **the Czech Republic** only one case is known where an underage asylum seeker was granted refugee status because of female genital mutilation and forced marriage. In **Germany**, some forms of child-specific persecution are considered in the decisions: especially female genital mutilation grants protection. A very few child-soldiers are granted protection.

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

[128] Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, § 59, *op.cit.* (note 31).
[129] UNHCR, *Guidance Note on Refugee Claims relating to Female Genital Mutilation*, May 2009, §9. Available at : **http://www.unhcr.org/refworld/docid/4a0c28492.html** [accessed 18 June 2012].
[130] See *ILO* Convention No. 182 Worst Forms of Child Labour, available at: **http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182** [accessed 18 June 2012].
[131] Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, §8.7, *op.cit.* (note 30).
[132] *Ibid.*, §8.8.
[133] Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, available at : *Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* [Belgium], 22 September 2011, Art.48/3, §2, available at: **http://www.unhcr.org/refworld/docid/4e803ea82.html** [accessed 9 July 2012].
[134] Interviews with the coordinator of the belgium asylum office – CGRA and with a lawyer of the UAM pool, 18/10/2011.
[135] Written interview with Ofpra, 25/10/2011.
[136] See for example : CNDA, 28 juillet 2009, 636210/08016675, Mlle D.
[137] See for example : CNDA, décision n°10016190 du 20 décembre 2010.
[138] Interviews of legal representatives, 28/11/2011 and 29/11/2011.

COUNTRY	REFERENCE	DATE (M/D/Y)	TOPIC	COMMENTS
BELGIUM	CCE, judgement (arrêt) No. 13.854 CCE, judgement (arrêt) No. 11.831, case No. 21.870	07/08/2008 05/27/2008	Age-sensitive decision	The Court confirmed the need of a age-sensitive approach in asylum procedure and decision. The benefit of the doubt principle should also be more widely implemented.
	CCE, judgement No. 64.557	06/09/2011	Child-specific persecutions and gender-specific persecutions	
FRANCE	CNDA, decision No. 636210/08016675	07/28/2009	Fear of female genital mutilation	Refugee status granted on gender ground
	CNDA, decision No. 10016190	12/20/2010	Fear of forced recruitment, Afghanistan	Subsidiary protection granted
HUNGARY	Case no. 6K34223/2009/10. M.A. v. Office of Immigration and Nationality	2009	Well founded fear	The Court ruled that children's fear has to be examined in accordance with the specificities of the applicant's young age and individual circumstances (lack of schooling and being vulnerable).
ROMANIA	Afghanistan / Suceava Tribunal / decision no. 584 - quote the decision no. C465/07 El Gafaji from ECJ	04/06/2011	Granted subsidiary protection because of the general situation in Afghanistan	
	Sudan - / Bucharest, Court sector 4 / decision no. 4207	05/28/2010	Granted subsidiary protection because of the critical situation of the children in Darfur area.	
	Nigeria - / Bucharest, Court sector 4 / decision no. 7269	12/11/2009	Granted subsidiary protection because of the trafficked young girls' situation in Nigeria.	
SLOVENIA	Ghana - / Supreme Court / Judgement I Up 466/2009,	11/12/2009	Credibility, contradictory statements of the asylum seeker	The Supreme Court ruled that the Asylum authority should provide additional questions to the minor asylum seeker in order to enable him to clarify his answers (contradictory statements) about the reasons for leaving his country of origin.

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

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

In **Belgium**, the application is processed by a specific asylum officer for unaccompanied children even if the procedure ends after the age of 18. In **Slovenia**, the child turning 18 may ask to extend the mandate of the legal guardian. In **Sweden**, applications made by unaccompanied minors are still treated as minors applications even if the child turns 18 during the process while waiting for the decision.

In **France**, the asylum institutions affirm that even if the application is processed after the age of 18, the fact that persecutions were suffered during minority is taken into account. In practice however, it seems not so obvious. In **Cyprus**, applications are not processed until children become adults because there is no legal representation available. In **The United Kingdom**, decisions taken for 18 years old applicants are much less favourable than decisions for under-age minors, but also less favourable than adults' decisions. One reason for that is that, after 17 and a half, unaccompanied minors are not eligible to discretionary leave under unaccompanied asylum seeking children - UASC -policy anymore.

7.2. Communication of decisions

The UNHCR states that "*Minors old enough to understand what is meant by status determination should be informed about the process, where they stand in the process, what decisions have been made and the possible consequences*"[139]. The analysis of the issue of communication of decisions in EU implies to study two points: the person to whom the decision is communicated and the way this decision is communicated.

[139] UNHCR, *Refugee Children: Guidelines on Protection and Care*, p.102, *op.cit.* (note 30).

7.2.1. The person to whom the decision is communicated

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

How the representative informs the minor in **Austria** about the decision is individually different, ranging from *"not informing the UMR at all"* and *"informing and explaining them together with the supervisor and a translator"*. In **Lithuania**, the decision is notified to the guardian who is responsible for making sure that the decision is communicated to the child in a proper way and that all unclear information is explained.

In other countries, **the decision is communicated to both child and legal guardian**.

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

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

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

In **Portugal**, the Servicio de Estrangeiros e Fronteiras – SEF – notifies the decision to the unaccompanied minors, as well as to UNHCR and the NGO CPR[140]. In **Romania**, the decision is notified to the minor personally if he/she is above 16 years old (he can make an appeal without the legal guardian).

7.2.2. The way the decision is communicated

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

In **Belgium**, the only difference with adults is the use of the familiar form of "you" (*'tutoiement'*). In **Ireland**, the wording of the decision is the same for children and for adults and the Ombudsman for Children's Office noticed that these letters *"have been described as 'scary and unfriendly' by separated children"*[141]. In **Estonia**, if the decision is negative, it is sent by mail in the language the child communicates. If the decision is positive, it is written in Estonian language and translated orally to the child. An interpreter is present if necessary at the time of the communication in **Bulgaria, the Czech Republic, Finland, Greece, Hungary, Portugal and Sweden**. In **Portugal**, the decision is first communicated by asylum officers of SEF to the minor at SEF's office. Then, CPR staff also talks to the minor acknowledging the full understanding of the document, replying to any doubts or questions that might exist.

7.3. Appeal

According to the UNHCR, minimum procedural guarantees should include *"possibility to appeal for a formal review of the decision"* [142]. Globally, there are no specific conditions for unaccompanied minors to appeal a negative first decision in the regular procedure, with some exceptions.

7.3.1. Special provisions or practices regarding children implemented on appeal

As well as in first instance, the legal guardian is usually involved in the procedure. In some countries as **Austria, Belgium, France, Hungary** and Italy the **guardian must introduce the appeal** or at least give his/her approval. Globally, **there is little difference in practice on appeal, compared to first instance.** In **Finland**, the court does not always arrange oral hearing for unaccompanied children. In **Germany**, the appeal in front of the administrative court is an ordinary trial, child-specific-tools are not common. In **Latvia**, additional guarantee is free legal assistance provided to the unaccompanied child during appeal procedure. In **Sweden**, at the appeal, the child gets an attorney appointed by Swedish Migration Board.

[140] Law 27/2008 of 30 June 2008, Art. 29, *op.cit.* (note 65).

[141] Ombudsman for children's office, *Separated children living in Ireland* (November 2009) p 31, available at: **http://www.oco.ie/assets/files/publications/separated_children/SeparatedChildrenProjectReport.pdf** [accessed 18 June 2012].

[142] UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, *op.cit.* (note 30).

In many other countries, **there can be a difference between the first instance procedure and the appeal, but without any specificity for children**. In **Bulgaria** and **France**, the appellant has a right to ask to be appointed a lawyer under the Law on Legal Aid. In **Cyprus**, in the case of appeals before the Refugee Reviewing Authority the law specifically states that the applicant may be accompanied by his lawyer or legal advisor, the guardian of an unaccompanied minor and the necessary interpreter, unless otherwise requested by the applicant. In **Belgium**, both adults and minors do not have interview at the appeal stage.

In some countries, **the right to appeal seems to be threatened**. In **Austria**, until today some youth welfare offices do by conviction not appeal to court against a negative first instance decision. In **Slovakia**, the guardian does not submit appeals at all against the negative administrative decisions of the Migration office. Similar shortcomings were revealed in **Hungary** regarding the lack of submitting the appeals in some cases. In **the United Kingdom**, an important matter of concern is that some unaccompanied minors have **no appeal rights**. This is the case of children who were identified as Dublin II cases, but also for those who were granted discretionary leave for less than 12 months. Another matter of concern is that some legal representatives may advise children against appealing their initial decision[143].

