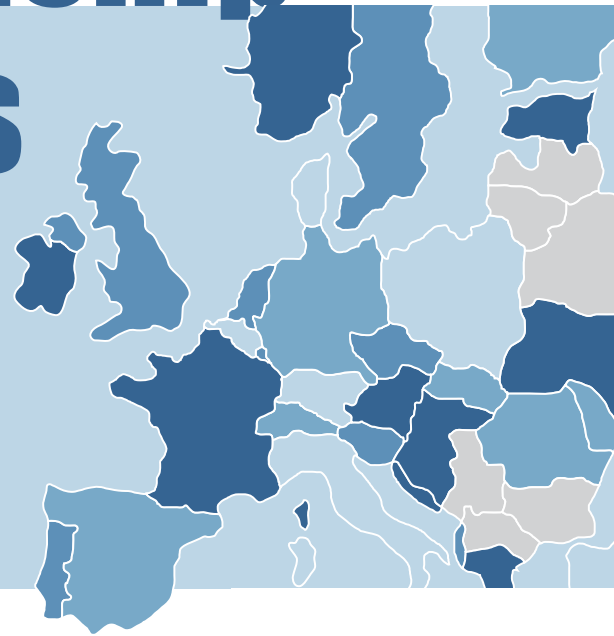


# Towards a European Network of Guardianship Institutions



## Framework ENGI-midterm report

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# 1

# Introduction

The ENGI-project is a project funded under the European Commission European Refugee Fund (ERF) aiming to improve guardianship services in the EU Member States. The project is implemented by NIDOS Foundation from the Netherlands and Refugium from Germany.

The Foundation NIDOS is the Dutch guardianship institution for unaccompanied minor refugees and asylum seekers. NIDOS assists unaccompanied minors to provide them with legal guardianship arrangements. Guardianship in the Netherlands means that Nidos has the lawful assignment of exercising the authority of supervising these young people on their way to adulthood and the promotion of the interests of these young people. The guardian provides long term continued care and has the responsibility for the mental and physical well being of the child and the furtherance of the development of his/her personality.

Refugium is a guardianship organization for unaccompanied minor asylum seekers from Magdeburg, Germany. Refugium supports the children with a comprehensive personal care in all necessary fields of their lives, Refugium takes care of their legal needs and brings the theme under the public attention.

During the project Nidos and Refugium have worked closely together with organizations responsible for implementation of guardianship services in many different member states, international and national NGO's and several ministries. Special thanks to all who contributed to create an overview of the current state of affairs of guardianship in Europe.

In view of the ENGI-partners a system of guardianship is the best guarantee for good care of unaccompanied minor asylum seekers. The ENGI-project will try and provide insight and recommendations for improvement of guardianship systems in the EU Member States and take the first steps by exchanging good practices and working together in Europe.

# 2

# ENGI

## 2.1 What is being researched?

EU-member states have to deal with young unaccompanied migrants who claim to be asylum seekers and are legally under the age of 18 years old. As a group they are called unaccompanied minor asylum seekers as it is not known if these children do or do not have parents or other legal representatives. These unaccompanied minors are a vulnerable group:

- They are often easy to influence and can become victims of people with wrong intentions
- They are at an age of growth, physically as well as mentally. (Parental) guidance towards an insecure future is a minimum acquirement

- Legal representation is required as by law many actions are prohibited for the under aged taking care of access to rights

That the EU-Member states agree that special representation for unaccompanied minors should be organized is shown by article 19.1 of Directive 2003/9/EC, which states it as follows:

*“Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organization which is responsible for the care and well-being of minors or by any other appropriate representation. Regular assessments shall be made by the appropriate authorities”.*

As a result every Member State has to organize the necessary representation. However, what does this mean exactly? What should the qualifications of this representation contain? Should the representation be directed towards individual growth or does it mainly apply to legal representation?

Should we not work towards a quality standard in the representation of unaccompanied minor asylum seekers? Should this quality standard not be recognizable by the minor himself? Do we not need minimum standards for the representation of unaccompanied minor asylum seekers? These are some of the questions that arise when thinking about a common approach.

How does the European regulation as laid down in Directive 2003/9/EC relate to the current situation and daily practice in Member States? Does the current article and its ongoing implementation provide an answer to these questions? And, if not, what can be improved and how? The ENGI-project will gather stakeholders from the daily practice in different member states and their views, aiming to come to recommendations on improved legislation.

## **2.2 Why is it being researched?**

The ENGI-project overall tries to contribute to improved (professional) service to unaccompanied minor asylum seekers in the EU Member States. Or, as Save the Children UK put it in a recent report<sup>1</sup>:

*“Separated children are some of the most vulnerable children [in the UK]. Many are seeking protection because of a fear of persecution, human rights violations or armed conflict while others may have been trafficked [to the UK] for exploitative purposes such as domestic servitude, manual labour or sexual abuse.*

<sup>1</sup>Guardianship for separated children in the UK: Stakeholder views; Save the Children UK

*These children have to enter a complex and confusing immigration process often with little support or understanding of what is happening and the level and quality of support provided to them can vary widely and is often inadequate. We believe that a guardian would ensure that a separated child's welfare needs would be properly safeguarded within the context of the asylum determination and immigration process and that their support and care needs would be met by all responsible agencies."*

Exactly this is why well arranged guardianship could be important. If we look at the European situation we see a European Union with open borders inside. At this moment, an unaccompanied child coming to Europe will receive different representation in every Member State. One child will get a professional to aid him during his or her reception and asylum claim, another a volunteer. One child will have a guardian specialized in legal issues of unaccompanied minors, another a general guardian having a responsibility for local elderly as well. One guardian may have 60 children in his or her care, another has one or two. Not only is this a system in which vulnerable children are in danger of not being properly taken care of, it also creates competition between Member States. Favourite destination countries with young migrants change quickly when rules and regulations change. The Netherlands had a very high entry number of unaccompanied minors each year in the first years after the millennium, as acceptance level was high and the level of care and representation was high. The high numbers attracted made the system non-viable on the long term and the quality of representation and care was downgraded. In Finland on the other hand the entry number of unaccompanied minor asylum seekers tripled from 2007 to 2008, as it seems almost entirely because of changes in acceptance of Iraqi and Somalian minors in Sweden. Level of protection, level of care and level of representation all influence these patterns of migration.

Furthermore, the lack of cooperation and the huge differences in systems and approaches between Member States in this field mean there is no chance that organizations can learn from each other. A common methodology is not developed.

Even though the number of asylum seeking unaccompanied minors is not as high as it has been several years ago, we know that there will always remain unaccompanied minors, whether in the asylum system or not. And there will always be countries having to cope with suddenly rising numbers. Child trafficking may be one of the reasons for this. The exchange of knowledge on this subject between guardianship institutions can give European Member States the opportunity to combat child trafficking.

It is time to join forces, learn from each other for the benefit of this vulnerable group and the societies that have to provide them with care.

## 2.3 Methodology

How can organizations from the daily practice contribute systematically to improved (professional) service to unaccompanied minor asylum seekers in the EU Member States?

Our approach has been to establish network contacts throughout Europe as a start for the foundation of a more permanent platform. This fact-finding study contributed to creating these network contacts and provided the necessary information on the state of the art within the Member States. Contacts intensified in the last phase of the project at a conference where the results of the fact-finding study and the current state of implementation of article 19 of Directive 2003/9/EC have been discussed.

The fact-finding study took place in 11 selected Member States being Hungary, the Netherlands, Germany, Belgium, Finland, the United Kingdom, Ireland, France, Italy and Spain. These countries are selected more or less at random taking into account the regional spreading and size of the Member States. After starting the project adjustments regarding country choice have been made based on the first information, taking out Hungary and including Poland and Sweden.

In each country interviews took place with the relevant stakeholders, carefully selected beforehand. During the missions the following aspects are addressed:

- Organization and regulation of legal representation for unaccompanied minor asylum seekers;
- Assessment tools of member states on this topic;
- Coherence between asylum procedures and legal representation procedures in Member States;
- Quality control of legal representation. What programs are in place to assist for instance foster families, legal guardians etc.;
- Strong and weak points of the legal representation system through the eye of the individual Member State stakeholders;
- Examples of bad & best practices in legal representation;
- The exchange of knowledge and experiences on guardianship
- The way Member States should cooperate when dealing with legal representation;
- Problems Member States may face when implementing article 19 of Directive 2003/9/EC.

From the information obtained lesson have been learned for the future on cooperation and further improvement of legal representation in Europe and compiled in this report.



# 3

# Country reports

## 3.1 Orientation before the start

During the first orientation phase a general scan has been done with key persons in the field. 15 Members of the European Parliament have been approached and key Members from Germany, France, the UK, Netherlands, Ireland and Hungary have been consulted in person. Secondly, the European Commission policy officer has been asked for his views on the current state of affairs. Finally, liaison has been sought with the Separated Children in Europe Programme (SCEP) and Save the Children international.

The country reports have been designed around a simple approach to make findings as comparable as possible. Respectively the general national framework, the organization

of care, the organization of guardianship, the financial relations and the practical situation around guardianship are discussed. Regarding key issues the following choices have been made:

#### *Definition of guardianship*

No single definition of guardianship exists. When speaking of guardianship in several member states it soon came clear that perceptions of what guardianship is, can be or should be are extremely different from country to country or from organization to organization. In this report two definition levels are being discussed. Firstly there is representation in the sense of article 19 of Directive 2003/9/EC.<sup>2</sup> Secondly, guardians as independent representatives responsible for the well-being of the child.

#### *Where no guardianship exists*

For the countries where no guardianship exists the choice has been made to discuss those systems in this report, by regarding the tasks that would be attributed to a guardian in a guardianship system. If no guardian is present, who has parental responsibility, who makes the important decisions in name of the child, who assists in the asylum claim and who is responsible for controlling these actors?

#### *Definition of target group*

In this report we speak of unaccompanied minor asylum seekers. This implicates no statement or opinion on whether other, non-asylum seeking separated children should or should not have access to representation, let alone care. It would however add a complicating variable to the research as Member State care and guardianship systems are almost solely made for asylum-seeking children. In some, mainly Southern-European countries it is however impossible to discuss the one without touching the other. In these cases other groups of children have briefly been discussed in the general context.

<sup>2</sup>...necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organization which is responsible for the care and well-being of minors or by any other appropriate representation, . article 19 of Directive 2003/9/EC

## 3.2

# Guardianship in Belgium

### Political framework and general context

Belgium knows a system of guardianship since 2004. While the government was initially hesitating to introduce guardianship, in 2002 the case of a 5-year-old girl called Tabitha, who was mistakenly detained and deported back to DRC having travelled from DRC to Belgium on her way to re-join her mother in Canada, opened a window for change.

The services responsible for guardianship are working within the Ministry of Justice (Dienst Voogdij). The service, existing of between 20 and 30 officials and assistants, is responsible for the recognition of guardians. In approximately 1500 cases a year a guardian is appointed. Guardianship in Belgium is a federal responsibility, making arrangements the same throughout Belgium.

Belgium has a large number of minors travelling with the intention to go to the UK, causing a rate of disappearing minors estimated at about 50%. The largest group of nationals in Belgium are Afghans and north-Africans.

### Organization of guardianship for unaccompanied minor asylum seekers

#### *Responsibility for care*

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

Reception in Belgium is organized in two phases. In the first phase the guardianship services are notified (reachable 24/7). Upon notification minors are brought to an Orientation and Observation centre. Immigration officials are not supposed to deport separated children before the Guardianship Services have been contacted. Separated children are also not supposed to be detained (although cases have been mentioned in which this has happened). Exception are age-disputed cases: detention can in these cases be up to 3 days. Next the guardianship service have one month to determine whether the minor is indeed a minor, which is done through x-rays and interviews. The conclusion should be followed by the immigration services, although a review may be asked in case of doubt.

From the Orientation and Observation centre the guardianship services together with specialist in the reception centre decide on the best type of reception for the minor. In principle the guardian then decides where the minor will be placed in the second phase reception, although in practice the choices available are often limited. After this one month the minor will be placed in a Fedasil reception centre or in smaller living units of special youth care.

A decision on the reception status of the minor should be taken within a period of 4 months. Approximately 20% is granted a permanent status. Also after 4 months, minors can move from the reception to a different kind of reception, local reception institutes, which offer more independency. This type of reception is offered by municipalities, financed by Fedasil (LOI's – local reception initiatives). The guardians stays the same and, if possible, the region of reception too. The period of 4 months is in practice a challenge to keep, as the local reception institutes are having permanent capacity problems. After three years each minor will be granted permanent status, even if the procedure has not been finished (although this depends on the type of procedure the minor is in).

#### *Responsibility for guardianship*

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

The guardianship services are responsible for recruiting the guardians, recognizing the guardians and offering education to guardians. A person can become a guardian with a 5 day course and each year the guardianship services offer a 4-day training to the guardians. An independent or voluntary guardian can have up to 40 cases, however the majority of guardians have less than 5.

The guardianship law prescribes the tasks and responsibilities of a guardian in detail (frame on page 13). The implementation of responsibilities in detail between the guardian and mainly the staff of reception centres proves sometimes to be difficult. Guidelines are being developed to improve the cooperation.

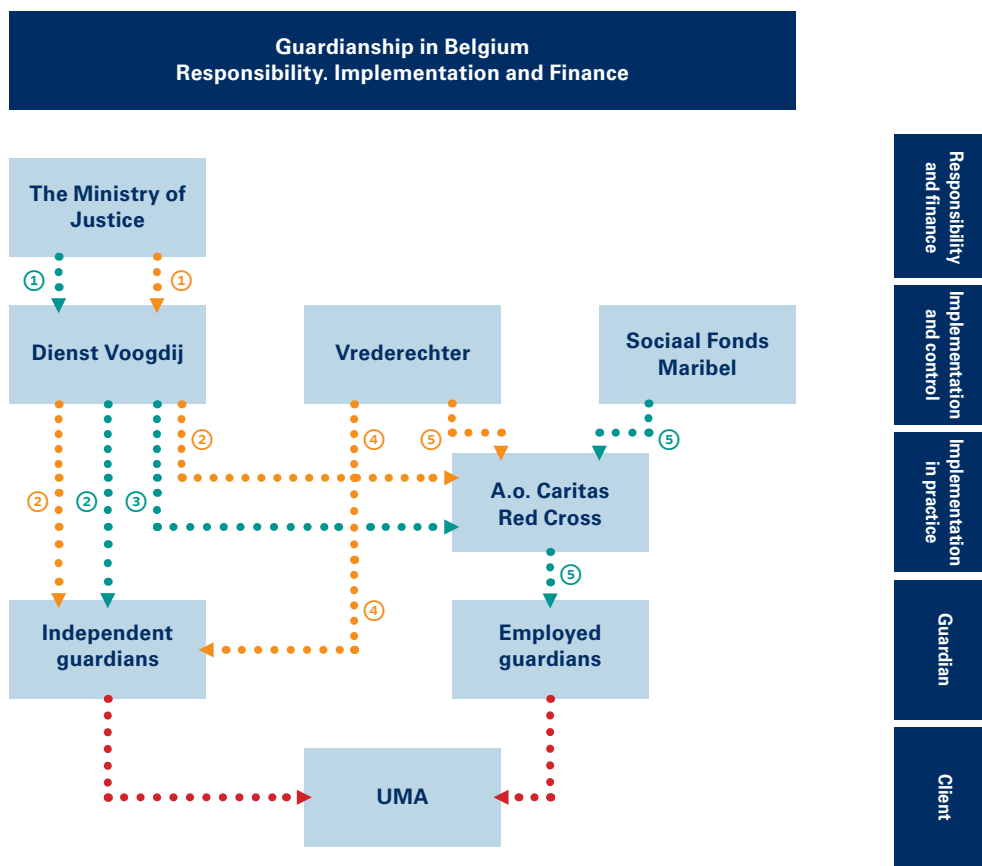
### **Tasks and responsibilities of a guardian**

- 1 To help with the asylum application; however a child can also claim on their own if they want to;
- 2 If the separated child does not apply for asylum, to help them to apply for another type of status (there are special provisions for victims of trafficking/ family reunification/ humanitarian basis);
- 3 To appoint a lawyer. While the lawyer can give specialist advice on which legal route to take, the guardian makes the final decision. The lawyer however acts on behalf of the child, so where there is a disagreement between the child and the guardian, the lawyer would act on the child's behalf;
- 4 To act as a legal representative in all proceedings – including to appeal negative decisions;
- 5 To be physically present at every hearing/interview; there should be no hearings without a guardian. If, during an interview, the authorities discover that the asylum applicant is a separated child, they legally have to stop the interview and ask the Guardianship Services to appoint a guardian, otherwise the interview cannot be legally said to have taken place;
- 6 To look after the child's social well being with regard to education, and mental and physical health. The guardian's relationship with the child's social worker will depend on the type of accommodation that the child is living in, but generally if the child is in accommodation with a social worker it will be the social worker that provides the day to day support such as taking the child to school, while the guardian will take legal decisions. If the child is living alone, the guardian will perform more of the other roles as well;
- 7 To find accommodation for the child where the child is safe and feels well;
- 8 To respect the religion, politics and psychology of the child;
- 9 To assist in family tracing; while this is one of the guardian's tasks, no means is provided to undertake it. Guardians rely on NGOs to help them, e.g. Red Cross which provides a tracing and messaging service with the child's consent. If the family is traced, this does not necessarily mean the child has to be returned; the child's wishes must be taken into consideration. It is up to the guardian to reach a decision on whether it is in the child's best interests to make contact with the family in the first place, and the immigration authorities ought to take the guardian's recommendations into consideration;
- 10 To seek a durable solution for the child. Guardians make a recommendation about this based on the child's best interests, and the immigration authorities make the final decision. If a decision is made to remove a child under 18, the child is informed; however currently enforcement is not employed until the child turns 18, at which point s/he can be forcibly removed;
- 11 To explain the decisions to the child and ensure the child fully understands all processes;
- 12 To manage the child's finances;
- 13 To help the child to access social benefits;
- 14 To provide reports on the child; after the first 15 days and thereafter every 6 months, which are sent to the Guardianship Services.

