

# Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors



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Belgium



Bulgaria



The Czech Republic



Poland



Romania



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“Exchange of information and best practices  
on first reception, protection and treatment  
of unaccompanied minors”

Manual of Best Practices and Recommendations



European Commission DG JFS ARGO Programme (2006)

With the support of the Governments of Austria, Belgium, Bulgaria,  
the Czech Republic, Poland and Romania

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on first reception, protection and treatment  
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# **Manual of Best Practices and Recommendations**

International Organization for Migration

(B. Albrecht, N. Clerin, K. Klepkova, J. Owczarek, C. Paun, V. Shilegova)

September 2008



The International Organization for Migration (IOM) is committed to the principle that humane and orderly migration benefits migrants and society. As inter-governmental body, IOM acts with its partners in the international community to assist in meeting the operational challenges of migration; advance understanding of migration issues; encourage social and economic development through migration; and uphold the human dignity and well-being of migrants.

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Unless otherwise stated, whenever the masculine gender is used, both men and women are included.

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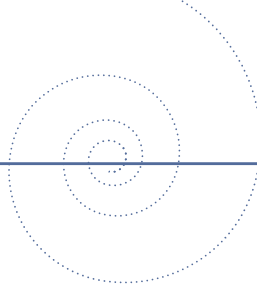
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# Glossary

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## General Terms used in this Manual

**Asylum seeker** - a person who is seeking to be recognised as a refugee.

**AVR** – Assisted Voluntary Return programs of IOM.

**Child** – An individual being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier (Article 1, 1989 Convention on the Rights of the Child).

**Country of Destination** – A country that a migrant is travelling to; a country that is a destination for migratory flows (legal or illegal).

**Country of Origin** – A country that a migrant is coming from; a country that is a source of migratory flows (legal or illegal).

**Country of Transit** – A country that a migrant travels through; a country through which migratory flows move (legal or illegal).

**Identity Document** – A piece of documentation designed to prove the identity of the person carrying it.

**Internal Trafficking** – Trafficking in persons, which takes place within a country.

**Irregular Migration** – Movement that takes place outside the regulatory norms of the sending, transit and receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries it is illegal entry, stay or work in a country, meaning that the migrant does not have the necessary authorisation or documents required under immigration regulations to enter, reside or work in a given country. From the perspective of the sending country, the irregularity is for example seen in cases

in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country.

**Migration** – A process of moving, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, uprooted people, and economic migrants.

**Protection** – The notion of protection reflects all the concrete measures that enable individuals at risk to enjoy the rights and assistance foreseen by international conventions. Protecting means recognising that individuals have rights and that the authorities who exercise power over them have obligations. It means defending the legal existence of individuals, alongside their physical existence. It is part of a comprehensive strategy to combat trafficking in persons. Protection of victims can include (but is not limited to) shelter, medical and psychological assistance, establishing visa options, voluntary return and reintegration, safety, and national and transnational cooperation.

**Regular Migration** – Migration that occurs through recognised, legal channels.

**Smuggling of Migrants** – “The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident” (Article 3, UN Protocol against the Smuggling of Migrants by Land, Air and Sea).

**The Dublin Convention** - The Dublin Convention (sometimes the Dublin accords or Dublin system) is a European Union (EU) law to streamline the application process for refugees seeking political asylum under the Geneva Convention, as amended by the New York Protocol. The intent is to clarify which member state is responsible for any particular asylum seeker, and ensure that at least one member state deals with the application. Usually this will be the Member State through which an asylum seeker first entered the EU. In 2003, the Dublin Convention was replaced by the so-called Dublin II Regulation.

**Trafficking in Persons** – “The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” (Article 3 of the 2000 UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons).

Children are protected from trafficking in several international legal instruments and are considered a special case: “The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’” (2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons).

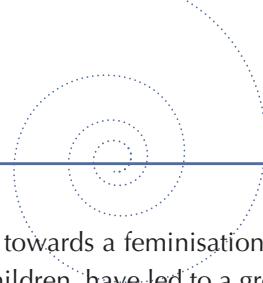
**Travel Documents** – Generic term used to encompass all documents which are acceptable proof of identity for the purpose of entering another country. Passports and visas are the most widely used forms of travel documents. Some states also accept certain identity cards or other documents.

**Victims of Trafficking (VoT)** – People (men, women and children) who are victims of the crime of trafficking in persons



# Foreword

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The observance of a shift in migration towards a feminisation of migration, as well as growing numbers of migrant children, have led to a growing interest of the International Organization for Migration (IOM) for migrant children. IOM believes in the necessity to provide suitable responses in terms of migration management for this particular vulnerable group. Indeed, migration and the policies introduced by national governments to manage and respond to it have profound implications for children's rights. Hence, it appears as a necessity to look into legal frameworks and to exchange information between countries concerned. In this frame, IOM believes in the added value of an enhanced cooperation between governments and the civil society.

One has to look at the global context in which child migration is taking place and the factors that prompt children to migrate; the problems and risks that they face in transiting from one country or region to another; and their experiences in the destination country.

The start of the twenty-first century has been marked by a heightened awareness of migration patterns around the globe. A particularly delicate issue in the broad scenario of migration is that of children in cross-border movements. In addressing migration issues, governments have the responsibility to give children and young migrants an adequate humanitarian response, providing them with appropriate care and offering enough guarantees for their security. At the same time, governments have an opportunity to release the resourcefulness and vitality that young migrants bring with them.

Because young people and children have been largely invisible in debates and policies concerning international migration, the information available is very limited. Little is known about the full diversity and complexity of young people's international migration. Data on young people crossing borders are extremely limited because for many years international migrants were presumed to be men of working age. Women and children were perceived as migrating only as part of family units. The lack of data is a major obstacle to the development of appropriate policies and responses for this most vulnerable group.

The international migration of young people has demographic, social, cultural, and economic implications. Globalisation and greater access to information may have made young people more aware of the opportunities they lack at home. Young people hope for a future where their visions and full potential can be realised.

**More than ever, young people migrate.** Over the past few decades, the growing volume of trade, faster and cheaper transport, and easier communication have encouraged more young people to migrate within and across national borders, in search for better employment opportunities or to escape violence, war, poverty, unemployment, crime or persecution.

**Young people migrating are determined.** Many lack working papers; pay smugglers to get them in; or are ready to cross oceans and deserts.

**Migrating, young people are vulnerable.** They are subject to smugglers, sex traffickers, or domestic slavery; victims of war or civil conflict. For some, migration means losing the networks of family and friends that would give them support and a sense of identity and direction. Moreover, integration largely depends on the host countries' policies.

The question therefore addresses the reasons why children migrate; when and why the process of migration puts children at risk; and when and why child migrants are vulnerable to abuse, exploitation and other human rights violations in the country of destination.

**The priority should be protecting young people, especially young children, in migration.**

Migration offers great opportunities to receiving and sending countries alike, if managed with policies and programmes that protect the human rights of migrants. As more children and young people migrate alone rather than with their families, host countries, transit countries and countries of origin need better data and analysis to guide responses and policies on this particular trend.

The “Best Interest of the Child” should prevail in all policy decisions and in all measures taken that concern young migrants. Several major texts recognise

children as holders of many essential rights, notably the United Nations Convention on the Rights of the Child (UNCRC). In Europe, children’s fundamental rights are further protected by the European Convention on Human Rights and the European Social Charter.

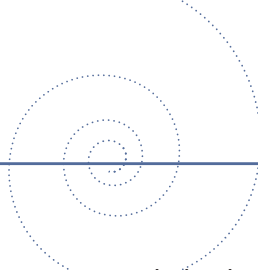
In line with the spirit and commitments laid down in the EC Communication “Towards an EU Strategy on the Rights of the Child” of July 2006, governments must be encouraged in taking into account the rights of the child in all actions towards unaccompanied minors, and by providing a framework for mutual learning within which they can identify and adopt the many good practices to be found across the European Union. Such an approach, based on broad and coordinated action, would add value to the efforts of the Member States and would strengthen recognition of and respect for the principles of the UNCRC and the European Charter of Fundamental Rights.





# Introduction

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## Background

Within the territory of the European Union, one regularly identifies children or young people residing legally or not in a host country and having no parent or legal guardian with them to care for them. These youngsters are known as Unaccompanied Alien Minors (UAMs). The crux of the problem lays in their vulnerability because of emotional and physical traumas they have experienced. Some of these children may be victims of abuse, neglect or abandonment, while others, separated from their families, become depressed, moody, withdrawn, or experience psychosomatic symptoms. Separated from their communities of origin, unaccompanied children are confronted with an unfamiliar culture and loss of their social network. This particular group is in need of special attention and care.

Unaccompanied children come to the EU from all parts of the world and enter the EU to escape persecution while others are smuggled or, in some cases, are victims of trafficking, subject to forced prostitution or labour. An increasing number are victims of human rights abuses such as child prostitution, street children abuses, child marriages, slavery, and recruitment as child soldiers.

## Treatment, Protection and Reception of Unaccompanied Minors

In some EU Member States, despite the good intentions and the recognition of the vulnerable status of UAMs, the authorities have identified a lack of coherence in policies and co-operation between the relevant departments, which creates many inconsistencies and uncertainties for UAMs, regardless from their status. Officials are torn between executing the law and taking into account the specific vulnerable position of unaccompanied minors. Moreover, national policies regarding treatment, reception and protection of UAMs are not always properly implemented, which means that in reality, UAMs do not always receive proper treatment. Often, first line service providers who work in direct contact with UAMs have no forum in which to share expertise and experience.

Over the past years, some NGOs have developed and successfully run programmes that seek to improve the situation of UAMs in Europe through

research, policy analysis and advocacy at national and regional levels. Such programmes, notably the “Separated Children in Europe”<sup>1</sup> programme funded by the EC and managed by the International Save the Children Alliance, resulted in the establishment of a wide network including NGOs, international organisations and experts. The present manual also builds on the achievements of such EU-funded projects to benefit from cross-fertilisation and lessons learned.

## **Objectives of the Project and of the Manual of Best Practices**

The project led to the publication of the present *Manual of Best Practices and Recommendations* on the Treatment, Protection and Reception of Unaccompanied Minors. The main innovative element was to bring national administration structures from the selected countries to the forefront to ensure immediate involvement of national agencies and individual service providers who work with unaccompanied alien children. This approach also ensured a bottom-up impact of the project’s results, from first line service providers to decision makers in national administration structures.

Therefore, the main objective of the project, materialised in this publication, is to improve the overall efficiency of national agencies and service providers responsible for reception, protection and treatment of unaccompanied minors. The project increased the cooperation and information exchange in the areas of reception, protection and treatment of unaccompanied minors between the six participating EU Member States. This has been achieved through the organisation of exchange visits, enabling involved agencies to gather information and best practice and to share know-how and management tools. The exchange visits offered the chance to see current practices in another country, share expertise with like-minded professionals and evaluate one country’s practice within a European context. The results of these exchanges are compiled in this Manual.

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1 **The Separated Children in Europe Programme** was initiated in 1997 as a joint programme from Save the Children and UNHCR and is based on the complementary mandates and areas of expertise of the two organisations. The programme was established as a response to the steady rise in the numbers of separated children arriving in European countries and to the observation that the treatments these children receive are not adequate or potentially damaging. It seeks to improve the situation of separated children through research, policy analysis and advocacy at the national and regional levels. UNHCR’s responsibility is to ensure international protection of refugee children and of those seeking asylum. Save the Children is concerned to see the full realisation of the rights of all children.

More information about the programme can be found under the following link:

[http://www.separated-children-europe-programme.org/separated\\_children/about\\_us/scep\\_programme.html](http://www.separated-children-europe-programme.org/separated_children/about_us/scep_programme.html)

The project, and hence the Manual, was based on two main approaches: first, a human rights-centred approach taking into account the fundamental principles of making decisions based on the best interest of the child<sup>2</sup> in line with EU and international standards; and second, a practical approach focusing on first-hand experience and problem-solving.

## **Structure of the Manual**

The *Manual of Best Practices and Recommendations* allows for discussing methodologies and approaches when identifying and caring for unaccompanied alien children.

This publication consists of five parts: The first part comprises an overview of international and European standards and the harmonisation of policies at EU level concerning unaccompanied minors and summarises the milestone document on children's rights worldwide.

In the second part, an outline is given of the different national legislations in each country, followed by a comparison of national practices, such as the reception and the treatment of UAMs, in the third part. The fourth part presents data gathering standards in the different countries.

Throughout the Manual, the authors have also referred to the Statement of Good Practice compiled in the frame of The Separated Children in Europe Programme (SCEP) by UNHCR and International Save the Children Alliance. The Statement aims to provide a straightforward account of the policies and practices required to implement measures that will ensure the promotion and protection of the rights of separated children in Europe.

The fifth part addresses the issue of available funding resources to care for this specific group. As a main result, based on best practices highlighted throughout the Manual, the last chapter of this publication proposes a number of recommendations on the best way to provide unaccompanied minors with adequate treatment, protection and reception.

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2 For a definition of the best interest of the child, cf. point 1.1

This publication is intended for government authorities and public institutions working on children, migration and refugee issues, law enforcement agencies, NGOs and social services, international organisations, expert researchers, policy makers and representatives from the European Commission.

A long term expected result of the project is the developing of common methodologies and cooperation in the first reception, protection and treatment of unaccompanied alien children.

# 1

## Application of International and European standards

### 1.1 Criteria for determining the best interest of the child: international instruments

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This Manual refers to the main immigration and asylum-related EU legal instruments. In particular, the focus of interest lays on the principle that Member States shall have due regard to the best interest of the child. Reference is made to the UN Convention on the Rights of the Child and its Optional Protocols, including also the Millennium Development Goals; UNICEF reference guide on the protection of the rights of children victims of trafficking, and the European Convention on Human Rights (ECHR). The EU explicitly recognised children's rights in the European Charter of Fundamental Rights, specifically in Art. 24, while immigration and asylum instruments have specific provisions addressing the situation of minors and, in particular, unaccompanied minors.

Specifically, from a human rights-centred approach, the treatment of unaccompanied minors has to reflect international human rights standards as laid down in the UN Convention on the Rights of the child (CRC). This manual aims at taking into account the fundamental principals in making decisions based on the best interests of the child.<sup>3</sup>

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<sup>3</sup> *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".* Art 3(1), UN Convention on the Right of the Child, September 1990., UN High Commissioner for Refugees, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997. Online. UNHCR Refworld, available at: <http://www.unhcr.org/refworld/docid/3ae6b3360.html> [accessed 4 September 2008], Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries, (97/C 221 03) OJ C221, 19.07.2003, p 0023-0027.

In this respect, the principle of defending the best interests of the child often conflicts with migration law. Discriminations based on legal status or national origin should however be eliminated. These fundamental principles of making decisions based on the best interest of the child, of placing children in the least restrictive setting, and of moving children towards permanency as soon as possible should lay the foundations of current laws and regulations governing treatment, reception and protection of unaccompanied alien children in Europe.

Save the Children: Statement of Good Practice (2004, p.7)

The best interests of children shall be a primary consideration in all actions concerning children.

This principle is laid down in a number of international reference documents<sup>4</sup>:

- \* CRC, Art. 3(1): In all actions concerning children... the best interests of children shall be a primary consideration.
- \* ECRE (Children), para. 4
- \* ICCPR, Art. 24(1): Every child, without any discrimination, is entitled to measures of protection as are required by his status as a minor, on the part of his family, society and the State.
- \* ICESCR, Art. 10(3): Special measures of protection are to be taken on behalf of children without discrimination.
- \* UNHCR Guidelines, para.1.5
- \* UNHCR Handbook, para. 14

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<sup>4</sup> *CRC* is the UN Convention on the Rights of the Child, 1989  
*ECRE (Children)* is the European Council on Refugees and Exiles: Position on Refugee Children, 1996  
*ECRE (Integration)* is the European Council on Refugees and Exiles: Position on the Integration of Refugees in Europe, December 2002  
*ICCPR* is the International Covenant on Civil and Political Rights, 1966  
*ICESCR* is the International Covenant on Economic, Social and Cultural Rights, 1966  
UN High Commissioner for Refugees, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997. Online. UNHCR Refworld, available at: <http://www.unhcr.org/refworld/docid/3ae6b3360.html>  
*JUNHCR Handbook* is on Procedures and Criteria for Determining Refugee Handbook Status, 1992

## 1.2 UN Convention on the Rights of the Child

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The UN Convention on the Rights of the Child (UNCRC) is the first legally binding international instrument to incorporate the full range of human rights. It spells out the basic human rights that children everywhere have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The five core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child. Addressing unaccompanied minors, one should always ensure the respect for the child's best interests; but also for non-discrimination; the right to be heard and the special duty of states to provide protection and assistance.

The UN Convention specially refers to those rights in the following articles<sup>5</sup>:

Article 2 on Non-discrimination states that governments should take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 12 II notably refers to the right to be heard stating that the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 20 specifies that the special protection and assistance provided by the state should be in accordance with the national laws, ensuring alternative care, such as *inter alia*, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children.

Every right spelled out in the Convention is inherent to the human dignity and harmonious development of every child. The Convention protects children's rights by setting standards in health care; education; and legal, civil and social services.

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<sup>5</sup> Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49: Article 2, 3, 12, 20 UNCRC.

The Convention includes two optional protocols.

The **Optional Protocol on the involvement of children in armed conflict** establishes 18 as the minimum age for compulsory recruitment and requires States to do everything they can to prevent individuals under the age of 18 from taking a direct part in hostilities.

The **Optional Protocol on the sale of children, child prostitution and child pornography** draws special attention to the criminalization of these serious violations of children's rights and emphasises the importance of fostering increased public awareness and international cooperation in efforts to combat them.

<http://www.unhcr.ch/html/menu3/b/k2crc.htm>

It is of interest to note that all six countries participating in this project and publication have signed the UN Convention on the Rights of the Child.

### 1.3 UNHCR guidelines on formal determination of the best interests of the child<sup>6</sup>

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During the implementation of the project, the national experts had the opportunity to meet with UNHCR representatives who provided them with the necessary feedback on the formal determination of the best interests of the child.

The UNHCR guidelines consist of information collected from a variety of reports, including the Annual Protection Reports, as well as through participatory assessments. They indicate that there is no consistency among field offices as to when and how Best Interests Determinations (BID) for refugee children should be carried out.

The main document of reference when it comes to recommendations is the Convention on the Rights of the Child (CRC).

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6 UN High Commissioner for Refugees, UNHCR Guidelines on Determining the Best Interests of the Child, May 2008. Online. UNHCR Refworld, available at: <http://www.unhcr.org/refworld/docid/48480c342.html>



The Guidelines set out detailed legal and other principles for making a formal Best Interests Determination, about the decision on who should make the determination and what procedural safeguards should be followed, and how criteria should be applied to take a decision in a particular case.

The Guidelines make frequent reference to other aspects of UNHCR's work with children, including the identification of unaccompanied and separated children, registration procedures, tracing and the appointment of a guardian.

Specific information and recommendations are given about the protection, reception and treatment of unaccompanied minors arriving in a foreign country. This comprises not only the legal outline, but also detailed guidance for specific situations.

Guidelines for the Best Interest of the Child Determination (BID) by UNHCR are set out regarding the identification of durable solutions for UAMs and decisions on temporary care arrangements.

It is also outlined who undertakes the BID, and how it is done. Possible steps include the gathering of information, the decision making, weighing the best interests of the child against interests of others, informing the child on the decision, filing and reviewing the BID decision. When weighing different interests against each other, the general principle contained in the CRC provides that the best interests of the child shall be a primary consideration. Once the best interests of the child are determined, the CRC does not exclude balancing other considerations. Other considerations, if they are rights-based, may in certain rare circumstances override the best interest considerations.

For a concrete implementation of these Guidelines, the tools of the latter include registration forms and Best Interests Determination report forms that can be used when dealing with UAMs.

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=447d5bf24>

## 1.4 European Convention on Human Rights

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The European Convention on Human Rights (ECHR) from 1950 is a text from the Council of Europe, which is made up of over 40 European countries, including the Russian Federation.

The ECHR doesn't make any reference to the rights of children or vulnerable groups. However reference is made to the equality between spouses and their right to see the child, to the right to respect for private life and family life, and to the right of education.

<http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf>

## 1.5 European Charter of Fundamental Rights

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The European Charter of Fundamental Rights is a document from the European Union (currently 27 members). It is legally binding in all countries except for Poland and the United Kingdom.

The EU explicitly recognises children's rights in the European Charter of Fundamental Rights, specifically in Art. 24. The text emphasises on the children's right to protection and on the best interest of the child which must be a primary consideration "In all actions relating to children, whether taken by public authorities or private institutions".

[http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

Article 24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his parents, unless that is contrary to his or her interests.

## 1.6 The Hague Programme<sup>7</sup>

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The Hague programme is a five-year programme for closer co-operation in justice and home affairs at EU level from 2005 to 2010. The programme's main focus is on setting up a common immigration and asylum policy for the 25 EU member states.

In May 2005 an Action Plan was launched by the European Commission. This plan takes the overall priorities for Freedom, Justice and Security from The Hague Programme and turns them into concrete actions. Most importantly it identifies 10 key areas for priority action, for example fundamental rights, migration management etc.

From these 10 key areas, the following two make explicit reference to children:

- 1) Fundamental rights and citizenship. The aim is to monitor and to promote respect for fundamental rights. Special attention is devoted on the rights of the child.

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<sup>7</sup> Communication of 10 May 2005 from the Commission to the Council and the European Parliament. The Hague Programme: ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice [COM(2005) 184 final].

- 3) Migration management. Children are mentioned in the context of the fight against trafficking in human beings. The goal of this key point is to define a balanced approach to migration management developing a common immigration policy at Union level, while further strengthening the fight against illegal migration and trafficking in human beings.

The Hague Programme and more details on the 10 key areas can be found under the following link:

[http://ec.europa.eu/justice\\_home/news/information\\_dossiers/the\\_hague\\_priorities/index\\_en.htm](http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/index_en.htm)

## 1.7 European Union Council Directives

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Immigration and asylum instruments have specific provisions addressing the situation of minors and, in particular, unaccompanied minors. Specifically, the following instruments shall be taken into account when implementing actions concerning UAMs:

- The Council Directive 2003/86/EC of 22.9.2003 on “**Family reunification**” determines the **conditions for exercising the right to family reunification** by third-country nationals residing lawfully in the territory of the Member States. This directive – which also applies to refugees – contains specific provisions in case the refugee is an unaccompanied minor.  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:EN:PDF>
- Council Directive 2003/109/EC of 25.10.2003 on “**Long-term residents**” does not contain specific provisions for unaccompanied minors and it is unclear whether a minor could be entitled to the long-term resident status. However, some provisions could apply also to minors, such as the right to equal treatment with nationals on a number of rights, in particular as regards education.  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:016:0044:0053:EN:PDF>

- The Council Directive 2004/81/EC of 29.04.2004: “**Victims of trafficking**” applies to third country nationals having reached the aged of majority but MS may decide to apply its provisions also to minors who are or have been victims of offences related to the trafficking in human beings or who have been subject of an action to facilitate illegal immigration. In case of unaccompanied minors, Member States shall take the necessary steps to establish their identity and nationality, shall ensure legal representation if necessary and shall make every effort to locate their families as quickly as possible. Link to the PDF document [http://www.unicri.it/www/trafficking/legal\\_framework/docs/CouncilDirective200481EC.pdf](http://www.unicri.it/www/trafficking/legal_framework/docs/CouncilDirective200481EC.pdf)

#### Article 24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

- The directive on common standards and procedures in member states for **returning illegally staying third country nationals**, adopted on 18 June 2008, provides for Member States to ensure that minors are not kept in temporary custody in common prison accommodation. Unaccompanied minors shall be separated from adults unless it is considered in the child’s best interest not to do so. Moreover, the directive will prohibit removal of an unaccompanied minor as long as there is no assurance that he can be handed over at the point of departure or upon arrival to a family member, an equivalent representative, a guardian of the minor or a competent official of the country of return.
- This directive was commented upon by UNHCR on the basis that it does “not incorporate all the safeguards necessary to ensure that returns take place

in safety and dignity”<sup>8</sup>, that there might be a risk of refoulement in practice and that minimum standards set out in the directive do not apply for asylum seekers who have crossed the borders irregularly.

- For more details, see section 3.2.5 on voluntary return.
- The Council Directive 2001/55/EC of 20 July 2001 on **“Temporary Protection”** requests that Member States provide for the necessary medical care or other assistance for persons with special needs, such as unaccompanied minors. Member States shall also take measures to ensure the necessary representation of unaccompanied minors by legal guardianship, or, where necessary, representation by an organisation which is responsible for the care and wellbeing of minors, or by any other appropriate representation. During the period of temporary protection Member States shall ensure that unaccompanied minors be placed with adult relatives, a foster-family, in reception centres with special provisions for minors, or with the person who looked after the child when fleeing. This article specifies that the views of the child shall be taken into account in accordance with his age and maturity.  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>
- The Council Directive 2003/9/EC of 27 January 2003 on **“Reception conditions”** deals with the right for schooling and education for minors, with the respect of family unity as well as with access to rehabilitation services, included appropriate mental health care, for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts. As regards unaccompanied minors, the directive has similar provisions as those stated under the directive on “Temporary protection”, notably: Member States shall take measures, as soon as possible, to ensure the necessary representation of unaccompanied minors by legal guardianship, or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation. Additionally, regular assessments shall be made by the appropriate authorities. From the moment that an unaccompanied minor who makes an application for asylum is

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8 UNHCR position on the proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals

admitted on the territory to the moment he is obliged to leave, the host Member States shall ensure the minor is placed with adult relatives, a foster-family or in reception centres with special provisions for minors. Member States may, however, place unaccompanied minors aged 16 or over in accommodation centres for adult asylum seekers. The provision further specifies that as far as possible, siblings shall be kept together, taking into account the best interest of the minor concerned and, in particular, his age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum. The directive further encourages Member States to trace the family members as soon as possible with due regard for his safety. Finally, those working with unaccompanied minors shall have had or receive the appropriate training.

[http://ec.europa.eu/commission\\_barroso/frattini/archive/DIR\\_2003\\_9\\_EC.pdf](http://ec.europa.eu/commission_barroso/frattini/archive/DIR_2003_9_EC.pdf)

## 1.8 EU legislation being adopted against trafficking in human beings

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### **Policies related to Trafficking in Human Beings on European scale**

The EU policy against Trafficking in Human beings (THB) is a multidimensional policy encompassing human rights, civil liberties, equal opportunity, security, development and foreign affairs dimension. The last decade can be marked as an era of change in EU policy concerning trafficking. Many legislative gaps have been closed, but many also remain. The following guideline shows the evolution of EU policy towards trafficking beginning with the year 1993.