7.3.2. Consequences of a negative decision at the appeal stage

In many countries, the judgment of the first court of appeal can be appealed before a **second instance court**, as in **Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Ireland, Italy, Luxembourg, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and the United Kingdom**. **In some countries, there are more than two possibilities of appeal** as in **Sweden** and in **the United Kingdom**. **Sometimes, once all remedies have been exhausted, the asylum seeker can ask for reexamination under certain circumstances** as in **France** or **Romania**.

In some countries, when the final decision is delivered, **the failed unaccompanied asylum-seeking minor has to leave the country**, and a removal order may therefore be issued. It is the case in **Bulgaria, Cyprus, Estonia, Finland, Germany, Luxembourg, the Netherlands, Poland, Slovenia, Spain** and **Sweden**. **In some countries, unaccompanied minors have the right to stay in the country till they turn 18**. In **France**, the unaccompanied minor whose asylum application has been rejected cannot be expelled from the country, as minors do not need residence permit to stay in the country, until they reach 18 years old. In **Slovakia** also unaccompanied minors whose asylum application was rejected are granted tolerated stay *ex officio* until 18 years of age. In **Luxembourg**, it is possible to suspend the deportation ("sursis à l'éloignement"), but only for medical reasons. In **Belgium**, **the Czech Republic**, **Italy** and **Portugal**, a **residence permit** can be delivered under certain circumstances. In **Belgium**, the "Office des Etrangers" - Aliens Office - grants the right to stay if return or family reunification is impossible In Italy, the minor can always get a stay permit for minor age. The law makes it possible for this residence permit to be extended even after a minor comes of age if he/she had been in Italy for at least three years at the time of application and followed a social integration project for at least two years. In **the United Kingdom** and **Sweden**, there is no possibility of getting another form of status for an unaccompanied minor as all varieties of statuses were considered in asylum and appeal procedures simultaneously and all were not granted.

7.4. Possible outcomes of the procedure

The consequences of the asylum process can vary significantly from one country to another. In some countries as **Belgium, Bulgaria, the Czech Republic, France, Ireland, Portugal, Romania, Slovenia** and **Spain**, **the possible outcomes of this procedure are** quite simple and consistent with the international and European legal framework on asylum: **rejection; refugee status; subsidiary protection**. In other countries as **Austria, Cyprus, Denmark, Finland, Germany, Greece, Hungary, Italy, Malta, the Netherlands, Poland, Slovakia, Sweden and the United Kingdom**, the asylum procedure is the main and sometimes only way to obtain a right to stay in the country. It means that **this procedure can lead to refugee status or subsidiary protection but also to other kind of residence permit**.

In **Cyprus**, it is possible that although an asylum application is rejected, the applicant is granted permit to remain in the country for a period of time, usually for humanitarian reasons. In **Finland**, people apply for all kinds of international protection at the same time and can be granted a lower status, which is a migration status in practice. In **Germany**, there are quite a lot of persons

[143] Interview of legal representatives, 28/11/2011 and 29/11/2011.

who will have a "*Duldung*"[144] after the procedure. "*Duldung*" means that deportation is temporarily suspended, so it is neither a permission to stay nor a legal status.

In **Greece**, the authorities competent to decide may grant an applicant whose application for international protection they have rejected a leave to remain on humanitarian grounds[145]. In **Hungary**, if the asylum claim is rejected the OIN might grant tolerated status to the unaccompanied minor, which is the prohibition of expulsion (deportation) for 1 year with a temporary residence permit. In **Italy**, the Territorial Commissions for the Recognition of International Protection may take any of four decisions: refugee status, subsidiary protection, humanitarian status or failed. In **Malta**, together with refugee status and subsidiary protection the Office of the Refugee Commissioner may grant protection based on humanitarian grounds such as age, disability or medical considerations.

In **the United Kingdom**, the possible outcomes of the asylum procedure are: outright refusal (on substantive matters) or non-compliance refusal (on procedural matters), grant of refugee status, humanitarian protection (=subsidiary protection) or discretionary leave to remain, i.e. a residence permit under migration law. This is a crucial aspect of the United Kingdom policy towards unaccompanied minors, since most asylum claims from UASCs indeed result in granting discretionary leave. Since April 2007 it is granted until the applicant is 17 years and a half, or for three years, whichever is the shorter[146]. Different stakeholders consider that unaccompanied minors are often granted discretionary leave without their need for protection being properly assessed.

7.5. Family reunification

Since it is not possible for a child who has been granted protection to come back to his/her country of origin, States have to implement measure ensuring that family of the child can join her/him. It is the issue of family reunification, linked to the right of every child to live with his/her parent provided in the Convention on the rights of the child[147].
According to EU directive on family reunification, "*if the refugee is an unaccompanied minor, the Member States (…) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line (…) [and] may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced*" [148].
Regarding asylum procedures, the 2004 qualification directive states that "*Member States shall ensure that family members of the beneficiary of refugee or subsidiary protection status, who do not individually qualify for such status, are entitled to claim the benefits referred to in Articles 24 to 34, in accordance with national procedures and as far as it is compatible with the personal legal status of the family member*"[149]. The new directive, adopted in 2011 and that should be translated in national legislations before the end of 2013, contains the same provision[150].

7.5.1. Definition of the family regarding family reunification

The definition of "family members" in the 2004 qualification directive did not include the family of a minor beneficiary of refugee or subsidiary protection[151], but it is the case in the new directive. Indeed, the 2011 qualification directive defines as member of the family "*the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned, when that beneficiary is a minor and unmarried*"[152].

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

In most countries defining the family of the minor refugee, family is defined as **the parents of the unaccompanied refugee minor**. It is the case in **Austria, Belgium, Cyprus, France, Greece, Ireland, Italy, Lithuania, Slovakia, Spain and Sweden**.

[144] Residence Act (Aufenthaltsgesetz, AufenthG), Section 60a, available at: **http://www.iuscomp.org/gla/statutes/AufenthG.htm** [accessed 11 July 2012].
[145] Presidential Decree 114/2010, Art.28, *op.cit.* (note 91).
[146] This change of policy aimed "to ensure that the appeal process is completed by the time an applicant turns 18 years so that arrangements can be made for return to home country as soon as it is safe to do so"; and it is less generous than the previous policy. R (on the application of AO) v Secretary of State for the Home Department [2011] EWHC 110 (Admin) (28 January 2011).
[147] Convention on the rights of the child, Art. 22, *op.cit.* (note 76).
[148] Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Art. 10(3), available at: **http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:NOT** [accessed 11 July 2012].
[149] Council Directive 2004/83/EC, Art. 23-2, *op.cit.* (note 3).
[150] Directive 2011/95/EU of the European parliament and of the council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, Art. 23-2, available at: **http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF** [accessed 11 July 2012].
[151] The directive only mentions spouses and child of the beneficiary.
[152] Directive 2011/95/EU, Art. 2(j), *op.cit.* (note 150).

This strict **definition can be extended to the legal representative** as in the **Czech Republic, Finland, Hungary, Latvia** and **Slovenia**. In some other countries, **it could be either the parents, or the guardian or another adult from his/her family**, as in **Bulgaria, Estonia** and **Portugal**. In some countries, unaccompanied refugee minors can be joined by their parents and **also their siblings**, as in **Denmark, Germany, Luxembourg, Netherlands** and **Poland**. In **the United Kingdom**, family reunion for refugees only applies to dependent children and spouses of refugees, not to their parents. As a consequence, it is hardly possible for an unaccompanied child to apply for family reunion.

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

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

In many countries, very few data is available on this issue. It is the case in **Belgium, Estonia, Greece, Ireland, Luxembourg, Malta, Poland, Portugal** and **Slovenia**. In some countries, the family can be granted the **refugee status**. It is the case in **Cyprus, the Czech Republic, Denmark, Hungary** and **Slovakia**.

In **Cyprus**, the law provides that asylum should be granted to members of the family of a refugee who enter the Republic either at the same time as the refugee or thereafter[153]. There is no equivalent provision for applicants enjoying subsidiary protection. According to the law in **the Czech Republic**, the parent would have to apply for asylum and would receive the same – positive - decision very quickly[154]. In theory there is no difference if the child receives subsidiary protection.

In other countries, family can be granted a **residence permit**, as in **France, Belgium, Germany, Ireland, Italy, Latvia, Lithuania** and **Sweden**. In **Belgium**, there is a possibility for minor's parents to ask for regularization for exceptional circumstances, if they are already residing legally[155]. In **France**, the parents may obtain a 10 years resident permit, but only if they were previously staying under a regular status in France[156].

In **Germany**, parents of an underage foreign national must be granted a residence permit, as long as there is no parent already resident within Germany who is entitled to have the care and custody of the minor in question[157]. Equally, other members of the minor's family can be issued with a residence permit for the purposes of family reunification, provided this is necessary for the "avoidance of exceptional hardship". In **Lithuania**, if a child was granted refugee status, his/her family members have to apply for residence permit up to three months after the refugee status was granted. If a child was granted subsidiary protection he/she should have residence permit at least for 2 years for his/her family members to have possibility to apply for residence authorization in the country on the basis of family reunification. In **the United Kingdom**, family reunification seems almost impossible for unaccompanied minors.