Monitoring of cases happens through written reports of the guardian to the guardianship services as well as the court. In case there is doubt on the quality of the work, the guardianship services can push the guardian. In the end however the guardian is independent in its acts. If a conflict between the guardian and the services arises, the court is responsible to judge, which can lead to the appointment of a different guardian.

Guardianship ends automatically when parents turn up, when the minor has disappeared for 4 months or when the minor receives a permit for permanent stay, after which a civil guardian should be appointed. The guardians receive a fixed amount per case a year. Professional guardians receive a fixed amount for their organization per year.

*Finances and control*



### *Financial relations*

- The Ministry of Justice is responsible for guardianship for UMAs and finances “Dienst Voogdij” for implementation and control.
- “Dienst Voogdij” finances guardians with expenses and a fee.
- “Dienst Voogdij” finances non-profit organisations to take guardianship upon them where there are shortages.
- “Sociaal Fonds Maribel” finances non-profit organisations additionally for the task of guardianship.
- Non-profit organisations employ guardians.

### *Control relations*

- The Ministry of Justice controls the « Dienst Voogdij »
- “Dienst Voogdij” controls guardians.
- “Dienst Voogdij” controls non-profit organisations which are financed for guardianship.
- The Vrederechter controls guardians
- The Vrederechter controls non-profit organisations which are financed for guardianship.

### **Guardian: position in practice**

The guardian in Belgium has a clear and strong position by law. In practice, the task of a guardian is challenging, as it is not easy to steer around the well-being of a child in a field with many professional actors (lawyer, social services of the reception centres, government services) with all their own limitations. This makes the social and networking skills of a guardian at least as important as their familiarity with the law and asylum procedures or their ability to interact with the minor.

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

The independence of a Belgian guardian is high, but knows two constraints. A weak point in the position of the guardian is said to be that the guardian has a duty to represent the child’s best interests, yet Belgian law states that all pertinent information must be given to the authorities, which can result in a contradiction of the best interest rule and the guardian’s relationship of trust with the child. In practice, immigration authorities do not always appear to follow the guardian’s recommendations in such cases<sup>2</sup>. A second point is practical independency – while guardians have the independent responsibility to make

<sup>2</sup>Dermine C. & Van Zeebroeck, C. *Qui défend les droits des mineurs non accompagnés en Europe ?* Paper presented at the conference Actes du Colloqu International “La Migration des Mineurs Non Accompagnés en Europe”, Poitiers, 10-11 October 2007 Page 9

choices in the best interest of the child, their ability to make choices is limited by the possibilities the system offers. The united voice of the guardians would not be strong enough to flag major concerns or trends.

In the case of all guardians, but even more in case of the voluntary guardians, much of the success in their work is depending on the strengths of the individual according to the reception services. If a guardian acts in time, is persistent and has a personal network, their minors will be placed in the reception best suited for them much sooner (as most struggle with capacity problems). Another example is information on voluntary return and a network to work with – offering information to a minor on return as a potential sustainable solution is not something all guardians are familiar with. Finally, a guardian faced with conflict situations with the immigration services might not have an independent body where to turn to and problems or breaches might not be signaled.

NGO's feel a system of full professional guardianship would be better, as it might raise the standard of the guardians (having a suitable education as well as an organization to fall back on when facing difficult changes). The government sees the benefits of independent guardians in having strongly motivated volunteers, who might be able to invest more time and energy in a single case as well as more time for personal contact.

### **Actors involved**

- The Ministry of Justice Guardianship Service (Dienst Voogdij) is responsible for guardianship
- A.o. the Red Cross and Caritas International employ guardians
- Gardanto is the union of independent guardians
- Fedasil is the national organ for the reception of asylum seekers



## 3.3

# Guardianship in Finland

### Political framework and general context

The Finnish system of guardianship for unaccompanied minor asylum seekers exists for about a decade. It is based on the Act on the Integration of Immigrants and Reception of Asylum Seekers in combination with the Guardianship Services Act, both of 1999. Since 1 January 2008 there is a new child welfare law in Finland. The new law comes down to an increase of prevention, more based on the rights of the child compared to the former law which had more of a parents-based rights approach.

Almost every unaccompanied child entering Finland asks for asylum. The total number of unaccompanied minors in 2006 was 118, in 2007 96 and in 2008 the number has increased with over 700% to 706. The sudden increase is a direct result of changes in Sweden (and maybe to a lesser extent other European countries) in taking Iraqi and Somali children. Most asylum seeking children can stay in Finland, close to 90%. Children either cross the Russian border, the Swedish border or enter via the airport in Helsinki. Almost all asylum applications are done at police stations inland.

The responsibility for guardianship of minor asylum seekers is different from responsibility for regular youth care. The responsibility of guardianship is on the same authorities that have the responsibility of the reception of asylum seekers. Currently it is the Ministry of Interior. However, there will be changes in the beginning of 2010; the responsibility of the reception of asylum seekers will be moved from the ministerial level to central agency, the Finnish Immigration Service. This agency examines the applications and gives or denies residence permits. With this big administrative change, also the responsibility for reception will change.

### Organization of guardianship for unaccompanied minor asylum seekers

#### *Responsibility for care*

The system of unaccompanied minor asylum seekers and their care is different from the system for regular child welfare. In the first case it is considered a national government responsibility, while in the regular child welfare it is the municipalities which implement

the law. Like in regular child welfare the majority of children live in institutes (approximately 70%) and a minority (30%) in families. The reception on asylum seeking children is based on Integration Act and not the Child Welfare Act. However, there are similarities on the treatment of minors: the rules concerning the size of the institutions, the number and competence of the staff are partly comparable; there are references in the Integration Act to the Child Welfare act concerning these.

Absolute numbers in regular youth care as well as absolute numbers of uma's are rising: every year there is an increase of 2 to 3% in children who are in regular care; the number of uma's tripled in 2008.

The reception centre Ingas is located in Espoo, having the benefit to not be too far away from the Immigration Service, where minors are interviewed. It is a transit centre with 11 places, but copes with 30 to 40 children at a time due to this sudden growth of inflow (autumn 2008). Young children live in the group home while there are so called "supported housing" for older children (24 places). While the idea is that all children would stay here until they have their asylum interview with the immigration services and be transferred afterwards, this is at this moment not always possible. Children are either brought somewhere else or stay at Ingas for longer than they should (up to 6 months instead of up to 2 months). The first day after arrival school starts, although this in practice is not always possible. After the asylum interview a child is transferred to another centre somewhere in Finland where they wait for the asylum decision. This might mean that a new guardian and/or lawyer needs to be appointed for the child. The responsibility of the everyday care of a minor is in the group home, exercised by a social worker.

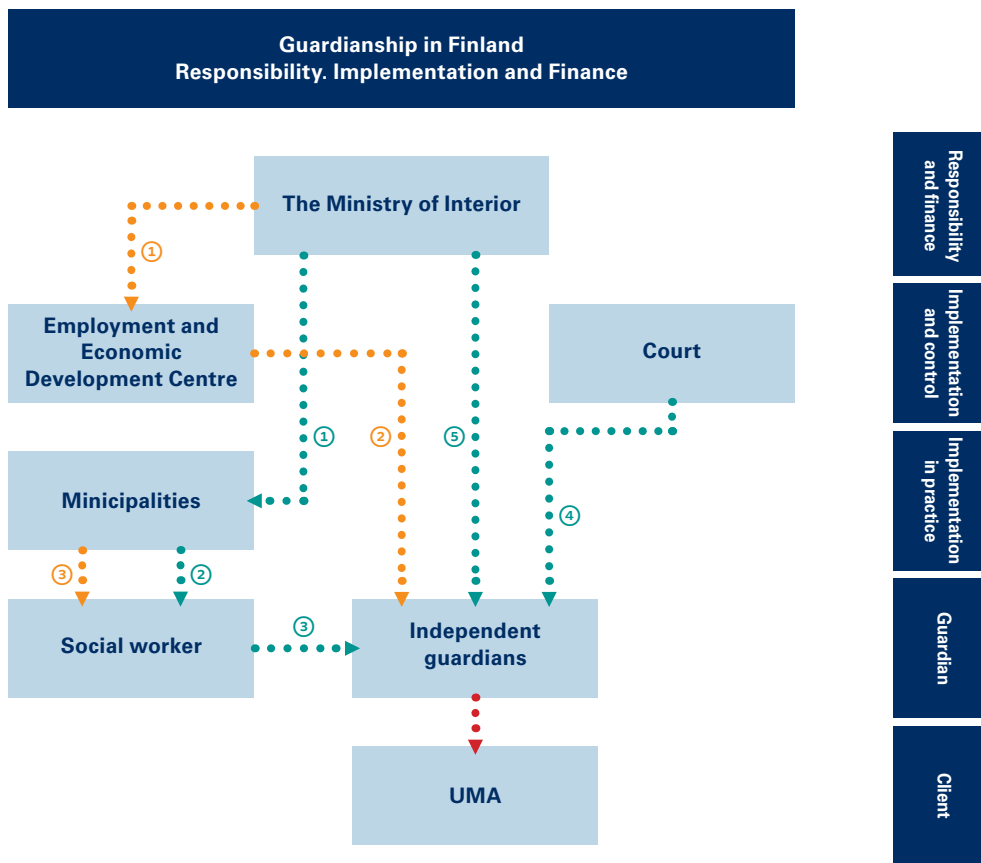
The several dozens of guardians are taking care of 1-30 cases each. The initial idea of a guardianship was that there would be only few children per guardian, but after sudden rise of the numbers of children there are guardians who have even 20-30 children at a time. The sudden rise of minors caused problems to find enough guardians. Children disappearing during the procedure is estimated at about 10%, a relatively low percentage.

#### *Responsibility for guardianship*

After a few days in first reception centre Ingas a guardian is usually appointed, initiated by the reception centre and appointed by the court. The reception centre can ask the court as well to relieve the guardian from his/her tasks, as can the guardian request this him/herself. It is impossible for the immigration service to interview the child without a guardian being appointed. Immediately after being appointed the guardian makes appointments with lawyer, police etc.

Problem at the moment are the numbers, both first reception and the guardians have an overload. New guardians are usually recruited from the informal circuit in the social sector and child welfare. One can be a guardian after an interview with the social workers in the reception centre. Guardians payment and travel expenses are paid by the ministry and after the beginning of 2010 by the Finnish Immigration Service.

*Finances and control*



*Financial relations*

- 1 The Ministry of Interior finances the Employment and Economic Development Centre to finance guardians fees and expense. *(The Immigration Service will pay the fees for guardians from the beginning of 2010.)*
2. The guardians are paid by the Employment and Economic Development Centre *(from 2010 by Immigration Service)*, although the centre has had quite a little responsibility or control towards them. Depending on the centre, it might have had some steering or training organized to guardians in the region.
3. Municipalities hire social workers for reception and counseling of children. However their, role is minimal, as the centres are financed and controlled by the central government.

### *Control relations*

- 1 The Ministry of Interior is responsible for the care of UMAs. The centres are in municipalities, where the staff is sometimes employed by municipalities. *From the beginning of 2010, the responsibility is in the Immigration Service.*
- 2 Municipalities employ their social workers, but steering lies directly with the government
- 3 Social workers initiate hiring new guardians
- 4 The Court appoints new guardians
- 5 The Ministry of Interior has organized 1 or 2 trainings for guardians. Some training has been organized also by regional governmental level and by reception centers as well as by NGO's.

### **Guardian: position in practice**

A guardian in Finland is a volunteer, sometimes a full-time volunteer. Although it is possible to make a living being a guardian, the system is clearly not designed for guardians to be full-time professionals. A guardian is a bit of a pioneer as well – the Finnish system is young and the role of the guardian is still shaping. While guardians usually have a close relationship with responsible social workers, their role is not yet fixed and not all parties in the system know or understand what a guardian is.

Resources for and organization of guardians are limited to non-available. Guardians may have experience with asylum procedures or not. Moreover, guardians are hardly controlled on the quality of their work. However, social workers are key persons, who might get feedback from the lawyers or other parties. It is always possible that they don't propose a certain guardian anymore to the court.

The guardian is independent in his or her choices for the child, as well as in choosing the child's lawyer. However, given the informal way of recruitment, the limited demands and the fact that no training is needed to start, independence in practice will depend on the personal attitude, experiences and skills of the guardian. Guardians are paid by the Employment and Economic Development Centre. (and from 2010 by the Finnish Immigration Service). The reporting has an administrative nature: while guardians have to justify their actions to get paid, this justification is not qualitative. The Finnish guardians have identified several issues they perceive as problematic around their situation as a guardian and voiced these concerns at the Ministry of Interior (frame page 21).

Almost 90% of the children gets his or her legal representation by a lawyer from the Refugee Advice Centre. The other 10% might get a private lawyer (if the guardian arranges this). The decision on whether to take a legal advisor and which one lies with the guardians

Guardians have almost no demanded qualifications

Almost everyone can be a guardian

Responsibilities and duties are not entirely clear (*however, in June 2009 the government has given in-depth official recommendations for the first time, available in Finnish and Swedish*)

Guardians do not always want to work professionally

There is no obligatory training (only voluntarily)

There is no network between guardians

Most of the time guardians and social workers are friends or family: it is not independent

If not, the professionally trained social workers are usually stronger

Almost no possibilities for professional guidance

and group homes. Legal advisors do have sufficient time to work with their clients. The guardian is always there, in some cases the social worker as well. There are hardly any children with a refugee status, usually they get a protection.

