

Refugee and Migrant CRISIS IN EUROPE

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A call for effective guardianship for unaccompanied and separated children

In 2015, 88,300 asylum seekers applying for international protection in the Member States of the European Union (EU) were considered to be unaccompanied minors. A substantial majority of them were males (91%). Over half were aged 16 to 17 (57%, or 50,500 persons), while those aged 14 to 15 accounted for 29% (25,800 persons) and those aged less than 14 for 13% (11,800 persons).¹ In the first five months of 2016, over 7,000 unaccompanied and separated children made the crossing from Northern Africa to Italy.² According to the Convention on the Rights of the Child, the State is responsible for the protection of any unaccompanied and separated child on its territory. The appointment of a guardian is a first step in this direction. Such a role can be assigned either to an individual or to a legal person.

In its General Comment no. 6, the Committee on the Rights of the Child requests States to appoint a guardian or adviser as soon as the unaccompanied or separated child is identified, and to maintain such guardianship arrangements until the child has either reached the age of majority or permanently left the territory and/or jurisdiction of the State, in compliance with the Convention and other international obligations. The guardian should be consulted and informed about all actions taken in relation to the child.³

Guardians are key to the protection of children who are temporarily or permanently deprived of their family, regardless of their nationality and migration status. The role of the guardian is to ensure that the child receives care, accommodation, education, healthcare, and other services the child needs and is entitled to as a child. The guardian accompanies the child during the various procedures, complementing the child's limited legal capacity and safeguarding the child's best interests. It also supports the child to nurture positive family relations in line with the child's best interests. Guardians are involved in any long term durable solution for the child.

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Throughout Europe, guardianship for national children is mainly regulated by domestic law. For foreign unaccompanied and separated children, in addition to domestic law, EU legislation is also applicable. EU law foresees the appointment of a representative for unaccompanied children.⁴ Even though various EU documents refer to a 'representative' rather than a 'guardian', the way the

¹ Eurostat Press release, 87/2016, 2 May 2016.

² IOM Mixed Migration flows in the Mediterranean and beyond, 19 May 2016.

³ Committee on the Rights of the Child, General Comment no.6 on Treatment of unaccompanied and separated children outside their country of origin, 2005.

⁴ Directive 2013/33/EU of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (hereinafter the Reception Conditions Directive); Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (hereinafter the Qualification Directive).

functions are described makes it clear that the role of this person or entity goes beyond mere legal representation. EU law defines a representative's role to include: providing information to the child about all relevant procedures; giving consent to initiate an age determination process; accompanying the child in a series of proceedings (asylum interview, age assessment, etc.), and safeguarding the child's well-being. EU legislation also states that these duties will be performed in accordance with the principle of the best interests of the child.

In practice however, studies show that guardianship entitlements for unaccompanied and separated children in Europe differ from one State to the other. In some States, children identified as unaccompanied are immediately placed in accommodation centres and the guardianship is given to the centre or to municipal-level social services. This institution decides then internally to assign a specific person (e.g. a manager, legal representative or employee) as an individual guardian to the child. In other States, the child is appointed a legal representative from the beginning, but is entitled to a guardian only after being granted international protection.⁵

The large numbers of unaccompanied and separated children arriving in the last 18 months are challenging the guardianship systems across Europe. There are long delays in the appointment of guardians for unaccompanied and separated children, the caseload of certain individual guardians reaches over hundreds of children and migration authorities involve them less and less in the decisions regarding the children.



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UNICEF recommends:

Appointing a guardian for every child deprived of family care

Guardianship should be an integral part of the national child protection system, which equally protects all children on the territory, regardless of their nationality and/or migration status. Once an unaccompanied and separated child is identified, a guardian should be immediately appointed to represent the child's interests in various initial procedures and act as a link between the child and service providers to ensure the required continuum of care required. There should be no differences in the mandate of a guardian based on whether the child is a national or a foreigner.

Guaranteeing independency and impartiality of the guardianship

National law should provide the legal basis for guardianship and define the authority responsible for it. Such an authority can be centralised at national level, or decentralised at local level. When guardianship is decentralised, the systems and practices, including in recruitment and training should be harmonized throughout the entire country.

Migration authorities should fully recognise the independent nature of the function and create an environment that allows all guardians to look after the best interests of the child. Guardians' views should be taken into account in all decisions affecting the child. Organisations, institutions, and/or individuals should be precluded from guardianship duties if their interests conflict, or could potentially conflict, with those of the child.

Listening to children and ensuring accountability

The child should be consulted on the appointment of the guardian and external monitoring of the guardian should be in place, including through contribution of the children concerned. The guardianship authority should be held responsible and accountable for the acts of any appointed guardian.

Developing guidelines on assessing family links, family reunification and other durable solutions

Separated children are accompanied by adults who could be extended family members or persons trusted by the family. Such an adult could be appointed as a guardian if assessed that his/her intention and acts aim at protecting the child. This assessment is however not easy, as the person might abuse the trust given to him/her and exploit the child for personal gains. Clear mechanisms and standard operating procedures should be elaborated by the guardianship authority at national level to: assess the link between the child and the adult accompanying him/her; establish whether it is in the best interests of the child to appoint this adult as his/her guardian; and monitor and support the adult in his/her guardianship role.

⁵ European Union Agency for Fundamental Rights, Guardianship systems for children deprived of parental care in the European Union, 2014.



Unaccompanied children, on the other hand, are defined as children who have been separated from both their parents and other relatives. However, some of the refugee and migrant children that have arrived in Europe over the last 18 months as unaccompanied in fact have family members in the State of arrival or another European State. Guardians should assist children to receive timely information on legal possibilities for family reunification and to be reunified with their family, if in the child's best interests.

Providing training and support for guardians

Guardians carry out demanding tasks when supporting unaccompanied and separated children. They must safeguard the child's best interests, guarantee the child's well-being, and make sure the child is legally represented. Therefore, individuals acting as guardians need to be supported with training and advice, and connected to a network of services such as free legal aid, translators, health professionals (including mental health), etc.

Unaccompanied and separated children are often involved in legal and/or administrative proceedings, requiring the appointment of a specialised lawyer in addition to the guardian. The interaction between the guardian, acting as legal representative of the child, and the child's lawyer needs to be well-defined, either in law or by specific regulations by the guardianship authority.

Though the State should prioritise a professionalized and remunerated guardianship system, motivated volunteers also act successfully as guardians, when properly supported by a network of professionals and guardianship authorities. Guardians should be at least compensated for the costs incurred by the fulfilment of their duties. In all cases, guardianship authorities should ensure that child safeguarding rules and codes of conduct are strictly implemented and monitored.

Investing adequate human and financial resources for an effective guardianship

Whilst the total number of unaccompanied children in Europe has surged in recent years, States have failed to proportionally increase investment in guardianship systems. Existing good practices⁶ are in jeopardy due to the large numbers of children needing such a service and to financial cuts in guardianship systems. Today a single individual might be entrusted guardianship tasks for even a hundred unaccompanied and separated children, which threatens the quality of the service. Policies at national level should determine a maximum caseload for guardians, in order to ensure quality. Sufficient resources should then be allocated to transform these policies into effective guardianship practices for unaccompanied and separated children.

⁶ See for example UNHCR, UNICEF, Safe and Sound What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe, 2015.