7.5.3. Reunification with the family living in a third country

7.5.3.1. Family tracing for unaccompanied refugee child

In order to implement family reunification, it is necessary to know where the family of the child is. The International Convention on the rights of the child foresees that States Parties shall provide measures "*to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family*" [158]. Family tracing is thus foreseen by the international instruments. In **Austria**[159], **Belgium**[160], **Bulgaria**[161], **Cyprus**[162], **the Czech Republic**, **Greece**[163], **Ireland**[164], **Latvia**, **Lithuania**, **Luxembourg**, **Poland**[165], **Portugal**[166], **Slovenia**[167] and **Sweden**, family tracing is also provided by national law. Different organizations or institutions may be in charge of this family tracing. Sometimes, it can be **immigration services**, as in **Denmark, Finland, Lithuania, Poland, Portugal** and **Sweden**. In **the Czech Republic**, according to the law, the International Child Protection Office in the Czech Republic based in Brno is charged

[153] Refugee Law of 2000, Art. 25(1), *op.cit.* (note 33).
[154] Act No. 325/1999 (the Asylum Act), Art. 13, available at: **http://www.mvcr.cz/clanek/procedure-for-granting-international-protection-in-the-czech-republic.aspx** [accessed 24 August 2012].
[155] Article 9bis of the Law on Foreigners, quoted in VAN ZEEBROECK C., PLATE-FORME MINEURS EN EXIL, *Aspects législatifs de la situation des mineurs étrangers non-accompagnés en Belgique*, mars 2008, pp.419-444.
[156] Article L 314-11-8° of the Code de l'entrée et du séjour des étrangers et du droit d'asile, available at : **http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=AA49BE3DFAE817CB6C55AE4D2F65C222.tpdjo08v_3?idArticle=LEGIARTI000006335113&cidTexte=LEGITEXT000006070158&dateTexte=20120709** [accessed 10 July 2012].
[157] Residence Act, Section 36 (1), *op.cit.* (note 144).
[158] Convention on the rights of the child, Art. 22, *op.cit.* (note 76).
[159] Austrian Asylum Law (AsylG § 35 Para 1 & Para 2).
[160] *Loi-programme du 24 décembre 2002 Tutelle des mineurs étrangers non accompagnés*, *op.cit.* (note 42).
[161] Law for the Asylum and the Refugees (as amended in 2007) [Bulgaria], 16 May 2002, Art. 34, Paragraph 9, available at: **http://www.unhcr.org/refworld/docid/47f1faca2.html** [accessed 15 June 2012].
[162] Refugee Law of 2000, Art.25(A)(3), *op.cit.* (note 33).
[163] Presidential Decree 168/2008.
[164] Section 4 of the Child Care Act, 1991, available at: **http://www.irishstatutebook.ie/1991/en/act/pub/0017/index.html** [accessed 10 July 2012].
[165] Act on Aliens of 13 June 2003 [Poland], 1 September 2003, Art. 61 part 3, available at: **http://www.unhcr.org/refworld/docid/3f9fd9a94.html** [accessed 15 June 2012].
[166] Law 27/2008 of 30 June 2008, Art.79, *op.cit.* (note 65).
[167] *Law on International Protection* [Slovenia], 4 January 2008, Art.16 (1), available at: **http://www.unhcr.org/refworld/docid/47f1fdfc2.html** [accessed 15 June 2012].

with the duty to trace family members. However, in practice the Office does not really provide any tracing effort. In **Belgium**, in theory, family tracing is one of the **guardian's missions**.

In **Romania**, in practice, the Ministry of Interior gets contact with the Romanian Minister of Foreign Affairs. Through the Minister of Foreign Affairs, are contacted the Romanian Embassies from the target countries to trace family members in the country of origin.

In many countries, the **Red Cross** is responsible for this research or at least is one of the services that can help tracing family. It is the case in **Bulgaria, the Czech Republic, Estonia, France, the United Kingdom, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Poland, Portugal** and **Sweden**. In **France**, social services, associations (as the Red Cross) or social workers working with the minor may do this research. However, it is not systematically done.

Many questions may arise from this, in particular **question of confidentiality, linked to their status as an asylum seeker or refugee**.

7.5.3.2. Procedure of family reunification

Family reunification is the procedure that allows a refugee or beneficiary of the subsidiary protection to make its family come to join him/her in the country where he/she got the international protection.

In some countries, as **Belgium, Cyprus, France**[168] or **Italy**, the family reunification procedure only applies to refugees, not to subsidiary protection beneficiaries. **The procedure may be difficult or very long** in some countries. It is the case in **Austria, Finland, France, Hungary** and **Luxembourg**.

In **Austria**, the authorities can demand accredited documents, DNA analysis and age assessment of the family members. In **Finland**, family members in the country of origin will have to arrange several times often expensive and even dangerous travel to the Finnish Embassy, often in another country[169]. Firstly, travelling is needed just to apply for family reunification, then later for interviews and possible DNA-tests.
On the contrary, in **the Czech Republic**, procedure seems easier. If the parent is not present in the Czech Republic, he/she would have to use favourable provisions for family reunification under the Aliens Act[170].
In **Lithuania**, the family may obtain a visa for family reunification to come and get a residence permit. If a child was granted refugee status, his/her parents can apply for a residence permit for 1 year. After the year, the family members need to reapply for a residence permit. After five years, family members can receive permanent residence permit.
In **the United Kingdom**, under family reunion rules, the parents of a refugee child can not join him/her. However, some new immigration rules provide immigrants with the right to apply for reunion with other members of the family (i.e. parents, brothers and sisters), but they have to pay for this application, and prove that they can financially support their relatives[171].
In **Romania**, the Romanian Office for Immigration will automatically begin the family reunification procedure.

RECOMMENDATION 7 – Decision and its consequences

- Considering vulnerability and special needs of unaccompanied minors, it is essential that every effort be made to reach a decision on asylum promptly and fairly.
- A liberal application of the principle of the benefit of the doubt should be applied to decisions regarding applications of unaccompanied children. Child-specific forms of persecution should be taken into account in the decision process.
- Unaccompanied minors should never been prevented from appealing a negative decision.
- The family of unaccompanied children who were granted international protection should be granted a residence permit. Family reunification should apply to families of minors who were granted international protection, in a reunification procedure eased and accelerated.

[168] However, the appeal court (CNDA) considered, in March 2009, that the minor who were granted subsidiary protection should make his/her parents come and they should be granted a one year stay permit or subsidiary protection.
[169] According to the new Act on Integration that came into force in the beginning of September 2011.
[170] Act No. 326/1999, *op.cit.* (note 82).
[171] Immigration Rules, §319, available at: **http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part8/** [accessed 10 July 2012].

8 SPECIFIC ASPECTS OF ASYLUM AT THE BORDER

The "non-refoulement" principle[172] prohibits the return of refugees and requires States to consider asylum applications before deporting a person. At the border, it means that States have to provide the possibility to access asylum procedure. Regarding this requirement for unaccompanied minors, the recent EU action plan states that *"reception measures and access to relevant procedural guarantees should apply from the moment an unaccompanied minor is detected at external borders or on EU territory, until a durable solution is found. (…)"*[173]. This general consideration raises issues of access to the asylum procedure, guardianship, interview and detention at the border for unaccompanied children seeking asylum.

8.1. Access to the asylum procedure at the border

Not all European countries have procedures at the border. In **Malta**, all persons crossing the maritime border are immediately channelled in the regular procedure and conducted in detention centres. In **Romania**, unaccompanied minor asylum-seekers are not subject to the border procedure[174]. In **Denmark**, there is no traditional border with traffic control. In **Austria**, there is no border procedure, except for the so called "special transit" at the Vienna airport.

Bulgaria, Cyprus, the United Kingdom, Ireland and **Romania** are not Schengen States. Otherwise, some countries share borders with non EU nor Schengen countries as **Lithuania** (borders with Belarus and the Russian Federation) and **Poland** (borders with the Russian federation, Lithuania, Belarus and Ukraine). Due to the very insufficient social support for asylum seekers and not well developed integration policies Poland is considered by many asylum seekers rather a transit country than a final destination. The same situation applies for **Hungary** and **Slovakia** (bordering non-EU countries such as Serbia, Ukraine). The number of unaccompanied minors readmitted from Hungary to Serbia rose significantly in 2011; at least 75 cases could be identified where separated children were sent back to Serbia from Hungary without assessing their individual situation and the care they would receive in Serbia.[175]

In **Finland**, only 4 applications for international protection regarding unaccompanied minors were submitted at airports in 2008, the remaining 702 being filed with local police[176]. In **Ireland**, the policy is that no unaccompanied minor should be refused the entry to the State, as soon as their minority is recognized. **Cyprus** is an island close to Turkey, Syria and Egypt. Due to its small size, no part of the asylum procedure takes places at the border, although an applicant is entitled to submit an application to the police at the border. In **France**, in 2011, 44 unaccompanied children asked for asylum in the so called «zones d'attente» (99 in 2010)[177]. 9 of them have been admitted in the territory in order to make an asylum application.