### **Actors involved**

- The Refugee Advice Centre is an NGO focusing on legal aid to refugees.
- The Ministry of Interior is responsible for guardianship for UMA's
- Ingas group home is the centre for first reception in Espoo
- The Central Union for Child Welfare is a privately financed institute caring for the welfare of children – as such they have been incidentally active in supporting guardians and speaking with the Ministry of Interior concerning the guardianship system.



## 3.4

# Guardianship in France

### Political framework and general context

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

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

The official amount of *uma*'s in Paris is in the summer of 2009 475. Unofficially, estimates are around 1000. Among these there are many Afghan children travelling to the UK, Norway and Sweden. Numbers for France in total are not known.

A child entering France at the airport (the majority comes by plane) is at first held in the waiting zone (*zone d'attente*). Upon entering the airport the first question is whether asylum is asked for or not. If asylum is requested, the office protection refugees checks whether the claim is realistic. If that does not seem to be the case in 4 days, the *juge de liberté* decides whether entry is granted or not. If no asylum is asked the same 4 days are used to find a country that will accept the person. If no country or no return flight is found in 4 days entry is permitted. Once on French territory, minors will not be deported until 18. At 18 years old their situation is looked at again.

Minors are sometimes, not always, assisted during the period in the waiting zone by *administrateurs ad-hoc*. These administrators can be anyone, in practice many are Red Cross or Terre d'Asile employees. An administrator has one interview-free day on which the child will not be returned or interviewed by police. After that the child can be in the waiting zone for another 3 days before seeing a judge (after those 3 days possibly prolonged two times by another 8 days, each time separated by a court order prolonging the time in the waiting zone). If the grounds for asylum are found to be absent, children can be returned

immediately from the airport. Several respondents estimate the number of these airport returns at several hundreds a year (in case no asylum request is tabled and no residence permit is granted). The destination to where they are returned poses problems as the country they entered France from is not always the country of origin. A significant number of cases of violence against minors a year are mentioned by Anafé, an ngo with access to the waiting zone.

After minors are past the waiting zone they will meet the immigration court. 80 to 90% of the ones coming before this court are allowed to enter the French territory. Once on French territory, children can stay until their 18<sup>th</sup> birthday. Children younger than 15 years old can be regularized at their 18<sup>th</sup> if they meet certain requirements after staying in France for 3 years (f.e. good behavior, language). The same goes for children who have been in school for over 5 years. To have this declaration of French nationality, a birth certificate is needed (or a replacement if it cannot be acquired due to external circumstances). It does not happen very often as most minors are not under 15 upon entering France, the vast majority of minors are close to 18 years old.

Age assessments are done by different methods, but the most common is the wrist examination. The results are given as a child being above or below 18 years old. Major countries of origin are China, DRC, Cameroon and Morocco. About 50% of the children disappear during the first days after their arrival.

## **Organization of guardianship for unaccompanied minor asylum seekers**

### *Responsibility for care*

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

The daily care in the departments is arranged within the system of regular youth care or foster families. Foster families are professional. They are selected and approved and paid as professionals. There also is short-term reception (foyer), costing 140 – 200 euros a day. The amount of children and the services given are kept low profile by the different departments, afraid that the data will be a pull factor. This makes it very hard to estimate how



many children are in which type of reception. Secondly, there are big differences between departments how reception and services are arranged. Moreover, it is possible for children to “shop” departments and impossible for anyone to keep track of disappearing children, as no general administration is kept and no coordination exists between departments.

#### *Responsibility for guardianship*

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

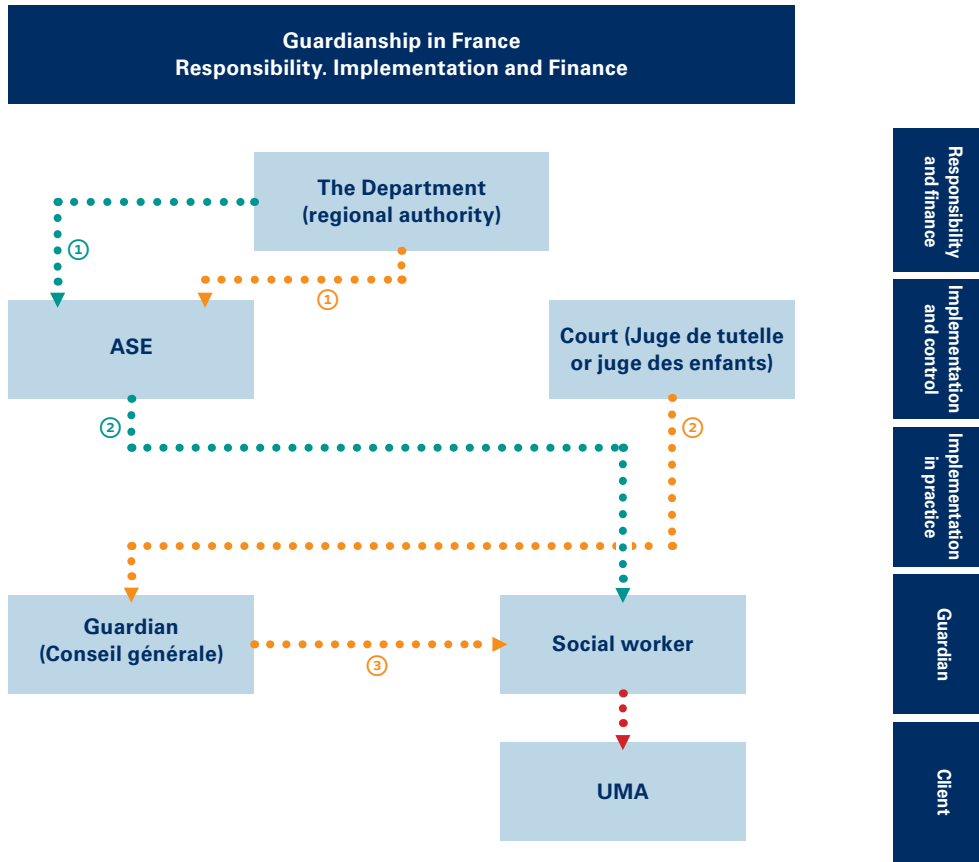
- *guardianship referred to the child welfare department: this guardianship is delegated to the child welfare department (ASE) for unaccompanied minors, whether French or foreign, without any family network. These minors are often already being cared for by child welfare (ASE) under article L223-2 of the French Family and Social Action Code, already quoted and relating to the notification of unaccompanied minors. The children’s judge is notified and sends the file to the guardianship judge, who makes the decision regarding organisation of the guardianship.*
- *guardianship with family council, decided by the guardianship judge, can be organised if the young person has family members in France. This measure actually only affects a very small number of unaccompanied foreign minors.*

In summary this means that there is *tutelle*, meaning that there are no parents, and guardians, meaning protection when parents are there. For the children we are speaking about *tutelle* is generally covering guardianship. Departments are responsible for both in their geographic area. In case of *tutelle*, there is no full accountability for the minors actions. Legally, it makes the difference whether the *juge de tutelle* or the *juge des enfants* is involved. For 16 and 17 year olds an administrateur ad-hoc is used for practical affairs (school, bank etc.), replacing the guardianship system.

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

The *administrateur ad-hoc* is used to cover the absence of a guardian during the time before the minor is geographically assigned to a part of the French territory. Besides a poor mandate, he has a large problem concerning time. There is only 24 hours available to win trust and look at the best interest of the child, after which a child is free to be interviewed or deported by the police. Even if a child arrives on Saturday 23.00 and the administrator is notified at 01.00 the 24 hours are ticking. There is also a big shortage of these voluntary administrators.

Finances and control



Financial relations

- 1 The Department finances the ASE, responsible for youth care in the region
- 2 The ASE employs social workers, who exercise guardianship (although officially guardianship lies with the conseil générale)

Control relations

- 1 The Department is responsible for the ASE
- 2 The court attributes guardianship
- 3 The guardian is officially responsible for the work of the social worker

**Guardian: position in practice**

Officially all children in France have guardianship in the form of legal representation, although the system of ad-hoc administrators can hardly claim to be covering all children not under guardianship of an ASE. Responsibility for representation here lies with the

individual voluntary administrator, who is under constraints of time and mandate. He can also hardly be held accountable for his or her work, as he does not have any facilitated resources other than access to the child.

Guardianship in the sense of parental responsibility and responsibility for the well-being of the child is not available for all minors at all times. It is even doubtful whether it exists in all departments, as there is no coordination or overview of services. Guardians are not independent, as responsibility for care and responsibility for representation lies with the same (state) actor.

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

It is perceived as a problem by NGO actors that the responsibility for the children is pending between regional and national authorities. Regional authorities, as soon as children enter their geographic territory and either make themselves known to the authorities or are found on the streets. The state is responsible for asylum and for foreigners entering France. From the moment minors are allowed upon French territory until the moment they are in the care of the ASE no one is responsible. Secondly, when a child is in care of the ASE and disappears, lack of information prevents the authorities from realizing whether the minor turns up again in another region.

### **Actors involved**

- The ASE, the youth care department of the regional government, is responsible for *uma's* within its borders
- The Ministry of Immigration is responsible for reception, asylum, residence and Dublin affairs
- A number of NGO's deliver reception services (f.a. Terre d'Asile, the Red Cross)
- A number of NGO's advocate on behalf of refugees (f.a. Terre d'Asile, Anafé, Gisti)
- Red Cross employees sometimes act as *administrateurs ad-hoc*



## 3.5

# Guardianship in Germany

### Political framework and general context

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

*“The number of UNAMs applying for asylum in Germany has [...] decreased significantly in recent years. In 2002, some 873 UNAMs under the age of 16 applied for asylum at the Federal Office for Migration and Refugees (BAMF). In 2007, only 180 applications by UNAMs were counted. In 2008, there has been an increase again, to a total of 324 UNAMs under 16. The overall number of UNAMs applying for asylum in Germany in 2008, that is to say, including 16 and 17-year-olds, was 763. [...] The most important countries of origin in 2008 were Iraq, Vietnam, Afghanistan, Guinea and Ethiopia.”<sup>4</sup>*

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

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

Age assessment is done by the immigration authorities upon entry and before a guardian is appointed. Return is a point of specific attention for the German authorities. Although special considerations are made for minors, forced return for minors does happen.

<sup>4</sup>Unaccompanied Minors in Germany Reception, return and integration arrangements, EMN 2009

## Organization of guardianship for unaccompanied minor asylum seekers

### *Responsibility for care*

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

### *Responsibility for guardianship*

Upon arrival a guardian is appointed by the guardianship court (*Vormundschaftsgericht*). In practice the Jugendamt coordinates which guardian is appointed. It depends on the state and the capacity of service providers at that moment who this guardian will be: Jugendamt employees, NGOs or individual lawyers.

After the guardian has been appointed the next 3 to 6 months are used for the Clearing procedure. During this procedure children until 16 years old may have different first reception than 16 or 17 years old, as happens in Bavaria. During the clearing procedure the guardian and the social worker determine the needs of the child and develop a care plan.

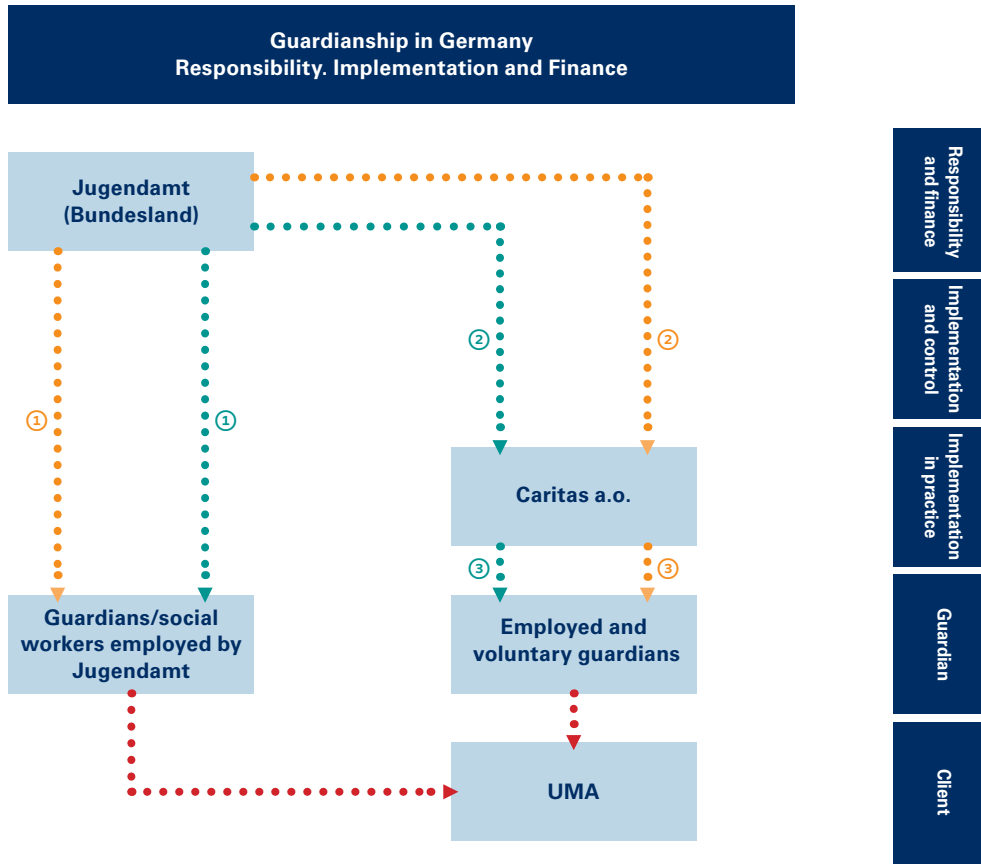
*“This procedure serves the aim of determining the individual need of youth welfare measures to be granted the minor, to examine if the minor in question has any relatives in Germany or another EU Member State, and to analyse if an application for asylum is a reasonable way forward. Thus far, the “clearing procedure” is applied differently across the 16 German Federal States (Länder) as regards the length of the procedure and the quality of care offered to UNAMs.”<sup>5</sup>*

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

The Jugendamt has 95% of guardianship cases (Amtsvormundschaft). Besides these there are guardianship organizations (Vereinvormundschaft), private and independent professional guardians (Einzelvormundschaft) who exercise guardianship over minors. In Bayern there are 6 to 7 guardianship organizations, the largest is KJSW. For each full time employed guardian up to 40 cases are taken.

<sup>5</sup>Unaccompanied Minors in Germany Reception, return and integration arrangements, EMN 2009

Finances and control



Financial relations

- 1 The Jugendamt employs guardians
- 2 The Jugendamt finances non-profit organisations for the task of guardianship
- 3 Non-profit organisations employ guardians on a salary or voluntary basis

Control relations

- 1 Jugendamt controls guardians in their own service
- 2 Jugendamt controls non-profit organisations which they finance for guardianship
- 3 Non-profit organisations supervise their guardians

**Guardian: position in practice**

A guardian has, depending on the state, between 20 and 80 cases per social worker. To be truly responsible for the perspective and well-being of the child while taking care of this amount of cases is seen as highly problematic by many actors in Germany.

The position of the Jugendamt is often a double one: being responsible for care, well-being as well as guardianship, guardians directly employed by Jugendamt are in a tough position to be independent in their approach to the responsibility for daily care.

### **Actors involved**

- The Jugendamt is responsible for youth care and guardianship in each Bundesland
- NGO's such as Caritas and KJSW are often involved both in the implementation of daily care and in exercising guardianship
- The *Bundesamt für Flüchtlinge (BAMF)* is responsible for the asylum procedure



## 3.6

# Guardianship in Ireland

### Political framework and general context

Ireland does not use a general system of guardianship for the protection of the care and well-being of unaccompanied minor asylum seekers (or separated children). An agency under the Department of Health and Children, the Health Service Executive (HSE), is responsible for daily care and representation of the children. A guardian (Guardian Ad Litem) does exist, but is only activated in a minority of cases. Legal basis for the Irish system of care for una's lies in the Refugee Act as well as the Child Care Act.