**November 1993:** The Justice and Home Affairs Council of the EU adopted unanimously the set of Recommendations to Member States to counter trafficking in human beings which was the beginning of the victim targeted approach, the basis for the future direction towards EU prevention policy.

**June 1996:** The first European Conference on Trafficking in Women was held in Vienna. It has unanimously adopted a package of measures towards new EU

financial instruments (i.e. the STOP<sup>9</sup>, Sherlock<sup>10</sup> Programmes), later elaborated and implemented by IOM in a number of awareness raising and information campaigns, the establishment of shelters, the assistance and counselling to the victims and assisted voluntary return and reintegration of victims in the countries of origin.

**20 November 1996:** As a reaction to the Vienna Conference, the European Commission presented the first formal Communication on Trafficking in Women for the Purpose of Sexual Exploitation<sup>11</sup>.

**1998:** High Level Working Group on Migration was set up due to an initiative from the Netherlands

**October 1999:** The Tampere Council, a special meeting of the European Council held in Finland under the Finnish EU Presidency *inter alia* elaborated the political guidelines in the sector of trafficking for the following years. The Tampere conclusions defined trafficking as a criminal act, calling for a reinforced cooperation among Member States to detect and dismantle criminal networks, while providing protection to the victims especially children. Assistance should also be given to countries of origin and transit to help the local authorities to strengthen their ability to combat trafficking.

**19 July 2002:** The “Council Framework Decision on Combating Trafficking in Human Beings<sup>12</sup>” aims to approximate the laws and regulations of EU Member States in the field of police and judicial cooperation as well as to establish a common framework relating to the fight against trafficking in human beings.

**September 2002:** The Brussels Declaration<sup>13</sup>, initiated by IOM, and funded by the EC STOP II<sup>14</sup> programme presented a comprehensive, holistic approach

9 European Commission, Incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children (STOP). 1996. Online. Available at: <http://europa.eu/scadplus/leg/en/lvb/l33015.htm>

10 European Commission, SHERLOCK PROGRAMME. 1996. Online. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1998:065:0023:0024:EN:PDF>

11 European Commission, Trafficking in women for the purpose of sexual exploitation. 1996. Online. Available at: <http://europa.eu/scadplus/leg/en/lvb/l33095.htm>

12 European Commission, Council framework decision on combating trafficking in human beings. 2002. Online. Available at: <http://europa.eu/scadplus/leg/en/lvb/l33137.htm>

13 European Commission, BRUSSELS DECLARATION ON PREVENTING AND COMBATING TRAFFICKING IN HUMAN BEINGS. 2002. Online. Available at: [http://ec.europa.eu/justice\\_home/news/information\\_dossiers/conference\\_trafficking/documents/declaratio\\_n\\_1709.pdf](http://ec.europa.eu/justice_home/news/information_dossiers/conference_trafficking/documents/declaratio_n_1709.pdf)

14 European Commission, STOP II - to help prevent and combat trade in human beings and all forms of sexual exploitation. 2001-2002. Online. Available at: [http://ec.europa.eu/justice\\_home/funding/expired/stop/funding\\_stop\\_en.htm](http://ec.europa.eu/justice_home/funding/expired/stop/funding_stop_en.htm)



and provided concrete measures in the field of prevention, victim protection and police and judicial cooperation.

**July 2004:** The consultation process “Towards a NATO Policy on Trafficking in Human Beings” resulted in the adoption of a “Zero Tolerance on Trafficking in Human Beings” by the NATO at the Istanbul Summit. The summit was aimed at defining and establishing the NATO common position and priorities concerning the THB and resulted in a set of conclusions and recommendations for preventative and counter-acting measures to be undertaken by NATO nations.

**December 2004:** An “Expert Group on Trafficking in Human Beings” produced a Report<sup>15</sup> which contributed to the practical implementation of the EU Brussels Declaration. The report contains a number of proposals for specific measures in the field of prevention, assistance, protection and social inclusion of the victims and law enforcement strategies. Those proposals are, however, not yet realised.

**2004:** The Council adopted the **Hague Programme** on Freedom Security and Justice. It asked the Commission to develop a Plan on Best Practices, Standards and Mechanisms.

**October 2005:** The “Action Plan on Best Practices, Standards and Procedures for Combating and Preventing THB” was presented by the European Commission as a result upon the Hague Programme. In addition to a number of guiding principles the Plan of Action seeks to promote coordination at EU level, prevention, reducing demand, investigation and prosecution and support of victims, return and reintegration and external relations.

## **Recent EU Presidency initiatives concerning Trafficking in Human Beings**

The EU presidency can be seen as a good platform to launch initiatives and highlight the need of action in the field of trafficking of human beings. In the following part, incentives by the different EU presidencies are chronically listed.

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<sup>15</sup> Experts Group on Trafficking in Human Beings, report. 2004. Online. Available at: [http://ec.europa.eu/justice\\_home/doc\\_centre/crime/trafficking/doc/report\\_expert\\_group\\_1204\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc/report_expert_group_1204_en.pdf)

**January - July 2006: Austrian EU Presidency:** Emphasis laid on THB resulted in the “Vienna Declaration on Security Partnership<sup>16</sup>” of 4-5 May 2006, which called for the capacity building assistance to third countries and the need for harmonisation of measures to protect victims in accordance with the EU, Council of Europe and the UN laws and instruments.

**July - December 2006: Finish EU Presidency:** Focused strongly on the implementation of the EU 2005 Action Plan. A number of seminars were organised on the Identification of Children at Risk Becoming Victims of Human Trafficking.

**January - July 2007: German EU Presidency:** Emphasis was laid on expanding the powers and mandate to Europol and other cross-border policy mechanisms, improving cooperation with Europe’s Eastern neighbours as well as to protect and support victims of trafficking by bringing together up-to-date information from the member states.

**July-December 2007: Portuguese EU Presidency:** Organised a conference on Trafficking in Human Beings and Gender on 8 - 9 October 2007 and adopted the “Porto Declaration<sup>17</sup>” of the Council of Europe Convention on Actions against THB. The declaration proposed the creation of common mechanism of European reference to monitor THB as far as knowledge, prevention, identification and reintegration of victims are concerned.

**January – July 2008: Slovenian EU Presidency:** Co-chaired the meeting of the High Level Advisory Group on the future of European Home Affairs Policy on the 31 March and 1 April 2008. The Future Groups was set up in February 2007 to draft recommendations on future European JHA policy starting after The Hague Programme and to initiate the process of the third generation policy planning after the Tampere and The Hague.

**July - December 2008: French EU Presidency:** Aims to provide the basis for the establishment of a new EU Framework supported by a specialised European Network against Trafficking. Together with a Czech-initiative, it will pave the

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16 Austrian EU Presidency, Internationale Konferenz zur Inneren Sicherheit, 4.-5. May 2006. Online (German). Available at: [http://www.eu2006.at/de/The\\_Council\\_Presidency/security/index.html](http://www.eu2006.at/de/The_Council_Presidency/security/index.html)

17 Portuguese EU Presidency, Porto’s Declaration. 2007. Available at: [http://www.nordicbaltic-assistwomen.net/IMG/doc/Porto\\_Declaration.doc](http://www.nordicbaltic-assistwomen.net/IMG/doc/Porto_Declaration.doc)

way for the adoption of the Stockholm Programme succeeding the Hague Programme, this time set within the framework of the EU Constitutional Treaty expected to be adopted in 2009; during the Swedish EU Presidency in 2009. The Stockholm Programme aims at collecting and analysing data, developing indicators, setting up an index for measuring the country progress in implementing anti trafficking laws and recommendations and developing common benchmarks.

More Information on the legal and political background, the EU legislation, main proposals and community acts concerning: the decisions, other council Acts, joint actions, proposals and communications can be found together with programmes financed by the commission or regarding to international organisations and expert groups on trafficking under the following link:

[http://ec.europa.eu/justice\\_home/doc\\_centre/crime/trafficking/doc\\_crime\\_human\\_trafficking\\_en.htm](http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc_crime_human_trafficking_en.htm)

## **1.9 Council of Europe: Life Projects for Unaccompanied Migrant Minors**

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In 2007, the Council of Europe adopted a recommendation from the European Committee on Migration (CDMG) on life projects for unaccompanied minors (UAMs). This recommendation offers advice to governments on how they can improve their policy and practice related to the migration management relating to UAMs.

The practical component foresees drawing up an individual project for each UAM involving the minor, his guardian, and the authorities. The project covers different aspects of the child's life from housing, health, education to personal development, social integration and future employment. The life project is open in space and time and can involve the host country as well as the country of origin. The best interest of the child is always to be at the heart of the project.

Recommendation Rec (2007)9 on life projects for unaccompanied migrant minors stresses the importance of placing the best interests of the child at the heart of all government policies and practice in this area. A life project is an individual tool based on a joint undertaking between the child and the relevant

authorities for a limited duration. It defines the child's future prospects, promotes his best interests without discrimination and provides a long-term response to his needs. Each project aims to develop the capacities of the child, allowing him or her to acquire and strengthen the skills necessary to become independent, responsible and active in society. Life projects should seek to promote the social integration of the child and his personal and cultural development, as well as to open access to housing, health, studies, vocational training and employment. The recommendation also aims at improving the capacities of Member States to manage migration of unaccompanied migrant children. It underlines the importance of co-operation between all the countries involved and co-ordination by the relevant authorities.

Link to the explanatory memorandum to the recommendation on life projects for UAM:

[http://www.coe.int/t/dg3/migration/Source/Recommendation%20CM%20Rec\\_2007\\_9%20-%20Explanatory%20memorandum\\_en.pdf](http://www.coe.int/t/dg3/migration/Source/Recommendation%20CM%20Rec_2007_9%20-%20Explanatory%20memorandum_en.pdf)

**Guidance on how to ensure that the most appropriate decision is taken when dealing with unaccompanied and separated children is included in a number of documents:**

- **Inter-Agency Guiding Principles on Unaccompanied and Separated Children**, (UNHCR, UNICEF, ICRC, IRC, Save the Children (UK), World Vision International, Geneva, January 2004)
- **Refugee Children: Guidelines on Protection and Care** (UNHCR, Geneva, 1994)
- **Working with Unaccompanied Children: A Community-based Approach** (UNHCR, Geneva, revised May 1996)
- **Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum**, (UNHCR, Geneva, 1997)
- **The Separated Children in Europe Programme: Statement of Good Practice**, (UNHCR and International Save the Children Alliance, Brussels, third edition, October 2004)
- **Working with separated children, Field Guide. Training Manual and Training Exercises**, (Save the Children UK, London, 1999).

Other Recommendations:

**Council of Europe: Recommendation 1703(2005) Parliamentary Assembly on protection and assistance for separated children seeking asylum**

Urging member states to “recognize the primacy of the principle of the best interest of the child in all asylum or immigration decisions, procedures, practices or legislative measures affecting minors.”

## 1.10 European Commission: ‘Towards an EU Strategy on the Rights of the Child’

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In July 2006, the European Commission launched a communication called “Towards an EU strategy on the Rights of the Child” (COM(2006)0367).

The communication proposes to establish a comprehensive EU strategy to effectively promote and safeguard the rights of the child in the EU’s internal and external policies and to support Member States efforts in this field. The strategy takes a transversal and cross-cutting approach dealing with civil and criminal justice, employment, development co-operation, trade negotiation, education and health. The communication is based on the observation that children are not just covered by general efforts to promote human rights, but their rights must also be recognised as a self-standing set of concerns.

As regards UAMs, one of the identified challenges of the Communication is to ensure in the EU that the rights of children as immigrants, asylum seekers and refugees are fully respected in the EU and in Member States’ legislation and policies.

The Communication outlines seven specific objectives:

- (1) It takes stock of existing activities and addresses urgent needs.
- (2) It identifies priorities for future EU action.
- (3) Through this Communication, the Commission aims at ensuring that all internal and external EU policies respect children’s rights in accordance

with the principles of EU law, and that they are fully compatible with the principles and provisions of the UNCRC and other international instruments (“**mainstreaming**”).

- (4) In order to improve the effectiveness of activities promoting children’s rights, the Communication **establishes an efficient coordination and consultation mechanisms** and
- (5) Sets up instruments and tools **enhancing capacity and expertise on children’s rights**.
- (6) To raise awareness on children’s rights, the Commission will prepare a **communication strategy**, helping both children and their parents to improve their knowledge of children’s rights, and contributing to the dissemination of relevant experience and good practice among other interested parties.
- (7) The European Union will continue and further enhance its active role in **promoting the rights of the child in international forums and third country relations**. The role and impact of the EU actions has been strengthened by good coordination and unified and coherent messages in the UN human rights forums.

The Commission will also appoint a “**Commission Coordinator of the Rights of the Child**”, acting as a contact person of the European Commission, making Children’s Rights more visible, and ensuring coordination of the strategy with all services concerned.

Some of the **concrete actions** already undertaken are presented in an annex to the Communication which lists 75 instruments (legislative, non-legislative and financial).

Actions proposed for 2006-2007 included:

- The development of a web site fully dedicated to children’s matters and rights, with the documents accessible in all languages and with a globally accessible vocabulary, in collaboration with the Council of Europe and others;

- Supporting the creation of a single telephone number in Europe for children help-lines on one hand and for emergency lines on the other hand (116);
- The allocation of parts of the budgets of existing and future EC programmes for actions in favour of children (i.e. make a better – and more efficient - use of available money in favour of poverty reduction, prevention of violence, employment, etc. for children);
- The presentation, when justified, of legislative proposals under all relevant existing legal bases.
- The preparation of a Green Paper based on an in-depth analysis of children’s rights in the Union, in order to carry out a wide public consultation.

The European Commission’s communication can be found under the following link:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0367:FIN:EN:PDF>

A summary of the communication under

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/266&format=HTML&aged=1&language=EN&guiLanguage=fr>

In response to the Commission’s communication, **the European Parliament in January 2008 adopted a resolution** based on a report, called “Angelilli report” with recommendations from the EP to promote and develop the Strategy.

The European Parliament made very detailed statements about actions to be taken in order to better protect UAMs and children of migrants, asylum seekers and refugees.

The Parliament welcomed the establishment of a strategy to safeguard the rights of the child as this is a sign of its determination to make this issue a priority of EU action.

The Strategy should be promoted and developed by means of a positive affirmation of children’s rights, such as the right to a family, education, social

inclusion, health care, equal opportunities and sport, with a view to laying the foundations for a 'children-friendly society', in which children can feel protected and actively involved.

The broad lines of the strategy are the following:

- A legal framework on the protection of children's rights should be adopted at EU level
- Mainstreaming of children's rights, i.e. including children's rights in all legislations and decisions at EU level
- Participation of children in all matters that concern them directly
- Establishment of an inter-institutional process, enhancing communication and cooperation between the various institutions responsible for the protection of children's rights
- Collecting statistical data: an assessment is needed on what obstacles are preventing children from enjoying their rights
- Closer cooperation with stakeholders: a FORUM closely linked to the Fundamental Rights Agency should be set up. It should contribute to the design and monitoring of EU actions and act as an arena of exchange and good practice
- Establishment of a mechanism to monitor progress: The Commission will publish an annual progress report on the implementation of the proposed Strategy.

Some priority fields have been outlined which should form the core of the strategy:

- Combating all forms of violence against children
- Combating poverty and discrimination of children and guarantee their right to education
- Rights of migrants' children and respecting the best interest of migrant children.

The European Parliament's report can be found under the following link:

[http://tdh-childprotection.org/rcpp\\_content/country\\_pages/eu/angelilli\\_report\\_dec\\_2007.pdf](http://tdh-childprotection.org/rcpp_content/country_pages/eu/angelilli_report_dec_2007.pdf)



# 2

## **Overview of existing legislation and practices at national level linked to the reception, protection and treatment of unaccompanied minors**

In some EU Member States, despite the good intentions and the recognition of the vulnerable status of unaccompanied minors, the authorities have identified a lack of coherence in policies and co-operation between the relevant departments. It is particularly true when defining authorities in charge of, on the one hand, the coordination of decisions on stay and asylum, and on the other hand, youth assistance measures. An enhanced coordination between the relevant departments needs to be urgently developed in order to allow for a more efficient and effective policy towards UAMs.

National authorities in the host countries are equally responsible for apprehending, detaining, caring for, placing, legally protecting, and possibly operating the removal of unaccompanied alien children. Despite progress mainly in awareness-raising and capacity building, many protection concerns still remain in Europe. Evidence shows that an increasing number of UAMs disappear and run a high risk of becoming victims of trafficking; in some countries guardianship systems need to be reinforced and mechanisms for the identification of the child and age-assessment must be enhanced in line with human rights standards.

## 2.1 Definitions of an unaccompanied minor: commonalities and differences

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Unaccompanied alien minors are children under 18 years of age who are found in the territory of the European Union and who have no parent or guardian to care for them and ensure their protection at all stages of their stay in the EU country.

This section provides a definition of an unaccompanied minor as provided under the national legislation of each of the six participating countries, highlighting some major differences and commonalities with the aim to emphasise how one could draw one single and harmonised definition, thereby ensuring better identification and protection of unaccompanied minors in Europe.

A common element of all definitions is the **age threshold of 18**. Another key element is the fact of **not being accompanied by an adult**. The definition/specification varies when it comes to defining who can accompany a minor so that he would not be a UAM anymore. In Austria, it is defined as “an adult who is by law or customary law responsible for the minor”; in Bulgaria, the law states “[...] not accompanied by one of his parents or by an adult relative person by the third degree of the lateral branch of the family”; The Czech legislation leaves the definition quite open, stating “[...] unaccompanied by an adult responsible for him”. The same statement can be found in the Polish legislation: “An unaccompanied minor is a foreign minor arriving to or staying at the territory of the Republic of Poland without adults responsible for a minor according to a law or a custom”.

The Romanian law is more specific, defining unaccompanied as “without being accompanied either by his family or by any closed relatives or a legal representative or who is not entrusted to be taking care to any adult person according to the provisions of the law”. In the Czech Republic, the law foresees that socio-legal protection shall be provided to every child, even if he does not have the right of permanent residence<sup>18</sup> in the Czech Republic.

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18 Permanent residence – Type of stay in the territory of the Czech Republic that provides the Foreigner with the same rights as a Czech citizen (excluding the right to vote and to be elected). Permanent residence can be obtained in the Czech Republic usually after 5 years of permanent stay on the territory.

In Belgium, Bulgaria, the Czech Republic, Poland and Romania, there exists a legal definition of UAM. In Austria, the term is generally used but not defined by national law, although the legislation of some Austrian provinces did define the term UAM.

In Austria, Bulgaria, Czech Republic, Poland and Romania, the definition applies for both EU and third countries nationals; therefore, these two categories are eligible for care and protection as UAMs. In Austria, for instance, the Youth Welfare in Austria does not differ between Austrian nationals and foreign minors and has to take care of all persons residing within the Austrian national territory. As for under-age asylum seekers in Romania, they have the right to have access to compulsory education in the same conditions as under-age Romanian citizens. Unattended under-age minors benefit from the same protection legally offered to national minors in difficulty.

## AUSTRIA

The term “Unaccompanied Minor” is not defined in the Austrian national legislation. However, in general, it is used in reference to a foreign person below the age of 18 who is unaccompanied. In some of the provincial legislation concerning the basic welfare provisions the term “Unaccompanied Minor” is explained as a foreign national under the age of 18 who has entered into Austria without the company of an adult (who is by law or customary law responsible for the minor) and who is actually not cared for by an adult. This also applies to minors who have been left unattended after their entry into Austrian territory.

Austria has signed and ratified the Convention on the Rights for the Child and its supplementing Protocols. Austrian laws are providing special protection to minors.

Furthermore, the Civil Code differentiates between two stages with regards to a minor:

A person who is under 14 is an under-age minor (“*Unmündiger Minderjähriger*”). As such, he has very limited contractual capability.

The contractual capability for a minor between 14 and 18 years of age is limited as well, but grants him certain rights that a minor below 14 years does not have

(Of-Age Minor: “*Mündiger Minderjähriger*”) such as to conclude minor bargains. However, these rights also imply obligations. This, for example, is relevant when a minor commits a crime.<sup>19</sup>

## BELGIUM

Under Belgian law (Art. 5 of the guardianship law), an unaccompanied foreign minor is defined and recognised as follows:

- A UAM is «Anyone who is below the age of 18 (verified according to credible documents such as valid identity document in Belgium) and, failing this, by a medical examination carried out by the guardianship service;
- He should not be accompanied by a person exercising parental authority or guardianship as provides by the law;
- He originates from a country outside the European economic Area (EEA);
- And he has either requested refugee status, or does not possess the necessary documents (passport and/or visa) to enter or remain in the territory.

Authorities aware of the presence of an unaccompanied minor alien within the territory or arriving at the border are obliged to inform the Guardianship Office (a body responsible for appointing a guardian if the person who says to be a UMA is identified as such within the meaning of Article 5 of the Guardians Act).

The Circular Letter of 24 April 2004<sup>20</sup> obliges the police forces and the Immigration office to complete a « UAM form » at the moment they intercept the minor or when they have contact with him for the first time. This form has to be sent to the Immigration office and the Guardianship Office in order to inform both authorities immediately about the presence of the unaccompanied minor alien within the territory or at the border.

The following information must be included in the form: a photograph of the minor with a description of his physical characteristics, name and first name, place and date of birth, nationality, domicile or residence in Belgium, information about his family, information about the members of his family in

<sup>19</sup> See Chapter 2.6. for further information.

<sup>20</sup> Circular Letter of 23 April 2004 of the Immigration Office on the identification form « unaccompanied minor alien » (Belgian Official Gazette of 30 April 2004).

Belgium, the circumstances of the interception, the reasons why he came to Belgium, an information on the question whether or not the authority completing this form considers the minor to be a possible victim of human trafficking, and the facts regarding the minority (in case of doubt).

As soon as the Guardianship Office that can be contacted around the clock is informed about the presence of an unaccompanied minor alien at the border or within the territory, it will take charge of him. Subsequently, the Guardianship Office carries out the identification of the minor.

## BULGARIA

“An unaccompanied minor is a minor or underage foreigner staying on the territory of the Republic of Bulgaria who is not accompanied by his parent or other adults responsible for him by virtue of a law or a custom.” (*Asylum and refugees Act, Additional provisions, §. 1, Item 4*).

## CZECH REPUBLIC

Czech Republic: “An unaccompanied minor (*in accordance with the Act No. 325/1999 Coll., on asylum*) is a person below the age of 18 who arrives or is found on the Territory unaccompanied by an adult responsible for him, in accordance with legal regulations in force in the country of origin of the minor. “Unaccompanied minor” also means a person below the age of 18 who has been left unaccompanied after he has arrived on the Territory.”

*Act no. 359/1999 Coll., Act on the Socio-Legal Protection of Children:*

There is not an exact definition of UAMs in the Act no. 359/1999 Coll., however in principle socio-legal protection shall be provided to every child. A child is understood to be a minor who has not reached the full age of 18 years. We distinguish between several kinds of UAMs - asylum seekers, aliens (citizens of third countries) and children from the EU.

Socio-legal protection shall be provided to a child who:

- a) Is permanently resident in the Czech Republic,
- b) Has permission to reside permanently or is in the possession of a visa entitling them to stay in the Czech Republic for a period of at least 90 days pursuant,

- c) Has applied for asylum on the territory of the Czech Republic,
- d) Is authorised to stay permanently,

Socio-legal protection shall also be provided to a child who does not have the right of permanent residence on the territory of the Czech Republic or who does not possess a visa authorising them to stay for a period of at least 90 days pursuant.

## POLAND

The Act of the 13<sup>th</sup> of June 2003 on granting protection to aliens within the territory of the Republic of Poland defines an unaccompanied minor as a foreign minor staying on the territory of Poland without a legal representative. The Amendment Act of 12 March 2008 determines an “unaccompanied minor” as a foreign minor arriving to or staying on the territory of the Republic of Poland without an adult being responsible for the minor according to a law or a custom (Art.1)<sup>21</sup>.

The Civil Code defines a “juvenile” as a person younger than 18 years. Only a person who achieved the age of 18 years has the total legal capacity, except for girls who can obtain the full legal capacity from the age of 16 years by entering into a marriage if agreed upon by a custodial court. A minor who reached the age of 13 has a limited legal capacity which means that he can only draw up an agreement commonly concluded in everyday life.

## ROMANIA

In Romania the definition of an unaccompanied minor is the following: “A minor, with an alien citizenship or with no citizenship, who reached Romania without being accompanied neither by his family nor by any close relatives or a legal representative or who is not entrusted to be taken care of by any adult person according to the provisions of the law, as well as a minor who is left unaccompanied after he enters the territory of Romania.”

An unaccompanied minor, according to the legal provisions, is considered to belong to the category of *special cases* together with handicapped persons, aged persons without pensions, victims of torture, and mono-parental families with small children.

21 <http://www.udsc.gov.pl/LAW,265.html> (Journal of Laws 2003, No 128, it. 1176)

## 2.2 National reception and asylum procedures with regard to apprehending, detaining, caring for, placement of, legal protection of and removal of unaccompanied minors

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The Council Directive 2003/9/EC of 27 January 2003 on “Reception conditions” deals with the right for schooling and education for minors, with the respect of family unity as well as with access to rehabilitation services, including appropriate mental health care, for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts.

As regards unaccompanied minors, the directive has similar provisions as those stated under the directive on “Temporary protection”, notably: Member States shall take measures, as soon as possible, to ensure the necessary representation of unaccompanied minors by legal guardianship, or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation.

Additionally, regular assessments shall be made by the appropriate authorities. As soon as an unaccompanied minor who submits an application for asylum is admitted on the territory until he is obliged to leave, the host Member States shall ensure the minor is placed with adult relatives, a foster-family or in reception centres with special provisions for minors. Member States may, however, place unaccompanied minors aged 16 or over in accommodation centres for adult asylum seekers. The provision further specifies that as far as possible, siblings shall be kept together, taking into account the best interest of the child and, in particular, his age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum. The directive further encourages Member States to trace the family members as soon as possible with due regard for his safety. Finally, those working with unaccompanied minors shall have had or receive the appropriate training.

**Access to the territory:** unaccompanied minors seeking protection should never be refused entry or returned at the point of entry. They should never be detained for immigration reasons. Neither should they be subjected to detailed interviews by immigration authorities at the point of entry.