8.2. Guardianship at the border

In **Austria, Bulgaria, Denmark, Estonia, Finland, Italy, Latvia, Lithuania, Poland, Portugal, Slovenia, Sweden** and **the United Kingdom no guardian is directly appointed at the border** when unaccompanied minors are identified there.

In **Belgium**, agents at the border must inform the Guardianship Service ('service des tutelles'), as soon as a minor is identified at the border. The problem is that this process may take some time, which implies that a guardian cannot be appointed while the youngster is still at the point-of-entry. In **Lithuania**, a lawyer commissioned to provide legal services to asylum seeker and representing interests of an unac-

[172] UN General Assembly, *Convention Relating to the Status of Refugees*, Art. 33, *op.cit.* (note 2); Council Directive 2004/83/EC, Art. 21, *op.cit.* (note 3).

[173] Communication from the Commission to the European Parliament and the Council: Action Plan on Unaccompanied Minors (2010 – 2014), available at: **http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF** [accessed 10 July 2012], Chapter 4, pages 10-12.

[174] Law 122/2006, Art. 84(1), *op.cit.* (note 92).

[175] According to the Hungarian Helsinki Committee - HHC's experience in border monitoring in 2011. Hungarian law foresees that unaccompanied minor may only be expelled if family reunification or adequate institutional care is ensured in the destination country. Section 45 (5) of the TCN Act.

[176] Parsons, Annika (2010). The best interests of the child in asylum and refugee procedures in Finland. The office of the Ombudsman for Minorities, p 33, available at: **http://ec.europa.eu/justice/news/consulting_public/0009/contributions/public_authorities/042_ombudsman_for_minorities_finland_report.pdf** [accessed 11 July 2012].

[177] OFPRA, Rapport d'activité 2011, p 34, available at: **http://www.nouvellecour.com/espace_client/ofpra2/** [accessed 10 July 2012].

companied minor and a representative of the territorial child's rights protection agency are present during primary questioning at the border. The person is not officially appointed as a guardian, but nevertheless has the obligation to represent the minor's interests. In **the United Kingdom**, there is no real guardianship system, whether at the border or in the country.

In **the Czech Republic, France, Germany, Hungary, Luxembourg, the Netherlands** and **Slovakia** **a guardian is appointed for minors arriving at the border**.

In **France**, a guardian must be appointed at the border. This "*ad hoc administrator*" must be designated without delay. In practice, there are sometimes problems. For example, no guardian was appointed for 53 minors out of 637 who were placed in "zone d'attente" in 2009[178]. In **Luxembourg**, unaccompanied minors who are refused access to the territory must be provided as soon as possible with an *ad hoc* administrator. In **Hungary**, the law foresees that a legal guardian has to be immediately appointed to all procedures the unaccompanied minor may be subject to, as soon as the police identify one and do not contest his/her age, but it is rather pure formality and the guardian does not play an active role in practice. In **Slovakia**, when the police finds out that a foreigner is minor they have to stop any other proceedings and without delay contact the local office of labour, social affairs and family, which takes the responsibility to appoint a guardian. In **Germany**, a guardian and additionally a lawyer are appointed for all minors up to 18, but it only applies during border procedure at the airport.

8.3. Interview at the border

When a child arrives at the border and asks for asylum, an interview usually takes place in order to clarify this claim and to examine if the child is eligible for granting refugee status or to be admitted in the territory for this reason. The conditions of this interview are crucial to determine in this specific context, where a child may be deprived of his/her liberty and may be traumatized by his/her arrival in a new country. In this perspective, at the border, the presence of interpreters as well as other services, the sensitivity of agents regarding children's rights and the content of the interview are the main points analyzed.

8.3.1. Interpreters

Sometimes, **interpreters are available at the border** when questions are asked to the minor or when information is notified to him/her.

Interpreters are foreseen in many countries as **Austria, Belgium, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Portugal, Romania, Slovenia, Spain** and **the United Kingdom**.

In **Germany**, a distinction must be made: at the external border, an interpreter is not systematically present, but during the airport procedure, an interpreter is present. In **Romania**, in practice, at the border, police authorities face difficulties in finding interpreters for rare languages such as Somali, Pashto or Hazara. In **Italy**, individual agreements concluded every year between Prefectures and NGOs have led to the setting up of "information portals" at ports, airports, and land borders[179], which provide services such as interpreting services.

Even if this service is foreseen by Law, many countries have a **lack of information to evaluate whether it is performed systematically**, as in **Austria** and **Cyprus**. In **Bulgaria**, there is a lack of interpreters. In **Estonia**, where interpreters are foreseen, in practice there is a lack of expertise for the most exotic languages. In **Finland**, in practice, the asylum form may have been filled in with the help of the police officer's and the applicant's often inadequate knowledge of English[180].

In **Malta** and **Poland**, **no interpreter is provided at the border**.

8.3.2. Other available services at the border

In some countries, **other services are foreseen at the border to provide assistance to the child**.

In **Austria**, the supervision of the unaccompanied minors as well as the adult refugees in the special transit of the Vienna airport is performed by Caritas Social Care. In **Belgium**, a few NGOs are allowed as «visitors» to enter the closed centres at the border. They can help minors who are detained when there is a doubt on their age. In **France**, the French Red Cross and another NGO acting as legal guardian (Famille Assistance) are present in the waiting area. The NGO «Association nationale d'assistance aux frontières pour les étrangers (Anafé)» is also present in the airports and provide legal support to minors and adults. In 2010, this organisation met 53 unaccompanied minors[181].

[178] ANAFE, *Rapport d'activité 2009*, p. 20, available at: **http://www.anafe.org/download/rapports/_Rapport%20Activit%E9s%20Anaf%E9%2009.pdf** [accessed 24 August 2012].

[179] Art. 11 sub-section 6 of the Immigration Law 286/98 as modified by Law n. 189/02, foresees such services at the border.

[180] Parsons, Annika, p 34, *op.cit.* (note 176).

[181] ANAFE, *Rapport d'activité 2010*, available at: **http://www.anafe.org/download/rapports/rapport%20activit%E9%20Anaf%E9%202010.pdf** [accessed 24 August 2012], p. 18.

In **Spain**, there are a number of NGOs working at the borders where immigrants enter (Red Cross, Comisión Española de Ayuda al Refugiado…). In **Italy**, Individual agreements concluded every year between Prefectures and NGOs have led to the setting up of "information portals" at ports, airports, and land borders[182].The beneficiaries of the services are those who lodge an asylum application and foreigners who intend to stay in Italy for over three months. The Decree issued on 2 May 2001 by the Ministry of the Interior states that the assistance to the most vulnerable persons such as the victims of torture, victims of violence, persons in need, unaccompanied minors, is the main aim these services at borders[183] must reach. Beneficiaries of these services are provided with legal and social counselling, interpreting services, search for accommodation, contact with local authorities/services, production and distribution of informative documents on specific asylum issues directed to both asylum seekers and border police.

8.3.3. Sensitivity of agents at the border regarding children's rights and the right to asylum

As unaccompanied asylum-seeking children have specific needs, **immigration agents should be sensitive to issues regarding children's rights and the right to asylum for unaccompanied minors**.

Many countries recognize that in theory agents should be trained to such issues but also note that in practice there are failures to respect children's rights.

In many countries, **they have no specific training**. Therefore, unaccompanied children are treated as adults. In some countries, **agents at the border receive training or at least follow specific rules to work with children**. In **Estonia**, the Police and Border Guard Board has internal regulation – code of conduct for work with children. In **France**, training for all policemen is normally foreseen to prepare them working with children. According to the Red Cross, it does not seem to be the case currently. Inappropriate treatments have been noticed. In **the United Kingdom**, in theory immigration agents at the border should be sensitive to children's rights issues, or at least to children's welfare. There is official guidance in this respect[184] but in practice, failures to respect children's rights are noticed. In **Portugal**, according to the Law[185], training must be provided to personnel working with unaccompanied minors. Recently, in June 2010, there was a training provided by UNHCR / Rome both to SEF asylum officers (that also included officers at borders) and to the legal staff of the organization CPR. The training included a chapter on child interviewing techniques.