Until the late 90's separated children or una's hardly came to Ireland. Having a few years of higher entries, the current number of unaccompanied children in Ireland is relatively low. In 2008 around 350 entered the country. Most of the children enter Ireland in Dublin, with some smaller numbers in Cork and Limerick. The majority of the children entering care ask for asylum. The vast majority of these applications is rejected.

The disappearance rate is about 50%, many of those being Nigerian and Chinese children. While this is a rate comparable to many European countries the Irish case seems different. Between many different parties in Ireland there is concern about these children and frustration about results of policies: while the cases seem easily identifiable, an unclear responsibility structure, insufficient resources and poor checks and follow-up are believed to make the rates much higher than otherwise necessary. An example mentioned in the 2007 report of the Ombudsman for Children says that *if they arrive at the weekend, when a social worker is not available, their true identity may not be verified from the outset*. There have also been many cases in which adoption was requested, where doubts have risen about whether the child was trafficked or not.

Although numbers are relatively low, the system in Ireland has had several incidents and cases of bad practice, raising concerns of civil society. A report of the Ombudsman for Children of 2007 has firm criticism on the access to rights and many aspects of the organization of care for separated children (and una's). One recommendation has been to introduce a general guardianship system. For a long time the report has only led to incremental changes in implementation. Recently, the government has announced an operational policy, which should ensure the equity of care for separated children.

## Organization of guardianship for unaccompanied minor asylum seekers

### *Responsibility for care*

Refugees in Ireland are the responsibility of the Department of Justice. The Refugee Act states that children should be transferred to the responsibility of the Health Service Executive, making the care for unaccompanied minors the responsibility of the Department of Health and Children. Upon rejection of the asylum application, an age assessment saying the child is over 18 or a child turning 18 while in care, the responsibility is transferred to the Department of Justice again. The HSE can refuse the transfer in cases where there are mental health concerns.

In Ireland the system of child protection, including the protection of unaccompanied minor asylum seekers, is based on the Child Care Act of 1991. This act is designed for all children, without any specific focus on unaccompanied minor asylum seekers.

### **Irish Refugee Council: Making Separated Children Visible:**

Section 3 of the Child Care Act 1991 stipulates that the main obligation of the Health Service Executive is to 'promote the welfare of children in its area who are not receiving adequate care and protection'. Furthermore, section 4 specifies that the Health Service Executive has the duty to take a child into its care when she/he cannot be protected outside of its remit. Under Section 4(4), the Executive shall attempt to reunite the child with her/his family when it is deemed to be in the child's best interests, and under section 5 the Health Service Executive may act if it considers that a child is homeless. Section 36 provides that it shall attend to the provision of maintenance and accommodation and place children in foster or residential care or other arrangements that it deems fitting. There is inconsistency across the country as to which section of the Child Care Act 1991 should be used to care for separated children. Practice varies across HSE areas.

In 1991 there was no need in Ireland, as asylum seekers as well as trafficking did not exist. As a result, the legal framework for unaccompanied minors to enter the care system is to be taken care of either under so-called voluntary care or under the article of homeless children. Consequently, the responsibility of the government body responsible for the care of the children, the HSE, regarding the welfare and the legal interest of the child is not clearly defined. While it is clear they are responsible to arrange the daily care of the children and legal assistance the scope of this responsibility regarding all aspects of their lives associated with parental responsibility (their status, rights, education, asylum procedure etc.) remains unclear.

The HSE has a social worker responsible for the care of the child, apart from a social worker a child also has a lawyer appointed in all cases. In a conclusion of the Ombudsman for Children report of 2007 it is said that “Although each separated child is allocated a social worker, under-funding of the services means they are often in the care of unqualified or untrained private hostel staff.”<sup>5</sup>

The HSE works with social workers and project workers with mostly social worker qualifications. The team working on uma’s consists of 26 persons, responsible of 170 children (their asylum process, reception, doctor, education). The HSE does not have a standard working method for all social workers throughout the country; experience with uma’s out of Dublin is very limited. Aftercare is a problem as well: children turning 18 or leaving the care of the HSE otherwise are not looked after but incidentally.

The HSE is also responsible for family reunification. Here it is unclear as well where the responsibility of the HSE ends: what assessment needs to be made of the family, is there any monitoring or aftercare?

Whether to ask for asylum in first instance is the decision of the HSE. It is possible for a child to be in care without having claimed asylum. This creates a so-called “legal limbo”, creating insecurity and unclarity for the child as well as the social worker, regarding their status, but also for example their schooling. This ended up in extreme cases of children ageing out while being unregistered, but within the system for periods up to 7 years, while not being educated. Reception and daily care is arranged by the HSE. About two-third of the children are placed in hostels without full-time childcare staff. The rest of the children live in foster care or registered homes. The HSE does not have the capacity and funding to arrange daily care itself. As a result children have been placed in private hostels for years. Many of these hostels turned out to not meet any quality standards. Registered homes (used in “regular” childcare as well) are monitored on their quality by the Health Information and Quality Authority (HIQA). Private hostels are not monitored on a regular and registered basis, although the social worker may check the living conditions. After a check done by the ombudsman for children many hostels proved not to meet the criteria. All actors would welcome a clearer responsibility for the HSE, with funding matching the responsibility. This would also enable better control of the HSE.

#### *Responsibility for guardianship*

In Ireland children do not have a guardian. If a separated child is identified, the HSE is brought in by the immigration services. In rare cases a Guardian Ad Litem may be appointed. A guardian ad litem is a person generally understood to be independent and appointed by the courts to represent children in child care proceedings. This means that s/he must

<sup>5</sup>*Barriers to the Realisation of Children’s Rights in Ireland, Ombudsman for Children, 2007*

attend court in care proceedings to make known a child's wishes and feelings and to advise the court on the child's best interests.

A Guardian Ad Litem is a person, appointed by the court in case of special care needs of a child, who is responsible to represent the best interest of the child. This person is working next to a lawyer. An appointment of a GAL is done if the court sees the need, usually it is initiated by the HSE (and any costs are made by the HSE). In principle, other actors could ask the court for the appointment of a GAL as well, however, without knowing the individual case it is in practice hard to indicate special care needs to the court. A GAL is more commonly appointed in regular child care than in case of asylum-seeking or separated children cases. In principle, anyone can be a GAL if the court decides so. Barnardos, being Ireland's main child charity, is involved providing a Guardian Ad Litem in 25-30 cases each year.

Age assessment is frequently mentioned as a problem in Ireland. Different actors do an age assessment using different methods (based on an interview, on appearance or on a wrist scan). A lack of criteria makes an appeal practically impossible. Moreover, a person identified being not a minor is not transferred to the HSE by the immigration services. Instead, he or she enters the adult system and will have no representation responsible for such an appeal (unless it incidentally happens differently). A third barrier is that the district court is responsible, making it impossible to build precedence with cases. A GAL is no party in these proceedings and as such cannot appeal. Again, appointment of a GAL in cases of asylum-seeking children is an exception, not the rule. Assistance in the legal procedures is a mixed picture. Assistance during the asylum procedure is given by the Refugee Legal Service and paid for by the HSE. Whether to appeal or not is decided upon advice of the RLS by the HSE.

#### *Finances and control*

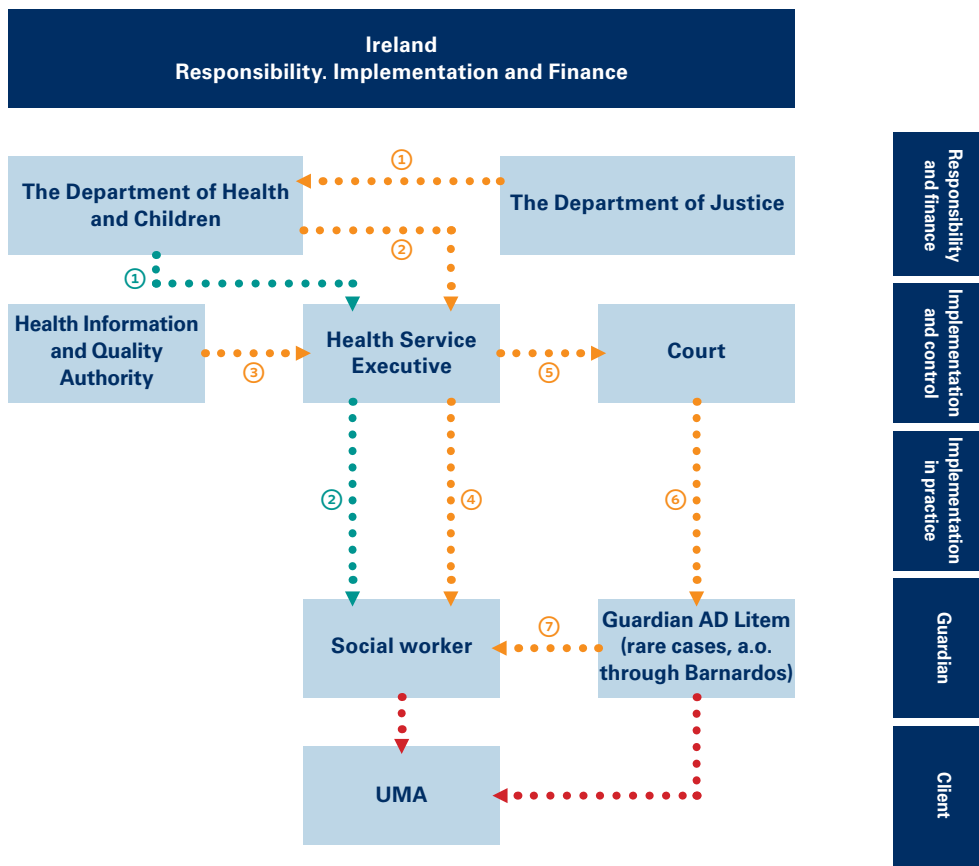
(see model on page 37)

#### *Financial relations*

- 1 The Department of Health and Children finances the Health Service Executive for the care of UMAs.
- 2 The Health Service Executive employs social workers for the care of UMAs.

#### *Control relations*

- 1 The Department of Justice transfers control for all minors to the Department of Health and Children under the Refugee Act.
- 2 The Department of Health and Children controls the Health Service Executive.



- 3 The Health Information and Quality Authority (HIQA) controls the reception and dailycare of the Health Service Executive (only the reception controlled by the HSE, not the private).
- 4 The HSE controls the work of the social worker.
- 5 The HSE asks the Court for the appointment of a Guardian Ad Litem in complex cases.
- 6 The Court appoints a Guardian Ad Litem if requested and if the request is granted
- 7 A Guardian Ad Litem controls the circumstances of the minor and as such the work of the social worker and the HSE.

**Guardian: position in practice**

As no regular guardianship exists, the system in Ireland can be discussed in two ways. Firstly, one can look at the functions a guardian has in a system and see to what extent these functions are performed by other actors. Secondly, it is worth to take a look at the position of the Guardian Ad Litem and compare this position to guardians in other European systems. A guardian is the representative of a child, responsible for the care and well-being of the child. It needs to be able to fulfill this role independently and control the actors delivering the services to the child (daily care, schooling, asylum process etc.). Within the system in Ireland the HSE performs all of these functions. At this point the organization is responsible without being in control.

Firstly, in practice this creates many problems concerning capacity and resources. These could be solved by a clear mandate, describing responsibilities by as well as output of the HSE. A clear responsibility and attached resources could enable better implementation. Secondly, what remains is the problem of independent representation. In the current situation, the work of the HSE, being a government agency, is only checked on the level of the individual child by a guardian if the HSE thinks this is necessary. The ombudsman for children states: *There is a serious question about the lack of guardianship, independent representation and advocacy for these children who, in this area, may also fall outside the complaints function of the Ombudsman for Children. Concerns have been expressed about social workers advising children on the asylum process, including the decision to make an application in the first instance*<sup>7</sup>. In short, the only monitor of the government being the government without a court or independent third party involved, raises questions about the level of protection and the access to rights for uma's.

Secondly, the Guardian Ad Litem. When appointed, parties describe its independence, resources and function as sufficient to perform the role it should.

### **Actors involved**

- The Health Service Executive is the state agency responsible for care as well as individual assistance of uma's (and other separated children).
- The Irish Refugee Council, an NGO advocating for refugees, is actively advocating better and clear arrangements for uma's and other separated children.
- Barnardos, a charity on behalf of children, works as Guardian Ad Litem in a limited number of cases a year. Secondly, they actively advocating better and clear arrangements for uma's and other separated children.
- The Ombudsman for Children is appointed to be the voice of children towards the government and as such is responsible to follow up on any complaints of children. (Children in) The asylum procedure, however, has been excluded from this responsibility.

<sup>7</sup>Barriers to the Realisation of Children's Rights in Ireland, Ombudsman for Children, 2007, p. 36

## 3.7

# Guardianship in Italy

### Political framework and general context

The Italian situation concerning unaccompanied minors is characterized by large numbers and by many children with a migration plan of their own. For some of these children Italy is a destination country, while some others see it as a gateway to other EU countries: many never appear in official channels or the asylum procedure. Italian guardianship is there for the ones who do.

In 2008 there was an estimated number of about 7800 unaccompanied minors in Italy, plus several hundreds asylum seeking children. Around 80% of these minors are 16 or 17 years old. Unofficially the number is likely to be even higher. Last year there were 4300 refugees and asylum seekers, adults and minors in the protection system. With an average turnover of 6 months this means 8600 people a year. In 2009 the capacity has been only 3000 places. The total cost is about 30 million euros.

The responsibility for guardianship of minor asylum seekers lies at the local level with municipalities, the court responsible for appointing one. For the implementation of their care responsibility a number of the municipalities are working together with the Ministry through ANCI, the Union of municipalities. Together they are working within a national programme that assists minor asylum seekers, the SPRAR-programme (Protection System for Asylum seekers and Refugees). Many of the minors have a very clear migration plan, towards family, friends or other countries, so they are not easily kept within a programme (about 60% leaves the centres with unknown destination, for many different reasons; both system-related and individual reasons). On guardianship there is no national cooperation.

Actors are not concerned by the level of protection the Italian law offers to unaccompanied minors: Children can not be deported (return is possible on a voluntary basis, but this rarely happens), they receive assistance until 18, after that they can have a permit of stay for work, study or search for work, if they have been involved in an integration programme since at least 2 years. The trafficked children and victims of prostitution can stay in Italy (art. 18 special measures for trafficking victims), which does not depend of their cooperation with authorities. There is concern about implementation, especially the lack of uniform standards and the differences on the local level. Another problem is the high concentration on a few places: Sicily, the Adriatic ports.

## **Organization of guardianship for unaccompanied minor asylum seekers**

### *Responsibility for care*

The Ministry of Interior, department migration and asylum, is responsible for the care of unaccompanied minor asylum seekers. Together with ANCI, the Union of municipalities, have an operational programme for uma's (until 6 weeks after their 18th birthday). The project contains 138 projects within municipalities, of which 15 specified for minors, each taking care of 10 to 15 children. The projects aim at services for the target group (language, legal and psychosocial assistance, school and education). In case a child asks for asylum in a municipality working within SPRAR, the programme needs to be notified and places a child in a project. A guardian is appointed by the court at that point as well.

Italy has over 8000 municipalities. 95% is a member of ANCI, which represents their interests. In the law the Ministry of Interior is mandated to handle the issue. The national programme SPRAR is a permanent, law-based programme, which aims to share, disseminate and exchange good practices across the country. Municipalities can enter the programme. (ANCI also works with the ministry of labour on unaccompanied minors not seeking asylum. That, however, is still on project-basis. Regarding unaccompanied minors there are 26 projects with each 10-25 children). The incentive for municipalities to enter the programme is a financial one: 80% of expenses are financed, 20% co-financed. Recently more autonomy has been transferred to the local level, by the creation of the Central Service, office for the assistance and the coordination of the Protection System projects. The Central Service has been constituted by the Ministry of Interior but it is managed directly by ANCI.