- \* CRC, Art. 6(1): Every child has the inherent right to life.
- \* CRC, Art. 37(b): Children shall not be deprived of their liberty arbitrarily or unlawfully;  
they shall be detained only as a measure of last resort and separated from adults.
- \* 1951 Refugee Convention:  
Art. 31: States shall not penalise those who illegally enter or are present in a country if they arrive from a territory where they faced persecution as per Art. 1.  
Art. 33: States shall not return a refugee to a country where his or her life or freedom is threatened as per Art.1.
- \* CAT, Art. 3. No state shall return a person to a country where he or she is at risk of being tortured.
- \* Dublin II Art. 3(1): Member States shall examine the asylum application of any third country national who applies at the border or in their territory.
- \* ECHR, Art. 2(1): Everyone's right to life shall be protected by law.
- \* ECHR, Art.3. No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
- \* ECRE (Children), paras. 14 & 15
- \* EU Res. Minimum, para 1: Procedures will comply fully with Art. 1 of the 1951 Convention concerning definition of a refugee and Art. 33 relating to the principle of 'nonrefoulement'.
- \* ICCPR, Art. 6(1): Everyone has the inherent right to life, which should be protected by law, and no one shall be arbitrarily deprived of his or her life.
- \* UNHCR Guidelines, paras. 4.1 & 4.2

When it comes to a comparison, more differences than commonalities can be found regarding the reception and the asylum procedure in the participating countries. In Belgium, Bulgaria and in Poland, a guardian is appointed for the



UAM. In Austria, legislation targets mainly the access of UAM to basic welfare support. In Belgium, the detailed reception procedure consists of three phases, the observation phase followed by an orientation to the most appropriate reception structures.

In Bulgaria, a guardian and a legal representative are appointed. Regulations foresee the placement of UAMs in reception facilities and grant them access to language courses and schooling. In the Czech Republic, an assessment of physical and mental health of UAMs is conducted in a special reception facility for children, and psychological follow-up is ensured, as well as school attendance.

When it comes to reception systems, every country has an existing system in place and it is working well. Good practices to be highlighted are the following:

Belgium: NGOs are actively involved in the reception process.

Bulgaria: good organisation and infrastructure of crisis centres for repatriated UAMs and good work at the level of family reinsertion.

The Czech Republic: only one interview of children before going to court. Integration in the country (language, social skills)

Poland: During interview, the child is assisted by a psychologist.

Romania: UAMs can choose if they want to live in a reception centre for asylum seekers (family with children, etc) or in a specialised centre for minors.

## AUSTRIA

On 1 January 2006 the new codification of the *Asylum Law*, the “*Fremdenrechtspaket*” (“*Aliens Law Package*”), entered into force. The “*Fremdenrechtspaket*” comprises a number of laws that have been reformed or newly formulated concerning the entry, the residence and removal of aliens, their access to the labour market as well as other regulations, including Unaccompanied Minors, such as the *Asylum Act*, the *Alien Police Act*, the *Settlement and Residence Act* and others.<sup>22</sup>

<sup>22</sup> See Chapter 3.1. for further information.

Under the [Alien Police Act \(Fremdenpolizeigesetz - FPG\)](#), minors over the age of 16 are capable of acting (§12 FPG).

Regarding the care for asylum seekers, the Federal Government of Austria has signed a [Basic Welfare Support Agreement – Art. 15a B-VG](#) with the provincial governments which regulates the competencies and provisions of temporarily granting basic welfare support to asylum seekers, persons entitled to asylum, displaced persons and persons who may not be deported.

## BELGIUM

In Belgium, since its creation in May 2002, the Federal Agency for the Reception of Asylum Seekers – Fedasil<sup>23</sup> – has the mandate to coordinate and harmonise the reception of asylum seekers, hereby also caring for the reception of unaccompanied minor asylum seekers.

Fedasil is in charge of providing asylum seekers (including UAM asylum seekers) and other categories of foreigners (including foreign minors residing illegally on the territory with their parents; and minors having no valid permit of stay) with material assistance.

Fedasil seeks to organise a humane, efficient, flexible and quality reception for this target group, which constitutes a particularly vulnerable public. Since 21 March 2004, the Council of Ministers approved a note relating to the reception of unaccompanied foreign minors, foreseeing a reception model in two phases, regardless form the status of the minor (asylum seeker or not). During a first phase of observation and orientation, the minor can be oriented to the most appropriate structure in a second phase. Nowadays, the model has evolved to reception in three phases.

Since 1 May 2004, the Guardianship Service (depending on the Federal Public Service of Justice) was created by [the law of 24 December 2002](#) and implemented in order to ensure juridical protection of all UAMS staying in Belgium, systematically appointing a guardian.

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23 FEDASIL: Federal Agency for the Reception of Asylum Seekers, created by the law of 19 July 2001. It aims at ensuring organisation and management of different reception modalities; coordinating voluntary return and conventions signed with third parties for providing reception services to asylum seekers. The Agency is also responsible for the monitoring and surveillance of the quality of the reception offered. Since 22 December 2003, Fedasil's competences have been enlarged, notably receiving the mandate to coordinate the housing of all unaccompanied minors, regardless of their status.

In Belgium, the provision on guardianship of unaccompanied foreign minor is laid down in Title XIII, Chapter VI « Unaccompanied minor aliens », of the Programme Law of 24 December 2002 (Belgian Official Gazette of 31 December 2002). A Royal Decree was approved on 22 December 2003 to implement the above-mentioned Chapter VI. The Royal Decree outlines a permanent guardianship regime through the guardianship service under the auspices of the Minister of Justice, according to which a guardian will be appointed for each unaccompanied minor, asylum-seeker or not.

The creation of the Guardianship Service in Belgium implied a number of changes. It has notably become a necessity to organise housing for all UAMS during the identification phase of the minor by the Guardianship Service. Hence, since 1 May 2004, Fedasil has cooperated with the Guardianship Service in order to temporarily and urgently take charge of the UAMs for whom the Guardianship Service couldn't find a housing solution. As a first step, these minors are hosted mainly in the reception structures for UAM asylum seekers in the federal centres.

On 16 August 2004 Fedasil opened a first Observation and Orientation Centre for UAMs, asylum seekers or not, with a capacity of 50 places, in Neder-over-Heembeek. On 8 June 2005, a second centre, equally holding a capacity of 50 places, opened in Steenokkerzeel. In principle, the minors are hosted for a period of 15 days, which can be renewed once.

Particular attention to foreign minors have been set in the new [law on reception of asylum seekers and some other categories of foreigners of 12 January 2007](#)<sup>24</sup> but also by the implementation of a royal decree fixing the rules for the functioning of the Observation and Orientation Centres<sup>25</sup>.

This law mostly confirms the existing practice, and transfers partially in Belgian law the European [directive 2003/9/CE relating to minimal norms for the reception of asylum seekers in the Member States](#). This directive notably aims at establishing a common reception system. The transfer in the national law is said

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24 <http://www.fedasil.be/home/attachment/i/13551>

25 <http://www.fedasil.be/home/attachement/i/13545>

to be partial because it only concerns the part on “social assistance” given to asylum seekers. This law must be completed with a number of royal decrees out of which five have already been published.

## BULGARIA

In Bulgaria, there is a developed legal framework as well as an institutional mechanism for the protection of unaccompanied children seeking refuge or having refugee status. The State policy with regard to such children is implemented by the State Agency for Refugees at the Council of Ministers in conformity with the [Asylum and Refugees Act](#) (in force since 1 December 2002). Bulgaria adheres to the [1951 Convention Relating to the Status of Refugees](#) (SG, No.88/15 October 1993).

The measures taken with regard to unaccompanied children refugees are in compliance with the international criteria for best practice. The main governing principles are: the best interest of the child; non-discrimination; timeliness; cooperation among the relevant organisations which strictly abide by the EU principles of best practice for work with unaccompanied children.

The following principles are applied during the procedure for providing protection: access to the territory of the Republic of Bulgaria (“non-refoulement”); provision of translation services; non-application of the accelerated procedure. The procedure is carried out as follows: early identification; accurate registration; interviewing in the presence of a representative of the relevant department for child protection at the Directorate for Social Assistance; evaluation of the age; appointment of a custodian/guardian and legal representative; collection of data and humane and expeditious search of the family.

The temporary care measures taken during the procedure for providing protection include:

- Placement under safe conditions in refugee registration and reception centres;
- Providing social assistance at the level envisaged for foreign adults in the form of monetary aid for food and food packages;
- Providing health insurance, directing the person to a general practitioner, carrying out examinations and treatment as provided for Bulgarian citizens;

- Consultations with a psychologist;
- Access to Bulgarian language courses and providing opportunities to join the educational system up to secondary education.
- Upon the delivery of the decision concerning the request for asylum, permanent solution measures are to be taken, such as searching for the family of the child with the aim of reuniting them;
- Placement in institutions for children deprived of parental care (under the supervision of the municipalities) - after a court decision, upon request by the relevant department for child protection at the Directorate for Social Assistance and Integration in Bulgaria.

Under the programme “Separated Children in Bulgaria”, a joint initiative of members of the “Save the Children” international alliance in Europe and the United Nations High Commissioner for Refugees, special guidelines on good practice have been published and distributed. The guidelines aim at describing in an articulate and distinct manner policies and practices necessary to secure and protect the rights of unaccompanied children in Europe. These guidelines are used by interviewing authorities, lawyers, social workers, psychologists, teachers and other professional groups in their daily work.

## CZECH REPUBLIC

At the reception centre at the Prague airport *Ruzyně* the first contact is made with UAMs arriving in the Czech Republic by air. After the reception procedure, which includes a health examination, UAMs are transferred to a special facility for children called „Blue School”<sup>26</sup>. This reception centre ensures social, psychological and medical care.

(cf. Act No. 325/1999 Coll. on Asylum [www.mvcr.cz/azyl/azyl/325\\_99.pdf](http://www.mvcr.cz/azyl/azyl/325_99.pdf))

All unaccompanied minors (foreigners unaccompanied by parents or statutory representatives who were found by the police on the territory of the Czech Republic) are placed into the Facility for foreign children (hereinafter referred to as “the Facility”).

<sup>26</sup> Blue School - Facility for children of foreign nationals - younger than 18 years who are in the territory of the Czech Republic without parents or other legal representatives - that serves as a diagnostic facility, children’s home with school, educational institute, educational care centre, primary and special school. This facility also cares for the foreign children whose parents are in the territory but who are not able to look after their children.

In the Facility a first assessment of the child's maturity, mental and physical health is conducted. This complex diagnosis comprises five areas – social, health, special education, pedagogical and psychological diagnostics. In the area of social diagnostics, specialists focus on recognising personal, family and complex social anamnesis of minors, on gathering documents and data and also try to find a solution on the social status of the minors. The Facility cooperates with all parties concerned, including the public and non profit sector.

As regards health, the minor's current condition is assessed and all necessary health examinations are organised. Special pedagogical diagnostics aims at behavioural differences stemming from ethnic, cultural, historical and religious diversities, ability to adapt to facility conditions, living in a group, reactions to stress situations, basic hygienic and working habits, alternatively solution to ethopaedical questions (ethopedy is a discipline dealing with problematic children, it belongs to social pedagogy).

Psychological diagnostics focuses especially on the setting of cognitive abilities level, personality characteristics and the ability of adaptability, as well as the level of influence of experienced traumas, eventually minor's psychopathological characteristics. Psychologists work with the minors on their adaptation to the facility rules and care, on building relationships with other children, on accepting their future after leaving the facility and thus preparing them for facing an independent life after leaving the facility.

Besides the above and in the framework of therapeutic tasks, individual consultations are carried out aiming at calming the minor, breaking down anxiety and trauma, strengthening safety feelings and confidence as well as building-up self-consciousness and develop their personality. Pedagogical diagnostics consist of the identification of educational level and the abilities and knowledge of the minor in each school subject. Based on these diagnostics teachers prepare options related to further education.

They also decide what level of class of Czech primary, special or high school the child should start to attend after the transfer to the Children's Home with School/Educational Institute for Foreign Children.

## POLAND

### First reception procedure in Poland

In accordance with the [Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland and the Amendment on 18 March 2008](#), an unaccompanied minor submits his application for refugee status to a unit of the Border Guard at the Polish border or in a scope of the city of Warsaw or in a guarded centre.

During the admission procedure, the representative of the Border Guard carries out an interview with the minor. The Border Guard immediately applies to a custodial court for the appointment of a guardian (“curator”) to represent the minor in the asylum procedure and for placement of the minor in a custodial-educational centre. If a person appears as a minor during the procedure, the Head of Office for Foreigner is responsible for applying to a custodial court.

The Border Guard should escort an unaccompanied minor to a foster family which plays the role of custodial-educational centre or to a custodial educational centre. Both institutions are designed as crises centres. In accordance with [Art. 47<sup>27</sup>](#) an unaccompanied minor applying for the refugee status shall not be placed in a guarded centre or in arrest for the purpose of expulsion.

In practice every unaccompanied minor under 18 who applies for refugee status is brought to the Children’s Home Number 9 in Warsaw based on an Agreement between the Office for Foreigners and the Municipality of Warsaw. At the Children’s Home Number 9 special facilities and complex care is provided for unaccompanied children.

### Care standards in Poland

Currently, the children’s home possesses facilities for 10 unaccompanied minors; however there is a possibility to increase this number. Among unaccompanied minors placed in the children’s home are asylum seekers, minors granted refugee status and minors granted tolerated stay.

<sup>27</sup> <http://www.udsc.gov.pl/LAW,265.html> (Journal of Laws 2003, No 128, it. 1175)

The children's home provides accommodation facilities and complex care for unaccompanied minors according to the standards defined in [Art. 53 of the Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland](#).

**Art. 53.<sup>28</sup>**

The minister competent with respect to internal affairs, acting in consultation with the minister competent with respect to social security, shall specify by means of an ordinance the conditions of accommodation of unaccompanied minors in the centre as well as standards of custody in such centres, taking into account the necessity to satisfy minor's needs in a manner relevant to his age and psychophysical condition and compensating a lack of contacts with his natural family. The ordinance should specify in particular the conditions applying to the location of the centre, equipment of rooms therein, manner of placing minors in the centre and of exercising care over them.

The care for children is provided by tutors 24 hours a day. There is a special procedure of reception welcoming "newcomers" in a nice atmosphere to facilitate a process of adapting to the new situation and joining the group. All rules of the group and the children's home are introduced to every new child. During individual conversations, tutors try to recognise the life situation, problems, and needs of the children.

Unaccompanied minors are provided with the proper conditions for cultural adaptation with respect to their culture including religion. The meals are adapted to cultural and religious requirements. They have the possibility to learn the Polish language and to study. The children are encouraged to choose particular courses on the level corresponding to their knowledge. They are also provided with the possibility to participate in computer and professional trainings. Children may also participate in entertainment activities. During summer and winter holidays various trips are organised for the children. To compensate for the separation of a minor from the family, tutors try to create a family-like atmosphere in the group.

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28 <http://www.udsc.gov.pl/LAW,265.html> (Journal of Laws 2003, No 128, it. 1175)



In every individual case the health and psychological conditions are recognised and a proper health care service is provided for the children. Unaccompanied minors are supported to stabilise their psychological conditions. If needed, they are provided with assistance from a psychologist.

Tutors assist minors in their asylum procedure. They contact a legal representative or lawyer if needed. The minors are supported by tutors in preparation to the interrogation and to go through the asylum procedure.

### **Interrogation procedure**

The Head of Office for Foreigners shall notify the legal representative of an unaccompanied minor at the latest 7 days in advance about the terms and the place of the interrogation. The legal representative shall inform an unaccompanied minor on the way and importance of the procedure, and possible results of the interrogation. The interrogation shall be carried out in a language understandable to the minor and in a way adapted to the minor's age, level of maturity, and mental development. The fact that the minor's knowledge on a situation in his country of origin is limited should be taken into account. During interrogation an unaccompanied minor is assisted by the following persons:

- A legal representative ("curator");
- An adult appointed by the minor, if this does not obstruct proceedings;
- A psychologist or an educator who gives his opinion on psychological and physical conditions.

A legal representative is entitled to post questions and make comments. There is a possibility of recording an interrogation. An unaccompanied minor can be interviewed only by a qualified person who fulfils one of the following conditions:

- MA in law and 2 years of working experience in institutions which scope of activities include care for unaccompanied minors
- MA, 2 years of working experience in the public administration, and training in the field of proceedings related to unaccompanied minors applying for refugee status
- MA in one of the following subjects: psychology, sociology or pedagogy and 2 years of working experience in a public administration.

Interrogations of unaccompanied minors are carried out in a special 'cosy' room adapted to psychological needs of minors. The room is situated in the office of the Nobody's Children Foundation. The Foundation and the Office for Foreigners signed in March 2004 an agreement on this cooperation. According to the Agreement, the obligations of the Foundation are twofold:

- The participation of the pedagogic counsellor or psychologist in the interview of an unaccompanied child refugee;
- Preparing assessments of the psychological condition of the child aliens
- Offering rooms adjusted to interviewing children.<sup>29</sup>

Older children in the age close to eighteen are interviewed in the Office for Foreigners.

### **Legal protection**

According to the [Act of 13 June 2003 on Aliens, Code of Administrative Proceedings and its Amendment of 18 March 2008](#), following forms of humanitarian protection in Poland are applicable:

- refugee status
- subsidiary protection
- asylum
- tolerated stay
- temporary protection

**Refugee status** in Poland is granted to a foreigner who fulfils the conditions determined in the [Geneva Convention of 1951 and New York Protocol of 1967](#). The refugee status is also granted to a spouse and a child of a foreigner applying for refugee status if they are included in the application submitted by a foreigner.

**Subsidiary protection** is granted to a foreigner who does not qualify as a refugee but who cannot return to his country of origin because of the real risk of suffering a serious injury or harm such as:

- Death penalty or execution
- Tortures or inhuman treatment
- Serious and individual danger of life and health being a consequence of widespread violence against civilian population in a situation of international or domestic conflict.

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<sup>29</sup> Resource Book for Law Enforcement Officers on Good Practices in Combating Child Trafficking, 2006, IOM Vienna & Austrian Federal Ministry of Interior, p.127-128

And because of the above mentioned risk a foreigner cannot or does not want to be under protection of the country of origin. Injuries or harms can be caused by the authorities of the country of origin, organisations or groups controlling the country of origin or a part of it, other unites in the case when the authorities or international organisations are not able or do not want to protect citizens against persecutions or risk of suffering inhumane treatment.

**Asylum** is granted to a foreigner when it is essential to provide him with protection and when it is in the interest of the Republic of Poland.

Tolerated stay is granted to a foreigner under the following conditions:

- 1) *The expulsion may violate the right to family life as stated in the Convention on Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, or may violate children's rights as defined by the United Nations Convention on the Rights of the Child to an extent essentially jeopardizing a child's psychophysical development.*
- 2) *The expulsion may be effected only to a country where a foreigner's right to life, to freedom and personal safety could be under threat, where he could be subjected to tortures or inhumane or degrading treatment or punishment, or could be forced to work or deprived the right to fair trial, or could be punished without any legal grounds – within the meaning of the Convention on Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950.*
- 3) *The expulsion is unenforceable due to reasons beyond the authority executing the decision on expulsion or beyond this alien*

**Temporary protection** is granted to foreigners who are arriving to Poland in large numbers and who have left their country of origin or a geographical region due to external invasion, war including civil war, ethnic conflicts, human rights violation; regardless whether foreigners arrived spontaneously or with assistance provided by Poland or international community. Temporary protection is granted until the moment when the return of a foreigner to the previous place of residence is possible; however no longer than for one year. Temporary protec-

tion can be prolonged for the period of six months (however no more than two times) if the obstacles have not receded and safe return home is not possible.

Temporary protection is granted on the basis of a decision of the Council of EU or of a regulation of Council of Ministers.

### **Removal**

Rejected asylum seekers who were not granted any kind of the above mentioned humanitarian protection receive a removal order. In consequence, they should leave the territory of Poland on their own during 30 days after the decision for not granting protection has been delivered. In the case of unaccompanied minors, they stay in a custodial-educational centre until Polish authorities transfer them to the competent authorities or to a competent organisation in the country of origin. Another option available for unsuccessful asylum seekers is to use the voluntary return programme. This programme is also accessible to unaccompanied minors.

See **section 3.2.5** for more information on voluntary return and reintegration.

## **ROMANIA**

### **Refugee Status Determination Procedure for unaccompanied minors**

#### **Access to the territory of Romania**

- Unaccompanied minor asylum seekers have access to the Romanian territory and they cannot be subject to the border procedure.
- Their applications will be processed under the ordinary procedure and cannot be subject to the accelerated procedure as manifestly unfounded applications.
- An unaccompanied minor asylum seeker will not be kept in detention for illegally entering the Romanian territory.
- The Border Police officers do not have the right to perform a detailed interview concerning the reasons for leaving the country of origin (law No.122/2006 on asylum in Romania, Art. 75, § 2, Art. 84, modified and completed through the [Government Emergency Ordinance No.55/2007](#) on the foundation of the Romanian Immigration Office-RIO).

## Reception, registration and accommodation in Romania

- In case the application of an unaccompanied minor is submitted in the territory to other structures of the Ministry of Interior and Reform of the Administration:
  - The application will be sent immediately and registered at the centre and the processing will take place at the central headquarter of the RIO;
  - The unaccompanied minor will receive a temporary certificate replacing the temporary ID and free transportation to the RIO will be provided.
- In the case of a third country national minor under 14 years of age, his interests will be protected by a legal representative, and in the absence of such a legal representative, one will be appointed according to the Romanian law.
- After the age of 14, the minor can submit the application personally, and can be appointed a legal representative according to the Romanian law.
- A personal file will be created (including the application, photo, and fingerprints)
- Data will be collected concerning the unaccompanied minor: name, date of birth and country of origin, names of the parents, status (unaccompanied by parents, relatives, others, etc) and the nature of the relationship, languages spoken, level of education;
- The unaccompanied minor shall be informed about his rights and obligations and about the asylum procedure.
- A temporary ID will be issued.
- Unaccompanied minors will be accommodated with the accompanying relatives, with no regard to the degree of kinship.
- Unaccompanied minor asylum seekers under the age of 16 will be accommodated in the centres of the General Direction for Social Assistance and Child Protection, or in the centre of an authorised private organisation.
- Asylum seekers over 16 who do not have the means to support themselves can be accommodated in the reception and accommodation centres of the ORI until 15 days after a final and irrevocable decision of rejecting the application for protection has been issued.

### *a) If the application is rejected*

- In case the application of an unaccompanied minor for granting protection in Romania is rejected by a final and irrevocable decision, the General Direction for Social Assistance and Child Protection implements the

actions foreseen by the law in order to establish a measure of protection for the latter, requesting in this respect the courts to establish the placement of the child in a special protection service

- In a second phase, the Department for Migration, within the Romanian Office for Immigration, is informed about the situation in which the unaccompanied minor is and whose application has been rejected. This department together with the General Directorate for Social Assistance and Children's Rights Protection has to cooperate in order to solve the case in respect of children's rights.
- The measure of protection lasts until the return of the child to the country of residence of the parents or to the country where other members of the family have been identified as willing to receive the child.

*b) If a form of protection is granted*

- In order to accommodate the minors who obtain a form of protection, the age of the minor is taken into consideration: those who are under 16 years old will be accommodated in centres belonging to the General Directorate for Social Assistance and Children's Rights Protection, and for those who are over 16 years old, they have the choice between the above mentioned centres or the centres belonging to the Romanian Office for Immigration. For the last category the choice is made in consultation with the legal representative appointed by National Authority for Children's Rights Protection.
- These UAMs will receive residence documents and have the right to stay in the centres until the age of 18.
- Minors can be enrolled in special integration programmes.
- In view of integration in the Romanian education system, minors granted a form of protection in Romania benefit from a free introductory course to the Romanian language for the duration of one school year. During this time they attend learning activities with theoretical, practical and recreational character in normal schools and without their presence being registered in official documents. At the end of the introductory Romanian language course, an evaluation committee assesses the level of acquaintance with the Romanian language and decides on enrolling the minors granted a form of protection in Romania in the appropriate grade.
- They will also receive a personal numeric code.

**Legislation:**

- **Law No.122/2006 on asylum in Romania;**
- **Government Emergency Ordinance No.55/2007 on the foundation of the Romanian Immigration Office;**
- **Law 272/2004 on children' rights protection, Art. 73;**
- **Ordinance No.44/2004 on the social integration of aliens who obtained a protection form in Romania**

## 2.3 Policies on unaccompanied minors in an irregular situation

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Promoting respect for the human rights of undocumented migrants within Europe, including respect for their basic social rights such as the right to health care, the right to shelter, the right to education and training, the right to a minimum subsistence, the right to family life, the right to moral and physical integrity, the right to legal aid, and the right to fair labour conditions, appears as essential to strengthen the protection of undocumented children against discrimination-based violence in the fields of access to housing, health care and education in Europe.

PICUM, the Platform for International Cooperation on Undocumented Migrants<sup>30</sup>, is a non-governmental organisation that aims to promote respect for the human rights of undocumented migrants within Europe. PICUM's research and the experience of the organisations in its network have shown that there is a wide disparity amongst EU Member States concerning legal entitlements of undocumented migrants to basic social services.

In February 2007, PICUM has commented on the communication from the European Commission on "Policy priorities in the fight against illegal immigration of third-country nationals" and has welcomed the fact that the communication highlights the need to promote and protect undocumented migrants' fundamental rights. Nonetheless, PICUM regrets that while "irregular migrants must be offered a humane and dignified treatment particularly as they are often victims of traffickers' networks and exploited by employers," there is no other mention in the communication of what these fundamental rights are, and how they can be protected and promoted.

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30 PICUM (2007) 'PICUM's comments on the communication from the Commission on "Policy priorities in the fight against illegal immigration of third-country nationals"', Platform for International Cooperation on Undocumented Migrants, Brussels, 12.02.2007.



Amongst other recommendations, the Platform for International Cooperation on Undocumented Migrants (PICUM) recommends to “ratify the International Convention for the Protection of the Rights of All Migrant Workers and the Members of Their Families (1990), which reiterates a number of rights applicable to migrant workers and their families, including various rights applicable to undocumented workers”.

## AUSTRIA

When a person is picked up and claims to be a minor, the youth welfare services have to be immediately informed. Minors are subject to special protection and a guardian has to be appointed for all unaccompanied minors residing in Austria, regardless of their legal status.<sup>31</sup> The situation the minor finds himself in is analysed and evaluated. Following a best interest determination the future steps are to be decided.