8.3.4. Content of the interview at the border

In most countries, asylum seeking minors are interviewed about the substantive matters of their claim at the border. Indeed, **unaccompanied asylum-seeking children are asked the reasons why they left their country and why they are asking asylum**, and this information might be used afterwards during the examination of their application. In **Greece**, on the contrary, the interview seems very short, only lasting 15 minutes. Therefore, the minor does not have the opportunity to explain the reason for his displacement.

In **Slovenia**, unaccompanied minors explain how they came from their country to Slovenia and very briefly why they seek protection in Slovenia. Records on all this come together with them to the asylum home. They are confronted with this statement during the official submission of the application for asylum.
In **the United Kingdom**, when unaccompanied minors are identified at the border, unaccompanied children may be subjected to an "Illegal Entrant Interview", aiming to establish their identity and route to the United Kingdom. There are concerns that the contents of this interview might be used in the substantive processing of the asylum claim[186].

In **France**, unaccompanied asylum seeking children are not interviewed about the substantive matters of their claim but NGO "Association nationale d'assistance aux frontières pour les étrangers (Anafé)" is worried because they notice that agents of the Office Français de Protection des Réfugiés et Apatrides - OFPRA - at the border ask very accurate questions.

[182] Art. 11 sub-section 6 of the Immigration Law 286/98 as modified by Law n. 189/02.
[183] CIR e Commissione Europea, Progetto S.A.B. Servizi alle frontiere: cooperazione pratica. Rapporto finale, 2008, p 22, Available at : **http://www.cir-onlus.org/SAB_CIR_servizi_alle_frontiere_italiano.pdf** [accessed 11 July 2012].
[184] United Kingdom: Home Office, *Every Child Matters: Change for Children,* November 2009, available at: **http://www.unhcr.org/refworld/docid/4b2a23462.html** [accessed 11 July 2012].
[185] Art. 79 of Law 27/2008, dated 30 June, which states that staff working with unaccompanied minors should be trained in a suitable manner to meet the needs of the minors and are bound to uphold confidentiality with regard to the information they might acquire during the course of their duties.
[186] REFUGEE AND MIGRANT JUSTICE, *op.cit.,* 2010, about a 15-year-old unaccompanied child whose asylum claim was rejected : "In the Reasons for Refusal Letter, the UKBA cited details he had given in the Illegal Entrant interviews to discredit his asylum claim, even though these interviews were not even mentioned in his substantive asylum interview. The UKBA is even refusing to release the transcript of the Illegal Entrant interviews to his carer or legal representatives."

In **Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Germany, Ireland, Italy, Lithuania, Romania** and **Sweden** unaccompanied **minors are not asked about the substantive matters of their claim at the border**.

In **Belgium**, at the border, the unaccompanied asylum seeking children have to fill a form and one question concerns the migration grounds. Potentially, this question could be used to assess the fears of the asylum seeker, in case of return but in practice this form is not sent to the Commissariat général aux réfugiés et apatrides – CGRA - and thus cannot be used during the examination of the asylum application.

In **Latvia**, details of the initial interview at the border are used fully during the substantive examination of the application and have an important role, as the representative of the Office of Citizenship and Migration board compares the answers of the asylum seeker during the initial interview and main interview in order to identify any discrepancies and conflicting information.

8.4. Detention at the border

In some countries, minors cannot be detained at the border. Sometimes, even if they cannot be detained, they are in practice when there is a doubt on their age or a wrongful age determination. In other countries, their detention is possible.

In **Austria, the Czech Republic, Finland, France, Germany, Greece, Latvia** and **Malta**, **unaccompanied minors may be detained at the border**.

In **Austria**, detention can be extended up to 6 weeks. In **France**, unaccompanied minors can be detained at the border up to 20 days, in the so called "zone d'attente".

In **Greece**, unaccompanied minors may be detained for several days or months. According to a recent report by the Greek Council for Refugees during the last year only in one detention centre of Fylakio – Orestiada (Thrace borderline with Turkey) at least 572 unaccompanied were detained in numbers 55-130 in a cell with a 40 persons capacity. Only after September 2011 the children had the chance to get out of it for at least 15 minutes daily. Before this date detained minors had seen daylight very rarely in a month of detention[187].
In some countries, **detention is allowed and implemented but only a few hours and under certain circumstances**, as in **Denmark, Estonia, Hungary, Latvia** or **the United Kingdom**.

In **Denmark**, unaccompanied minors can be detained but for a short period of time, before being transferred to the Red Cross centre for minors. In **Hungary**, detention at the border is possible but only until the transfer is taking place to the shelter if the unaccompanied minor sought asylum, which is usually not more than a few hours in a short-term detention facility at the border. In **Poland**, the child is temporarily detained by Border Guard during the time necessary to find suitable accommodation and to appoint a guardian[188].

In some countries, **detention is allowed, but in practice it is rarely implemented** as in **the Czech Republic** and **Portugal**.

In **Belgium, Cyprus, Ireland, Lithuania, Romania, Slovakia**, **unaccompanied minors cannot be detained at the border**.

In **Ireland**, all unaccompanied minors, once identified by Immigration services, are referred to the HSE, which means that they are directed straight away to the single institution that will care for them and represent them.

In **Bulgaria**, the situation is peculiar. The principle is that asylum seekers, including unaccompanied minors, cannot be detained[189]. However, unaccompanied minors who are not asylum seekers can be detained so detention seems possible if the child is not informed about the possibility to ask for asylum or if his/her application is not properly registered.

RECOMMENDATION 8 – Asylum at the border

- Unaccompanied children arriving at the border should be admitted to the territory in order to assess their situation regarding asylum and provide them appropriate accomodation and care. They should never be detained at the border.

[187] Greek Council for Refugees, Unaccompanied minors at the Greek-Turkish border, March 2011 – March 2012, Report, **http://www.gcr.gr/sites/default/files/evros.pdf** [accessed 10 July 2012].

[188] The answer was provided to International Humanitarian Initiative by Polish Border Guard official in a written form.

[189] On 09 November 2011, the Council of Ministers adopted amendments to the Ordinance on the Responsibility and Coordination of the State Bodies Realizing the Implementation of Regulation No.343/2003 of the Council of 18 February 2003, Regulation No.1560/2003 of the Commission of 02 September 2003, Regulation No.2725/2000 of the Council of 11 December 2000 and Regulation No.407/2002 of the Council of 28 February 2002.

Conclusion

The analysis of various issues related to unaccompanied minors seeking asylum highlights many concerns. One of the main finding from this report is the heterogeneity of law and practices in this area, despite the intention to harmonize the implementation of asylum right within the European Union. Overall, the consideration of minority in the application of the fundamental right to seek asylum remains poorly developed within the European Union with regards to the requirements of European and international standards on human rights, especially the Convention on the rights of the child. Statistics are often incomplete, the scope and content of legal representation varies considerably from one country to another, the Dublin II regulation is not always applied in the best interest of the child, support and accommodation during the procedure are generally unsatisfactory (some countries even allowing detention of unaccompanied asylum seeking children), while the treatment of the application and the decision process include few child-friendly specificities.

Thus, the overall picture does not seem very positive. However, this study shows that numerous ways of improvement are possible. In fact, we observe good practices in each issue related to the right to asylum for unaccompanied minors. Comparison of these positive examples should guide the national stakeholders and the European institutions in order to improve the situation of these young people who have suffered and who need now a respect of their fundamental rights to build their life in Europe.

The implementation of a Common European Asylum System should particularly take into account the specific situation of unaccompanied children. In this context, it is interesting to see that this issue is taken into account by European institutions and agencies as the Commission[190], the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union - Frontex[191], European asylum support office[192] and Fundamental rights agency[193]. It is now necessary that this issue be addressed comprehensively and consistently by the European Union in order to implement relevant measures in Member States, with the support of civil society. Although they represent a few part of asylum applicants, unaccompanied children who join Europe to flee persecution are the future of a continent which should ensure they are protected in a high standard basis, in accordance with the commitments and the tradition of the European Union.

[190] Action Plan on Unaccompanied Minors (2010 – 2014), *op.cit.* (note 173).
[191] Frontex, *Unaccompanied minors in the migration process*, December 2010, available at: **http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/Unaccompanied_Minors_in_Migration_Process.pdf** [accessed 30 July 2012].
[192] European Asylum Support Office, *Work programme 2012*, September 2011, available at: **http://ec.europa.eu/home-affairs/policies/asylum/docs/easo/EASO_2011_00110000_EN_TRA.pdf** [accessed 11 July 2012].
[193] Fundamental rights agency, Separated asylum-seeking children in European Union member states, December 2010. Available at: **http://www.unhcr.org/refworld/docid/4e539f1c2.html** [accessed 30 July 2012].