In areas where the pressure of numbers is highest, problems occur. In Sicily there is said to be a structural problem with money and conflicting interests. The centres receive governmental assistance until children are transferred to municipalities. The municipalities are poor. Centres delay the process, as well as the appointment of a guardian. As a consequence, the asylum request is tabled at a later stage. Minors from Lampedusa usually ended up in municipalities in Sicily, who lack expertise, capacity and finances to handle the numbers (currently the number of entries in Lampedusa is very low and these problems have diminished). Currently the programme SPRAR has about 200 uma's. An unknown amount of uma's is taken care of outside of the programme though, as only uma's from municipalities that are a part of the programme are counted.

The law is basically the same as for Italian orphans. The court decides where the child goes, it is however very hard to find foster parents. Younger children are in the same system as older ones, with different activities, following the model of regular Italian youth care. They live in the same centre, but have different 24h counselors. Children go to regular Italian schools,



especially in basic education, and have the obligation to go to school until 16. The European Refugee Fund is used as an additional source to what municipalities already do. There have been calls for proposals for municipalities to integrate them socio-economical (about 3 million for all vulnerable groups, of which 2 million for minors' psychological counseling, professional training).

### *Responsibility for guardianship*

It is an obligation by law in Italy to appoint a guardian to a child deprived of parental care. The tutelary judge appoints a guardian according to general rules: a person needs to be of good behaviour and suitable for the task. In practice, guardianship in Italy is, as well as care, arranged differently on a local level. The first guardian appointed by the court is usually the mayor of the municipality where the centre is located. The practical task is then transferred to an official, a volunteer or is limited to signing papers. The system is not comprehensive: it does happen no guardian or representative ever sees the child. Much efforts are aimed at family reunification. If this is within Italy, the best interest is not always checked when a child for example goes to an uncle, making them vulnerable for exploitation.

To enter the asylum process the child needs a guardian. A child can ask for asylum, but the procedure is put on hold until a guardian is appointed who can handle in the best interest of the child. As this usually takes long and many children do not see the need to ask for asylum as they are not deported, receive care whether they ask asylum or not and/or as their personal migration plan is not served with an asylum application. As a result asylum is in most cases not asked for. It is perceived a problem that it is hard to measure whether this is in the best interest for the children or just a consequence of the delays and inexperienced guardians. A small change lately was that children already entered the SPRAR-programme before the guardian confirmed the asylum procedure to speed up the procedure.

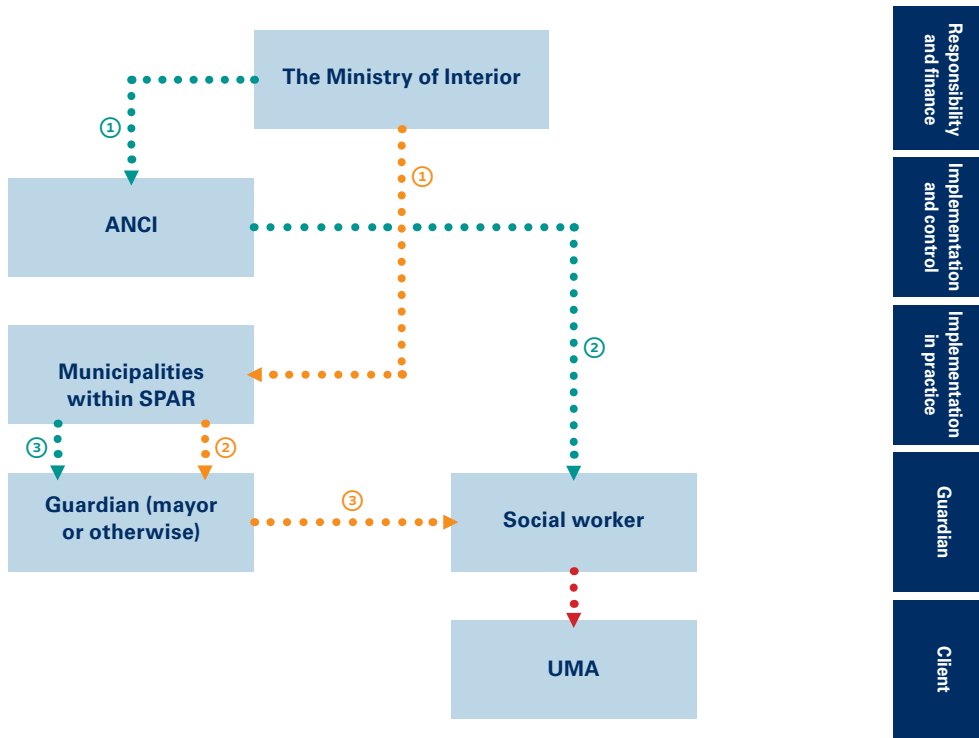
### *Finances and control*

(see model on page 42)

### *Financial relations*

- 1 The Ministry of Interior finances municipalities within the framework of the SPRAR-programme for the care of unaccompanied minors.
- 2 Municipalities hire social workers for reception and counseling of children

## Guardianship in Italy Responsibility, Implementation and Finance



### Control relations

- 1 The Ministry of Interior controls municipalities within the SPRAR-programme through funding
- 2 Municipalities control their official guardians
- 3 Municipalities employ social workers who exercise the task attributed to the official guardian

### Guardian: position in practice

In Italy there is a clear distinction between formal guardianship and guardianship in practice. The formal guardian, often the mayor of the municipality where the centre is located, does not perform practical guardianship tasks.

Guardianship is not handled by professional organizations. The guardians in municipalities lack juridical knowledge and in many cases do not know the asylum process generally. They do not pursue the asylum procedure, but take the permit for minors for granted. The problem is that this permit is not automatically transferred at 18 years old, for example the level of integration is a criterium for that. Secondly, there are not enough guardians, one

of the reasons they are appointed late. As a result a child very rarely has a guardian before the age assessment, if an age assessment is done. As Italy does not have one clear methodology (it may happen with wrist X-rays, it may happen based on an interview and appearances) this is precarious from a rights-perspective.

The responsibility for guardianship at the local level and the level of freedom in implementation, with only the law as basis (no central guidelines or cooperation between all guardians) make that many good examples (like the municipalities volunteering to enter SPRAR regarding care) oppose a lot of bad ones as well. There are no guarantees for much personal contact with a guardian and the skills of a social worker are in many cases non-sufficient to represent the best interest of the child.

Summarizing actors in Italy emphasize Italian laws are good and several projects are good and the national SPRAR-programme are as well. The problem is the general system and the basic rights, guaranteeing that every child receives this treatment – differences in practice are too large.

Whereas a strong guardian, acting independently in the best interest of the child, could be a safeguard in the system and of real added value given the large variations in care and procedures, it is not. The independence of the guardian is questionable and the variations in quality of guardians between one municipality and the other are currently too large to perform this function.

### **Actors involved**

- a Save the Children Italy focuses on the protection of children on the move, including refugee children and child victims of trafficking and exploitation. Activities are largely aimed at the policy and advocacy level, but include also direct assistance and protection work. Guardianship (or tutorship) is no core field of interest but regularly comes up, mostly in a current project on Sicily and Lampedusa.
- b UNHCR handles mostly the asylum perspective. They work together with IOM, Save the Children and the Red Cross in the “Presidium” project, financed by Interior and the EC.
- c The Ministry of Interior is responsible for guardianship for UMA’s
- d ANCI is the Union of municipalities, coordinating the care of uma’s in municipalities as far as they are part of the SPRAR-programme.



## 3.8

# Guardianship in the Netherlands

### Political framework and general context

In the Netherlands guardianship is arranged by a specific organization made responsible for all unaccompanied minors asylum seekers, Nidos. Nidos is an NGO, financed by the Ministry of Justice, with an independent board. In the beginning of the nineties, the Dutch Ministry of Justice appointed Nidos as a specialised guardianship institution for *uma's*, because a national organisation can function as a point of address and can guarantee continuity in the counselling. Another consideration was that in this way expertise could be developed for such a specific group. In 2009 more than 1000 new guardianships were granted. In the years before this was much less. This made the total number of guardianships on 31-12-2009 about 3.000. The percentage of minors that leave for an unknown destination is 7%.

Since the beginning of this decade the Netherlands have a more restrictive admission policy, which means for the *uma's* that they will only be able to receive temporary residence in the Netherlands, at any rate, until the age of 18 and that they will have to leave the country when coming of age. This 'policy of determent' is aimed at turning or controlling the large flood of *uma's* that came to the Netherlands before 2001. There is a tension between the youth protection and the policy with respect to aliens: based on juvenile law, an *uma* is in the first place a child and only in the second place an alien, from the point of view of the immigration laws, an *uma* is first an alien and only then a child.

The Dutch admission policy for young people prescribes that first and foremost a decision is taken whether a young person is eligible for asylum status. If this is not the case, it is examined if there is "adequate" reception in the country of origin. The basic principle is that the country of origin should provide reception for the young person. The Dutch government assumes for some countries that there is adequate reception because of the presence of reception centres. Children from countries where there is no adequate reception or where it is not clear whether there is adequate reception receive a temporary residence permit because they are under age. This permit may be issued three times for a one-year term, but if the young person reaches the age of eighteen before expiry of these three years, this residence permit is cancelled and the young person must leave the country unaided. Most of the *uma's* don't get a residence permit at all.

## **Organization of guardianship for unaccompanied minor asylum seekers**

### *Responsibility for care*

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

Reception in the Netherlands: Nidos will accommodate the uma's younger than 12 years old in foster homes. The uma's between 12 and 18 will be accommodated in small living groups for a period of three months, from the moment of arrival in The Netherlands. During this period the minors will be observed by the juvenile protectors and the mentors, after which they will decide together which continuing accommodation is most suitable for the uma in question. Not the age or the fact that there is or is not a residence permit is the leading criteria in this, but his development and maturity. This means that in the small living units and groups minors, whether they have a residence permit or not, live together.

As from 2007, asylum seekers aged 13 to 17, including those who arrive in the Netherlands without adult relatives by blood or affinity, have been received by the COA in special Children Living Groups nearby the Application Centre (AC) for the first period of maximum three months. During this period the minors will be observed by the juvenile protectors and the mentors, after which they will decide together which continuing accommodation is most suitable for the uma in question. Not the age or the fact that there is or is not a residence permit is the leading criteria in this, but his development and maturity. The next suitable stage of reception can be reception in a foster family, Children Living Groups, Small Living Units or a Uma-campus.

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

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

In the field of foster care, uma's form a specific group that requires a specific vision and

interpretation of foster care. One of the tasks of the guardian is to ensure education and care and a secure lodging and living situation for the pupils. In the view of Nidos, the most suitable form of living for uma's is provided in a family connection in his or her own culture. These family connections provide a youngster with a secure basis, from which the youngster, while preserving his or her own cultural identity, can integrate in Dutch society. Preferably these family connections are looked for in the immediate family network or network of the youngster. The youngster is familiar with living with family within his or her culture; not just because the youngster - in most of the cases - knows the family, but also because in most of the countries of origin of our pupils it is customary that, in the absence of the parents, family members receive and educate the child in the family.

#### *Responsibility for guardianship*

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

Nidos had been recognised by the Dutch authorities as a guardianship- and family guardianship (supervision) institution. The guardianship is assigned to the foundation. The guardianship is actually carried out by professionals, so-called juvenile protectors, employed by Nidos. Every recognised institution functions under the Youth Care Act. This means that certain quality requirements must be met by the organisation, such as the procedure (the tasks that have to be carried out and how this should be done), the recruitment of professionals for the counselling of minors, the right of complaint and the accounting for methodical work by means of file creation. The task of Nidos is tested against the Civil Code and the Youth Care Act. Supervision of its execution is done by a governmental body: the Inspection for the Youth Protection supervises the guardianship institutions.

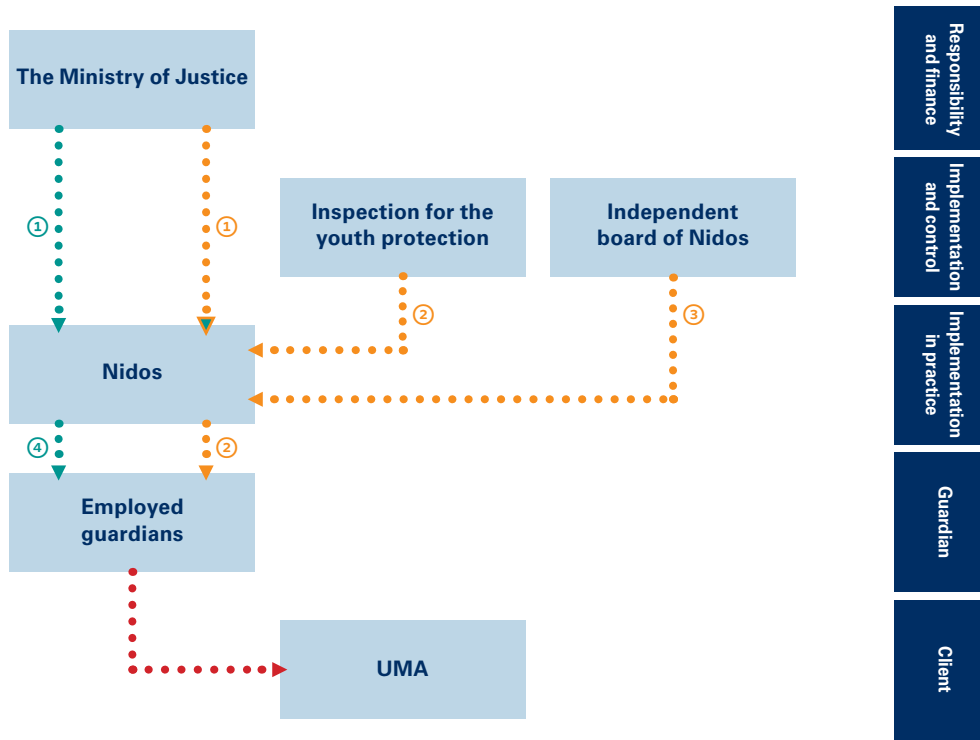
#### *Finances and control*

(see model on page 48)

#### *Financial relations*

- 1 The Ministry of Justice finances Nidos.
- 2 Nidos employs juvenile protectors and finances uma's and foster families with a monthly fee

## Guardianship in the Netherlands Responsibility, Implementation and Finance



### *Control relations*

- 1 The Ministry of Justice controls Nidos financially
- 2 The independent board of Nidos controls the organizational performance of Nidos
- 3 The inspection for the Youth Protection controls the implementation of guardianship
- 4 Nidos controls its employed guardians

### **Guardian: position in practice**

Guardianship means that Nidos exercises the lawful assignment of the authority of supervising these young people on their way to adulthood and the promotion of the interests of these young people. The guardian provides long term continued care and has the responsibility for the mental and physical well-being of the child and the furtherance of the development of his/her personality. The guardianship counselling aims at independence at the age of majority (18) since this is, according to the law, the moment that the guardianship ends.

The juvenile protectors must have graduated from the social academy. A juvenile protector accompanies 24 minors when he or she is working full time. This means that he or she



will see a pupil at least once a month on an average basis. When necessary to support the juvenile protectors, courses and studies on special subjects will be organised by Nidos.

As a guardian Nidos is responsible for the education and care of uma's. The juvenile law determines how to handle children. This means that, as a guardian, Nidos has to promote the interests of the ward: his rights are being protected. In addition, Nidos guides the pupil in such a way that he or she will be independent when coming of age. He or she will be able to manage in Dutch society, which knows completely different norms and values than the youngsters learned at home. Pupils will know where to get something and Nidos guides them in building their own network. In other words: Nidos teaches them to look after themselves. With the guardianship, the youngsters are offered a perspective: it is in the interest of youngsters to obtain clarity about their position quickly: will they be able to stay in the Netherlands or will they have to leave? The perspective on whether the uma can stay or not, directs the way uma's are accompanied by Nidos. All minors, also uma's, are of school-age until the age of 16 (when they are of partially school-age). All uma's have the same access to education as Dutch minors, depending on their knowledge of the Dutch language. Uma's that want to go back to their country of origin, are getting special education that is of use for their stay there.