## BELGIUM

In Belgium, the [guardianship provision \(Art. 5\)](#) outlines that a guardian shall be appointed for each unaccompanied minor, asylum seeker or not. The procedure is the same for both.

If the minor does not claim asylum (or the asylum request is refused and the minor is rejected), the circular of 15 September 2005 relating to the stay of UAMs provides with the issuance of an entry permit recording his arrival (known as a residence permit), renewable once, followed by a certificate of registration as foreigner (CIRE), which is valid for six months to one year, renewable for up to three years.

In certain cases, the existence of a guardianship is likely to have an influence on the decision of the state to grant permanent residence. Such would be the case if the guardian were to propose settlement in Belgium as a durable solution and the Immigration office cannot prove that another solution is more consistent with the child’s best interests. All the authorities concerned will have to take into account the fact that a guardian has been appointed, because a young person at risk is involved, and that regularisation of his situation has to be advocated on “humanitarian grounds”.

<sup>31</sup> See chapter on Guardianships.

The temporary residency is renewable up until age 18 for all those for whom, in the opinion of the guardian, no other satisfactory durable solution has been found.

If the minor does not fulfil all conditions to request a stay permit on the basis of the circular of 15 September 2005, he can introduce a request based on [Art. 9 bis of the law of 15 December 1980 on entry into the territory, residence, settlement and removal of aliens](#)).

If the minor suffers from a serious illness and if he cannot be taken care of properly in his country of origin, he can claim a stay permit on the basis of [Art. 9 ter of the law of 15 December 1980](#).

Many unaccompanied minors however do not receive any legal status despite the existence of a guardian. They just stay illegally in the country and could be faced with an order of expulsion.

## BULGARIA

According to the [Law for Asylum and Refugees, Art. 25. I \(amendment – SG 52/07\)](#), for an unaccompanied minor or under-age foreigner seeking or having received protection who is on the territory of the Republic of Bulgaria, a guardian or respectively a trustee shall be appointed under the conditions and by the order of the Family Code.

(3) [\(amendment – SG 52/07\)](#) The State Agency for refugees shall exercise control and shall take measures for protection of the minor and under-age foreigners seeking protection against physical or mental violence, cruel, inhuman or humiliating treatment.

## CZECH REPUBLIC

Every minor under 18 years has the right to stay in the territory of the Czech Republic in case of placement in the Facility for children. In accordance with this right to stay, free of charge, social, psychological and medical care as well as education is ensured.

After accomplishing the full age of 18 years, such a person can apply for permanent stay in the territory with regard to special considerations.

## POLAND

In Poland, proceedings related to unaccompanied minors in an irregular situation are regulated by the [Act of 13 June 2003 on Aliens, Code of Administrative Proceedings, and Regulation of the Minister of Interior and Administration of 26 August 2004](#). If the Border Guard or Police detains an unaccompanied minor, they shall immediately request a family court to appoint a guardian to represent the minor and to place the minor in a custodial-educational centre. At the same time, a detaining institution shall apply to the *voivod* for issuance of the decision on expulsion. The detaining agency shall also contact an adequate consulate.

On the contrary to proceedings related to unaccompanied minors who apply for refugee status, it is allowed to place an irregular unaccompanied minor in a guarded centre for foreigners instead of placing him in a custodial-educational centre. In theory, the Convention on the Rights of the Child shall be taken into account and the arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time. In practice, unaccompanied minors in an irregular situation detained by Border Guards or Police are located in guarded centres by a court decision. Unaccompanied minors are accommodated in specially adapted facilities within the guarded centres. Rooms for unaccompanied minors shall be located in a separated zone of the building to make the contact with adults placed in the centre impossible. A room should not be smaller than four square meters. The choice of the room should be determined by medical, psychological, and remedial recommendations related to the minor's conditions, the age and sex of a minor, and the need for building a friendly atmosphere among youngsters. Organisations, associations, and individuals in guarded centres are allowed to organise cultural, educational and sport activities.

### Expulsion from Poland

The decision of expulsion of an unaccompanied minor to the country of origin or to another country shall be executed only when he shall be under the care of the legal representative unless the manner of executing the decision on expulsion provides that the minor shall be handed over to the legal representative or to the representative of the competent agencies of the country to which the

expulsion is carried out. In practice, the *voivodes* very rarely issue the decision on expulsion of an unaccompanied minor. The legal regulations related to unaccompanied minors in an irregular situation are ambiguous. It is not clearly defined which agency is responsible for searching the legal representatives in the country of origin, for confirming if a minor will be handed over in the country of origin to the legal representative or to a representative of an adequate institution, and for determining what the best interest of a child is

### **Permit for tolerated stay in Poland**

Art. 97 of the Act of 13 June 2003<sup>32</sup> on granting protection to aliens within the territory of the Republic of Poland and Amendment of 18 March 2008 define the following conditions under which a foreigner cannot be expelled and shall be granted the permit for tolerated stay (see the above point 2.2.POLAND) Permit for tolerated stay can be granted to a foreigner by *voivode*, Head of Office for Foreigners, Refugee Board.

As a conclusion one can say that the situation of unaccompanied minors who do not apply for refugee status in Poland is worse than the situation of unaccompanied minors who are asylum seekers. The asylum procedure is the only way available for legalising the residence of unaccompanied minors in an irregular situation and it provides minors with the possibility of placement and of special care in the children's home (see the point 2.1.2) instead of temporary placement in the crisis centre or guarded centre. Specific legal rules apply to unaccompanied minors in an irregular situation who are suspected to be victims of trafficking in persons (see point 2.1.5).

The legal regulations related to unaccompanied minors in an irregular situation are ambiguous. It does not clearly define which agency is responsible for searching the legal representatives in the country of origin, for confirming if a minor will be handed over in the country of origin to a legal representative or to a representative of an adequate institution, and for determining what the best interest of the child is.

## **ROMANIA**

If unaccompanied minors in an irregular situation are found on the Romanian territory, both the Romanian Immigration Office and the National Authority for

32 <http://www.udsc.gov.pl/LAW,265.html> (Journal of Laws 2003, No 128, it. 1175)

Child Protection are informed in order to decide upon the minor's situation according to the provisions of the [Law no.272](#). The General Directorate for Social Assistance and Child Protection implements the actions foreseen by the law in order to establish measures of protection for the unaccompanied minor, requesting in this respect the courts to decide on the placement of the child in a special protection service. The measure of protection lasts until the return of the child to the country of residence of the parents or to the country where other members of the family have been identified as willing to receive the child.

## 2.4 Policies on unaccompanied minors originating from the European Union

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**In Austria, Bulgaria, the Czech Republic, Poland and Romania**, the definition of an unaccompanied minor applies for both EU and third countries nationals; therefore, these two categories are eligible for care and protection as UAMs.

**In Austria**, a minor holding an EU Member State's citizenship is put on par with an Austrian minor. Upon the evaluation of the situation the minor finds himself in, a best interest determination is carried out in order to determine the future steps to be undertaken.

In the **Czech Republic**, regarding asylum procedure and the right of stay in the territory there are no differences between EU citizens and non EU citizens according to the [Asylum Act](#)<sup>33</sup> and the Aliens Act. The legislation is based on bilateral contracts and transnational contracts ([www.justice.cz](http://www.justice.cz)).

**In Belgium**, the [Circular of 2 August 2007 \(M.B. 17 September 2007\)](#) referring to European unaccompanied minors in a vulnerable situation aims at guaranteeing provisional care in favour of those who are not registered in the population registers. This provisional care aims at fighting against situations of vulnerability, delinquency or trafficking in human beings in which some minors can find themselves.

The service in charge of identifying European unaccompanied minors in a vulnerable situation that was created inside the FPS Justice is in charge of providing adequate care to the concerned minors. This service verifies the vulnerability criteria in cooperation with the police services and takes immediate measures in coordination with the competent authorities in order to ensure adapted social care.

**In Poland**, the situation of unaccompanied minors who are citizens of EU country and who are detained on the territory of Poland is regulated by [the Act of 13 June 2003 on Aliens](#), [Code of Administrative Proceedings](#), and [Act of 14](#)

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33 [Asylum Act \(Act No. 325/1999 Coll.\)](#) – Regulates entrance and stay of foreigners who apply for international protection in the Czech Republic. This Act regulates the asylum procedure as well as the rights and duties of applicants for international protection.

July 2006 on terms and conditions of the entry into the territory of the Republic of Poland of the citizens of the EU Member States and the member of their families.<sup>34</sup>

If the Police or the Border Guard detains an unaccompanied minor who is a citizen of an EU country, similar measures as in the case of irregular minors shall be applied. The detaining unit shall immediately request to the family court for appointment of a guardian to represent a minor and for the placement of the minor in a custodial-educational centre. At the same time, the adequate consulate should be contacted. In accordance with the Convention on the Right of the Child, the best interest of the child shall always be taken into account. The expulsion of unaccompanied minor who are citizen of an EU country is possible; however only the Head of the Border Guard or the Head of Police can appeal to the *voivod* for issuing the decision on expulsion.

The Act of 14 July 2006 on terms and conditions of the entry into the territory of the Republic of Poland of the citizens of the EU Member States and the member of their families says:

*Art. 68<sup>35</sup> An expulsion decision may not be taken against Union citizens, if they have resided in the Republic of Poland for the period exceeding ten years, except if the decision is based on imperative grounds of national defence, national or public security by means of constituting a threat for peace, humanity, independence or defence of the Republic of Poland, or due to terrorist activity.*

*Art. 69<sup>36</sup> A minor Union citizen cannot receive an expulsion decision, except if:*

- (1) Circumstances referred to in Article 68 occur, or*
- (2) The expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989 (Dz. U. of 1991, No 120, item 526, and of 2000, No 2, item 11).*

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<sup>34</sup> <http://www.udsc.gov.pl>

<sup>35</sup> <http://www.udsc.gov.pl/LAW,265.html> (Journal of Laws No. 144, item 1043)

<sup>36</sup> *ibidem*

Regarding unaccompanied minors who are citizens of an EU country and who are victims of human trafficking, they are also targeted by the Programme of Support and Protection of Victims of Trafficking in Person who are foreigners (see the point 2.5).



## 2.5 Legislations linked to unaccompanied minor victims of trafficking

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In the UN Convention against Transnational Organised Crime (Palermo Protocol), Art. 3, human trafficking includes trafficking in children in the context of organised crime: “a) Trafficking in Persons shall mean recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power off a position of vulnerability or of a giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at the minimum, exploitation of prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practises similar to slavery, servitude or removal of organs; b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph a) of this article shall be irrelevant where any of the means set forth in subparagraph a) have been used; c) The recruitment, transportation, transfer, harbouring or receipt of a child for purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph a) of this article; d) “Child” shall mean any person under eighteen years of age. “

According to the Optional Protocol “sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”.

### AUSTRIA

The Austrian Penal Code constitutes trafficking in human beings as a criminal offence in §104a StGB<sup>37</sup>. A person who recruits, accommodates, transports, offers or passes on to a third person an adult person by illicit means for the purpose of labour or sexual exploitation, or the removal of organs can be sentenced up to ten years in prison. Illicit means are listed in §104a II StGB as deceit about facts, use of force, the abuse of power or of a position of vulnerability and others.

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37 STGB = Strafgesetzbuch (penal code)

In case the victim is a minor, the existence of the act (recruitment, accommodation, transportation, offer, passing on) and the purpose (sexual or labour exploitation, removal of organs) constitutes the offence of trafficking in human beings, and the existence of means (deceit, use of force, abuse of power or of a position of vulnerability) is irrelevant.

§ 217 of the Austrian Penal Code (StGB) states that leading someone into prostitution or recruiting someone for prostitution in a country other than the one in which the person has his citizenship or habitual residence is an offence. The penalty is increased if deception on the purpose of the journey to the country, coercion or force is used. Furthermore, traffickers can be prosecuted for other offences such as bodily harm, rape, coercion and others.

According to the Austrian Criminal Procedure (§ 66 StPO<sup>38</sup>), trafficked persons have the right for psychosocial and juridical assistance during the trial. Psychosocial assistance includes the preparation of trafficked persons for the trial and for the emotional situation that results out of it, accompanying the person to the interviews, provision of legal assistance and representation. The Ministry of Justice has the right to appoint qualified institutions for these tasks.

Victims or witnesses can be granted a residence permit on humanitarian grounds (§72 NAG<sup>39</sup> Settlement and Residence Act) with a minimum duration of six months. This is not mandatory (“can be granted”). Romanian and Bulgarian nationals as EU citizens are allowed to reside in Austria but underlie a waiting period before they obtain open access to the Austrian labour market.<sup>40</sup>

Minors under the age of 14 years which may be victims of abuse must be interviewed in a sensitive manner (“schonende Einvernahme”), taking into account their physical and mental state.

If a witness is below the age of 14, an expert can be asked to interview the minor. The interview takes place in a separate room, so that the minor does not meet with the accused person or other parties; the testimony is recorded. Furthermore, victims must not be interviewed another time.

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38 STPO = Strafprozessordnung (criminal procedure)

39 NAG= Niederlassungs und Aufenthaltsbewilligungsgesetz (law on settlement and residence authorisation)

40 Bundeskanzleramt Rechtsinformationssystem (RIS): §32a AuslBG  
<http://www.ris2.bka.gv.at/Dokument.wxe?QueryID=Bundesnormen&Dokumentnummer=NOR40078599&TabbedMenuSelection=BundesrechtTab&WxeFunctionToken=8be15119-f59d-49e4-8a11-b41200e2f818>

## BELGIUM

In Belgium, the law of 10 August 2005 modifies a number of measures in order to reinforce the fight against trafficking in human beings and against landlords demanding exorbitant rents for degraded housings (“marchands de sommeil”). This law redefines the notion of trafficking and makes a distinction between trafficking and smuggling.

Other tools are the law of 15 September 2006 modifying the law of 15 December 1980 on the access to the territory, the stay, and the removal of foreigners and its royal decrees of 27 April 2007.

The new measures apply both for UAMs originating from the European Union and for adults. The notion of trafficking covers prostitution, exploitation of beggars, organ traffic, economic exploitation, forced offences such as stealing or drug traffic. In order to benefit from the status as victim of trafficking, the minor must fulfil following three conditions:

- Leave the person or the network having exploited him.
- Be followed up by one of the three reception centres specialised in the reception and assistance of victims of trafficking.
- Lodge a complaint against the traffickers or trafficking network or make a declaration against them.

The Centre for Equal opportunities and Fight against Racism is in charge of the coordination between the three specialised centres (Sürya in Wallonia, Payoke in Flanders and Pag Asa in Brussels). These centres provide juridical, administrative, social and medical assistance to the victims.

These specialised structures are not adapted for minors. Minor victims are normally hosted in centres for unaccompanied minor victims of trafficking: *Esperanto* in Wallonia, *Juna* in Flanders and *Minor N'Dako* in Brussels. These centres ensure the reception of the minor; juridical and administrative follow up being ensured by one of the three specialised centres.

The law of 13 April 1995 and the Royal decree of 16 June 1995 have mandated the Centre for Equal opportunities and Fight against Racism with the promotion, coordination and the follow up of the policy on the fight against international trafficking.

The interdepartmental Coordination Cell of Fight against International Trafficking in Human Beings gathers representatives of different ministries, the College of general Prosecutors and Judges, the police, the Immigration Office and the Centre for Equal opportunities and Fight against Racism. The Cell coordinates the action of the different departments involved in the fight against trafficking; evaluates results; disseminates information coming from the Centre for Equal opportunities and makes proposals and recommendations aiming at improving the fight against trafficking.

The detection and identification of victims is usually performed by first line services in the field (police, hospitals, etc.). The Immigration Office has a cell dedicated to unaccompanied minor victims of trafficking and is in charge of delivering special resident permits for unaccompanied minors recognised as victims of trafficking. To obtain this special permit, one has to address one of the three specialised centres. Unlike an adult victim, a minor would immediately benefit of a resident permit of 3 months. It can be prolonged in function of the investigation's evolution and under five conditions:

- Not having renewed contacts with the traffickers.
- Not being considered as possibly jeopardizing public order or national security.
- Not stopping cooperating.
- The judiciary authorities should not decide to put an end to the procedure.
- The cooperation or the victim's complaint must not be fraudulent or ill-founded.

## BULGARIA

In Bulgaria, the ratification of the [Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography](#) and the implementation of its provisions have further increased the commitment on behalf both of responsible institutions and society as a whole

regarding the protection of children from trafficking for the purpose of the sale of children, child prostitution and child pornography.

Legislative measures for the protection of children from sexual abuse were undertaken in two directions. Firstly, relevant legislation was adopted (e.g. [Child Protection Act - CPA](#), [Combating Illegal Trafficking in Persons Act](#)) which led to the creation of a special mechanism for child protection and the enhancement of the administrative capacity of the system for protection. At the same time, amendments were made to the Penal Code which provides definitions for new offences and strengthens the sanctions with regard to offences committed against children. The definitions given by the Protocol to the terms “sale of children”, “child prostitution” and “child pornography” have been incorporated into Bulgarian legislation.

The measures provided for in the Optional Protocol are included as activities in several key national strategies and programmes, including the [Action Plan against Sexual Exploitation of Children for Commercial Purposes \(2003 - 2005\)](#); the [National Programmes for Child Protection covering the years \(2004, 2005, 2006, 2007\)](#); the [National Strategy for Child Protection \(2004 - 2006\)](#); the [National Strategy for the Child \(2008 - 2018\)](#), the [National Programs for Prevention and Counteraction of the Trafficking in Persons and Protection of the Victims \(2005, 2006, 2007\)](#), and the [National Strategy and Action Plan for the Protection of the Rights of the Street Children](#).

Protection measures intended for the groups of children referred to in this Protocol have been also included in the [National Integrated Plan for the Implementation of the Convention on the Rights of the Child for 2006 – 2009](#). The Integrated Plan aims to ensure the welfare of children in Bulgaria by bringing together the national policies and strategies for child protection, identifying the roles and responsibilities of all institutions involved in observing children’s rights in Bulgaria in a long-term perspective.

In 2006, the mechanism for consular protection of Bulgarians who are victims of trafficking abroad was also updated in compliance with the [Coordination Mechanism for referral and care of unaccompanied Bulgarian children coming back from abroad](#). Instructions for implementing these measures are defined in [Art. 76a, § 1 of the Bulgarian Identity Documents Act](#). The mentioned article

contains provisions for protection mechanisms for juvenile and minor Bulgarian citizens who have been victims of trafficking abroad.

As regards the protection of child victims of sexual abuse and exploitation, amendments to the Penal Code were adopted strengthening the sanctions for persons involved in the sexual exploitation of children and those who resort to sexual violence against children. Through the amendments to the Penal Code in 2002, the terms of deprivation of liberty were increased for offences committed against juveniles or minors, including imprisonment of up to 20 years.

With the amendments to the Penal Code in 2002, a special new section has been included - "Trafficking in Persons". Recruiting, transporting, hiding or admitting individuals or groups of people for the purpose of using them for debauchery activities, forced labour, dispossession of bodily organs or for holding them in forced subjection, regardless of their consent, is defined clearly as a crime. When the victim of the offence is a person less than 18 years of age, the punishment is deprivation of liberty for 2 to 10 years and a fine of up to 10,000 BGL (Art.159 à, §. 2, item 1).

In May 2003, Bulgaria deposited the ratification instrument for the [Hague Convention on the Civil Aspects of International Child Abduction](#).

The National Assembly adopted specific amendments to the Family Code with regard to the ratification of the two conventions in July 2003;

Trafficking in expectant mothers for the purposes of selling the babies has been criminalised (Art. 159.a, § 3 of the Penal Code), as well as the consent of a female to sell her child in Bulgaria or abroad (Art. 182.b, § 1 of the Penal Code).

- In September 2003, amendments to the Civil Procedure Code were introduced;
- The 2003-2005 National Action Plan against Sexual Exploitation of Children for Commercial Purposes adopted by the Council of Ministers provides for further strengthening the legal framework by introducing additional provisions in the Criminal Procedure Code with regard to ensuring better protection of the child-victims. For example, the child is to undergo only one interrogation, video records of the interrogation are to be provided, the child is to be placed in special premises fit for his needs, and

indirect participation in the interrogation is to be allowed to the other party and the other party's legal counsel. All these measures aim at ensuring full respect for the child's dignity and reducing to the possible minimum any additional harm that might be caused to the victims, witnesses or their families. The suggested measures are also believed to increase the reliability of the child's testimonies.

Art. 11 § 3, of [Child Protection Act](#) stipulates the right of every child to protection against being used for begging, prostitution, distribution of pornographic materials and receipt of illegal incomes as well as against sexual violence.

According to the amendments to the [Bulgarian Identity Documents Act](#), if information is received on a Bulgarian national from a foreign authority that a certain minor during his stay abroad has been engaged in or used for illegal activities, as enlisted in [Art. 11 of CPA](#), the authorities may resort to measures such as the prohibition to leave the country and the non-issuance of passports, substituting or confiscating documents from the minor in question.

The measures for protection of a child at risk are enumerated in [Art. 4](#): assistance, support and family environment services; placement in the family of relatives or in the close family; adoption in accordance with the provisions of the Family Code; placement in a foster family; placement in a specialised institution; police protection; specialised protection at public places; information with regard to the child's and parents' rights and obligations; preventive measures for ensuring the security and protection of the child; provision of legal assistance by the State.

The [Bulgarian Combating Trafficking in Human Beings Act](#) was adopted in 2003. The main advantages of this law are its focus on prevention and the measures for victims' support. The Act approves the co-operation between governmental structures, non-governmental organisations and municipality representatives regarding the development of the national policy in the field of prevention and fight against human trafficking.

The Act contains measures for the prevention and for the fight against human trafficking, as well as the measures for protection and support of the victims,

especially women and children. The Act introduces to the Bulgarian legislation terms such as “recovery period” and “reflection period” and arranges the statute of special protection for the victims who co-operate in the investigation. The Combating Trafficking in Human Beings Act defines the statute and the functions of the shelters, centres and commissions which provide protection and support for the victims. The Act also settles the structure and functioning of the main state body – The National Commission for Combating Trafficking in Human Beings.

The National Commission for Combating Trafficking in Human Beings is the national focal point for coordination of the state activities against trafficking in human beings on national and international levels.

The Local Commissions for Combating Trafficking in Human Beings are structures of the National commission, founded in risk regions in the cities of Burgas, Varna, Pazardjik and Sliven.

## CZECH REPUBLIC

### **The Czech Republic relies on following legislation (The Portal of the Public administration - [www.portal.gov.cz](http://www.portal.gov.cz)):**

- Act No. 140/1961 Coll, the Criminal Code (all kinds of criminal acts)
- Act No. 141/1961 Coll, on Criminal Procedure (the Criminal Code – the criminal process, the delivery, the testimony, litigants etc.)
- Act No. 47/1992 Coll, on Civil Code (it is about the civil proceedings)
  
- The recompense:
  - Act No. 209/1997 Coll (On financial recompensation of victims of criminal acts)
  - Act No. 359/1999 Coll, Act on the Socio-Legal Protection of Children (socio-legal protection shall primarily focus on children who became victim of a criminal offence that would put their life, health, human dignity, moral education or property at risk, or who are suspected of being the victim of such an offence)

See point 3.3.4 for more details.



## POLAND

### Definition of human trafficking

No separated definition of human trafficking is included in the Polish Criminal Law. One of the priorities pointed out in the National Program on Combating and Preventing Human Trafficking 2007 – 2008 is for the Ministry of Justice to elaborate a definition of human trafficking.

Regarding the definition of trafficking of unaccompanied minors, until now experts have relied on international law ratified by Poland, such as the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Woman and Children, supplementing the UN Convention against Transnational Organised Crime (Palermo Protocol). [Art. 3 of the Palermo Protocol](#) defines human trafficking including trafficking in children in the context of organised crime.<sup>41</sup>

### Penal Code – trafficking in persons

In virtue of the [Polish Penal Code \(Art. 253\)](#), whoever conducts trafficking in persons even with their consent shall be subject to the penalty of deprivation of liberty for a minimum term of three years. Whoever in order to gain material benefits organises the adoption of children in violation of the law, shall be subjected to the penalty of deprivation of liberty for a term between 3 months and 5 years. The Polish Criminal Law subjects to amerce a person who induces another person to practise prostitution or facilitates it in order to derive a material benefit. If a minor is a victim of the mentioned activity, the perpetrator shall be subjected to the penalty of deprivation of liberty for a term between 1 and 10 years ([Art.204](#)).<sup>42</sup>

### Visa for foreigners who are victims of trafficking in Poland

If a foreigner is suspected to be a victim of trafficking in human beings and it has been confirmed by an authority competent to conduct procedure on combating trafficking in human beings, he may be granted visa, despite of the circum-

41 <http://untreaty.un.org/English/TreatyEvent2003/Texts/treaty2E.pdf>

42 <http://prawo.money.pl/akty-prawne/ujednoczone-akty-prawne/kodeksy/kodeks;karny;z;dnia;6;czerwca;1997;r;1997,88,553,DU,410.html>

stances that justify the refusal of the visa ([Act of 13 June on Aliens, Art. 33<sup>43</sup>](#)). The visa shall be granted for the period necessary for the victim to take a decision whether to cooperate with the Polish authorities. The maximum duration of the visa is two months. ([Act of 13 June on Aliens, Art. 33](#))

If a victim of human trafficking residing in Poland cooperated with the responsible Polish authority and has terminated contacts with the suspected traffickers, he shall be granted the residence permit for a fixed period of time. The special circumstances shall justify his residence in Poland for the period exceeding three months ([Act of June on Aliens, Art. 53](#)).

### **Interrogation procedure of Victims of Trafficking in Poland**

Minors who are Victims of Trafficking (VoT) can be interrogated in a special room adapted to the minor's needs with assistance of a psychologist. The room is situated in the *Nobody's Children Foundation* (see the above point 2.1.2).