Appendix 1 - EXECUTIVE SUMMARY

Summary of the main findings of the project

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

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

1. General overview of asylum procedures for unaccompanied children.

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

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

Some aspects of the asylum procedure could dissuade minors to ask for asylum. In several countries, **informal practices implemented by authorities** (difficulties to withdraw an application form...) may have an effect of discouraging minors to apply for asylum. The lack of reliability and length of **age assessment** are other points that could prevent people from being considered as unaccompanied children and then to have the benefit of specific procedures. It is a major subject of concern in almost **all EU countries**, where medical examination yet considered as inefficient is the most widespread method.

In almost **all EU countries**, the police is required by law to inform all migrants about their right to ask for asylum especially when they are arrested, but this information is generally the same regardless of age. Thus, in practice, many children do not understand this formal notification because there are no specific provisions for minors.

In **Sweden**, Migration Board provides a special document for children containing different general information about the process of applying for refugee status. In addition, the Swedish Red Cross is giving "asylum information workshops" in the youth centres where unaccompanied minors live. That activity is very popular and usually the young people have many questions about the procedure.

RECOMMENDATION 1 – Access to asylum procedure

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

2. Statistics and profiles

In some countries, statistics on asylum application are unclear or incomplete. In total, we count 10,295 asylum applications for unaccompanied minors throughout the European Union in 2010. **Sweden** (2 393), **Germany** (1 948) and **the United Kingdom** (1 595) are the countries with the most important number of application. Except in **the Czech Republic**, there is no data available on appeal cases of unaccompanied children.

Afghanistan was the first country of origin in 2010, in 13 of the 21 countries where breakdown by nationality was available. The age of these children applicants seems higher than 15 in almost every case. In 2010, the average in the countries where this statistics are available shows that 82 % of the minor applicants are male.

The majority of the countries do not provide disaggregated data that could show the number of decisions regarding unaccompanied children's asylum applications. We see when these data are available that the rate of positive decision varies from 8% (in **Ireland**) to 61 % (in **the United Kingdom**), but the possible outcomes of the procedures are not the same in all countries (a "positive" decision may be issued but with a status less favourable than refugee or subsidiary protection status).

RECOMMENDATION 2 – Statistics

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

3. Legal guardianship

European States are implementing different models of legal guardianship. Several EU countries implemented a system of legal guardianship specifically earmarked for unaccompanied children seeking asylum (**Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Luxembourg, Poland, Portugal, Romania, Slovenia** and **Sweden**).

In other countries, unaccompanied children are represented during the asylum procedure by legal representative who are not especially appointed for this procedure (**Austria, Belgium, Bulgaria, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, the Netherlands, Slovakia, Spain** and **the United Kingdom**)

The conditions to be appointed as a guardian vary from one country to another. In **Austria, Bulgaria, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Romania, Slovakia, Spain** and **the United Kingdom** there is no formal requirement for any knowledge or training in the field of asylum law. A specific expertise is required in few countries as **Cyprus, Denmark, Estonia,** and **the Netherlands**.

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

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

RECOMMENDATION 3 – Legual guardianship

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

4. Dublin II regulation

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

Most European countries **allow the transfer of unaccompanied minors under the Dublin II regulation: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden** and **the United Kingdom**. However, most of these countries allowing transfer under the Dublin II regulation though **suspended transfers to Greece**. In some countries, **transfer can**

happen, but it rarely happens in practice. It is the case in **Luxembourg, Romania** and **Slovakia** where transfers under the Dublin II regulation are possible, according to Law, but in practice there is almost no transfer.

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

Implementation of transfers varies from country to country. In some countries, children can be detained pending deportation. Sometimes, they are informed of their coming transfer a few days before and given explanation on what is going to happen. Sometimes, they are transferred with very little information. In some countries, they can be led to the country of transfer and sometimes they have to leave on their own. In some countries, children are accompanied to the country of transfer. One important question is the one of follow-up after returning, which seems to be non-existent.

RECOMMENDATION 4 – Dublin II

- The Dublin II regulation should not be applied to unaccompanied minors, except for the purpose of family reunification if it is in the best interest of the child.

5. Support and accommodation during the procedure

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

ACCOMODATION

The option of **foster family** for unaccompanied asylum-seeking children is sometimes chosen in certain countries, but never widely. In some countries, it depends of the age of the minor. Unaccompanied minors may be accommodated in **reception centres for children**, which means with nationals or in centres designed for unaccompanied foreign minors. Sometimes, their status of asylum seeker takes precedent on their status of minor in the choice of the accommodation. Therefore, they may be placed in **reception centres for asylum seekers with adults** as permitted by European law for children above 16. They thus receive a legal follow-up but their specific needs as minors are not always satisfied. Finally, children can be accommodated in **specialized centres for unaccompanied asylum-seeking children**.

In **France**, there is one centre at the national level specifically designed for them, which offers legal and educational support and follow-up. This reception centre for minors seeking asylum (called 'CAOMIDA') is allocated near Paris. A psychologist and a legal expert are working within this centre for supporting children during their asylum application. This centre only has 33 places, which means that many other unaccompanied asylum seeking children are not accommodated there.

LEGAL SUPPORT

In some countries, a **free legal support** (generally provided by a lawyer) is foreseen or/and provided. In other countries, **free legal support is only available for the appeal or under certain circumstances**, as in **Denmark, France, Germany, Greece, Latvia, Malta, Portugal** and **Slovakia**. In countries where free State legal support is not foreseen, or in addition to such support, **NGOs or legal specialists within the reception centres** can offer such aid.

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

Sometimes, children can benefit from a **free interpreter to help them preparing the application**. In practice, even when interpreters are not foreseen to help the minor preparing the application, **NGOs or volunteers can sometimes offer such support**.

MEDICAL AND PSYCHOLOGICAL SUPPORT

In some countries, unaccompanied children receive the same medical and psychological support as resident children in public care. In other countries, unaccompanied asylum seeking minors have access to the medical

care as asylum seekers. Finally, unaccompanied minors can have access to medical care, as children AND as asylum-seekers (double status). In addition, unaccompanied asylum-seeking children can benefit, most of the time, of the support from NGOs. Concerning the psychological aspect, it seems that support is not provided in all countries.

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

DETENTION

A first list of countries, prohibiting detention of all unaccompanied children on the territory can be drawn up: **Belgium, Cyprus, Denmark, France, Hungary, Ireland, Italy, Lithuania, Portugal, Romania, Slovakia, Spain, Sweden** and **the United Kingdom**. A second list of countries, prohibiting detention of unaccompanied asylum-seeking children is composed of **Bulgaria** and **Poland**. In **Austria, the Czech Republic, Estonia, Finland, Germany, Greece, Latvia, Malta, the Netherlands** and **Slovenia**, unaccompanied children can be detained, whether they are asylum seekers or not.

In **Portugal**, minors cannot be detained for an irregular entry or stay in the country. In this context, the law provides for a special regime which allows the regularization of the situation of such minors in the country

In some countries allowing detention of unaccompanied minors, conditions of detention are quite bad. However, when unaccompanied minors are detained, in general they are **separated from adults**.

Thus, the detention of unaccompanied children seeking asylum is not prohibited in all the 27 EU countries. The Jurisprudence of the European Court of Human Rights has yet emphasized the extreme vulnerability of these children in the context of detention. We hope that these positive developments will lead to the end of such practices in the coming years.

RECOMMENDATION 5 – Support and accommodation

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

6. Main interview

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

TRAINING OF ASYLUM OFFICERS

Asylum officers usually receive training on different issues related to asylum such as content of eligibility criteria, legal and country conditions research, or cross-cultural communication during the interview. However, processing an application from an unaccompanied minor requires training on specific issues related to this vulnerable population. Despite this numerous norms and recommendations, training and knowledge of asylum officers dealing with unaccompanied children is not generalized in EU countries.

In **Ireland**, UNHCR provides trainings with key principles on interviewing children, and covering the whole protection assessment process (credibility assessment, burden of the proof, child-specific forms of persecution…). The training includes case studies and the contribution of a child psychologist on interviewing techniques. To date, according to asylum office, all caseworkers received training on this issue.

CONDITIONS OF THE INTERVIEW

Unaccompanied children are not able to express their situation in the same way as adults. Due to their particular vulnerability, they need specific conditions of interview. It may be material arrangement such as specific rooms but the most important is to provide specific procedures and techniques of interview in accordance with the age and maturity of the child. Specific conditions of interview for minors are not implemented in all EU countries. Law and practices differ from country to country.

In **Belgium**, the asylum officer should ensure at the beginning of the interview that the minor understands the interpreter. Unaccompanied minors are interviewed in special rooms. The Commission on asylum adopted a specific technique called "dialogical communication method". This technique is designed to be specifically tailored to children's memory. Another specificity of the interview technique is to let the first child to talk freely about his/her experiences on a given subject, before asking specific questions.