The objectives of the guardianship can be divided in judicial and pedagogic objectives. Children up to the age of 18 are legally considered to be dependent and without the legal capacity to act. Consequently, they cannot and are not allowed by the legislator to live without custody. The pedagogic task of the uma guardianship aims to teach children and young people to participate actively and productively in the social relationships within the society of which they are part at present.

From these two objectives the domains in which the guardian must be active methodically can be concluded. The domains are:

- Promotion of interests
- Education and care
- Identification and prevention with a view to preventing abuse, preventing disappearances and preventing an existence in illegality.

*Method:*

Nidos has a special guardianship method for uma's that discusses problems relating to return and various forms of reception. Nidos has always aimed at dialogue-oriented action, in which the client contacts form the basis of the procedure. The guardianship method supports this. Nidos works with the clients and with the 'plan on the table' on the four steps that the method exists of. Based on this, an 'Action Plan' is drawn up. This is written within six weeks after the start of the guardianship.

After the Action Plan has been drawn up, Nidos works on the objectives during the year as the progress is continuously being evaluated. During each contact Nidos works consciously on an operational objective. At the end of the year an obligatory evaluation takes place to examine the development of the young person.

### **Actors involved**

- Nidos is responsible for guardianship
- Nidos is also responsible for the reception in foster families
- COA is responsible for reception in Children Living Groups, Small Living Units and Uma-campus.

## 3.9

# Guardianship in Poland

### Political framework and general context

In Poland there is no guardianship in the sense of responsibility for the well-being of the child, nor is there currently an organization willing or able to take this role. There is a form of legal representation, arranged by the law since 5 or 6 years, fulfilling the requirement in article 19 formally.

The total number of all asylum seekers was around 6000 in 2008 and around 10000 this year, mainly Chechens and Georgians. They are in reception centres organized by nationality. Children in these groups are usually accompanied by relatives, staying there with their family members. Poland has between 100 and 200 asylum seeking children each year, the numbers mentioned varying from source to source. In 2007 there were 190 children arriving in centres, of which 109 left with unknown destination within 7 days. The percentage of children disappearing is said to be much lower at this moment, as children no longer independently have to travel from the Belarusian border to the reception centre near Warsaw. It is assumed many of them are travelling west or south to other European destinations, but real data of those children.

For 2008 4,4 % of (adult and children) asylum seekers received refugee status, 63,4 % received subsidiary protection. The rest stays in Poland until 18 on a "tolerated stay", although unconfirmed deportations are mentioned. Only a part of the children is being interviewed by immigrations services. It depends on their age, family members present and whether they are having a separate asylum claim or not. Over 90% of the asylum claims are done at the border with Belarus. The largest numbers come from Belarus, Georgia, Chechnya, Russia, Vietnam and Ukraine. The numbers of children entering unaccompanied is not entirely clear. October 2009 4 children were in the only specialized reception for unaccompanied children in Poland.

Care is largely arranged by foster homes. The foster homes are generally financed by the Ministry of Labour, with a specific budget financed by the Office of Foreigners for alien children. The Ministry of Social Affairs sometimes finances the legal guardian. In certain cases of children, for example trafficked children, the ministries of Interior, Justice, Health and Labour and Social Affairs are involved. For Polish orphans it is the regional administration responsible for financing.

Age assessment is done by dental records. The procedure is doubtful, as the dentist is paid by the border guard and receives a premade form where he should make the statement that a child is over 18 (or not). There is no margin of error in this procedure.

## **Organization of guardianship for unaccompanied minor asylum seekers**

### *Responsibility for care*

In Poland care for unaccompanied minor asylum seekers is arranged similarly to the care for Polish orphans. Polish orphans are usually taken care of in foster homes and do not have a guardian. They do have someone responsible for them, which is usually a staff member of the foster home. This person is responsible for the well-being as well as the daily care. Arrangements for Polish children are laid down in family law.

A professional finding a child has a series of steps to take, from procedure to shelter to representation. Regional authorities are responsible for all children alone in the region. In practice this is more difficult: it is unclear who finances, for example, the health care of a separated child. This makes it hard to find reception: the professionals finding the child try to find reception, but if the child is not accepted in long-term reception they go to short-term reception, which is only for several days. However, for asylum seeking children there is one foster home in Warsaw, meant for all of Poland.

The Office of Foreigners finances the City of Warsaw for school and reception of the minors. Currently children are brought directly to this foster home by the border guard. The office of foreigners is at the same time informed by the border guard. These measures are said to have made the disappearance rate go down significantly, although clear data are not available. The foster home falls under the responsibility of the Bureau for Reception Centres. In the past 5 years the foster home has had about 60 children in the age range of 7 to 18 years old. The social worker within the foster home is responsible for everything around the child, except the legal representation.

Uma's are interviewed at the premises of Nobody's Children Foundation, an NGO coming from regular child care. NCF is responsible for psychological assistance and preparation. The psychologist is present during the interview or even does the interview, with an earphone connection to the official of the immigration service. In practice, not all interviews are held at NCF's premises, but also at the foster home. It is up to immigration services whether they feel this to be necessary or not.

About 20 to 30 children are interviewed by NCF, in principle financed by the Office of Foreigners, although that has become a budgetary problem lately. The staff of the Office

for Foreigners decides whether a child needs psychological assistance, which usually happens with children under 16 and depends on the case with children of 16 or 17 years old. Besides the interviews NCF trains officials in interviewing children.

### *Responsibility for guardianship*

As mentioned, the prime responsibility for an asylum seeking child lies with the staff of the group home. They are attributed responsibility for the daily care and simple decisions. Unaccompanied minors are not brought before a court to appoint responsibility, only upon request the court attributes responsibility for certain aspects to either a legal guardian or the staff of a group home (on their request).

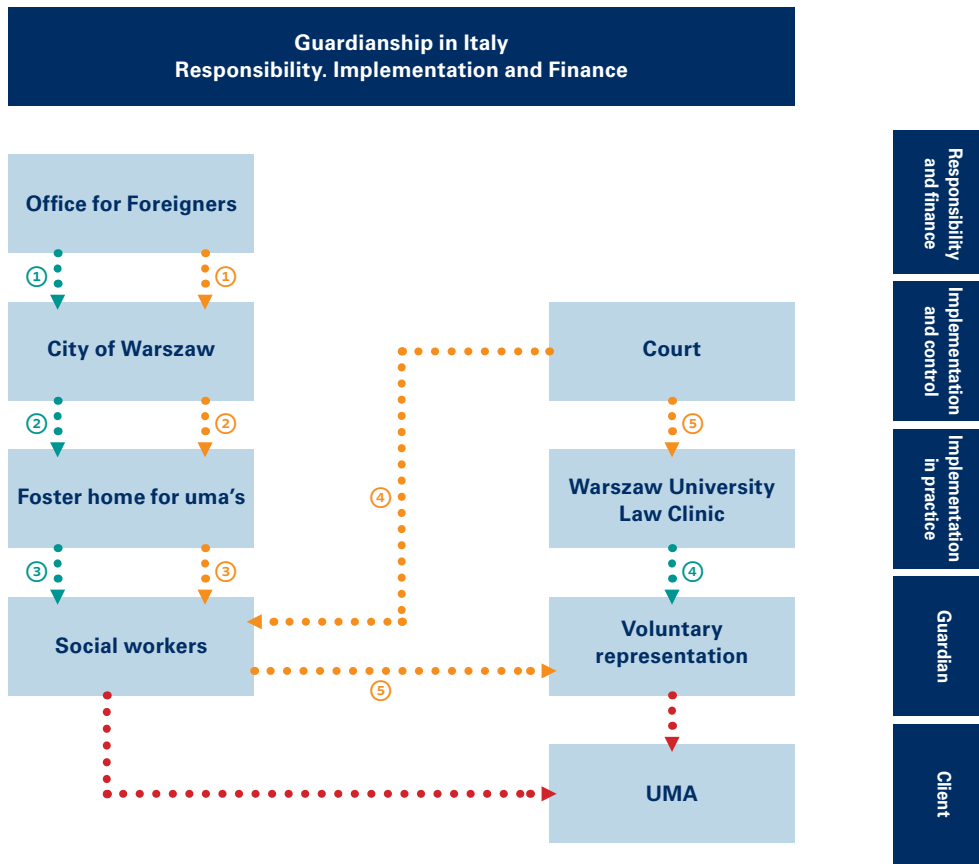
In Poland a reference to guardians refers to legal representatives of the Warsaw Law Clinic, which are usually students. However, the Warsaw Law Clinic makes a clear distinction between curator (being the legal representative) and a guardian (responsible for the well-being of the child), their students acting as the former. The legal guardian is only appointed with reference to the asylum procedure. Decisions regarding school, health care etc. are taken at the foster homes. Children visit regular schools. The representatives being law students cause certain practical problems, for example with continuity during the school holidays.

If a child enters Poland and they are identified as a *uma*, they are referred to the family court (district court). This court appoints a legal representative. At some point the district court appointed a court secretary, as no legal guardians were available. Since 9 years the Warsaw Law Clinic works together with many district courts, in principle on a voluntary basis. Proceedings should be finished within 6 months, however, in practice this is usually more than 12 months.

The representatives are mostly students, who are recruited at the beginning of the academic year. One student can do more cases, depending on the student as well as the court. About 95% is 16 or 17 years. Many cases end "naturally" when the child becomes 18 or when the minor disappears (for example Italy, the UK and Norway are popular destinations). Return is very rare, although it did happen to Chechnya.

Until recently Poland had a system of a factual guardian, responsible for all *uma*'s (2 persons in the service of the reception authorities), working in the general reception centre. Recently the law has been changed, making the staff of the foster home the legal representative. This is still not effective.

Finances and control



Financial relations

- 1 The Office for Foreigners finances the City of Warsaw for foster care for uma's
- 2 The City of Warsaw finances a foster home for uma's
- 3 The foster home employs social workers
- 4 Warsaw University law clinic has mostly students working as legal representative

Control relations

- 1 The Office for Foreigners delegates responsibility for care to the City of Warsaw
- 2 The City of Warsaw delegates responsibility to the foster home
- 3 The foster home controls the social workers
- 4 The court attributes responsibility for daily care and smaller decisions to the foster home social worker
- 5 The court attributes the responsibility for legal representation to someone from the Warsaw University Law Clinic
- 6 Social workers work directly with the legal representative and control their work

## **Guardian: position in practice**

Firstly, it should be mentioned that Poland has made arrangements for una's exactly similar to those for Polish orphans, with a specialized staff for una's in the foster home and legal representation for the asylum procedure. Secondly, all organizations state that legal arrangements in Poland are quite good, but that practice is more difficult and that everything is depending on the individual efforts of a few people. Thirdly, there is a serious lack of distinction of responsibilities and data available, with all organizations involved having different perceptions of numbers and responsibilities.

When speaking of the position of the guardian in Poland, the main thing to mention is that no guardian exists. Several roles a guardian can have are divided over several actors: assistance with the asylum procedure lies with the legal representative, responsibility for the choices in the life of the child lies with the staff of the reception centre and responsibility for larger choices lies with the judge and has to be attributed case by case. The system does not provide for checks and balances. In case of malpractice of any of the responsible people or organizations it is highly doubtful a child has someone to turn to. Besides, not all children have at all times a capable person representing their case, with the yearly flow of law students. Cases are taken over and proceeded, but elementary steps are meant to be sometimes missed in individual procedures. Secondly, as no financial arrangements are made continuity of legal representation is not guaranteed.

Having such a small number of unaccompanied minor asylum seekers, the specialized staff in the foster home seems capable of taking care of daily care as well as keeping track of the procedure. However, it is highly doubtful that una's in Poland will have access to rights and protection when a sudden rise of numbers will occur. Moreover, at this moment age assessment in Poland is doubtful, without the guarantee of a guardian following the procedure. There are also cases of deportation mentioned, without representation being sorted, on the basis of the probability of adequate reception in the country of origin.

## **Actors involved**

- The Office for Foreigners is responsible for reception and care of asylum seekers
- The City of Warsaw has the only foster home specifically for una's
- The Warsaw University Law Clinic arranges voluntary legal representation
- Nobody's Children Foundation assists in the interviews with children and offers psychological assistance





## 3.10

# Guardianship in the UK

### **Political framework and general context**

The United Kingdom does not have a system of guardianship. Social services of local authorities have the responsibility for children, for both care and representation in the asylum process. The UK government does not support the call of many NGOs for a guardianship scheme in England. In Scotland, however, experiments have started with other forms of representation. For the assistance during the asylum procedure and access to rights the UK authorities rely to a large extent on the active NGO community.

Responsibilities regarding the minors in the UK are divided between the UK border agency and immigration services and local authorities, being appointed responsibility for the daily care of the children by the court. NGOs are playing a large role, but without official mandate. About 2000 unaccompanied minors enter the UK and about 2000 more are age disputed. About 11% of these are granted a permit to stay. The highest numbers are coming from Afghanistan, Somalia, Iran, Iraq, and Eritrea. The UK has an active fight against trafficking, with many government actors cooperating in their efforts.

Return of minors is an increasing point of attention for the UK government. The UK is more and more looking at providing adequate reception in countries of origin. First steps have been taken in Afghanistan to facilitate orphan houses, other countries are being looked at. For the NGO community increasing efforts on return in combination with the absence of an independent guardian are mutually increasing points of concern.

### **Organization of guardianship for unaccompanied minor asylum seekers**

#### *Responsibility for care*

Local authorities in the UK are responsible for the daily care of unaccompanied minor asylum seekers. Care is basically arranged in the same way and by the same organizational structure as for British orphans.

### *Responsibility for guardianship*

There is no guardianship for unaccompanied minor asylum seekers in the UK. The social worker is responsible for decisions around the child, for big decisions the court needs to approve the decision. Social workers have different levels of expertise in working with foreign children and do not receive centralized specific support for this task. In the areas with most foreign minors expertise tends to be higher. Work pressure on social workers is reported to be high, which does not tend to have many consequences for the daily care, but does pose a problem regarding actions on the child's long-term perspective and asylum procedure.