### **Assistance for victims of human trafficking**

The [Act of 12 March 2004](#) on Social Assistance and the amendment [Act of 6 February 2007](#) provide a legal basis for social assistance to victims of human trafficking. According to these acts, persons who are granted a visa/residence permit for a fixed period of time because they are suspected to be victims of trafficking or they have already cooperated with the competent authority have right to social benefits such as:

- Placement in a crises intervention centre
- Food and clothing
- Other welfare benefits

On the basis of the agreement between the Ministry of Interior and Administration and non-governmental organisation *La Strada*, the Programme of Support and Protection of Victims of Trafficking in Persons, who are foreigners, is implemented. The following activities are carried out in the frame of this programme:

- Recognising of the victim's needs
- Case management including counselling, support, and assuring the safety of the victim
- Assistance by a translator

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43 <http://www.udsc.gov.pl/LAW,265.html> (Journal of Laws 2003, No 128, it. 1175)

- In-country transportation
- Accommodation in a shelter
- Medical and psychological assistance
- Assisting a victims while contacting prosecution agencies and a body of justice
- Legalization of residence
- Organization of safe return to the country of origin

The Programme is coordinated by the Department of Migration Policy in the Ministry of Interior and Administration, by Border Guards, the Police Headquarters, and *La Strada Foundation*.

### **Cooperation between different agencies to combat trafficking in persons**

On 5 March 2005, the Group on Combating and Preventing Human Trafficking was created in order to establish constant cooperation between different agencies. The Group is an interdepartmental body which is responsible for coordination and assessment of the implementation of the National Programme on Combating and Preventing Human Trafficking. The Group has the following members:

- Minister of Education
- Minister of Labour and Social Policy
- Minister of Justice
- National Prosecutor
- Minister of Interior
- Minister of International Affairs
- Minister of Health
- Office of European Integration Committee
- Head of Office for Foreigners
- Head of the Police Headquarter
- Head of the Border Guard Headquarter

The Group cooperates with NGOs such as *La Strada Foundation*, *ITAKA Foundation*, and the *Nobodies Children Foundation*.

The NGOs *La Strada* and the *Nobody's Children Foundation* organise workshops for representatives of the Border Guards and the Police on the special procedures for identification and treatment of VoT, including unaccompanied minors.

The Polish regulations do not determine the way of identification, treatment, and protection of UAMs who are victims of human trafficking. The Group on Combating and Preventing Human Trafficking is currently working on the creation of procedure for the identification and reception, treatment, and protection procedures related to UAMs who are victims of trafficking. The Creation of this procedure is one of the aims pointed out in the National Program on Combating and Preventing Human Trafficking 2007 – 2008.

## ROMANIA

In the attempt of imposing a solution to the situation of children staying illegally on the territory of other states as a consequence of trade or of illegal migration, [Art. 18 § 1 from the Law No. 272/2004](#) published by Official Monitor, Part One, no. 557 of 23/06/2004 stipulates the rights of UAMs to ensure their return to the legal representatives. The provisions of [Art. 18](#) shall not apply however if the child is abroad accompanied by one of his parents and as a consequence of breaking of a court order regarding the entrustment of the child for raising and education after a divorce. In these situations the provisions of the international conventions are determining.

Connected to the child's right to have the return to his representatives ensured, [Art. 18 § 3](#) stipulates the obligations of the person responsible of the surveillance and care of the child to announce the child's disappearance from the residence within 24 hours.

If the Romanian authorities have been informed by foreign diplomatic services about the presence of foreign UAMs on Romanian territory, the law clearly states that the child will be placed in a service as stipulated in [Art. 107 of Law No. 272/2004](#), on the basis of a court order.

The exclusive competence for the implementation of the protection measure goes to the Bucharest Tribunal. The National Authority for the Protection of the Rights of the Child must propose to the court a placement in a special protection centre.

The placement of the child in a care centre will always be for a determined period of time, respectively until the child's return to the country of residence of the parents or to a country in which other members of the family willing to take care of the child, were identified. When an UAM is found, The Romanian Immigration Office and the competent foreign authorities must be notified, as well as the institution for child protection.

If *Romanian* children are found in other states, the National Authority for the Protection of the Children can collaborate with these states ([Law No. 590/2003](#)).

Save the Children: Statement of Good Practice (2004, p.13)

Trafficking in children for the purposes of prostitution, the production of child pornography and other forms of exploitation is a serious problem in Europe. States should take counteractive measures to prevent and stop trafficking by sharing information on trafficking with other states, and ensure that immigration officers and border police are alerted to this problem. Children are exploited both by those who traffic them and by those who use their services in the country of destination. The treatment of trafficked children by immigration officers, police, social workers and other practitioners should be governed by child protection principles that should prevail over immigration or crime prevention priorities. Views and wishes of child victims of trafficking should be sought and taken into account whenever decisions affecting them are being made, also to help their rehabilitation and empowerment.

- \* CRC, Art. 34: States shall protect children from all forms of sexual exploitation and abuse.
- \* CRC, Art. 35: States shall take all appropriate measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

- \* CRC. Art. 36: States shall protect children from all other forms of exploitation prejudicial to their welfare.
- \* CRC, Art. 37
- \* Protocol 1 to CRC, Art 3: Requires the criminalisation of sexual exploitation of children and trafficking of children for any purpose (organ transplant, adoption, prostitution, child labour).
- \* Protocol 1 to CRC, Art 8(1): States shall adopt appropriate measures to protect the best interests of children who are victims of sexual exploitation and trafficking.
- \* CEDAW, Art. 6: State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and the sexual exploitation of women (and girls).
- \* CoE Ministers 91
- \* CoE Ministers 2000
- \* CoE Young Migrants, para. 8
- \* Council of the EU: Joint Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children, 24 Feb. 1997
- \* Council of the EU: Brussels Declaration on Preventing and Combating Trafficking in Human Beings, May 2003: paras. 9, 12, 13
- \* ECHR, Art. 4: No one shall be held in slavery or servitude or subjected to forced labour.
- \* ICCPR, Art. 8: No one shall be held in slavery or servitude or forced to perform compulsory labour.
- \* ICESCR, Art. 10(3): Children should be protected from economic and social exploitation.
- \* ILO C182, Art. 3: The definition of “the worst forms of child labour” includes the sale and trafficking of children.
- \* OSCE
- \* Protocol on Trafficking in Persons,

- \* Art. 3(a): Trafficking in persons means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.
- \* Art. 3(c): The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article.
- \* Art. 6: States shall provide assistance and protection to victims of trafficking.
- \* Art. 7: Each State Party shall consider permitting victims of trafficking to stay in its territory, temporarily or permanently, in appropriate cases.
- \* Art. 9: States shall take various measures to prevent human trafficking and protect victims.
- \* Art. 10: Law enforcement, immigration and other authorities shall co-operate by exchanging information regarding trafficking. States shall provide and strengthen training of relevant authorities.
- \* Art. 14(2)
- \* Protocol on Smuggling, Art. 19
- \* UN Guidelines on HR & Trafficking, Guideline 8
- \* UNHCR-AP, Part III, Goal 2(2): States should ensure that their own asylum processes are open to receiving claims from individual trafficked persons, including women and girls.

## 2.6 Legislations linked to unaccompanied minor juvenile criminal offenders

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The international phenomenon of juvenile delinquency is closely connected to the evolution of juvenile justice. Favouring a harmonisation of economic, political, social, legal, educational and scientific policies and responses, this phenomenon should be looked at from a global perspective, taking into account the plurality of situations worldwide.

The International Juvenile Justice Observatory (IJJO), based in Brussels, aims at bringing an international and inter-disciplinary vision of juvenile justice in order to create a future for minors and young people all over the world who are in situations of exclusion leading to infringements of the law. It promotes international development strategies of appropriate policies, legislations and intervention methods within the context of a global juvenile justice without borders. The IJJO agrees to promote and work respecting the following international texts:

**The Convention on the Rights of the Child**, adopted unanimously by the United Nations General Assembly within the framework of its resolution 44/25 of 20 November 1989:

[http://www.oijj.org/faqs.php#faqs\\_1](http://www.oijj.org/faqs.php#faqs_1)

**United Nations guidelines for the prevention of juvenile delinquency** (The Riyadh Guidelines):

[http://www.oijj.org/faqs.php#faqs\\_2](http://www.oijj.org/faqs.php#faqs_2)

**United Nations standard minimum rules for the administration of juvenile justice** (The Beijing Rules):

[http://www.oijj.org/faqs.php#faqs\\_3](http://www.oijj.org/faqs.php#faqs_3)

**United Nations standard minimum rules for non-custodial measures** (The Tokyo Rules):

[http://www.oijj.org/faqs.php#faqs\\_4](http://www.oijj.org/faqs.php#faqs_4)



These rules, as well as the Convention, represent the will of the international community, expressed by the recommendations of the **United Nations General Assembly on Children of 2002 "A world fit for children"**.

With a view to identify best practices among European partner States in the field of criminal minors legislation, rehabilitation and re-education schemes alternative to detention, the Manual highlights the particular situation of unaccompanied minor juvenile criminal offenders, looking at existing legislations (section 2.6) and actual practices (section 3.3.5).

## AUSTRIA

The Juvenile Criminal Offenders Law sets out the definitions for juvenile criminal offenders as follows:

- An under-age minor is a person under the age of 14
- A juvenile person who is over 14 years and below 18 years of age
- A juvenile criminal offence an offence committed by a juvenile,
- A juvenile criminal case is a criminal case on a juvenile criminal offence.

According to the Austrian Law, if an under-age minor commits a crime which is penalised under the Penal Code, he will not be held liable for the crime committed as an under-age minor if he is not considered to be able to recognise the illegality of his behaviour and the consequences of this behaviour. Neither can the under-age minor be held liable for compensation. Traffickers are well aware of these provisions; therefore minors below the age of 14 are often forced to pick-pocket or steal as they cannot be held liable for these offences.

When the minor is over 14 years of age, he can be held responsible for a crime committed. However, there are exceptions to this rule e.g. when an of-age minor does not have the maturity to recognise the injustice of his doing.

The Public Prosecutor is obliged to inform the Youth Welfare when criminal proceedings against a minor are initiated. The aim of the Juvenile Criminal Offenders Law is to prevent juveniles from committing a crime.

If the minor is not represented by a lawyer during the interview, he has the right to convene a person of trust (a legal representative, the guardian, a relative, a

teacher, a representative of the youth welfare, of probation assistance or youth court) to be present during interviews. There is an obligation to inform the minor about this right.

A juvenile offender can be held liable for the crime committed in several ways such as the payment of a fine, the granting of a probation period, the obligation to do community service or a prison sentence. The living conditions and family environment of the minor, his development and all other circumstances that could lead to the judgement about his physical and mental state have to be investigated and taken into account unless this seems to be unnecessary. In case of doubt the examination of the accused minor has to be done by a medical doctor, psychologist or psychotherapist.

If sentenced to prison, juvenile offenders must be sent to special prisons, separated from adult prisoners. The law foresees the education of the juveniles and their occupation with work of educational character. Juvenile prisoners have the right to spend two hours daily outside, e.g. playing games or exercising. Furthermore, they have the right to receive visitors once a week for at least one hour.

## BELGIUM

In Belgium, the [law of 8 April 1965](#) relating to the protection of youth and the care for minors having committed an offence was reformed by the laws of [15 May 2006](#) and [13 June 2006](#) and relating royal decrees.

The law differentiates between the situation of minors who are in danger (Art. 36/2) and the situation of minors having committed an offence ([Art. 36/4](#)).

Two types of assistance can be envisaged: voluntary assistance via Youth Assistance Services or forced assistance decided by the Youth Tribunal.

In case of a criminal offence committed, the youth judge can take measures (but no sanctions nor sentences). The types of provisional measures are the following:

- Request social investigations
- Maintain the youngster in his familiar environment under certain conditions and under supervision of a delegate of the Judiciary Protection

Service.

- Place the minor either in a host family, or in a private institution, or in a public institution for the protection of youth (IPP), or in the federal closed centre<sup>44</sup> in Everberg.

There are various public institutions for the protection of youth managed at community level. These institutions entail closed sections (85 places in the French community and 130 in the Flemish community). They have the responsibility to educate the minors.

One specific centre named Everberg was created in February 2002 in order to host minors having committed severe offenses. Minors are sent there by order of the judge for a maximum period of 2 months and 5 days. The judge is the one to decide on arrest or release. Before sending a minor to Everberg, the judge must check whether there aren't any other alternatives in the closed sections of the other public institutions for the protection of youth.

## BULGARIA

A special Juvenile Delinquency Law exists in Bulgaria which regulates the activities to prevent and combat anti-social acts of minors and to secure the development and nurture of the minors. With the adoption of the [new Criminal Procedure Code](#) (“State Gazette”, No. 86/28 October 2005, in force as from 29 April 2006) the procedural rules for hearing of cases concerning crimes committed by minors were further developed in order to guarantee the rights of the child.

## CZECH REPUBLIC

In the Czech Republic, the following legislation regarding juvenile crime offenders exists:

[Act No. 218/2003 Coll](#), on the responsibility of juveniles for illegal acts and on Juvenile Justice<sup>45</sup> (Juvenile Justice Act).

[Act No. 140/1961 Coll](#), the Criminal Code (all kinds of criminal acts)

44 Closed centre – Unaccompanied minors whose entry on the territory is being refused at the border because they did not have the required documents, are held on the basis of the law of 15 December 1980?, Article 74/5 either in a centre designed for non asylum seekers or a centre designed for asylum seekers. In principle, unaccompanied minors are not held in other closed centres (there are six of them in total in Belgium).

45 The Juvenile Justice (Care and Protection of Children) Act - Act which consolidates and amends the law related to juveniles in conflict with law and children in need of care and protection by providing for proper care, protection and treatment.

Act No. 141/1961 Coll, on Criminal Procedure (the Criminal Code – the criminal process, the delivery, the testimony, litigants etc.)

Act No. 94/1963 Coll, on the Family (the parental responsibility, the upbringing, the guardian<sup>46</sup> and curator<sup>47</sup>)

Act No. 200/1990 Coll, on Misdemeanours (all kinds of offences, the process etc.)

Act No. 359/1999 Coll, Act on the Socio-Legal Protection of Children:

The municipal authority, department of social-legal protection of children, has the following functions including preventive measures: it shall focus its attention on these children during their leisure time, shall focus on children who have relations with persons or who are themselves addicted to alcoholic beverages or addictive substances or who commit criminal offences. Furthermore, they shall monitor any evidence of intolerance or violent tendencies in the children, shall act to prevent recurrent disturbing behaviour and activities of children, paying particular attention to offenders who have committed criminal offences and shall help children to overcome problems that might lead to negative tendencies in their behaviour. Social protection departments can then maintain personal relations with the child and select the means to influence children depending on the type and nature of the child's behavioural problems and his social standing. The child's problems should be resolved preferably within the child's everyday environment.

The competent socio-legal protection body belongs to the municipality having extended powers. Based on the [Juvenile Justice Act](#) and the [Act on Misdemeanours](#), representative of such municipality with extended powers shall attend the oral proceedings when a juvenile is charged with a misdemeanour.

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46 **Guardian** - Legal representative of the minor during his stay in the Czech Republic until the minor reaches the age of 18 years. If a child's parents died, were deprived of their parental responsibility or if the exercise of their parental responsibility was suspended or they have no full legal capacity, the court shall appoint a guardian to bring up the child, represent him and manage his property in the place of his parents.

If no natural person can be appointed as guardian, the court shall appoint the Authority for the Socio-Legal Protection of Children to be guardian.

Until a guardian is appointed for the child or before the appointed guardian takes up his function, the Authority for the Socio-Legal Protection of Children shall deal with urgent tasks in the child's interest and in the child's name.

Provisions concerning the rights and duties of parents and children shall also apply to the relationship between the guardian and the child. The guardian's function does not entail an alimentation duty for the child.

The court shall recall the guardian if he becomes unable to exercise this position or if he violates his duties.

47 **Curator** - Legal representative of a minor who acts in benefit of the child, e.g. during the asylum procedure. The court can appoint a curator in the child's interest, apart from cases involving a conflict of interest between the child and his legal representatives or between more children of the same parents (property interests cases where parental responsibility is limited, or adoption proceedings). The Authority for the Socio-Legal Protection of Children can also appoint a curator for these types of case. The court shall define the extent of the curator's rights and duties with regard to the purpose for which the curator was appointed in order to guarantee the protection of the minor's interests.

The municipality with extended powers shall cooperate with prisons to resolve the social and educational problems.

At least once every 3 months a representative of the municipality with extended powers shall visit a child held in prison or detained, and discuss with him in particular the possibilities of employment or preparation for a future employment after leaving prison or detention.

The most frequent criminal acts committed by UAMs and prosecuted by Criminal Code section are robbery, brawling, unauthorised production and possession of narcotic and psychotropic substances and poisons, and infringement of copyright.

In the Czech Republic, special statistics on UAMs who are crime offenders do not exist.

## POLAND

In Poland, unaccompanied minor juvenile criminal offenders as well as all other minors are amenable to [Law of 26 October on the Treatment of Juveniles](#). The Law is applied to juveniles over thirteen and under seventeen who have committed a punishable deed.

### **Measures that can be applied to prevent and counter demoralisation of a juvenile**

In order to prevent and counter demoralisation of juveniles, the following preventive measures can be applied in the virtue of the family court's decision ([Art.6 of the Law of 26 October on the Treatment of Juveniles the Law on the Treatment of Juveniles and by the Family and Custodial Code of 28 February 1962<sup>48</sup>](#)):

- A reprimand
- Recognition of the following indicated behaviour such as apologizing to a victim, making amends for an injury, taking up studies, etc
- Parental or guardian supervision
- Supervision of juvenile by a social organisation or trustful person guaranteeing for a juvenile
- Supervision by a curator

48 (Journal of Laws 1982, Dz.U.92.24.101, Dz.U.95.89.443, Dz.U.98.106.668)

- Addressing a juvenile to a curator’s centre for juveniles
- A ban on driving
- Forfeiture of properties achieved as a result of a punishable deed
- Placement in an institution or organisation for professional education, in a foster family, in an educational establishment or in a custodial-educational centre
- Placement in a borstal institution
- Applying other measures indicated by the Law on the Treatment of Juveniles and by the Family and Custodial Code of 28 February 1962<sup>49</sup>

### Best interest of a juvenile

In any judicial procedure concerning a juvenile the best interest of a juvenile should be taken into account. The applied measures should aim at achieving a positive change of the juvenile’s personality and behaviour and should ensure the proper fulfilling of the parents’ and the guardians’ responsibilities towards the juvenile. The social interest should be also considered. (Art.3). In every case the personality of the juvenile, health conditions, level of mental and physical development, conduct, reasons and level of demoralisation, social environment and educational conditions are taken into consideration.

See section 3.3.5 for more details on the actual practice.

## ROMANIA

In Romania, Law 272/2004 on the protection and promotion of children’s rights regulates the protection of children who committed a criminal act and who are not liable in court.

According to Art. 50 of the Criminal Code: „The deed stipulated by law of commitment thereof, did not meet the legal conditions to be criminally liable, and is not a crime”.

The description of underage children and their liability are stipulated in Art. 99 of the Criminal Code:

- 1) Children under 14 are not criminally liable;

<sup>49</sup> <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19640090059&type=2&name=D19640059.pdf>

- 2) Children between 14 and 16 are criminally liable only if it is proved that they committed the crime with power of judgment;
- 3) Children who have turned 16 are criminally liable.

The underage status of the offender removes the criminal character of the deed on the grounds that the offender does not have the capacity of realising the social meaning of his deeds and to control his behaviour in relation thereof. One considers the under aged child to have insufficient psychical development, which does not allow him to understand the character and the effect of its actions. Therefore, a child author of a deed needs protection, taking into account the personality under formation, the lack of judgment, the child's sensitivity to suggestion, but also family, educational, socio-cultural, and material factors that could have caused its deviant behaviour and the criminal deed. The need to take measures here is obvious, aiming on one hand at attracting the child's attention on the social reaction with respect to the negative character of its deeds, and on the other hand at supplying a source of surveillance and additional attention.

Even if the anti-social deed committed by an underage child does not trigger criminal liability, measures aimed at ensuring the child's protection with respect to the factors which might jeopardise the harmonious development of his personally and the prevention of the future commitment of such deeds might still be taken if deemed necessary.

Consequently, the measures to be taken for the child who committed a criminal deed and who either did not turn 14 or is between 14 and 16 years old (for which the investigations applied did not lead to the removal of the relative presumption of lack of judgment - instituted by [Art. 99 § 2 Criminal Code](#)) are specialised surveillance and placement in a care centre.

The competent bodies to dispose of protection measures are: the commission for child protection – if the parents or the child's legal representative approve - and respectively the court of law in the absence of such approval.

As for the causes subjected to be solved by the court of law, it must be specified that the provisions of [Art. 130 § 2 from the Law 272/2004](#) impose the drafting of

a report by the victims' service of protection and social reintegration of offenders who operate at the court of law.

Art. 81 from the Law 272/2004 on the protection and promotion of children's rights stipulates the content of the specialised surveillance measures as well as the conditions for placing children who are not criminally liable in a care centre. Thus, the specialised surveillance is a rule for taking protection measures for these children.

According to the particularities of each case the child will have to fulfil obligations during the entire specialised surveillance measure, taking into account the individual criteria mentioned above as well as on the basis of the conclusions of the reports made by the general direction of social assistance and child protection and respectively the service of reintegration and surveillance (if the measure is applied by the court of law, requirement imposed by Art. 130 § 2 Law No. 272/2004).

Juveniles can be placed in care centres in the following situations:

- The measure of specialised surveillance cannot be inflicted (including cases where keeping the child in his own family is considered from the start undesired or insufficient).
- During the measure of specialised surveillance the child did not fulfil his obligations.

The responsibility for monitoring the execution of the obligations imposed to the child is first of all that of the general direction of social assistance and child protection in the administrative-territorial area in which the family/person taking care of the child resides (subject to the prerogatives this institutions has in monitoring the measures of protection).

Regarding the conditions in which it can be decided to place the child who performs criminal deeds and is not criminally liable in a specialised residential service, motivated by the fact that such a measure is drastic as it involves the removal of the child from the family, this can be disposed only if the criminal deed constitutes a high social danger or if the child who committed a criminal deed and was inflicted a measure, continues to perform the deeds considered criminal.



The interdiction to publish any kind of data regarding the commitment of criminal deeds by children who are not criminally liable is also regulated. The need to institute this interdiction derives from the obligation of observing the child's right for the protection of his private family life.

The failure to observe the dispositions of this article is deemed to be an offence and is sanctioned according to [Art. 135 § 2 lett. d\) from the Law No. 272/2004](#).



# 3

## Analysis of working methods at national level

Having looked at international and EU standards first, then outlining the major national legislations applicable in terms of treatment, protection and reception of unaccompanied minors in the six participating countries, the present chapter aims at analysing the link between national legislations and practices in the international and European legal framework.

With the aim to promote cooperation between national agencies responsible for reception and treatment of UAMs, the next sections present the results of the exchange of information and best practices and sharing of know-how in the area of admission and first reception, with particular reference to [Council Resolution 97/C221/03](#), dealing with:

- First reception and treatment of UAMs
- Identification/determination of the age of a UAM
- Promote alternatives to detention for unaccompanied alien children
- Addressing the problem of disappearance of minors from reception centres
- Enactment of unambiguous standards ensuring that unaccompanied alien children are placed in the least restrictive settings possible pending the resolution of their immigration situation, and that those settings take into account their educational, health and recreational needs
- Enactment of standards of reception that ensure that unaccompanied alien children are not mistreated by being placed in facilities with adults, with juvenile offenders, and are not unnecessarily restrained
- Identification of victims of trafficking in human beings

- Identification of existing mechanisms to locate UAMs parents or immediate family members
- Collection and promotion of information sharing with countries of origin

### 3.1 National referral and reception mechanisms for unaccompanied minors

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Save the Children: Statement of Good Practice (2004, p.14)

Some unaccompanied minors travel on their own as migrants seeking relief from situations of poverty, deprivation and hardship. Should they come to the attention of the authorities, separated child migrants should never be removed from the country without a thorough assessment of the situation in their country of origin. They should be entitled to make an asylum application and/or an application for residence. All separated child migrants should have access to child welfare protection, education and health services.

- \* CRC Art 2
- \* CoE Young Migrants, para. 6
- \* ICRMW: This Convention sets out the rights of all migrant workers and members of their families.
- \* Protocol on Smuggling, Art. 19(2)

At ports of entry immigration authorities should put in place procedures to identify separated children and to refer such children to the appropriate child welfare authorities. Where an adult accompanies children, it will be necessary to establish the nature of the relationship between the child and adult. Since many separated children enter a country without being identified as “separated” at ports of entry, organisations and professionals should share information in order to identify separated children and ensure they are given appropriate protection.

Some children become separated after entry into a country (breakdown of family situation, departure of caregiver etc). Immigration and refugee determination authorities should ensure that any change of status resulting from that separation is reflected in their procedures.

- \* CRC, Art. 8
- \* EU Res., Art. 3(1)
- \* UNHCR Guidelines, paras. 5.1 - 5.3 & Annex II

### 3.1.1 First contact with unaccompanied minors and national reception policies

The presence of UAMs, both asylum seekers and non asylum seekers has prompted the discussion on adequate and harmonised reception policies. The basic principles for the reception of UAMs are the best interests of the child and the right for protection and assistance; and the creation of legal guardianship to safeguard the rights and the best interests of these minors.

According to Derluyn and Broekaert<sup>50</sup>, cited in the Save the Children Report on Child Migration and the construction of Vulnerability<sup>51</sup>, minors need to be provided with adequate advice by people working independently from the juridical and police context. Interpreters should be available during the interception – something that is not always the case at present. More research is needed on what happens to those minors who are not transferred to an institution, or those who leave the institution shortly after they are placed, as well as to assess whether it is appropriate to transfer all minors to an institution after their interception, or whether the minor’s own wishes should be taken into account. Above all, there is a need to increase the number of reception places for unaccompanied minors without legal documents, and to improve the level of care offered to children in crisis reception centres.

50 Derluyn, I. and Broekaert, E. (2005) ‘On the way to a better future: Belgium as a transit country for trafficking and smuggling of unaccompanied minors’, *International Migration*, Vol. 43, 4.

51 O’Connell Davidson, Julia/Farrow, Caitlin (2007): **Child Migration and the Construction of Vulnerability**. Save the Children Sweden - School of Sociology & Social Policy, University of Nottingham

## AUSTRIA

In Austria, the first contact with unaccompanied minors is mostly made by the police.

If the minor does not want to apply for asylum, he is referred to the Youth Welfare institutions which then take care of the minors. If the minor wants to apply for asylum, he is referred to the First Reception Centre in Traiskirchen. All together there are three first reception centres in Austria:

- The First Reception Centre in Traiskirchen
- The First Reception Centre in Thalham
- The Airport Reception Centre

The Reception Centres are managed by the National Asylum Office which is part of the Ministry of the Interior. In 2003, the Austrian Ministry of the Interior has signed a service provider contract with a private company called European Homecare which is in charge of the care of asylum seekers in the national reception centres.