RECOMMENDATION 6 – Main interview

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

7. Decision and its consequences

The specific situation of unaccompanied children seeking asylum requires that the decision process takes into account the minority and vulnerability of the applicant.

CHILD-SPECIFIC ASPECTS OF THE DECISIONS

To determine whether unaccompanied children are treated specifically, it is interesting to compare recognition rate between adults and unaccompanied children. Figures available in **Belgium, France, Hungary, Lithuania, Portugal, Slovenia** and **Ireland** suggest that children applications are examined more favourably. The protection rate for children seems quite similar to those for adults in **Greece, Latvia, Malta,** and **Slovakia**.

Some persecutions are suffered specifically by children and can be linked to the legal standards for granting refugee status or subsidiary protection. However, in some countries as **Bulgaria, Cyprus, Greece, Portugal**, child-specific forms of persecution are not quoted in national law or guidelines and, in practice, no cases where children have been granted protection because of these forms of persecution are known.

COMMUNICATION OF DECISIONS

The decision is mainly delivered to the legal guardian in some countries. In other countries, the decision is communicated to both child and legal guardian. Finally, the decision could be communicated to various people depending on the situation. In most countries, there is no child-specific language or other tools used to communicate the decision.

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

APPEAL AND POSSIBLE OUTCOMES OF THE PROCEDURE

In some countries as **Austria, Belgium, France, Hungary** and **Italy** the guardian must introduce the appeal or at least give his/her approval. In many other countries, there can be a difference between the first instance procedure and the appeal, but without any specificity for children. In some countries, the right to appeal seems to be threatened.

The consequences of the asylum process can vary significantly from one country to another. In some countries as **Belgium, Bulgaria, the Czech Republic, France, Ireland, Portugal, Romania, Slovenia** and **Spain**, **the possible outcomes of this procedure are** quite simple and consistent with the international and European legal framework on asylum: **rejection; refugee status; subsidiary protection**. In other countries as **Austria, Cyprus, Denmark, Finland, Germany,**

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

In some countries, when the final decision is delivered, the failed unaccompanied asylum-seeking minor has to leave the country, and a removal order may therefore be issued. It is the case in **Bulgaria, Cyprus, Estonia, Finland, Germany, Luxembourg, the Netherlands, Poland, Slovenia, Spain** and **Sweden**. In other countries, unaccompanied minors have the right to stay in the country till they turn 18. In **Belgium, the Czech Republic, Italy** and **Portugal**, a residence permit can be delivered under certain circumstances.

FAMILY REUNIFICATION

The issue of family reunification is linked to the right of every child to live with his/her parent provided in the Convention on the rights of the child (art. 22).
The definition of family regarding family reunification varies from country to country. In most countries as in **Austria, Belgium, Cyprus, France, Greece, Ireland, Italy, Lithuania, Slovakia, Spain** and **Sweden**, family is defined as **the parents of the unaccompanied refugee minor**. This strict **definition can be extended to the legal representative** as in **the Czech Republic, Finland, Hungary, Latvia** and **Slovenia**. In some other countries, it **could be either the parents, or the guardian or another adult from his/her family**, as in **Bulgaria, Estonia** and **Portugal**. In some countries, unaccompanied refugee minors can be joined by their parents and **also their siblings**, as in **Denmark, Germany, Luxembourg, Netherlands** and **Poland**. In **the United Kingdom**, family reunion for refugees only applies to dependent children and spouses of refugees, not to their parents.

In order to implement family reunification, it is necessary to know where the family of the child is. Family tracing is thus foreseen by the international instruments. In **Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Greece, Ireland, Latvia, Lithuania, Luxembourg, Poland, Portugal, Slovenia** and **Sweden**, family tracing is also provided by national law. Different organizations or institutions may be in charge of this family tracing. Sometimes, it can be **immigration services**, as in **Denmark, Finland, Lithuania, Poland, Portugal** and **Sweden**. In many countries, the **Red Cross** is responsible for this research or at least is one of the services that can help tracing family. Many questions may arise from this, in particular **question of confidentiality, linked to their status as an asylum seeker or refugee**.

In some countries, the family reunification procedure only applies to refugees, not to subsidiary protection beneficiaries. Otherwise, **the procedure may be difficult or very long** in some countries.

RECOMMENDATION 7 – Decision and its consequences

- Considering vulnerability and special needs of unaccompanied minors, it is essential that every effort be made to reach a decision on asylum promptly and fairly.
- A liberal application of the principle of the benefit of the doubt should be applied to decisions regarding application of unaccompanied children. Child-specific forms of persecution should be taken into account in the decision process.
- Unaccompanied minors should never been prevented from appealing a negative decision.
- The family of unaccompanied children who were granted international protection should be granted a residence permit. Family reunification should apply to families of minors who were granted international protection, in a reunification procedure eased and accelerated.

8. Specific aspects of asylum at the border

The "non-refoulement" principle prohibits the return of refugees and requires States to consider asylum applications before deporting a person. At the border, it means that States have to provide the possibility to access asylum procedure.

In **Austria, Bulgaria, Denmark, Estonia, Finland, Italy, Latvia, Lithuania, Poland, Portugal, Slovenia, Sweden** and **the United Kingdom** **no guardian is directly appointed at the border** when unaccompanied minors are identified there. In **the Czech Republic, France, Germany, Hungary, Luxembourg, the Netherlands** and **Slovakia** **a guardian is appointed for minors arriving at the border**.

As unaccompanied asylum-seeking children have specific needs, **immigration agents should be sensitive to issues regarding children's rights and the right to asylum for unaccompanied minors**. Many countries recognize that in theory agents should be trained to such issues but also note that in practice there are failures to respect children's rights. In most countries, asylum seeking minors are interviewed about the substantive matters of their claim at the border. Indeed, **unaccompanied asylum-seeking children are asked the reasons why they left their country and why they are asking asylum**, and this information might be used afterwards during the examination of their application.

In **Austria, the Czech Republic, Finland, France, Germany, Greece, Latvia** and **Malta**, unaccompanied minors may be detained at the border. In other countries, detention is allowed and implemented but only a few hours and under certain circumstances, as in **Denmark, Estonia, Hungary, Latvia** or **the United Kingdom**. In some countries, detention is allowed, but in practice it is rarely implemented as in **the Czech Republic** and **Portugal**. In **Belgium, Cyprus, Ireland, Lithuania, Romania, Slovakia**, unaccompanied minors cannot be detained at the border.

In **Ireland**, all unaccompanied minors, once identified by Immigration services, are referred to the HSE, which means that they are directed straight away to the single institution that will care for them and represent them.

RECOMMENDATION 8 – Asylum at the border

- Unaccompanied children arriving at the border should be admitted to the territory in order to assess their situation regarding asylum and provide them appropriate accomodation and care. They should never be detained at the border.

Conclusion

The analysis of various issues related to unaccompanied minors seeking asylum highlights many concerns. One of the main finding from this report is the heterogeneity of law and practices in this area, despite the intention to harmonize the implementation of asylum right within the European Union. Overall, the consideration of minority in the application of the fundamental right to seek asylum remains poorly developed within the European Union with regards to the requirements of European and international standards on human rights, especially the Convention on the rights of the child. Statistics are often incomplete, the scope and content of legal representation varies considerably from one country to another, the Dublin II regulation is not always applied in the best interest of the child, support and accommodation during the procedure are generally unsatisfactory (some countries even allowing detention of unaccompanied asylum seeking children), while the treatment of the application and the decision process include few child-friendly specificities.

Thus, the overall picture does not seem very positive. However, this study shows that numerous ways of improvement are possible. In fact, we observe good practices in each issue related to the right to asylum for unaccompanied minors. Comparison of these positive examples should guide the national stakeholders and the European institutions in order to improve the situation of these young people who have suffered and who need now a respect of their fundamental rights to build their life in Europe. Although they represent a few part of asylum applicants, unaccompanied children who join Europe to flee persecution are the future of a continent which should ensure they are protected in a high standard basis, in accordance with the commitments and the tradition of the European Union.