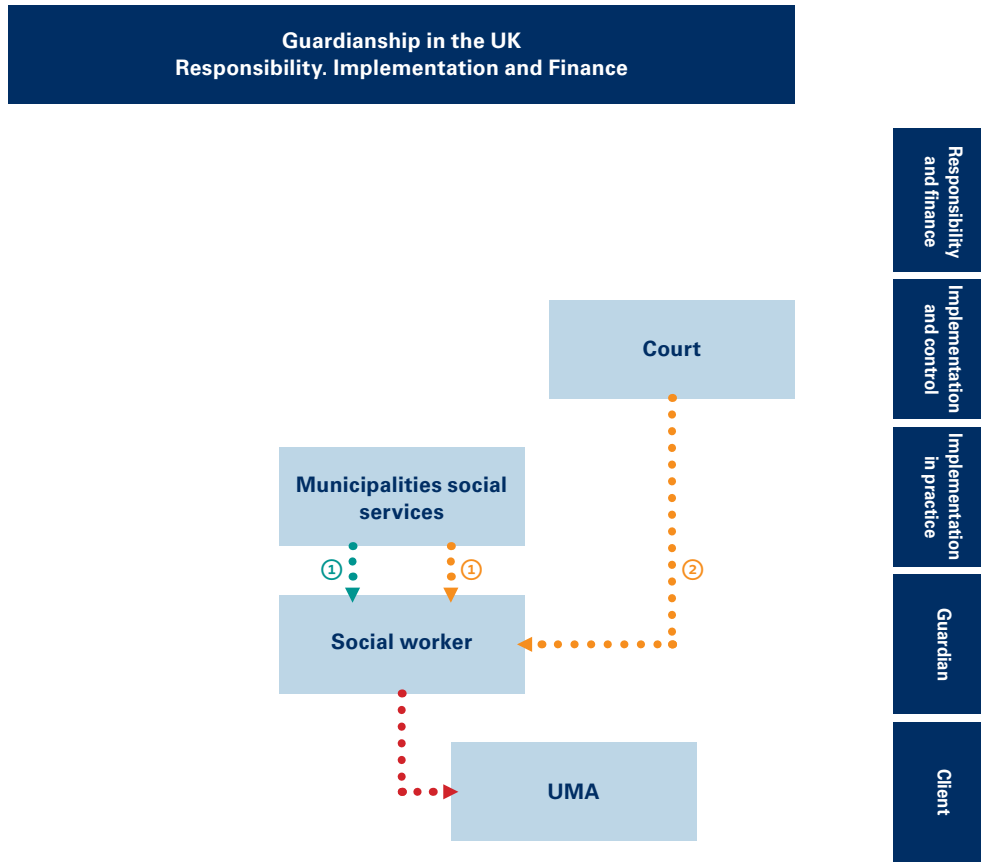
As possible solutions to the absence of a guardian sometimes regular child welfare services are mentioned. For these group, Cafcass is involved. Cafcass stands for Children and Family Court Advisory Support Service and is, as stated in the name, an advisory body to the court. Cafcass acts when families separate or divorce, when children are removed from their families by intervention from the court/social services and in adoption cases.

Cafcass actually checks the work of the local authorities. Local authorities social services have the responsibility to act (stated in Local Authorities law). After the work of Cafcass is finished, which is concluded with the approval of a care plan for the child, the work of checking the work of local authorities is taken over by Independent Reviewing Offices, present within local authority administration. Such a care plan is formalized in a care order from the court, making local authorities responsible for a child.

The nature of the work of Cafcass differs between public (legal guardian) or private (reporter to the court) law cases. In case of abuse, a local authority social worker and a Cafcass worker comes in. Both have interviews (a.o. with the child), meetings and make court reports, making sure the court is informed by two separate independent bodies. A guardian is appointed as soon as the local authority initiates proceedings. Concerning unaccompanied minors from abroad Cafcass can currently only be brought in on rare occasions.

For the British government guardianship (as we know it, beyond the legal guardian) at this moment is not an option. Cafcass as an organization might be receptive for such tasks, although expertise would have to be developed in the field of asylum.

Finances and control



Financial relations

1 Municipalities employ social workers to arrange daily care and representation for uma's

Control relations

1 Municipalities control their social workers in the same way as in regular youth care

2 The court is involved in big decisions around the uma

**Guardian: position in practice**

Having no guardianship in place the tasks that would in a guardianship scheme lie with the guardian are divided over other actors.

Responsibilities for the well-being of the child, for major choices in his or her life and for the asylum procedure are lying with social services. Social services are accountable

and controlled as they are part of the regular youth care system. However, they are not generally asylum specialists and are relying to a large extent on NGOs for assistance in the asylum procedure. Although this might work well in many cases, it has no built-in guarantee that each child is properly supported with the level of expertise needed for such a procedure. Secondly, for major choices such as return many social workers are not equipped, experienced and trained to assist in.

Secondly, the independence of a guardian does not lie with another actor in the system. For a child not taken care of properly, the social worker would be checking upon his or her own responsibilities. In an ultimate case, he would be responsible to take himself or his own employer to court.

One proposed solution of proposing regular child welfare services as guardians is seen as a possibility by many actors. Cafcass is a part of central government and an organization independent from local authorities and courts. Being only 6 years old, the position is growing stronger and they might be receptive for such a task if the central government would make a decision to install guardianship.

### **Actors involved**

- Municipalities are responsible for the unaccompanied minors in their area
- The UK Border Agency and immigrations services are responsible for the asylum procedure
- Several NGO's, a.o. the Refugee Council advocate on behalf of asylum seekers
- Cafcass is an advisory body to the court concerning regular child care services, but not for unaccompanied asylum seeking children
- Save the children has advocated for guardianship in the UK until recently
- The Scottish refugee council works on a guardianship-related pilot scheme in Scotland

## 3.11

# Guardianship in Spain

### Political framework and general context

In Spain guardianship exists by law in the sense of legal responsibility and representation. However, despite the fact that international standards on children's rights are embedded in Spanish legislation, there are significant weaknesses in their practical implementation. As a result, it is at least doubtful whether guardianship exists for all unaccompanied asylum-seeking minors. The whole system of care and services is very young: before 1997 there were hardly unaccompanied minors in Spain.

For Spain the difference between separated or unaccompanied minors and asylum-seeking children is important to discuss. Hardly any children are asking for asylum, but a large number of children is estimated to be in Spain. Reasons for this as well as actual figures can only be guessed at, as no central registration exists. Hardly any minor enters the country by plane, all come through the Canary islands or Andalusia. Most children come from Sub-Saharan Africa or Morocco (and inside the EU from Romania).

On a central level there are three ministries with responsibilities: the Ministry of Labour, the Ministry of Immigration and the Ministry of Interior. Responsibilities are divided between those ministries with the Ministry of Interior as central actor being responsible for asylum, and the autonomous regions, which are responsible for protection of children. Besides those, also the national prosecutor is involved. Finances are arranged on a regional level, but in case of high number the state pays a part, as is the case in Canaria, besides direct European finances.

In Spain only a small part of unaccompanied minors asks for asylum. How small this part is is unclear, as no statistics on the minors exist. General information and statistics hardly exists and are, when available, not reliable. In the last years some statistics became available. It is however clear that they are not even close to the reality (in 2004 1000 minors were registered, which is estimated to be only a very small part of minors present in Spain). This is as they are in the regular youth care system, which is responsible for adequate reception. As long as no statistics are developed, it will be hard to find out why the number of asylum requests is so low. As a second consequence minors can switch regions easily as no cooperation between regions exists.

At least partly this is the case as minors are generally not asked whether they want to ask for asylum. In case asylum is requested, the minors still fall under regional responsibility, as does the responsibility to arrange legal representation. Usually everything takes so long that by the time the procedure has started, a minor already has a residence card, at which point in most cases no further action is taken.

Guidelines are currently being developed for state workers how to deal with this situation. In practice state workers almost always use the aliens law (under which minors can receive a residence permit until 18), as they are convinced this is better, while the asylum law might be more suited and better in individual in cases. However, many of the minors entering Spain are also not looking for asylum, just for work, in which case the decision to use the aliens law can be correct.

Solutions by the state are however sought at the level of the individual official, not in the organization of the system. The absence of representation of the minor is not perceived as a state competence.

At the moment the Spanish government puts a lot of pressure on return. Concern of all non-government actors is that before return no adequate identification of needs is done. Although there is a big focus on return and adequate reception in countries of origin, only about 10 cases of return are known to UNHCR. Return has been a bigger issue in Spain lately and regions are actively seeking or providing adequate reception centres in countries of origin, especially Morocco. Recently the asylum law has been amended, giving the authorities the possibility to take someone to another country if he or she does not get accustomed. What this means and how it can or will be used is still unclear.

## **Organization of guardianship for unaccompanied minor asylum seekers**

### *Responsibility for care*

The Spanish autonomous regions are responsible for the care of minors, foreign or Spanish and generally use the same facilities for both groups. Regional governments delegate the care in some cases to private institutes or churches.

Reception is perceived to be of good quality: health school, integration, Spanish lessons and adequate facilities. Reception does not include planning the child's future. From the moment minors arrive at reception there is never really looked at the best interest of the child, just at the daily care.

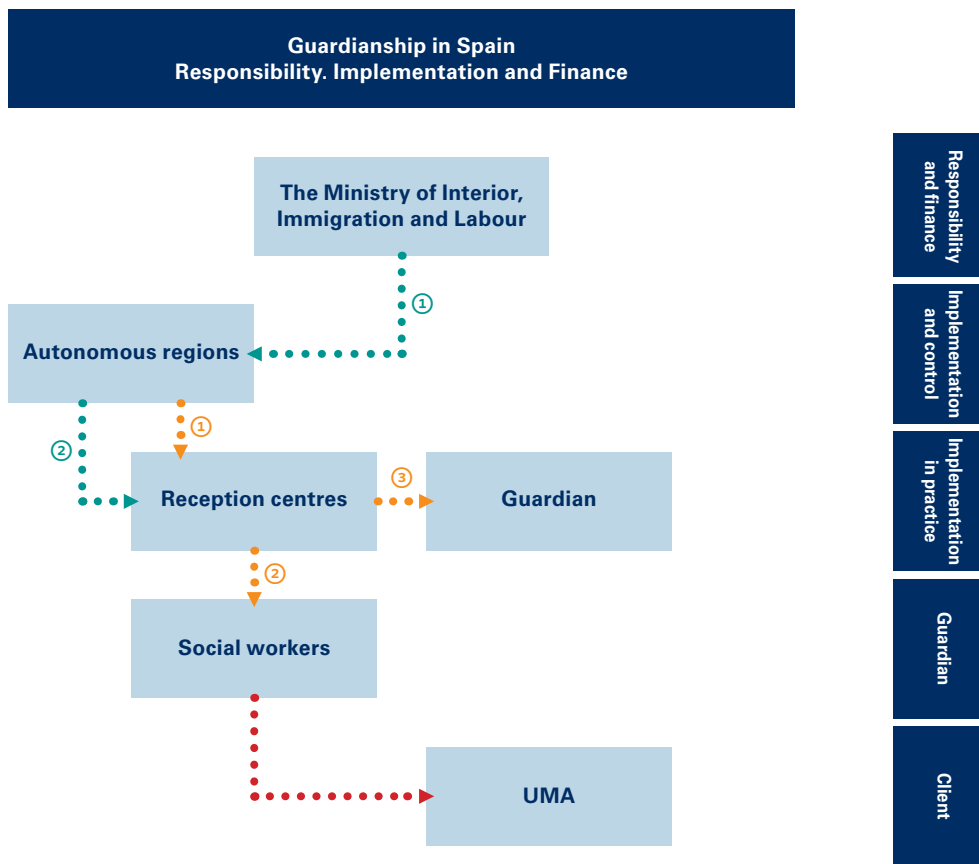
Another problem exists with Nigerian girls who are trafficked and claim to be over 18 years old. During the steps of their procedures they do not meet professionals able to make an assessment of the situation. Once in a centre for adults they disappear.

### Responsibility for guardianship

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

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

### Finances and control



### *Financial relations*

- 1 The central government finances autonomous regions for their reception task, especially those regions most under pressure
- 2 Regions finance reception centres

### *Control relations*

- 1 Regions are responsible for reception centres
- 2 Reception centres employ social workers
- 3 The director of a centre is the guardian of the minors

### **Guardian: position in practice**

In Spain officially guardianship exists in the definition of someone independent being responsible for the well-being of the child. In practice it is, besides the daily care of the child, unclear who is responsible for the child. Different actors state that with all responsibilities divided, in the end no actor is responsible for the child. As a central issue to this problem, respondents mention that the central actor (the region) does not perceive this as a problem. Their responsibility to take care of daily care of the minors is taken. On the other hand is the central government, not perceiving it as a problem as Spanish law officially reflects good standards and international agreements.

There is a problem of coordination between all actors, to which no progress seems to be made over the past years. Regional autonomy and responsibility is a traditional part of Spanish government. In case of the target group, the regional responsibility is concerning minors, but the state is responsible for the fact they are foreign.

Some respondents phrase it differently: because of the protection system asylum is ignored in Spain. Legal guardianship is in hands of the regional government, who are focusing on their care task and have no responsibility for asylum or expertise on the field of asylum. No transparency or uniformity in reception or representation exists.

There would be no easy solution to the status quo however: no national organization or NGO exists with enough institutional capacity to take the role of an independent guardian and it would be highly doubtful whether different regional responses could lead to satisfying outcomes. It would, however, be possible to make a significant advance in the situation if the authorities assume seriously their responsibilities towards foreign minors and particularly towards asylum seekers. Minors could be placed under permanent family fostering, arranging responsibility for their long-term well-being.



### **Actors involved**

- The Central government: legislator and responsible for asylum
- The autonomous regions: responsible for reception and care
- UNHCR: active in asylum
- The national ombudsman: active on the rights of asylum-seeking children



## 3.12 Guardianship in Sweden

### **Political framework and general context**

Sweden has a system of voluntary guardianship, arranged on the local level, supervised on a regional level by the county administrative boards and supported from the national level by the Swedish Association of Local Authorities and Regions (SALAR). Since 1st of July 2006 responsibilities for unaccompanied minors in Sweden have been shifted. The local government is responsible for the care of unaccompanied minors. The Migration Board (Migrationsverket) is responsible for the asylum investigation and to subsidize local governments for their responsibilities. Thirdly, the National Board of Health and Welfare is responsible for supervising the municipalities and developing guidance, recommendations and supervision for the care.

The model of care and guardianship for unaccompanied minors is organic, as different parties state. Many actors work together very well, in different levels of government. The downside of such a model is that change does not happen overnight. The theme of guardianship is still very much on the move, as it does not exist long in its current form. Currently on a project-basis among different issues the role of the guardian is looked at within the current system.

In 2008 Sweden had around 1500 unaccompanied minor asylum seekers. Major countries of origin were Iraq (31%), Afghanistan (22%) and Somalia (22%), of which approximately 80% boys and 20% girls. Early 2009 the number of Iraqis has gone down, but the others have gone up. 80% of all is between 15 and 18 years old. There have been some problems in Sweden with unaccompanied minor asylum seekers disappearing from care, especially among Chinese children.

### **Organization of guardianship for unaccompanied minor asylum seekers**

#### *Responsibility for care*

Based on Swedish law, each child (foreign or not) should receive the same level of care. When a child enters Sweden he or she spends at first some time in an arrival centre (of which 4 exist in the whole country), after which a municipality is found to cover reception. During the asylum seeking process all unaccompanied minors get a temporary guardian. If

a permanent stay is granted, the child gets a permanent guardian. The young person also move to another institution, or to a more independent home for unaccompanied minors.

In municipalities the social services take care of the living situation around the minors and the daily care. It is very important the children start school as soon as possible after arrival to Sweden. Before 2006 the Migration Board was responsible for this, which has led to criticism. The double responsibility of dealing with the asylum claim and being responsible for the care could lead to conflicts of interest. More and above, social services are better equipped for this task. The re-organization of responsibilities has not been easy during the first phase of implementation. This was mainly as the system was based on 300 to 400 places in the beginning, while the inflow was around 1500. In 2009 the Migration Board estimates there will come 2400 unaccompanied minor asylum seekers to Sweden.

The Migration Board is responsible for dividing the minors over municipalities having an agreement with the Migration Board or if a minor has a certain connection with relatives somewhere, to that municipality. A quite big number of children settle down with relatives in Sweden, or someone else known to the parents. 130 out of 290 municipalities have some care for unaccompanied minors. This varies from reception in foster families or kinship care to care in different institutes prepared for care for unaccompanied minors. Families come from the same pool of foster families taking care of Swedish children in need. The majority of the minors are living in small institutes (usually with about 10 children and 24 hours counseling). Until about 15 years old foster care is more common. After being granted a permanent stay, young people over 18 years of old can live independent with 2-4 other youngsters (and also guardianship ends). After turning 21 a young person goes to adult care, if he or she still needs support of any kind from social welfare.