Since the Reception Centre in Thalham does not have a special facility for UAMs, they are transferred to Traiskirchen where there is one building exclusively accommodating UAMs separated from adults. If a UAM arrives at the airport, he is usually granted entry into Austrian territory and transferred to the Reception Centre in Traiskirchen.

When submitting his asylum application, the applicant first has to enter the admission procedure. The legal advisor of the reception centre is appointed guardian for under-age minors and submits the asylum application of the minor. The guardian must be present at all interviews during the admission procedure

Persons aged 14-18 have the right to present their application for asylum. After presenting the application, they are represented by the legal advisor of the reception centre.

If a minor under the age of 14 has a positive decision taken in the admission procedure, he enters the asylum procedure and will be transferred from the reception centre Traiskirchen to a children's home which is run by the Youth Welfare. These homes also accommodate Austrian national minors.

If a minor aged 14-18 has been successful in the admission procedure and enters the asylum procedure, he will be transferred to an accommodation in one of the provinces of Austria, according to the Basic Welfare Support Agreement.<sup>52</sup> The Youth Welfare institution of the respective province becomes the legal representative of the minor.

Since 1 May 2004, asylum seekers are entitled to basic welfare support. [The Basic Welfare Support Agreement](#)<sup>53</sup>, agreed upon by the State and the Provinces, aims to standardise the basic welfare support throughout the Austrian national territory. Furthermore a regional over-burden in one of the provinces shall be avoided and the legal security for the target groups ensured. The Agreement also regulates who carries the costs for the care of asylum seekers (60% are paid by the National Authorities, 40% by the provinces) and the number of asylum seekers that each province shall care for.

Basic welfare support comprises the provision of suitable accommodation for the asylum seeker, provision of food, monthly pocket money for unaccompanied minors, medical examination if necessary at first reception, coverage of costs of transportation in order to attend school and school materials for minors. Furthermore it is recognised that UAMs need more extensive support; special provisions foresee the medical and psychological treatment of UAMs and accommodations providing special care. Details about the age, identity, origin and residence of the minor's family as well as future perspectives of the minor shall be clarified, and, if applicable, the family reunification and the development of a reintegration plan shall be considered.

Unaccompanied minors shall be cared for in residential units (Wohngruppe), hostels (Wohnheim) or supervised premises (Betreutes Wohnen). Residential Units are tailored for persons who need special care. Hostels are for UAMs who are capable of supporting themselves. Supervised premises are for UAMs who are able to care for themselves but under guidance.

In Vienna, for example, accommodation for UAM asylum seekers is managed by Fonds Soziales Wien (Social Fund Vienna). Fonds Soziales Wien has contracted five institutions that accommodate UAMs altogether offering 80 places

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52 The Provinces of Burgenland and Kärnten do not have any special facilities for UAMs.

53 Grundversorgungsvereinbarung – Art. 15a B-VG

for UAMs in Vienna. On 8 January 2008, Vienna cared for 99 UAM asylum seekers. The NGOs Caritas, Don Bosco, Verein ZeitRaum and the Integrationshaus, on behalf of Vienna, offer one residential unit, two hostels and two supervised premises for the care and accommodation of minors.

Currently, one Clearing House exists in Salzburg, run by SOS Kinderdorf Salzburg which covers the Austrian provinces Salzburg, Tirol and Vorarlberg.<sup>54</sup> After being referred from Traiskirchen to the Clearing Centre, the UAMs receive medical and psychosocial care, legal and other special assistance and further care during a period of two months after which they are referred to one of the accommodations provided in Salzburg, Tirol and Vorarlberg.

## BELGIUM

### **Reception of unaccompanied minors through the Fedasil network**

In Belgium, the first contact with UAMs oriented towards the Orientation and Observation Centres (OOC) is mostly through the police or the Immigration Office. Like any other authority, they have the obligation to refer the UAM to the Guardianship Service.

Once the UAM arrives in the OOC, a first discussion is organised with the social worker. Fedasil organises the reception of UAMs in three phases – there are 558 places available.

Regarding detection, one should improve information to these official services and administrations treating UAM files, targeting essentially services dealing directly with minors: parquet and youth judges, Youth Assistance Services, schools (as schooling until 18 is compulsory, although schools would have no legal obligation to inform the Immigration office or the Guardianship service about the presence of UAM). One would also need to set up a clear and univocal referral mechanism for those instances which are not legally obliged to refer minors.

54 SOS Kinderdorf Salzburg Clearing House  
[http://www.sos-kinderdorf.at/cgi-bin/sos/jsp/retrieve.do?BV\\_SessionID=@@@@1272817839.1205920901@@@@&BV\\_EngineID=cccfadedigdiijmcingcfkmdhkhdfij.0&lang=de&site=AT&hNav=show&fn=226\\_clearinghouse\\_geat.xml&nav=2.2&cat=/228\\_emergency\\_relief\\_programmes](http://www.sos-kinderdorf.at/cgi-bin/sos/jsp/retrieve.do?BV_SessionID=@@@@1272817839.1205920901@@@@&BV_EngineID=cccfadedigdiijmcingcfkmdhkhdfij.0&lang=de&site=AT&hNav=show&fn=226_clearinghouse_geat.xml&nav=2.2&cat=/228_emergency_relief_programmes)



## **Phase 1: Observation and Orientation Centres (OOC): first reception structures, 100 places available in 2 centres**

**Place: Neder-Over-Hembeek (Brussels) and Steenokkerzeel (Province of Brabant, close to Brussels)**

Mission and objectives:

- All UAMs are welcomed without distinction based on their administrative status.
- Reception allows for registration, identification of the minors and designation of a guardian by the Guardianship Service.
- First reception system, acclimatizing phase and psycho-social evaluation in view of a first orientation.
- Observation role in view of orientation.
- Duration: Reception for 15 days, renewable once.

These OOCs are managed by the federal government (through Fedasil). However, there is a cooperation mechanism between Fedasil and the communities (e.g. OOC Neder-over-Heembeek and Brussels' Youth Welfare).

## **Phase 2: Stay in collective reception structures: 381 places**

This second reception phase is organised through:

- Either the federal authorities, i.e. the collective structures of Fedasil's Reception Network: federal reception centre, Red Cross centre or Local Reception Initiatives.
- Or the Communities in more specialised reception structures (for very young UAMs and young victims of trafficking)

The Fedasil network organises the reception in so-called collective reception structures (381 places), consisting of the following structures:

- federal collective reception structures (252 places)
- Red Cross structures (71)
- Local Reception Initiatives structures (58) of which 2 specific ones only open for asylum seekers and refugees.

### Mission, objectives and definition

- Collective reception structures mean “open structures” caring for the youngsters 24 hours a day. The follow up is both individual and collective.
- Reception is organised in order to motivate these young people to becoming autonomous and responsible persons (autonomy, responsibility and sense of civic awareness).
- As in the first reception centres, material assistance is provided. In addition, minors are registered at school.
  - The staff’s role in these structures is to accompany the youngsters.
  - Duration: about 4 months, up to maximum 1 year

### Reception structure in which they can stay:

- Either the time needed to be oriented to a Local Reception Initiative known as third phase ; to a specialised follow up aiming at autonomy (cfr Mentor-Escale or Youth Assistance)
- Or until they are 18 years old, or until the end of the current school year

### Remark:

The Communities, through the Youth Welfare Service, welcome UAMs entering the second phase only sporadically. When places are available, the French community welcomes the most vulnerable UAMS regardless of their status. The Dutch community welcomes minor non-asylum seekers.

### **Phase 3: Stable housing or reception in autonomy (with follow up)**

Today, 78 places are available in Local Reception Initiatives subsidised by Fedasil.

This third phase of the reception can occur in three different forms:

- Reception in a Local Reception Initiative - autonomy with follow up (organised by the federal authorities)
- Housing organised by the Communities
- Autonomy (Social Welfare System, mixed option)

Besides reception structures run by the federal authorities (by Fedasil), there are also other forms of reception and housing:

Adapted housing can be provided by centres run by the French and Dutch Communities' Youth Services.

Victims of trafficking can be hosted in one of Belgium's three specialised centres for unaccompanied minors: Esperanto (Wallonia), Juna (Flanders) and Minor N'dako (Brussels).

The minor also has the possibility to be welcomed by a host family. Different services support these families, mandated by Youth Assistance Services or by a Youth Judge.

With the assistance of his guardian, and the reception centre's education team, the minor can also envisage the possibility to settle alone and live in autonomy. In this case he is either assisted by the Social Welfare Services (which can also provide financial assistance) or by the Youth Services. The process of living in autonomy can be supervised by a service recognised by the Dutch or French Community (e.g. Mentor Escale in Brussels).

### **Little independent reception structures**

The ideal reception model should ensure quality follow up, organizing the UAMs' life in little groups (max. 12 to 16 youngsters) who would have their own team of social workers and their own vital space and relaxing room.

### **Prolong reception if necessary**

- There should be a possibility to extend the reception of UAMs until they're 20 years old (instead of 18)
- One should develop or at least reflect on possible developments to adapt the organisation of reception to the profiles and hereby to the past of the youngsters (e.g. street children do not adapt easily to traditional reception structures; or young people aged 16 are already considered as adults in their home country).
- A "life project" should be worked on in collaboration with the different actors involved.
- UAMS should be properly informed on his rights and duties and on perspectives. One should make sure he understand the information he receives (by means of brochures but also oral information).

- One should organise the reception in small family structures (maximum 30 children) such as the Gavroche centre in Romania or Synergie 14 in Belgium. There should be more reception possibilities in autonomy (now existing in the third phase in Belgium). Follow up should be organised beyond 18, up to 20 years old
- As is the case in Romania: a pluridisciplinary team should give advise on the situation of the UAM to the Immigration Office.  
Types of reception should be adapted and properly organised in function of the age of the minors

## BULGARIA

The **Coordination Mechanism for Referral and Care of Cases of Unaccompanied Bulgarian Minors and Children – Victims of Trafficking, Returning from Abroad** was created by the Bulgarian authorities in 2005 to elaborate inter-institutional cooperation and social support for Unaccompanied Minors and Victims of trafficking (UAM VOT).

The Coordination Mechanism in Bulgaria has been created to enhance cooperation between different stakeholders involved in the fight against trafficking in children. Through this mechanism the stakeholders are guided by the principles of the best interest of the child, inter-institutional information exchange and collaboration, a multidisciplinary approach at a national and local level, flexibility in the decision making process and setting of long-term goals.

Purposes of the Coordination Mechanism:

- Regulate the responsibilities of the relevant subjects during the return process and referral of unaccompanied minors and victims of trafficking;
- Complex, quick and efficient monitoring of every case;
- Identifying the child and the reasons for going abroad;
- Investigating the family and social environment for taking measures in the best interest of the child;
- Regulation of exact responsibilities of relevant authorities.
- The stages for referring each child VOT are as follows:
- Identifying the child and investigating the reasons for him going abroad and for the involvement in exploitation;
- Studying the family and social background of the child in order to take measures

in the best interest of the child, e.g. reintegration, placement with family and relatives, etc., rehabilitation of the child by enrolling him in the educational system, alternative education, professional consultation and training and/or provision of social services<sup>55</sup>;

- Following up the case for a certain period in order to prevent the child being taken abroad again, submitting a trimester report by the team, working on each case at local level;
- Obligation of the working team to inform the partners about every change in the circumstances;
- The returning institution should provide as much information as possible about the health and emotional status of the child, including the child's perception of the fact that he returns to the country of origin, as well as the position of the involved professionals who have worked with the child during his stay in the country of destination.

The State Agency for Child Protection is in charge of coordinating and controlling the whole process of repatriation and referral of UAMs.

- If a Bulgarian child returns to Bulgaria after a longer stay abroad, this gives an opportunity for detailed preliminary assessment of the case;
- If a Bulgarian child returns to Bulgaria with a minimal notice to the Bulgarian authorities, the study and the assessment of the case are to be done after the return of the child.

The notification for a UAM or VoT is received by the State Agency for Child Protection (SACP) from different sources – police, Bulgarian embassies, IOM, etc. After that the information is transferred to the Agency for Social Assistance, which in turn takes the necessary steps to send a social worker to meet the child.

### **State Agency for Child Protection (SACP)**

- SACP has responsibilities in the area of child protection since 2001 as a specialised child protection body (guidance, coordination and control)
- SACP has responsibilities in the area of trafficking in children since 2003 – after information about a minor victim of trafficking is received, SACP is immediately informed and takes relevant measures according to the Child

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<sup>55</sup> NGO, working in the interdisciplinary team, have to be licensed by the President of the State Agency for Child Protection for the provision of social services for children

Protection Act.

- SACP licenses the providers of social services for children.
- SACP is a member of the National Commission Against Trafficking in Human Beings
- The SACP President proposes measures under [Art. 76a of the Bulgarian Identity Papers Act](#)

### **Agency for Social Assistance**

This is a special administration within the Ministry of Labour and Social Policy for the implementation of state policy on social support. It performs the following activities:

- Provision of social support and family benefits for children;
- Provision of social services;
- Controls the criteria and standards for social services;
- Opening and closure of specialised institutions for social services;
- Registration of physical and judicial entities under Bulgarian legislation for provision of social services;
- Preparation of reports and analyses of the social support in the country;
- Drafting legal acts on social support.

**The Child Protection Department** is a structure of the Social Assistance Directorate and as such a specialised body for the implementation of the child protection policy in the municipality.

At the border the child is met by representatives of the police and by a social worker from the Child Protection Department of the Agency for Social Assistance.

In Bulgaria, the child may be placed in a general institution if he does not show any form of antisocial behaviour. Children, who are victims of violence and/or trafficking or in case children were involved in illegal activities, they are placed in a special crisis centre for children,

At present, 3 crisis centres are operational and a procedure is in progress for opening additional ones. For the time being, these centres are for Bulgarian nationals only, and children can be placed there for up to 6 months. All children

are referred to the Centre by the relevant institutions (the Child Protection Departments and police bodies), according to the Bulgarian legislation.

These Crisis Centres, located in three Bulgarian towns, were opened in 2006 and accommodate children from 6 to 18 years of age. The main activities in the Centres consist of providing shelter, food, 24 hour care, health and educational services, psychological support, as well as work and preparation of the child for reintegration in the biological family and the community. The length of the stay depends on individual needs and on the level of preparation of the child and the possibility of reintegration in the family. In case of unsuccessful reintegration, the child will be placed outside the family.

The activity in the Crisis Centre is run by a team consisting of different kinds of specialists - administrators, social workers, psychologists and pedagogues as well as auxiliary personnel. The services provided by the Centre are carried out in a family-like atmosphere.

The Child Protection Departments have developed a good cooperation for accepting and placing children in the Crisis Centre as well as for providing further control. In all cases close contact is maintained between the relevant institutions taking care of the child. Team meetings are held on a regular basis among the professionals.

The Crisis Centre has a well trained staff which has the following responsibilities:

- Psychologists provide specialised psychological help and support for overcoming the emotional trauma; during individual meetings and they can meet the individual needs of each child and prepare a psychological file.
- The social workers plan activities for providing comfort and for meeting everyday needs of the children. Furthermore they help the children in the Centre overcome their educational deficits and stimulate their talents by preparing an individual working plan.
- The director organises, manages and controls the work of the centre. He controls the financial matters of the centre and is responsible for maintaining a high quality service.

For all the children in the Centre individual care plans are prepared depending on the period of adaptation. These care plans are also consulted with the Child Protection Department.

For the safety of the children, a 24 hour unarmed guard and a police patrol is provided.

The Crisis Centre works in close cooperation with the Social Assistance Agency, the State Agency for Child Protection, the Ministry of Interior, the schools, the municipal administrations and with several NGOs.

## CZECH REPUBLIC

In the Czech Republic the first contact in most cases is made by the police. A minor can be found when he arrives at the international airport Prague – Ruzyně, or when he is already on Czech territory.

A minor coming through the airport applies (in most cases) for asylum. In this case he is placed in the reception centre at the airport. After the reception procedure and medical examinations (about 7 – 10 days), the minor is transferred to the so-called „Blue School“. If a disease is diagnosed, the child is referred to a hospital. When the child is found to be healthy, he is transferred to the „Blue School“ for foreign minors. The health care is granted free of charge.

In general, the right to stay on the territory is granted to minors in accordance with the Aliens Act.

## POLAND

In Poland, the first contact with unaccompanied minors is usually made by the Police or the Border Guards.

In case of unaccompanied minors who apply for the refugee status, the Border Guards have to immediately apply to a custodial court in order to obtain a place of residence for the minor and schedule an appointment with a guardian (“curator”) to represent the minor in the procedure for granting the refugee status and for placement of the minor in a custodial-educational centre. If a person turns out to be a minor during the procedure, the Head of Office for Foreigner is



responsible for applying to a custodial court. The Border Guards shall escort an unaccompanied minor to the foster family or to the custodial-educational centre.

In practice the minor is transferred to the Children's Home situated in Warsaw where all unaccompanied minor asylum seekers are placed. The Children's Home closely cooperates with the Office for Foreigners (see the point 2.2). The Office for Foreigners is a governmental administration competent with respect to entry of foreigners in the territory of Poland, the transit of foreigners through the territory, the residence in and leaving of the territory and granting to foreigners the refugee status, asylum, tolerated stay and subsidiary protection. The Minister of Interior and Administration shall exercise supervision over the Head of Office.<sup>56</sup>

With regard to unaccompanied minors in an irregular situation, the detaining agency which is the Police or Border Guards, shall immediately request to a family court an appointment for a guardian to represent a minor and for placement of a minor in a custodial-educational centre. At the same time, the detaining institution shall apply to the *voivod* for issuance of the decision on expulsion. The detaining agency shall also contact an adequate consulate (see the point 2.3). In case of unaccompanied minors who are identified to be citizens of a EU member country, only the Head of Police or the Head of the Border Guard can request the *voivod* for issuance of the decision on expulsion (see the point 2.4).

If an unaccompanied minor is identified to be the victim of trafficking in human beings, he should be referred to the La Strada Foundation which is the NGO responsible for the implementation of the Programme of Support of Victims of Trafficking in Persons. Where special assistance shall be provided to an identified victim (see the point 2.5)

## ROMANIA

An unaccompanied minor is normally referred to the following authorities: the Border Police, the Romanian Immigration Office and its structures in the territory, the National Authority for Child Protection and the General Directorates for Social Assistance (there is one for each county).

<sup>56</sup> <http://www.udsc.gov.pl>

According to the provisions of the law, the unaccompanied minors are referred to the General Directorate for Social Assistance and Child Protection in order to provide them with the necessary form of protection until their legal status is defined. During this time the unaccompanied minors stay in a placement centre where they can benefit from different types of services after a multidisciplinary evaluation has been conducted. This evaluation is conducted either by specialists from the Romanian Immigration Office or specialists from the Directorate. In either of the cases the evaluation is discussed by a team of specialists from both institutions and both formulate recommendations for the unaccompanied minor.

After the evaluation, unaccompanied minors can decide if they want to ask for asylum, another form of protection or whether they decide to return to the country of origin.

Save the Children: Statement of Good Practice (2004, p.20)

Separated children should be found suitable care placements as soon as possible after arrival or identification. Care authorities should conduct a careful assessment of their needs and changes in care arrangements should be kept to a minimum. Regular reviews of care arrangements should be carried out. Siblings should be kept together if it is in the best interest of the child. Where children live with or are placed with relatives, these relatives should be assessed for their ability to provide suitable care and undergo police checks. Separated children over 16 years of age should not be treated as “de facto” adults and placed on their own, without adult support, in hostel or reception centre settings. Whether they are placed in foster care or in residential settings separated children should be cared for by suitable professionals who understand their cultural, linguistic and religious needs and who have an understanding of those issues that affect separated asylum seeking and migrant children. Those working with separated children should be aware that children are entitled to privacy and to maintain a confidential relationship with their guardian and/or legal representative and any other advocate. Care workers should help a child develop links with their ethnic community whenever possible. Child victims of trafficking should not be held in immigration detention in order to protect them from those who have trafficked them. Alternative secure measures such as safe

houses should be developed in conjunction with child welfare authorities. In order to establish safeguards, care workers in reception centres and residential homes need to be made aware of the problem of trafficking of children for the purposes of prostitution or other forms of exploitation.

- \* CRC, Arts. 3(3) & 13
- \* CRC, Art.14: Children have the right to freedom of thought, conscience and religion.
- \* CRC, Art. 15: Children have the right to freedom of association.
- \* CRC, Art. 16
- \* CRC, Art. 19: States shall take all appropriate measures to protect children from all forms of physical and mental violence, abuse, negligence, maltreatment or exploitation.
- \* CRC, Arts. 20(1), 20(3) & Art. 25
- \* CRC, Art. 26: Children have the right to benefit from social security and social insurance.
- \* CRC, Art. 27: Children have the right to a standard of living adequate for their physical, mental, spiritual, moral and social development.
- \* CRC, Arts. 30, 34, 35 & 36
- \* ECHR, Art. 9: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his or her religion or belief and freedom, either alone or in community with others and in public or private, to manifest his or her religion or belief, in worship, teaching, practice and observance.
- \* ECHR, Art. 10: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
- \* ECHR, Art. 11: Everyone has the right to freedom of peaceful assembly and to freedom of association with others
- \* ECRE (Children), paras. 12 & 19
- \* EU Dir. Reception, Art. 19(2): As far as possible, siblings shall be kept together, taking into account the best interest of the minor and his or her age and degree of maturity. Changes of residence shall be limited to a minimum.

- \* EU Res. Arts. 3(2,4&5) and 4(4): Irrespective of their legal status, unaccompanied minors should be entitled to the necessary protection and basic care in accordance with the provisions of national law. Member States should normally place unaccompanied minors during the asylum procedure with adult relatives, with a foster-family, in reception centres with special provisions for minors or in other accommodation with suitable provisions for minors.
- \* ICCPR, Art. 18(1): Everyone shall have the right to freedom of thought, conscience and religion.
- \* ICCPR, Art. 19
- \* ICCPR, Art. 21: Everyone shall have the right to freedom of assembly with others.
- \* ICCPR, Art. 22: Everyone shall have the right to freedom of association with others.
- \* ICCPR, Art. 24(1)
- \* ICESCR, Art. 9: The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.
- \* ICESCR, Art. 11(1): The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.
- \* UNHCR Guidelines, paras. 7.1 -7.5

### 3.1.2 Vulnerability assessment

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As explained, UAMs identified in the EU territory, are particularly vulnerable to emotional and physical traumas they may have experienced. Some of these children may be victims of abuse, neglect or abandonment, while others, separated from their families, become depressed, moody, withdrawn, or experience psychosomatic symptoms. Separated from their communities of origin, unaccompanied children are confronted with an unfamiliar culture and loss of their social network. This particular group is in need of special attention and care.

## AUSTRIA

Minors are considered as a vulnerable group that need special protection. If an unaccompanied minor is picked up, protection measures such as the appointment of a guardian are initiated. The Youth Welfare takes care of all unaccompanied minors in Austria, irrelevant of their nationality. The situation of the minor is assessed, i.e. how did he end up in Austria as an unaccompanied minor, was he trafficked etc. If a minor would like to return to his country of origin, a family and risk assessment is carried out in order to ensure a safe return.

## BELGIUM

Upon arrival in one of the two Observation and Orientation Centres (OOCs), the UAM has a first discussion with a social worker who becomes the referral person for the UAM and who ensures social and administrative follow up. The social worker also plays a role as an observer in order to identify the most appropriate orientation to give to the minor, respectful of the child's best interest. The social worker closely collaborates with the UAMs guardian.

The OOC establishes a medical, social and psychological report on the UAM with the aim to orient him towards an appropriate second reception phase.

During the entire reception process, a referral social worker is designated each time the UAM arrives in a new structure. This social worker is in charge of evaluating the individual needs of the UAM in view of detecting specific needs and determining whether the follow up he receives meets his needs. In each reception phase, collaboration with the guardian is necessary.

The first evaluation of the individual situation of the UAM must be done within 30 days. This evaluation relates to the particular vulnerable character of the UAM. The evaluation is continued during the entire stay of the UAM in the reception structure.

## BULGARIA

In Bulgaria, an assessment of the family and surrounding environment is carried out by collecting information from different institutions about the reasons for taking the child abroad and the way he was taken abroad. The information is

collected by the Agency for Social Assistance (Child protection departments). An assessment of the family capacity will be carried out to see if other siblings were taken abroad as UAMs.

The children's needs are assessed and at the same time information is collected to find out if there is a record of delinquency.

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## CZECH REPUBLIC

In the Czech Republic, this category of foreigners is automatically considered as vulnerable, no matter if the child is a victim of trafficking or linked to other criminal activities.

In the Czech Republic, there is also a Centre for crisis intervention ([www.ditekriize.cz](http://www.ditekriize.cz)), where double-sided mirrors can be used for the police's interview as a measure of privacy and protection.

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## POLAND

In Poland all unaccompanied minors are considered to be vulnerable. In every procedure connected with unaccompanied minors, the best interest of the child should be taken into account. Considering the Polish legislation system, the situation of unaccompanied minors who are asylum seekers is advantageous compared to unaccompanied minors who are irregular migrants.

Regarding unaccompanied minor asylum seekers, their special individual needs are assessed by the tutor from the Children's Home. Unaccompanied minors are provided with special care in the Children's Home. During asylum procedures UAMs are interviewed in special rooms adapted to minors' needs to limit the trauma effect that can be a consequence of the interviewing procedure.

Contrary to UAMs who apply for refugee status, UAMs in an irregular situation can be placed in a custodial-educational centre or in a guarded centre by a family court decision, where their special needs are assessed.

UAMs victims of human trafficking require a special attention and approach. Particular procedures of reception, treatment, and protection should be implemented, It is very important to make the Police, Border Guards, and foster care institution services aware about the risks of being a victim of human trafficking

or other abuses UAMs are exposed to. The special tools to identify unaccompanied minor victims of trafficking and procedures for further treatment should be provided to the service institutions coming into direct contact with UAMs.

## ROMANIA

The vulnerability assessment of an unaccompanied minor is carried out in most of the cases by specialists from the Romanian Immigration Office, or sometimes from those of the General Directorate for Social Assistance and Child Protection under which jurisdiction the minor has been put for protection.

All kinds of evaluation and assessments are carried out by specialists and any other information concerning the minor is kept into one specific file, which is presented to the judge in charge with his case.