Appendix 2 – International and European standards

United Nations

UN Conventions

- Convention relating to the Status of Refugees, adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950
  http://www2.ohchr.org/english/law/refugees.htm
- Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entry into force 2 September 1990, in accordance with article 49
  http://www2.ohchr.org/english/law/crc.htm

UN guidelines and comments

- UN High Commissioner for Refugees, *Guidelines for Interviewing Unaccompanied Minors and Preparing Social Histories*, October 1985
  http://www.unhcr.org/refworld/docid/47fdfae5d.html
- UNHCR, « Children: Guidelines on protection and care », Genève 1994
  http://www.unhcr.org/refworld/pdfid/3ae6b3470.pdf
- UNHCR, module "Interviewing Applicants for Refugee Status" (RLD4), 1995
  http://www.unhcr.org/publ/PUBL/3ae6bd670.pdf
- UNHCR, "Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum". February 1997
  http://www.unhcr.org/3d4f91cf4.pdf
- Committee on the Rights of the Child, *General comment N°6*, CRC/GC/2005/6 (2005), Treatment of unaccompanied and separated children outside their country of origin
  http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf
- UNHCR, *Conclusion on Children at Risk*, 5 October 2007, No. 107 (LVIII) - 2007.
  http://www.unhcr.org/refworld/docid/471897232.html
- UNHCR Guidelines on Determining the Best Interests of the Child, May 2008
  http://www.unhcr.org/4566b16b2.html
- Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention : Convention on the Rights of the Child : concluding observations : United Kingdom of Great Britain and Northern Ireland*, 20 October 2008, CRC/C/GBR/CO/4
  http://www.unhcr.org/refworld/docid/4906d1d72.html
- UN High Commissioner for Refugees, *Guidance Note on Refugee Claims relating to Female Genital Mutilation*, May 2009
  http://www.unhcr.org/refworld/docid/4a0c28492.html
- UNHCR, Training Manual for European Border and Entry Officials, 1st April 2011
  http://www.unhcr.org/4d948c736.html
- UN High Commissioner for Refugees, *UNHCR Global Trends 2010*, June 2011
  http://www.unhcr.org/refworld/docid/4e01b00e2.html

European Union

- Council Resolution 97/C 221/03 of 26 June 1997 on unaccompanied minors who are nationals of third countries
  http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31997Y0719(02)&model=guichett
- The Charter of Fundamental Rights of the European Union, (2000/C 364/01)
  http://www.europarl.europa.eu/charter/pdf/text_en.pdf
- Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of «Eurodac» for the comparison of fingerprints for the effective application of the Dublin Convention
  http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R2725:EN:HTML
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers
  http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0009:EN:HTML

- Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF

- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:NOT

- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML

- Council directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member States for granting and withdrawing refugee status
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF

- 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
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF

- Action Plan on Unaccompanied Minors of the European Commission (2010 – 2014) SEC(2010)534
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF

- Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:132:0011:0028:EN:PDF

- Council conclusions on unaccompanied minors, 3018th JUSTICE and HOME AFFAIRS Council meeting Luxembourg, 3 June 2010
http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/114833.pdf

- 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
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF

Council of Europe

- Recommendation 1703 (2005) on Protection and assistance for separated children seeking asylum adopted by the Parliamentary Assembly of the Council of Europe
http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta05/erec1703.htm

- Resolution 1810 (2011) on Unaccompanied children in Europe: issues of arrival, stay and return adopted by the Parliamentary Assembly of the Council of Europe
http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta11/ERES1810.htm

- Recommendation 1969 (2011) on Unaccompanied children in Europe: issues of arrival, stay and return adopted by the Parliamentary Assembly of the Council of Europe
http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/EREC1969.htm

- Recommendation 1985 (2011) on Undocumented migrant children in an irregular situation: a real cause for concern adopted by the Parliamentary Assembly of the Council of Europe
http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta11/EREC1985.htm

Appendix 3 – General Bibliography

CENTER FOR THE STUDY OF DEMOCRACY, *Integrating refugee and asylum-seeking children in the educational systems of the EU member states*, March 2012
http://www.csd.bg/fileadmin/user_upload/INTEGRACE_handbook.pdf

DEFENCE FOR CHILDREN, *Core standards for guardians of separated children in Europe*, 2011
http://www.defenceforchildren.nl/images/69/1632.pdf

ECRE, SAVE THE CHILDREN, *Comparative study in the field of return of minors*, December 2011
http://ec.europa.eu/home-affairs/doc_centre/immigration/docs/studies/Return_of_children-final.pdf

ENGI, *Care for unaccompanied minors – minimum standards, risks factors and recommendations for practioners*, October 2011

EUROPEAN AGENCY FOR FUNDAMENTAL RIGHTS, *Separated, asylum-seeking children in European Union Member States*, 7 December 2011
http://www.unhcr.org/refworld/docid/4e539f1c2.html

EUROPEAN AGENCY FOR THE MANAGEMENT OF OPERATIONAL COOPERATION AT THE EXTERNAL BORDERS OF THE MEMBER STATES OF THE EUROPEAN UNION (FRONTEX), *Unaccompanied Minors in the Migration Process, Warsaw*, December 2010
http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/Unaccompanied_Minors_in_Migration_Process.pdf

EUROPEAN ASYLUM SUPPORT OFFICE, *Work programme 2012*, September 2011, available at:
http://ec.europa.eu/home-affairs/policies/asylum/docs/easo/EASO_2011_00110000_EN_TRA.pdf

EUROPEAN MIGRATION NETWORK, *Small scale study family reunification*, October 2007

EUROPEAN MIGRATION NETWORK, Policies on reception, return and integration arrangements for, and numbers of, unaccompanied minors – an EU comparative study, May 2010, available at:
http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;jsessionid=05FFAF454DF4750E09B456B0405BFD2D?entryTitle=08_Reception, Return and Integration Policies for, and numbers of, UNACCOMPANIED MINORS

EUROPEAN MIGRATION NETWORK, *Assisted Return and Reintegration in Third Countries: Programmes, Strategies and Incentives*, 2009

FRANCE TERRE D'ASILE, CIR, I-RED, *Reception and care of unaccompanied minors in eight countries of the European Union: comparative study and harmonisation prospects, final report*, December 2010
http://www.france-terre-asile.org/images/stories/children-studies/the-reception-and-care-of-unaccompanied-minors-in-eight-countries-of-the-eu-final-report-en.pdf

FORUM REFUGIES et al., *Projet transnational Dublin*, Rapport final, 2011

HUMA-NETWORK, *Health for undocumented migrants and asylum seekers- access to health care and living conditions of undocumented migrants and asylum seekers- access to health care and living conditions of undocumented migrants and asylum seekers- in Cyprus, Malta, Poland and Romania*, March 2011
http://www.huma-network.org/averroes_fr/Publications/Nos-publications/Access-to-healthcare-and-living-conditions-of-asylum-seekers-and-undocumented-migrants-in-Cyprus-Malta-Poland-and-Romania

INTERNATIONAL CATHOLIC MIGRATION COMMISSION, *MayDay – strengthening responses of assistance and protection to boat people and other migrants arriving in Southern Europe – 60 years ICMC* 1951-2011, 2011
http://www.icmc.net/system/files/publication/icmc_europe_mayday_strengthening_responses_of_as_22403.pdf

PARSONS, ANNIKA (2010), *The best interests of the child in asylum and refugee procedures in Finland.* The office of the Ombudsman for Minorities, Publication 6, Helsinki 2010, available at: **http://ec.europa.eu/justice/news/consulting_public/0009/contributions/public_authorities/042_ombudsman_for_minorities_finland_report.pdf**

SAVE THE CHILDREN and the EUROPEAN COMMISSION, *Special child protection measures: realities and perspectives: save the children*, october 2008

SEPARATED CHILDREN IN EUROPE PROGRAMME, *Newsletter* n°30-36, (2008-2011)
http://www.separated-children-europe-programme.org/publications/newsletter/index.html

SEPARATED CHILDREN IN EUROPE PROGRAMME, *Review of current laws, policies and practices relating to age assessment in sixteen European Countries*, May 2011
http://resourcecentre.savethechildren.se/content/library/documents/review-current-laws-policies-and-practices-relating-age-assessment-sixteen

TOUZENIS Kristina, *Unaccompanied Minors, Rights and Protection*, Cosmopolis XL Edizioni, Roma, 2006, 287 p.

UNESCO, *Migrating alone, unaccompanied and separated children's migration to Europe*, 2011
http://unesdoc.unesco.org/images/0019/001907/190796e.pdf

UNICEF, *Age assessment practices : a literature review and annotated bibliography*, Terry SMITH, Laura BROWNLEES, 2011, 85 p, available at: **http://www.unicef.org/protection/Age_Assessment_Practices_2010.pdf** [accessed 10 July 2012].

Printing : Encre Nous // Design : Julien Riou

august 2012

FRANCE TERRE D'ASILE

Siège social
24, rue Marc Seguin
75 018 PARIS
Tél. : +33 1 53 04 39 99
Fax : +33 1 53 04 02 40

e-mail : infos@france-terre-asile.org

Association régie par la loi du 1er juillet 1901
Prix des droits de l'homme de la République française, 1989
Grande cause nationale fraternité 2004
Caractère de bienfaisance reconnu par arrêté préfectoral du 23 février 2006
Mention d'honneur 2010 de l'UNESCO - Prix pour la promotion
d'une culture universelle des droits de l'homme

ISSN : 2102 - 376X

Project co-funded by the European Union's Fundamental Rights and Citizenship Programme