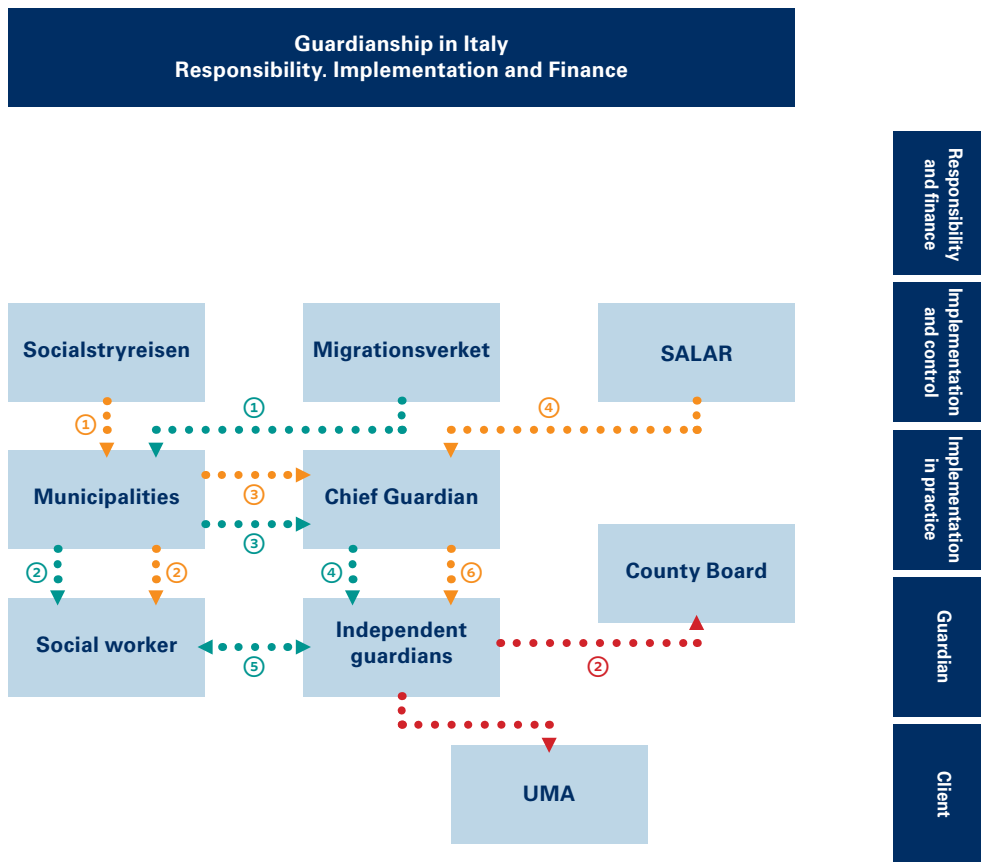
#### *Responsibility for guardianship*

Guardianship is the responsibility of the municipalities as well. A so-called chief guardian is appointed (which can either be a board or a person), having the responsibility to supervise the guardians. Both the Migration Board and social services can ask for a guardian. A guardian is usually appointed within 2 or 3 days of arrival. The guardian works on a voluntary basis, but gets a compensation decided upon by the local authorities. This guardian is only there for the time the asylum procedure takes, once a child receives a permit he or she gets another guardian. This is mainly because during the asylum procedure guardianship is different and more intense than after. The guardian has parental responsibility over the child. This responsibility covers everything but financial support or responsibility and the daily care. One guardian has usually 1-3 children under his or her guardianship, with a maximum of 8 in rare cases. Guardians do not have much education or back-up provided to them, apart from some information provided by Save the Children and the Red Cross. Further-

more, the Migration Board, as well as the Swedish Red Cross, offer family tracing services. Tasks of the guardian include judging the work of the lawyer and preparing the child for the interview with immigration services. This lawyer, the legal representation of the child, is supplied by the Migration Board, but operates fully independent of immigration services.

If a guardian has a difference of opinion or conflict with the responsible social worker, the chief guardian is the mediator and takes the decisions. If a problem persists, a guardian could go to the county board, however this would be a very unusual situation. In practice, the individual guardian shapes much of the content of guardianship. Not much is demanded and not many checks are done, but for an active and well-suited person it is possible to make a difference. Secondly, social workers many times have too much work, at which point they start using a guardian as reminder for urgencies, which can have big consequences. The guardian may act as a safeguard in a positive way, but a negative impact when a guardian does not do its job properly. In terms of methodology and support hardly anything is available for individual guardians. When it comes down to specific responsibilities, for which it is unclear whether the guardian is responsible or not, like issues around return or reception, this sometimes poses problems.

*Finances and control*



### *Financial relations*

- 1 Migrationsverket finances municipalities for the care for UMAs
- 2 Municipalities employ social workers
- 3 Municipalities employ a chief guardians, responsible for all guardianship (UMAs and other)
- 4 The Chief Guardian pays the (small) expense and fees for guardians

### *Control relations*

- 1 Socialstyrelsen controls municipalities on the quality of the work (develops guidelines etc.)
- 2 Municipalities control the social worker
- 3 Municipalities control the chief guardian
- 4 The Swedish Association for Local Authorities and Regions (SALAR) trains Chief Guardians
- 5 The guardian and the social worker collaborate closely in a system of mutual control
- 6 The chief guardian supervises the guardians

### *Appeal*

- 1 A guardian can, in case the compromise model between guardian, social worker and chief guardian fails, go to the county board

### **Guardian: position in practice**

The guardian in Sweden is a guardian in the sense of having the responsibility for the well-being of the child and the mandate to take all important decisions involving the child. However, for the role of the guardian no representative organization, union or supportive platform exists, which is perceived as a problem by some actors. This means that the level of support to the child and consequently the quality with which important decisions regarding the future of the child and his or her procedure are taken are to a large extent determined by the quality, knowledge and time investment of the individual guardian. The guardian in Sweden is independent in his or her choices. It is, however, questionable whether most guardians in Sweden are equipped to make these choices independently and whether they have the knowledge how to proceed when problems arise.

The guardians are not necessary specifically guardians for this target group. In many cases the same guardian has cases for 'regular' Swedish children or elderly people in need of a guardian. This raises questions whether there is generally enough familiarity with the asylum procedure.

In principle, anyone can be a guardian. As mentioned by one of the guardians, the job is to be ruled by a big heart and common sense. A small assessment is made by the social service and criminal records as well as the financial background are checked. Finding guardians is not a problem in Sweden, no shortage exists. Some actors would like to see the criteria for guardian selection elaborated and would like an evaluation of the mandate of the guardian, followed up by national guidance.

### **Actors involved**

- The National Board of Health and Social Affairs (Socialstyrelsen)
- The Migration Board (Migrationsverket) is responsible for the asylum process
- The Union of municipalities (Salar) assists municipalities with their guardianship
- The Swedish Red Cross delivers family tracing services as well as information support
- Save the children Sweden delivers information support
- Municipalities, responsible for social workers and guardians





# 4

# Conclusions

## 1 Guardianship is not common practice

Guardianship, in the sense of arranged responsibility for the well-being of the child by a person or organization, is not common practice in the EU. Out of the 11 countries researched, only 5 have a guardianship system: Belgium, Germany, Finland, the Netherlands and Sweden. The 6 other countries do not have a system of guardianship in place, which often creates problems concerning responsibility for the child and the independence of representation.

## 2 Article 19 of Directive 2003/9/EC is implemented

Where no guardianship exists, there is mostly another representation system in place that fulfils international obligations. These systems often are top-down developed, reflecting international agreements, but not creating true responsibility for the well-being of the unaccompanied minor.

In almost all countries Article 19 has been implemented. In Belgium, the Netherlands, Sweden, Finland and Germany unaccompanied minors are represented by legal guardianship. In the UK, Ireland, France and Italy unaccompanied minors are represented by an organization responsible for the care (and in some cases well-being) of minors. In Poland there are provisions for the legal representation of minors, but the state takes no responsibility for this representation. Only in Spain based on this research it is impossible to say article 19 has been implemented, as the state has no overview over the number and nature of unaccompanied minors within their borders. There are regional provisions for representation, but it is at least doubtful whether all asylum-seeking unaccompanied minors have any form of representation as mentioned in article 19.

## 3 Where guardianship exists, systems are very different

Even in the countries where guardianship systems are in place, design is completely different for example in terms of structure, practice, main responsible government actor and maturity.

The younger systems and the experience in the older systems show that a working system of guardianship is not created overnight. For a guardian to properly take his place, he needs (besides a good legal framework) to have a certain level of experience and he needs to be known and recognized by all relevant stakeholders to be able to act with a certain level of independence. Methodology, exchange, education and organization play a large part in this.

	<b>Belgium</b>	<b>Finland</b>	<b>Germany</b>	<b>Netherlands</b>	<b>Sweden</b>
<p><b>Regular Youth Care</b></p> <p>Is the system the same as with regular youth care or is it separate? Or does it have a link or shared principles, but a different organization?</p>	Separate	Separate	Linked or shared	Linked	Shared
<p><b>Maturity of the system</b></p> <p>The difference in systems for guardianship are to some extent depending on the maturity of the system. How well established is the system? Do other responsible organizations (social work, reception) recognize its role? Do guardians and the framework they are working in have the capacity to take this role?</p>	In between	In between	Mature	Mature	Young

	<b>Belgium</b>	<b>Finland</b>	<b>Germany</b>	<b>Netherlands</b>	<b>Sweden</b>
<b>Responsibility: State or Non-State</b> Responsibility for implementation differs between State and Non-State actors. Does the state take direct responsibility for implementation or does the state give a mandate to non-governmental actors	State - some delegation to NGOs	State	State - some delegation to NGOs	NGO	State
<b>Responsibility: local, regional or national</b> Responsibility for guardianship is taken care of at different government levels.	National	Local	Regional	National	Local (with national steering)
<b>Content of guardianship: professional vs. voluntary</b> Is guardianship a full-time profession or is it subject to civil initiatives and participation? It is a fundamental choice taken care of in different ways in Member States.	Mainly voluntary	Voluntary	Mainly professional	Professional	Voluntary

#### 4 Where there is a form of legal representation, systems are just as different

In the countries where there is no guardianship, but (some) representation, design is different as well. The differences are more focused however: in most cases the regular youth care has been made responsible for unaccompanied minor asylum seekers. The main differences are at the government level, which is a logical consequence of the attachment to regular youth care, as this responsibility lies at different government levels.

For all of these systems it can be concluded that the responsibility for daily care as well as the responsibility for legal assistance lies with the same state actor, creating a (possible) problem in terms of independence of representation.

Attachment or integration into regular youth care does not necessarily have to be a reason for concern, as one can reason that the primary concern for these organizations is the best interest of the child. However, integration into non-specialized regular youth care on a local or regional level does create problems. Regular youth care social workers are generally not equipped to follow and check upon an asylum procedure and have little to no reference to similar cases outside their direct working environment. In case of trafficking the chances of early recognition of the signs and the offer of extra protection are much lower, compared to a (semi-)specialized system. Moreover, the general overview of minors in care is poor to altogether unavailable in some of the decentralized systems (Italy, France, Spain), making it impossible to signal and adapt to for example new trends, trafficking routes or abuse of the system.

	<b>France</b>	<b>Ireland</b>	<b>Italy</b>	<b>Poland</b>	<b>Spain</b>	<b>UK</b>
<p><b>Regular Youth Care</b></p> <p>Is the system the same as with regular youth care or is it separate? Or does it have a link or shared principles, but a different organization?</p>	Shared	Shared	Mixed	Linked	Shared	Shared
<p><b>Responsibility: State or Non-State</b></p> <p>Responsibility for the child lies with organizations responsible for the care of the minors or other appropriate organizations, are these state or non-state organizations?</p>	State	State	State	State	State	State
<p><b>Responsibility: local, regional or national</b></p> <p>Responsibility for guardianship is taken care of at different government levels.</p>	Regional	National	Local	National	Regional	Local

## 5 Need for cooperation and exchange

There is a large need for cooperation and exchange, especially regarding the complex task a guardian has. Although national structures are very different, the work directly around the child is the same. Specifics areas in which cooperation is needed are:

- Direct contacts with counterparts in other countries, a.o. with regard to Dublin claims and family in other EU-countries.
- Development and exchange of methodology: specific methodology for guardians working with unaccompanied minor asylum seekers is hardly available. The methodologies that are available (Netherlands, Belgium) can be strengthened in exchange and of service to other member states.
- Reinforcement of guardianship: by working together the position of the guardian can be reinforced and national structures improved.

NIDOS has made a start regarding a platform for exchange and cooperation on [www.engi.eu](http://www.engi.eu), although much further development is needed.

## 6 No one-size-fits-all

A classic European network, with a guardianship institution from each and every member state that has more or less the same responsibilities, is not an option. Primarily as these organizations cannot be found in most member states.

The size, composition and nature of the group of unaccompanied minors is so different between Northwest, Southern and Eastern Europe that a completely similar system of guardianship will, at least on the short or medium term, not work.

- In Northwest Europe countries are mostly destination countries, minors ask for asylum in almost all cases, the numbers are high and there is a long standing tradition with regard to a rights-based system (vs. a more individual independence system).
- In Eastern Europe countries are mostly not a destination country, numbers are low and there is no tradition of a rights-based system.
- Finally in Southern Europe: countries such as Spain and Italy are destination countries as well as “travel” countries. Numbers are high, the majority of minors does not use the asylum system and there is a large tradition of independence. A minor can relatively easy work and take care of himself (as compared to Northwest Europe).

Although having a system of guardianship will probably benefit minors in each European member state, national systems of guardianship will without any doubt look completely different. Proposition of measures for quick improvements will have to take into account national systems.

## **7 Financial consequences**

A final remark must be made regarding financial consequences of systems of guardianship. It is clear that the costs of systems of guardianship have to be seen in relation to the costs of daily care, asylum procedures and the recognition of possibilities for return. A strong guardian is in the position to control foster parents, let minors live as independent as the individual is capable of, has the responsibility to discuss the future, including the possibility of return depending on the individual case. It is possible that the Dutch system (professional guardians, a mix of professional and voluntary daily care) is not more expensive than for example the Finnish system (voluntary guardianship, almost exclusively professional daily care) or the Irish system (no guardianship, professional daily care). It is however clear that policy choices are rarely regarded within the broader financial framework and focus on direct control of expenses of either reception or guardianship. Further research is needed to not only make proper choices on the quality of care and representation, but also to make overall comparison of finances possible.



# 5

# Recommendations

## 5.1 Guardianship in Europe: Amsterdam conference

On 26 and 27 November 2009 approximately 70 experts from 16 different European countries joined in Amsterdam to discuss the future of guardianship in Europe. In separate workshops in-depth discussions and exchanges took place on separate important subjects around the practice of guardianship. The role of the guardian on themes such as family tracing, age assessment, return, Dublin procedures and the basic skills and capacities a guardian should have to fulfill his or her mandate were discussed and worked out. The conference concluded with a clear request for more opportunities of in-depth exchange and cooperation in the future.

## 5.2 Recommendations

The world is not changed overnight, so during the conference as well as in the course of the research a focal point has been to recognize opportunities for quick wins in practice. In the years to come ENGI-partners would like to see special attention to be given to:

- Responsibility and accountability. In each member state there should be an organization or person that has the clear-cut responsibility for a separated child and is accountable for this responsibility. Guardianship attributes this responsibility.
- Mandate and resources. The organization or person attributed the responsibility for these children, need to be enabled to take this responsibility by a proper mandate and resources.
- Bottom-up next to top-down. Efforts to make changes to the reality of representation in member states so far, such as article 19, have established changes in member states. However, not enough has changed and not all changes have exceeded the administrative level. To make next steps on the international level successful, bottom-up development of methodology and exchange of practices is needed. Without it, member states will resist large reforms and/or national system changes will be a shift of administrative responsibilities.

In short, this means putting the situation directly around the child central, make an assessment of needs and attribute responsibility taking account of national realities. And, last but definitely not least, attribute the mandate and resources needed to take that responsibility. Doing this in a European context (or at least with a number of member states) has strong benefits: short-term political trends are blocking development of national systems and there is a big potential gain in terms of exchange of existing practice and methodology and legitimacy by developing systems beyond the national borders.