Best practices include an interview room that is equipped according to the needs of the child. A one-way mirror as well as a camera and microphones allow additional persons to be present at the interview without being perceived by the child. As regards the waiting room, an example for best practice is a room where child victims or witnesses (in case the child is a VoT) are not exposed to the offender and may play freely.

## 3.2 Treatment of unaccompanied minors

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The treatment of unaccompanied minors has to reflect international human rights standards. In this respect, the principle of defending the best interests of the child often conflicts with migration law. Such standards were developed to protect children as vulnerable human beings and to eliminate discriminations based upon legal status or national origin. These fundamental principles of making decisions based on the best interest of the child, of placing children in the least restrictive setting, and of moving children towards permanency as soon as possible should lay at the foundations of current laws and regulations governing treatment of unaccompanied alien children in Europe.

This section on treatment of unaccompanied minors covers following issues:

- Identification and age assessment mechanisms
- Establishment of family links and family tracing
- Social and cultural integration of unaccompanied minors in host countries
- Detention and removal of unaccompanied minors
- Voluntary return and reintegration opportunities

### 3.2.1 Identification mechanisms and age assessment in line with international human rights standards and legislations

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Unaccompanied minors should be identified on a priority basis. In general, an individual claiming to be less than 18 years of age should be treated as such. If unaccompanied minors are incorrectly identified as adults, they will not be accorded the full protection to which they are entitled under international law. UNHCR's "Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum" (1997) recommend that children should be "given the benefit of the doubt if the exact age is uncertain." If an age assessment is considered necessary, it should be carried out by an independent physician who has expertise in safe age assessment procedures and familiarity with and respect for the child's ethnic/cultural background. Examinations should not be forced or conducted in a degrading or age-inappropriate manner. It is important to note that scientific procedures for age assessment are not exact, and a considerable margin of error needs to be recognised.



The practice of age assessment differs largely between the European Member States. While in some states it is not allowed to conduct x-ray examinations of the child in order not to interfere with his personal integrity, in others x-rays, teeth examinations and even genital examinations are foreseen.

## AUSTRIA

In Austria, the alien police is not allowed to take fingerprints of under-age foreign UAMs.

The identification of UAMs might be difficult if they don't have any papers or forged papers. Frequently trafficked UAMs are trained by their traffickers to use alias names when being picked up by the police. As there is no centralised police register/data base, it is difficult to determine whether this minor has been picked up before (for example at a different location).

As a practice, the Crisis Centre *Drehscheibe* of the City of Vienna takes pictures of the minors who are referred to the centre. In some cases, it turns out that the minor has been picked up by the police before and has been registered at the Crisis Centre before under a different name.

If an asylum seeker claims to be minor and he apparently seems to be older than 18 years of age, an age assessment is carried out by a doctor. To conduct X-ray in order to determine a person's age is not allowed as this is seen as an interference with the personal integrity of that person.

In 2007, the High Administrative Court of Austria had recognised that even after the assessment of an asylum seeker's age by an expert there is still the possibility of a certain margin of error. In a case of doubt, the benefit of doubt must be applied in favour for the asylum seeker.

The Viennese Chamber of Doctors has called for a multi-professional assessment as it recognises that age assessment may end with insufficient results. The Chamber of Doctors has established a working group on this topic. Also, in 2007, the *Kinder- und Jugendanwaltschaft Österreich* (Advocacy for children and youth) in cooperation with *Kinderstimme* had organised a consensus conference on age assessment.<sup>57</sup>

## Best Practice

In the Crisis Centre *Drehscheibe* Vienna, experience has shown that persons tend to admit their real age (if they know it) when social workers and social pedagogues, having observed a person's behaviour over a certain period of time, confront them with the fact that they believe the person to be much older than he/she claims to be.

## Recommendations:<sup>58</sup>

- As a protection means, to create and maintain a database on UAMs in order to facilitate the identification of a minor, developing a mechanism ensuring data security.
- At European level, each Member State should establish a national coordination centre and a database that would be interlinked to Europol and the other Member States in order to follow the child's movements across borders.
- to better coordinate services between different service providers and police in order to have one file that allows for a comprehensive and linear overview of the UAM's experience and story.

## BELGIUM

The law on guardianship (Art. 3 § 2 , Nr. 2; 6, § 2, ; 7 et 8, §1) foresees that only the Immigration Office, the Commissioner General for Refugees and Stateless Persons (CGRA/CGVS), the Permanent Appeal Commission for refugees, or the Guardianship Service can express doubt about the age declared by the UAM.

In such cases, the law foresees a medical examination by a doctor under the supervision of the Guardianship Service. The Guardianship Service calls upon various hospitals in order to proceed with these medical examinations. A project is currently ongoing aiming at harmonising methods of age determination amongst hospitals.

57 The speeches (in German) of this conference can be found <http://www.kinderanwalt.at/images/stories/Konsensuskonferenz.pdf>  
Kinder- und Jugendanwaltschaft Österreich: Consensus Conference on Age Assessment, 13 June 2007.

58 Further information on age assessment can be found in IOM's Resource Book for Law Enforcement Officers on Good Practices in Combating Child Trafficking: [http://iom.ramdisk.org/en/images/uploads/Resource%20Book%20on%20Good%20Practices%20in%20Combating%20Child%20Trafficking\\_open%20version\\_04\\_04\\_06\\_1144072046.pdf](http://iom.ramdisk.org/en/images/uploads/Resource%20Book%20on%20Good%20Practices%20in%20Combating%20Child%20Trafficking_open%20version_04_04_06_1144072046.pdf)

This age determination process is based on 3 tests interpreted by an orthodontist specialist: the wrist bone test, the clavicle radiography and the dentition test. The doctor establishes a medical protocol and determines the age in his conclusions. Should the medical conclusions indicate a margin of error, the Guardianship Service would take into consideration the lowest margin. Indeed, the law foresees that in case of doubt the Guardianship Service should take into account the lowest age.

## **BULGARIA**

In Bulgaria, the structures of the Ministry of the Interior identify the children who are then referred according to the Child Protection Act. Until their identity is confirmed they are placed in homes for temporary placement for adolescents and minors belonging to the Ministry of the Interior. In case of UAMs, the child is referred by the “Migration” Police Directorate and the State Agency for Refugees.

All the actions are taken according to international human rights standards and legislations.

The age assessment of an UAM is requested by the State Agency for Refugees to the Council of Ministers and is carried out in the presence of a social worker of the Agency for Social Assistance. If there are reasonable doubts about the declared age of an UAM, his age will be assessed by x-raying some bones. The statement of the specialised centre carrying out the age assessment is used during the refugee status proceedings.

## **CZECH REPUBLIC**

In the Czech Republic, the following mechanisms for age assessment are used: X-ray of the hands, psychological tests, DNA tests and a dactylogram.

## **POLAND**

In Poland, in case of doubts related to the age of an unaccompanied minor, a medical age assessment can be carried out if the minor agrees. The result of the examination shall indicate the age of the minor and determine a margin of error. If the unaccompanied minor does not consent for the medical exami-

nation, he shall be considered an adult. The Border Guard and the Head of Office for Foreigners are responsible for the organisation of the medical age assessment.

In Poland there are three permitted methods of medical age assessment:

- 1) *Teeth examination*
- 2) *Wrist X-ray*
- 3) *Genitals examination*

The teeth examination and X-Ray of a wrist are the methods that are used more often. The examinations should be carried out by a specialised doctor.

## ROMANIA

### **Age assessment for the asylum seekers in Romania**

In Romania, upon request of the person responsible for registration, the physician will carry out an evaluation of the unaccompanied minor asylum seeker's age. In case the declared age is obviously true, it will be directly accepted.

- in case the unaccompanied minor cannot provide proof of minority and if the alleged minority does not result obviously from his physical aspect, the Romanian Immigration Office shall request the Legal Medicine Institution to carry out an expert exam for assessing the minor's age with previous written consent from the minor and from his legal representative. In this way, the ORI informs the unaccompanied minors and his legal representative in a language known by them about the possibility of carrying out a medical exam for age determination. The information session will include notes about methods of medical examination, possible consequences of the result of this examination, as well as the consequences for the minor who refuses to be involved in this examination.
- If the minor and/or legal representative reject the medical exam of age determination and conclusive evidence regarding his age is not brought, it will be assumed that the under-age turned 18 years old. If the reason for rejecting the age determination exam is justified, established through evaluation by a psychologist from the Romanian Immigration Office, the age declared by the minor will be accepted, without carrying out the legal medical examination.

Age-assessment includes physical, developmental, psychological and cultural factors. If an age assessment is thought to be necessary, independent professionals with appropriate expertise and familiarity with the child's ethnic/cultural background should carry it out. Examinations should never be forced or culturally inappropriate. Particular care should be taken to ensure they are gender-appropriate. In cases of doubt there should be a presumption that someone claiming to be less than 18 years of age, will provisionally be treated as such. It is important to note that age assessment is not an exact science and a considerable margin of error is called for. In making an age determination separated children should be given the benefit of the doubt.

- \* 1951 Refugee Convention, Art. 31: Penalties shall not be imposed on asylum seekers who enter a country illegally if they can show good cause for their illegal entrance.
- \* ECRE (Children), para. 9
- \* EU Res., Art. 4(3): Age assessment should be carried out objectively. For such purposes, Member States may have a medical age-test carried out by qualified medical personnel, with the consent of the minor, a specially appointed adult representative or institution.
- \* UNHCR Guidelines, para. 5.11
- \* UNHCR Handbook, paras. 196-197

### 3.2.2 Establishment of family links and family tracing

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The Council Directive 2003/86/EC of 22 September 2003 on "Family reunification" determines the conditions for exercising the right to family reunification by third country nationals residing lawfully in the territory of the Member States. This directive – which also applies to refugees – contains specific provisions in case the refugee is an unaccompanied minor.

## AUSTRIA

In Austria, family tracing is done via the Red Cross and/or in cooperation with the respective embassies and social institutions in the countries of origin.

With regards to DNA testing, this is compulsory when a person has committed certain crimes. In the case of family tracing, it can only be done on a voluntary basis.

## BELGIUM

In Belgium, as in Austria, family tracing is done via the Red Cross and/or in cooperation with the respective Embassies and social institutions in the countries of origin. The legal representative of the UAM, i.e. the guardian, is responsible for taking appropriate action in this respect. It is part of his most common duties.

## BULGARIA

In Bulgaria, investigations concerning family links are carried out by the police. There is a national database for Bulgarians used by the police authorities. Concerning UAMs, family tracing is carried out by the Embassies or consulates of their countries of origin or through the International Social Service. There is also a database of the Ministry of Regional Development and Public Works which can be used for family tracing.

## CZECH REPUBLIC

In the Czech Republic, family reunification for asylum seekers is possible under the Dublin Convention. In other cases, establishment of family links and family tracing is done in cooperation with the Czech Embassies, UNHCR, the Red Cross, and other NGOs.

The Authority for Social and Legal Protection of Children must inform without delay the representative authority of the child's country of origin. At the same time the Authority for Social Protection shall discuss with the authority in the country of origin ways to return the child to his parents or other persons who are responsible for the child. This measure does not apply for asylum seekers.

## POLAND

### **Unaccompanied minor asylum seekers**

With regard to unaccompanied minors who applied for the refugee status, the Head of Office for Foreigners in Poland should take up actions in order to find relatives of the unaccompanied minor taking into consideration [Art. 9 of the Amendment of 18 March 2008](#).<sup>59</sup> According to [Art. 9](#), information related to a foreigner applying for a refugee status cannot be shared with country of origin authorities and public institutions.

Proceedings are different in case of Dublin procedures for family reunification. Dublin procedures for family reunification are applied to family members who are citizens of the Third Country and who apply for refugee status in an EU country. If the child is separated from the parents who are in another EU country, the latter can apply for family reunification. In this case, parents or guardians have to present a birth certificate or another document confirming the family relationship.

Family links can be confirmed through genetic examination commissioned by the Head of Office for Foreigners.

### **Unaccompanied minors who do not apply for refugee status**

In case of unaccompanied minors who do not apply for refugee status, family links are established through recognition and then confirmed in cooperation with the relevant consulate. With regard to Polish law on proceedings related to the issuance of the decision on expulsion, it is not clear which agency is directly responsible for family tracing and assessment what the best interest of a child is.

Confirming the minor's identity is the first step for starting family tracing. In case of Vietnamese citizens who are considered to be minors, the border guard and *voivods* are often not able to confirm their identity in cooperation with the relevant consulate. Minors who are afraid of deportation do not reveal their identity.

<sup>59</sup> <http://www.udsc.gov.pl/LAW,265.html> (Journal of Laws 2003, No 128, it. 1176)

## ROMANIA

- In the case of unaccompanied minors seeking asylum the Romanian Immigration Office will take measures as soon as possible to locate their families.
- The opinion of the minor about locating his family is taken into consideration and is given the proper importance, depending on the child's age and degree of maturity.
- In the case unaccompanied minors were granted a form of protection in Romania, in conformity with the legislation of asylum, family reunification is done depending on the child's best interest.
- The Romanian Immigration Office will instantly launch the reunification procedure. For this, approval from the minor's legal representative is required, or, depending on the case, of the unaccompanied minor himself. In all cases the unaccompanied minors will be taken into consideration and will be given the proper importance.
- In case the family of the unaccompanied minor has been located, the responsible officer will analyse the possibility and conditions for implementing the family reunification, and will carry out a motivated decision in this direction in conformity with the existing law.

Save the Children: Statement of Good Practice (2004, p.15)

Tracing for a child's parents and family needs to be undertaken as soon as possible, but this should only be done where it will not endanger the child or members of the child's family in the country of origin. Tracing should be undertaken only on a confidential basis. States and other organisations undertaking tracing should co-operate with UN agencies, the International Committee of the Red Cross Central Tracing agency and International Social Services. Separated children need to be properly informed and consulted about the process and their views taken into account. Where appropriate those responsible for a child's welfare should facilitate regular communication between the child and her or his family.

\* CRC, Art. 9(3): Children who are separated from their parents have the right to maintain contact with their parents.

\* CRC, Art. 10(1): Applications for family reunification shall be dealt with in a "positive, humane and expeditious manner".



- \* CRC, Art. 10(2): Children whose parents reside in different countries have the right to maintain regular relations with their parents.
- \* CRC, Art. 22(2)
- \* ECHR, Art. 8
- \* ECRE (Children), para. 32
- \* EU Dir. Reception, Art. 19(3): Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives care must be taken to ensure that the collection, processing and circulation of information is undertaken on a confidential basis, so as to avoid jeopardising their safety.
- \* EU Res., Art. 3(3): Member States should endeavour to trace the members of the family of an unaccompanied minor, or to identify the place of residence of the members of the family, regardless of their legal status and without prejudging the merits of any application for residence. Unaccompanied minors may also be encouraged and assisted in contacting the International Committee of the Red Cross, national Red Cross organisations, or other organisations for tracing of their family members. Confidentiality should be duly respected in order to protect both the minor and the members of his or her family.
- \* ICCPR, Art. 23(1): The family is entitled to protection by the state.
- \* ICRMW, Art. 44(1): States shall take measures to ensure the protection of the unity of the families of migrant workers.
- \* UNHCR Guidelines, para. 5.17
- \* UNHCR Handbook, para. 218

### 3.2.3 Social and cultural integration of unaccompanied minors in host countries

#### AUSTRIA

The Youth Welfare is responsible for the welfare of minors in Austria. The competences regarding the Youth Welfare are divided between the State and the nine provinces, the latter having provincial laws regulating the execution of the legal provisions of the youth welfare law and are responsible for the implementation of the youth welfare.

In order to learn the German language, UAMS asylum seekers can attend 200 units of German classes as regulated in the [Basic Welfare Support Act](#).<sup>60</sup>

In Austria, school attendance is compulsory for all children permanently residing in Austria, irrelevant of their nationality. School is compulsory for nine years, starting in September after the child had his 6<sup>th</sup> birthday. Foreign UAMs falling under the compulsory school attendance are therefore obliged to attend schools. Usually they are placed in the grade that corresponds most to their knowledge and language skills. If a foreign UAM is older than the age limit foreseen for compulsory education, schools are not obliged to take him.

The [Aliens' Employment Act](#) regulates the access of asylum seekers to the Austrian labour market. The regulations for apprenticeship underlie this law, thus in practice the access of UAMs to the labour market/apprenticeship is restricted.

Several projects have been implemented aiming to foster the integration of young asylum seekers into the Austrian society. Two of them are mentioned below.

The project “connecting people”<sup>61</sup> has been managed by the NGO Asylkoordination Österreich since 2001. The project has been sponsored the first three years from UNICEF Austria, the first year also from *Fonds Gesundes Österreich* and the first years also little by other sponsors. From 2004 onwards it has been sponsored by the Austrian Red Cross, the City of Vienna and mainly from a circle of donors.

The aim is to foster integration of minor and young adult refugees by ways of mentorship. These are intended to be long-term relationships between an Austrian mentor and a young refugee. However, the relation between the mentor and the refugee should not be stopped when the minor turns 18. Before starting a mentorship, the Austrian applicant has to participate in several training activities and becomes part of a project group. The mentorship is based on voluntariness. Mentors should support young refugees in learning the

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60 Bundeskanzleramt Rechtsinformationssystem (RIS): Grundversorgungsvereinbarung – Art. 15a B-VG Artikel 9 <http://www.ris2.bka.gv.at/Dokument.wxe?QueryID=Bundesnormen&Dokumentnummer=NOR40053842&TabbedMenuSelection=BundesrechtTab&WxeFunctionToken=e5fc8d09-4aec-4a71-83f0-f008d75cf971>

61 Project Connecting People: <http://www.asyl.at/connectingpeople/>

language, counsel and support them in everyday life, as well as carry out leisure activities. The main goal is to provide contact, emotional support and a feeling of being welcome. Information meetings on certain issues of interest to the young refugees and also to the mentors (for the mentors: on asylum application procedure, information on countries of origin, psychological aspects etc.; for the young refugees on asylum procedure, rights as asylum seeker, on relations, friendship, sexuality or culture life in Austria and others) and joint activities for both mentors and young refugees are held on a regular basis. Additionally, in autumn 2006, so called education-mentorships for enterprises have been established to support the young refugees by financing education for a certain time (German language courses, computer courses, fees for schools etc. ) or to provide work, trainings and to give the youngsters the possibility to get to know every-day life in offices, profession and job-profiles as well.

EPIMA2<sup>62</sup> is an initiative for the development of measures for the education and integration of young asylum seekers in Austria. The target group of EPIMA2 comprised asylum seekers aged between 15 and 25 years. 140 young asylum seekers were participating in the programme EPIMA2 from autumn 2005 until summer 2007.

The goals of the projects were to strengthen the asylum seekers' potential of self-help to grant information which facilitates the access to work life, to improve German language skills, to gain professional experience through vocational trainings and others.

In six Austrian provinces EPIMA2 modules were carried out, which share a common structure, i.e. in all modules there are courses for the better orientation in and integration into the new social environment as well as computer literacy and language lessons. Furthermore, each module set at least one individual focal point, which was mainly oriented on the regional facilities and chances.

The projects were co-financed by the Austrian Ministry for Economic and Labour Affairs and the European Social Fund.

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62 Project epima2: <http://www.epima2.at>

## BELGIUM

In Belgium, the UAM, as all children under 18 years old, must go to school. Free choice of schooling is allowed. Nonetheless, if he lives in a collective reception structure, the reception centre would favour those with which they already have established contacts and which are easily accessible.

Courses are given in French, Dutch or German, depending on the region where the school is located.

Adapted courses called “welcome classes” are organised for the youngsters who do not have a sufficient knowledge of one of the national languages and/or to evaluate their level of education. These “welcome classes” give the youngsters the opportunity to reach a certain level before joining regular classes.

It should be noted that for young UAM mothers that are supposed to go to school, the Fedasil reception centre in Rixensart has created a day nursery named “Kirikou”.

In each reception structure activities are organised and the youngsters can also join sports clubs or cultural associations.

## BULGARIA

The treatment of UAMs comprises complex social services, connected with the prevention of abandonment, violence and drop-outs, deinstitutionalisation and reintegration of children, and the training of skills enabling children to lead an independent life. The social services include furthermore consultation and support of families at risk, and consultation and support of juvenile offenders.

Homes for temporary placement for adolescents and minors are specialised institutions adapted to the needs of children. They are under the supervision of the Ministry of Interior.

Special units called „Mother and Baby - units” provide temporary placement for pregnant women and mothers at risk of abandoning their children. In these units parental attachment is encouraged and young mothers are supported by social, psychological and legal consultation.

According to Bulgarian legislation, no restrictions of the rights or the privileges shall be admitted based on race, nationality, ethnic origin, sex, origin, proprietary status, religion, education and beliefs or presence of lesion. The protection measures are applied equally to Bulgarian and foreign minors. The minor and under age foreigners seeking protection shall be entitled to education and vocational training under the same conditions as Bulgarian citizens. Foreigners that have obtained a protection status shall be entitled to vocational training under the same conditions as Bulgarian citizens.

## CZECH REPUBLIC

### The socio-legal protection:

- everyone has the right to report to the socio-legal protection authorities any breach of obligations or abuse of rights arising from parental responsibility, as well as fact that parents are unable to fulfil the obligations arising from their parental responsibility or any facts contained in the point “the identification” of this material.
- each child has the right to request protection of his life or others rights at socio-legal protection authorities and facilities, state bodies, empowered persons, schools, educational and medical facilities. These bodies, legal entities and natural persons and empowered persons shall be obliged to provide the child with the assistance he requires. The child has the right to request this assistance without the knowledge of his parents or other persons responsible for the child’s upbringing.
- the municipal authority shall take measures to protect the life and health and to ensure that the most urgent basic needs are met, including health care for a child, if no care is provided or if his normal development is seriously threatened or disrupted.
- The Court must decide about these measures.

Primarily, in the Czech Republic the *Blue School* fulfils diagnostic, educational, therapeutic and social tasks. In this framework, the school is responsible for assessing the level of knowledge, skills and abilities of a minor, as well as the level of Czech language knowledge. The *Blue School* tries to meet social-

cultural, religious, and social-legal needs. Basic education according to the minors' intellectual and language abilities is included. Overcoming the language barrier is one of the primary tasks of the school. Individual educational programs are prepared if necessary.

Children spend about 8 weeks in the diagnostic facility. Afterwards, they are transferred to a children's home with school and educational institute which operate as one institution. Children can stay in the Facility for children of foreign nationals, the diagnostic facility, and the Children's home with school, the Educational Institute, the Educational Care Centre, or in the Primary and Special School up to the age of 26 years.

The stay in Blue School has the following phases: adaptation phase, stabilisation phase, supportive phase and leaving phase. Children usually adapt to the rules of the institution by the end of the first month. The level of stress for minors increases during the second month; therefore the children's feeling of safety and certitude are supported. The facility continuously cooperates with interpreters. Music therapy, art therapy and different relaxation techniques proved to have a very positive effect, followed by other activities such as ceramic workshops and needlework. Sports like football, basketball, cycling, table tennis and body building belong to the most popular activities.

## POLAND

In Poland, all children have the right to education including foreign children staying legally and illegally on the territory of Poland. All foreign children have the right to education free of charge in primary schools and middle schools, irrespectively of their knowledge of Polish. Additionally, asylum seekers, people granted any form of humanitarian protection and people granted a permit for stay on the territory of Poland have the right to education free of charge in secondary schools and universities on the same basis as Polish citizens.

In accordance with the [Act of 7 September 1991 on Education System](#), obligation of attending school starts when a child reaches the age of seven and lasts until a child reaches the age of eighteen. The beginning of a child's school education can be postponed up to one year when it is recommended by the psycho-pedagogical counselling service and decided by the head of a public primary school. This legal possibility is often used in case of unaccompanied

minors seeking asylum whose education level is insufficient compared to Polish pupils of the same age. During this time a tutor works with the child up to one year to catch up with educational deficiencies and to facilitate the adaptation of the minor to the new situation. In case an unaccompanied minor does not have any documents confirming which level of education he reached in the country of origin, the school assesses the educational level of the minor. Since the Polish legislation does not determine precise criteria for this assessment, the decision in what year to place the minor is up to the school. The best interest of the minor and the children enrolled in the concerned school shall be taken into account.

If a foreign minor does not speak Polish, an additional one year language course at least two times per week should be organised by the municipality. The language course should be free of charge. It aims to improve the knowledge of Polish language of a foreign minor to an extent allowing him to join the Polish education system. The course does not release the child from the obligation to attend school.

All identified unaccompanied minors who are under the care of relevant services are provided with medical, psychological, and social assistance.

Persons who reached the age of 18<sup>th</sup> and who are granted tolerated stay, subsidiary protection or refugee status have the right to work, to medical and social care. Moreover, persons granted refugee status or subsidiary protection are entitled to a one year integration programme. According to [Art. 92 of the Amendment of 18 March 2008](#), the integration programme entitles a foreigner up to 12 months to the following:

- Financial benefits between 446 PLN -1175 PLN per person to cover the costs of rent, food, cosmetics, Polish language courses
- Purchasing the health insurance (public)
- Social assistance
- Family, psychological and legal counselling
- Providing information and assistance in contact with other institutions such as labour market institutions, local environment, and NGOs
- Other activities supporting the integration process

The integration assistance is implemented through individual programmes adapted to the individual needs of foreigners.

## ROMANIA

The National Authority for Children Rights Protection is responsible for the welfare of minors in Romania. This authority lies within the competence of the Ministry of Labour, Family Protection and Equal Opportunities. There is a General Directorate for Social Assistance and Child Protection in each county of Romania. The treatment of unaccompanied minors is decided by the Directorate after a careful evaluation and is always respecting the best interest of the child. No matter if the child has a legal status or not, his rights are fully respected since he is under the protection of the [Law No.272 for children protection](#).

In Romania, under-age asylum seekers have the right to access compulsory education under the same conditions as under-age Romanian citizen. UAMs benefit from the same protection legally offered to national minors in difficulty.

For facilitating access to the Romanian education system, unaccompanied minors seeking for asylum participate during one school year in a free Romanian language course. This course is organised by the Ministry of Education and Research in collaboration with the Romanian Immigration Office (RIO).

At the end of the Romanian course, an evaluation commission will test the minor's Romanian language level and will register him for the adequate school level.

After having obtained a form of protection, minors can register for integration programmes. The activities of this programme are established according to the individual needs of each demander and include among others courses of Romanian language (the same as for minors who are asylum seekers).

Cultural orientation sessions are organised by the RIO personnel with the purpose of making the minors acquainted with the traditions, habits and cultural values of the Romanian culture, and of offering practical information regarding the Romanian society.



Counselling sessions are carried out by the RIO personnel in order to inform minors about their rights in Romania and the concrete way of exerting these rights. These include the right to a workplace, the right to social assistance, the right to medical assistance, access to education and the right to housing.

Psychological counselling supports minors who were granted a form of protection in Romania during the process of acquiring the abilities and the knowledge necessary for adapting to the Romanian society.

Given that minors have a low auto support potential, they can benefit from free housing in the accommodation centres for asylum seekers and refugees (Bucharest, Timișoara, Galați, Rădăuți, Șomcuta Mare), and in centres where foreigners may live during the integration program.

When minors turn 18 years old and are then considered adults, they can be supported with an accommodation assistance covering for 50% of the rent. This assistance will be paid by the RIO from the budget of the Ministry of the Interior and Reform of Administration ([Ordinance No. 44 on the Social Integration of Aliens Who Were Granted a Form of Protection in Romania](#)).

From a legal point of view, the aliens who were granted a form of protection in Romania benefit from access to the labour market, access to unemployment insurance, to the measures for preventing unemployment and stimulating the labour force under the same conditions as for Romanian citizens.

Aliens that have obtained a form of protection can benefit from employment agency services that are adapted to their specific needs and situation.

The right to work of a minor is treated according to the Romanian Labour Code. According to the Code, minors over 16 years old can work under specific conditions:

- No more than 6 hours per day;
- Not in shifts;
- Not in dangerous conditions.

Foreigners that have obtained a form of protection in Romania are entitled to medical assistance under the same conditions as Romanian citizens.

In order to benefit from social security provisions, foreigners that have obtained a form of protection shall contribute to the social security as soon as they have obtained a form of protection.

Minors who apply for asylum or who have been granted a form of protection can benefit from free medical assistance, under the same conditions as Romanian minors.

Access to the social assistance system is granted under the same conditions established by law for Romanian citizens.

Aliens who were granted a form of protection may benefit from a subsidy from the Ministry of Labour, Social Solidarity and Family during nine months. This subsidy is calculated according to the Romanian minimum wage.

### **The right for housing**

Access to housing for aliens who were granted a form of protection in Romania is allocated under the same conditions as for Romanian citizens.

Persons who have attended the integration program cannot receive social housing from the local authorities, but the Romanian Office for Immigration may subsidise their rent with a maximum of 50% for one year at the most.

### **Access to the education system**

Aliens, who were granted a form of protection in Romania, have access to all forms of education under the same conditions as Romanian citizens. In addition, minors can participate in Romanian language classes.

Save the Children: Statement of Good Practice (2004, p.22)

Separated children should have access to the same statutory education as national children. Schools need to take a flexible, welcoming approach with separated children and provide second language support. In order to preserve their cultural identity separated children should have access to mother tongue teaching. Vocational and professional training should be available to older separated children. It is likely to enhance their life chances if they return to their home country.

- \* CRC, Art. 28: Children have the right to free and compulsory primary education. States shall encourage different forms of secondary education and make them available to all children. Educational and vocational guidance shall be available to all children.
- \* CRC, Art. 29(1c): The aims of education shall be to encourage respect of children's cultural identity, language and values.
- \* CRC, Art. 30
- \* CRC, Art. 32: Children should be protected from economic exploitation and hazardous work.
- \* CDE, Art. 3: States shall take immediate measures to eliminate and prevent discrimination in education.
- \* CERD, Art. 5, e) V
- \* CoE Young Migrants, para. 6.
- \* ECRE (Children), paras. 37-39
- \* EU Dir. Reception, Art. 10(1): Member States shall grant to minor asylum seekers access to the education system under similar conditions as nationals. Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority.
- \* EU Dir. Reception, Art. 10(2): Access to the education system shall not be postponed for more than three months from the date the application was lodged.
- \* EU Dir. Reception, Art. 10(3): Where access to the education system is not possible due to the specific situation of the minor, the Member State may offer other education arrangements.
- \* EU Res., Art. 3(6): When assumed that an unaccompanied minor of school age will be staying for a prolonged period, the minor should have access to general education facilities on the same basis as nationals.
- \* European Social Charter, Part I(7): Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.
- \* European Social Charter, Part I(9): Everyone has the right to appropriate facilities for vocational guidance.
- \* ICESCR, Art. 13(1): Education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.

- \* ICRMW, Arts. 43 & 45: Members of the families of migrant workers shall enjoy equality of treatment with nationals in relation to access to education, vocational guidance and training.
- \* UDHR, Art. 26: Everyone has the right to education.
- \* UNHCR-AP, Part III, Goal 6(2): States should accord importance to primary and secondary education for refugees.
- \* UNHCR Guidelines, paras. 7.12 - 7.14

### 3.2.4 Detention and removal of unaccompanied minors

In June 2008, the European Parliament adopted the “Return Directive” proposed by the European Commission in 2005 (Directive on common standards and procedures in Member States for returning illegally staying third-country nationals)<sup>63</sup>. The directive sets common (minimum) standards for the treatment, detention and return of irregular migrants. Unaccompanied minors shall be separated from adults unless it is considered in the child’s best interest not to do so. Moreover, the directive prohibits removal of an unaccompanied minor as long as there is no assurance that he can be handed over at the point of departure or upon arrival to a family member, an equivalent representative, a guardian of the minor or a competent official of the country of return.

#### AUSTRIA

In practice, detention of minors constitutes the last means. Instead of detention, minors can for example be placed in an accommodation that is known to the police or/and have to report regularly to the police within a certain period of time. Foreigners under 16 years of age may only be exposed to detention pending deportation if an appropriate accommodation and care are ensured. Minors in detention pending deportation must be accommodated separately from adults. If the parents or legal representative are also placed in detention pending deportation, the minor and the adult must be put together.

#### BELGIUM

In Belgium, the « Reception law » in its Art. 41 entails a mechanism preventing UAMs from being held in closed centres. UAMs arriving at Brussels airport

<sup>63</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005PC0391:EN:HTML>

without a valid permit to enter the territory are now referred to one of the two Observation and Orientation Centres (OOC) while waiting for their asylum claim to be processed or for the decision to be returned.

It should be noted that UAMs arriving at the border and for whom there is a doubt about their age will be held during three working days (this period can be extended exceptionally for another three working days) and will be subject to a test aiming at determining their age.

Once the UAM arrives in the OOC, he will be considered for a period of 15 days (maximum 20) as a person not being allowed on the territory and the centre will be assimilated to the border. This allows the Immigration Office to apply the Chicago Convention<sup>64</sup> foreseeing notably that the repatriation costs for a person who did not enter the territory can be claimed from the air company. Thus the UAM can be returned during this period of 15 days. Once this delay has passed, the UAM is allowed to enter the territory.

A particular guardian is immediately (in the 24 hours of the arrival at the borders) appointed by the Guardianship Service to each minor who arrives at the border without possessing the required documents.

A provisional guardian may be appointed by the Guardianship Service to represent a foreign minor in detention who seems to correspond to the definition of a UAM but who is still in the process of being identified. If it appears that the minor is indeed an UAM then the provisional guardianship becomes definite. (Art. 6 § 3 of the guardianship law).

Before 12 January 2007, a governmental agreement provided that these young people should not be detained, and the effectiveness of the protection and care mechanism put in place by the guardianship law required the UNAM to enter the territory.

Nevertheless, the Immigration office has continued this practice of locking up minors who arrive at the airport.

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64 La Convention de Chicago du 7 décembre 1944 relative à l'aviation civile internationale.

The “Chambre du conseil” (the jurisdiction competent for this matter) had automatically ordered a request of discharge on the basis that the deprivation of liberty is contrary to Art. 3 of the International Convention on the Rights of the Child and Art. 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

On 9 June 2006, the Government of Belgium decided that in the future UAMs would no longer be detained in closed centres, but accommodated in an observation and orientation centre. All UAMs were concerned by this decision, whatever their administrative status.

This decision has been implemented by the new law of 12 January 2007 (Art. 41) on the reception of asylum seekers and other categories of foreigners and approved by the Royal Decree on 9 April 2007. The detention of UAMs is not possible anymore, except from the UAMs whose minority is not established.

Nonetheless, it should be noted that the existence of a guardianship does not have a direct effect on the entry to the territory or on the granting of a permanent residence permit.

## BULGARIA

The detention and removal procedures of unaccompanied minors are performed by the police. During this process minors can be accompanied by different specialists – pedagogues, psychologists, interpreters, health and social workers. The removal is done based on a document of a relevant state body. The minors are informed in an understandable way about the removal procedure. After the removal a special document is issued stating that the minor has been transported to a relevant police structure, institution for children, parent, guardian or a trustee.

## CZECH REPUBLIC

In the Czech Republic, a minor between 15-18 years can be detained in extraordinary cases for 90 days (a person over 18 can be detained for 180 days). In praxis, this measure is used in case there is a reasonable doubt about the real age. In these cases the age examination is carried out and if a person is really under 18, he is transferred to the “Blue School” immediately.

Removal of unaccompanied minors is possible only for the purpose of family reunification.

## **POLAND**

In Poland unaccompanied minors in irregular situation can be placed in a guarded center. The decision on expulsion of an unaccompanied minor to the country of origin or to another country shall be executed only when if he shall be under the care of the legal representative unless the manner of executing the decision on expulsion provides that the minor shall be handed over to the legal representative or to the representative of the competent agencies of the country to which the expulsion is carried out (see the point 2.3).

In case of unaccompanied minors, they stay in a custodial-educational center till Polish authorities transfer them to competent authorities or to a competent organisation in the country of origin. Unaccompanied minors also have the possibility of participation in the voluntary return programme (see the point 2.2).

## **ROMANIA**

In Romania, unaccompanied minors are not placed into detention centres regardless from their situation and legal status. They are placed in a centre under the jurisdiction of the local directorate for children protection and are kept there until their situation is decided according to the best interest of the child.

Save the Children: Statement of Good Practice (2004, p.18)

Separated children should never be detained for reasons related to their immigration status.

This includes detention at the border, for example, in international zones, in detention centres, in police cells, in prisons or in any other special detention centres for young people.

- \* CRC, Art. 37(a): Children shall not be subject to cruel, inhuman or degrading treatment.
- \* CRC, Art. 37(b)
- \* ECHR, Art.3

- \* ECHR, Art. 5: Everyone has the right to liberty and security of person.
- \* ECRE (Children), para. 20
- \* EU Res., Art. 2(3): Unaccompanied minors who must remain at the border until a decision has been taken on their admission or return, should receive all necessary material support and care.
- \* ICCPR, Art. 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- \* ICCPR, Art. 9: No one shall be subjected to arbitrary arrest or detention.
- \* ICRMW, Art. 16(4): Migrant workers and members of their families should not be subjected individually or collectively to arbitrary arrest or detention.
- \* UN Rules for the Protection of Juveniles Deprived of Their Liberty
- \* UNHCR-AP, Part III, Goal 1(9)
- \* UNHCR Guidelines para. 7.6 & 7.7

### 3.2.5 Voluntary return and reintegration of unaccompanied minors

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In June 2008, the European Parliament adopted the “Return Directive” proposed by the European Commission in 2005 (Directive on common standards and procedures in Member States for returning illegally staying third-country nationals). The directive sets common (minimum) standards for the treatment, detention and return of irregular migrants. Prior to the adoption of the directive, the 6 months detention period that can be prolonged up to 18 months and the detention of minors was controversially discussed.

The directive was commented upon by UNHCR on the bases that it does “not incorporate all the safeguards necessary to ensure that returns take place in safety and dignity”<sup>65</sup>, that there might be a risk of refoulement in practice and that minimum standards set out in the directive do not apply for asylum seekers who have crossed the borders irregularly.

Regarding UAMs, UNHCR argues that no specific safeguards are set out which require MS to address the needs of vulnerable persons such as UAMs. UNHCR clearly states that “the safeguards for unaccompanied minors in Art 8a are

<sup>65</sup> UNHCR position on the proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals



insufficient. These allow return if “adequate reception facilities” are in place, without a definition of what this constitutes, and without requiring the presence of a person or entity legally responsible for the child in the country of return.” (See point 1.3).

### **International Organization for Migration (IOM): Assisted Voluntary Return and Reintegration Programmes (AVR)**

At international level, the voluntary return assistance to unaccompanied minors is being provided in line with the principle of “the best interest of the child”<sup>66</sup>, the UNHCR guidelines for repatriation of minors<sup>67</sup> and the Council Resolution on unaccompanied minors who are nationals of third countries<sup>68</sup>.

In accordance with the UNHCR guidelines for the repatriation of minors, the assistance to the return of unaccompanied minors is limited to those who meet the following requirements:

- Unaccompanied minors who have formally expressed the wish to return home and for whom it has been decided that return is in the best interest of the child;
- Unaccompanied minors for whom parents/family members in countries of origin have formally indicated their agreement to welcome the child back and assist him in his reintegration process;
- Unaccompanied minors for whom IOM can provide/link to appropriate reintegration and follow-up assistance in their countries or origin.

In many countries, Assisted Voluntary Return Programmes (AVR) have been established by IOM in cooperation with the national governments. These programmes are generally open to unaccompanied minors no matter whether these have requested asylum or not. In the reception facilities for unaccompanied minors, IOM and its partners provide specific information on the option of voluntary return to their country of origin.

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66 *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”*. Art 3(1), UN Convention on the Right of the Child, September 1990.

67 UNHCR “Guidelines on Policies and procedures in dealing with Unaccompanied Children Seeking Asylum”, February 1997.

68 Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries, (97/C 221/03) OJ C221, 19.07.1997, p. 0023-0027.

Based on its AVR activities worldwide, IOM has extensive operational experience in implementing return and reintegration projects for particular vulnerable groups including persons with health problems, victims of trafficking, pregnant women, single parents, elderly people, minors and unaccompanied minors.

IOM quickly assesses and selects the most appropriate return assistance packages, linking pre-departure counselling, transportation and post arrival assistance. These services are specifically tailored to the individual situation of the beneficiary, ensuring that he can return to his country of origin under humane and safe circumstances.

## AUSTRIA

In Austria, the voluntary return programme is implemented by IOM in cooperation with the Austrian Ministry of the Interior and non-governmental organisations. IOM staff from the office in the country of origin assesses the social and economic situation of the family and checks whether the family consents to care for the UAM after his return. This internal report is then shared with the guardian. Without the consent of the guardian, a minor cannot be assisted under the Voluntary Return Programme.

During all stages in the asylum procedure, the asylum seeker can obtain Assisted Voluntary Return counselling.

The International Organization for Migration in Vienna has been implementing the General Humanitarian Voluntary Return Programme in Austria since June 2000 on the basis of a Memorandum of Understanding signed between IOM Vienna and the Austrian Federal Ministry of the Interior. The programme is implemented in cooperation with the Austrian Ministry of the Interior and non-governmental organisations. Target groups of the General Humanitarian Voluntary Return Programme are (rejected) asylum seekers and irregular migrants in Austria. Stranded migrants as well as unaccompanied minors can also be assisted under this programme.

Upon request by Austrian NGOs (such as Caritas, Diakonie), European Home-care (a private social service provider) and Provincial Refugee Offices, which provide return counselling, IOM Vienna organises the logistics of the return, including pre-departure, transit and reception assistance.

In 2007, all together 2067 migrants have been assisted. Thereof, five unaccompanied minors were assisted to return to their country of origin (Afghanistan 1; Albania 1; Bosnia and Herzegovina 2; Mongolia 1). One of the UAMs was 13 years old; the other four were 17 years of age, two of them female.

### Recommendations:

- to provide a clear definition of competences
- to provide information to all parties involved (UAM, guardian, youth welfare etc.)
- to ensure regular trainings for personnel
- to propose return and reintegration
- to monitor whether return/reintegration is sustainable
- to use standardized forms (e.g. Standard Template for Declaration of Parents to take care of the UAM upon return)

## BELGIUM

Likewise, in Belgium, IOM implements the return programme in cooperation with FEDASIL and with the guardianship service, providing pre-departure counselling, operational support during the return and reintegration support in the country of origin.

During the past few years the REAB programme has largely diversified its core activities in order to better respond to the changes in the migration trends. The latest developments of the REAB programme are based on the practices at Belgian level combined with the analysis and exchange of best practices at European level.

Due to its extensive contacts with and upon request of the FPS for Justice, IOM works in close cooperation with the Guardianship Service by contributing to the counselling and training of new legal guardians as well as of other legal guardians already having some experience with UAMs. IOM has inserted its training component on AVR policies and procedures regarding UAMs in the overall training provided by FPS Justice.

In 2007, 34 applications coming from unaccompanied minors were received, out of which 16 requests were processed, including returns to Angola, Brazil,

Bolivia, Bulgaria, Burundi, Ghana, Kazakhstan, Ukraine, Romania and Rwanda. There were 8 boys and 8 girls, aged between 12 and 17. Their status in Belgium was mainly migrants in an irregular situation.

The search for a durable solution is an important aspect of the guardian's assignment.

The Belgian law does not define what is meant by the notion of "durable solution" but specifies nevertheless that "the guardian takes all necessary measures in order to find the minor's family members and makes timely proposals (in writing) to find durable solutions consistent with the minor's best interest".

In practice, the durable solution might involve a family reunion, a return to the country of origin depending on a relevant evaluation of the conditions for return and for the reception of the UAM, or on the contrary, an unlimited authorisation of stay in Belgium.

The Guardianship Service ensures that a durable solution consistent with the child's best interest is sought as quickly as possible by the competent authorities. However it is the Immigration office that rules on this durable solution and that therefore has the power to decide whether to grant a residence permit or effect a removal.

The guardian clearly has the possibility to make an appeal against the refusal to grant a residence permit or against a removal measure. However, the guardian is given little time to find durable solutions and to possibly create and develop new mechanisms.

The Immigration office has the final word about the durable solution.

There might be a conflict as the Immigration office might not be working in the interest of the child but in the interest of the national migration policy.

## **BULGARIA**

In Bulgaria, too, UAMs have the option of assisted voluntary return. After the child leaves the crisis centre in Bulgaria, a reintegration process is started by the

Social Assistance Directorates by providing different educational, social and health services and family consultations. These services may be provided also by local NGOs working in the area and Centres for public support. A regular report by the Directorates should be provided to the State Agency for Child Protection about the process of reintegration.

## CZECH REPUBLIC

In the Czech Republic, IOM cooperates with two departments of the Ministry of Interior concerning voluntary return: With the Alien and Border Police for the return of irregular migrants from Detention Centres, and with the Asylum Facilities Administration if migrants are staying in one of the Refugee Facilities.

In the Czech Republic the responsible bodies for AVR are departments of the Ministry of Interior. The Headquarters of the Alien and Border Police is responsible for returns of irregular migrants from detention centres. For the returns from the Refugee Facilities, the Asylum Facilities Administration is in charge.

Foreigners who decide to return in the framework of the AVR programme have to express and declare their own free will to return to their country of origin, no matter if they are irregular migrants or former asylum seekers.

As regards the AVR in a case of a minor's return it is obviously applicable if an unaccompanied minor expresses and declares his free will to return to his country of origin, as well. The agreement of unaccompanied minors has to be expressed under the supervision of the appointed guardian. Such a provision should guarantee the free will of the respective minors.

UAMs returning with the AVR programme can be irregular migrants, former asylum seekers or victims of an offence, namely victims of trafficking. They are placed in specialised facilities where they have access to a wide scope of social, medical and psychological services. The Ministry of Education, Youth and Sport is the founder of such facilities and is responsible for their operation as well.

## POLAND

In Poland, the Voluntary Return Programme is implemented by IOM on the ground of the Memorandum of Understanding between IOM and the Minister of Interior and Administration signed on 12 July 2005. The target group of the programme includes:

- 1) Aliens who applied for refugee status:
  - a) Whose applications were not examined for formal reasons,
  - b) Who have been refused refugee status and have not been granted permission for tolerated stay;
- 2) Aliens who applied for refugee status and then withdrew or did not pursue their claim;
- 3) Aliens who applied for asylum and who have been refused asylum in the Republic of Poland;
- 4) Aliens who have been issued the decision which indicate an obligation to leave the territory of the Republic of Poland.

Unaccompanied minors who qualify to any of the above mentioned groups can apply for the Voluntary Return Programme. In case an unaccompanied minor wants to return home, special IOM procedures shall be implemented to organise a safe return to the country of origin (including checking the minor's situation in the country of origin; providing transit and reception assistance, escort if needed). Projects on Voluntary Return implemented by IOM that are co-financed by the European Commission include reintegration assistance in the country of origin after the return. For unaccompanied minors the reintegration assistance can include support in education or medical assistance.

Identified victims of trafficking who were provided with a visa can receive assistance in the framework of the Programme of Support and Protection of foreign Victims of Trafficking. The Programme is implemented by La Strada Foundation on the base of the agreement between the Ministry of Interior and Administration and the Foundation. The programme does not include reception and reintegration assistance in the country of origin which can be a problem in the case of unaccompanied minors who are victims of trafficking and who require special and complex assistance to make their return safe and sustainable.

## ROMANIA

Assisted Voluntary Return (AVR) is one of many migration management services IOM offers to migrants and governments. It is a key component of IOM's recommended response to help countries deal with irregular flows of migrants and to assist stranded and destitute migrants or victims of trafficking as well as unaccompanied minors. For all of the respective migrants groups, AVR avoids the stigma of deportation and shame as well as legal exclusion from future return to the country of destination (re-entry ban), while assisting countries to manage the presence of irregular migrants in their territory in a humane and cost-effective manner.

Save the Children: Statement of Good Practice (2004, p.31)

This is a complex area and detailed guidance is required on the implementation of good practice. A separated child should be returned only if return is considered to be in the best interests of the child. All other considerations such as the fight against illegal immigration should be secondary. The best way for family reunification and returns to be carried out is on a voluntary basis. Children should be fully informed, consulted and their views taken into account at all stages of the process. The length of time a child has been absent from the country of origin and their age are important factors to consider in this process.

- \* CRC, Art. 3
- \* Protocol on Trafficking in Persons Definition, Art. 8: States shall facilitate the repatriation of victims of trafficking
- \* Refugee Children: Guidelines on Protection and Care, UNHCR, 1994, p. 138-144
- \* UNHCR Guidelines, paras. 9.4 & 10-12

Before a separated child can be returned to a country of origin the following should be in place:

- careful assessment is made whether it is safe to return the child to his or her home country, taking into consideration risks of persecution, of being involved in armed conflicts, of violence and abuse, and of being exploited;
- the child's caretaker and guardian/adviser in the host country agree it is in the child's best interests to return;

- a careful assessment is made of the family situation in the home country. It will be necessary to investigate the ability of the child's family (parents or other family members) to provide appropriate care;
- A careful assessment is made of the access to food, housing, health care, education, and vocational training and employment opportunities in the home country;
- these investigations should be carried out by a professional and independent organization (that is different from the body or person(s) making the initial determination on the child's refugee or other claim) and should be objective, non-political and take into consideration the best interests of the child in each case;
- the child's parents, relatives or other adult caretaker agree to provide immediate and long-term care upon the child's arrival in the country of origin. The family's views on the child's return should be investigated and taken into consideration;
- the child is fully informed and consulted at all stages and is provided with appropriate counselling and support; also the child's views on return should be taken into consideration, in accordance with his/her age and maturity;
- prior to the return contact between the child and his or her family is facilitated;
- during the return the child is properly accompanied;
- after the return the well-being of the child should be effectively monitored by appropriate authorities or agencies.

Child victims of trafficking should never be returned to their country of origin without a thorough assessment of the family context and the potential risks of reprisal or re-trafficking, in order to ensure that the child is returning to a safe environment. Separated children who arrived as minors but who have reached the age of 18 and have not been allowed to remain in the receiving country should be treated as vulnerable and consulted on the conditions required for a successful reintegration into their country of origin.

\* CRC, Art. 3

\* CRC, Art. 5: States shall respect the rights and duties of parents or the extended family to provide the child appropriate direction and guidance

\* CRC, Arts. 6, 12, 19, 20, 24, 27, 28, 34, 35, 36, 37(a), 38 & 39



- \* 1951 Refugee Convention, Art. 32(1): States shall not expel a refugee lawfully in their territory.
- \* 1951 Refugee Convention, Art. 33
- \* CAT, Art. 3
- \* CoE Rec. on Expulsion, para. 13.v.h: unaccompanied minors must be treated in accordance with their age, and must immediately be taken charge of by a judge for minors, and have access to independent legal consultation and representation.
- \* CoE Young Migrants, para. 7, x
- \* ECRE (Children), paras. 33 & 42
- \* EU Res., Art. 5
- \* UNHCR-AP, Part III, Goal 2(7): States, working in consultation with relevant intergovernmental organisations, should develop strategies to promote return and readmission of persons not in need of international protection, in a humane manner and in full respect for their human rights and dignity, without resort to excessive force, and in the case of children, taking due account of their best interests.
- \* UNHCR Guidelines, paras. 9.4, 9.5, 10.5, 10.12 - 10.14

### 3.3 Protection and minimum guarantees for unaccompanied minors

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Always with the aim to promote cooperation between national agencies responsible for the protection of UAMs, the next sections present the results of the exchange of information and best practices and sharing of know-how in the area of protection and minimum guarantees for UAMs, with particular reference to [Council Resolution 97/C221/03, Art.3](#), and dealing with:

- Assistance to unaccompanied alien children in asylum and refugee-like circumstances;
- Development of a coherent institutional framework to regulate cross-interventions and deliberations of the different national agencies/bodies in charge of UAMs;
- Need for and availability of expanded use of foster care for UAMs,
- Identification and application of the best interest of the child according to CRC standards (Formal Best Interests Determination –BID)
- The creation of an office to handle children’s care and custody issues that is separate from the Immigration Service ;
- Adoption of guardianship services in national legislations;
- Provision of impartial guardians to investigate unaccompanied alien children’s circumstances and make recommendations on what would be in their best interests;
- Professional training for all persons serving as guardians which shall include the circumstances and conditions that unaccompanied alien children face; various immigration benefits for which such alien child might be eligible;
- Provision of access to counsel for unaccompanied alien children so as to help them navigate the legal processes in which they are involved;
- Enactment of standards favouring the release of children to responsible caregivers if the children are not a danger to themselves or the community;
- Establishment of family reunification as a desired principle in placement decisions;
- Treatment of delinquent UAMs; common criteria for gathering and assessing elements on immigrant juvenile delinquency.

In particular, this section deals with the following issues:

- Legal guardianship systems
- Actual practice and implementation of laws regarding protection, juridical, psycho-social and medical assistance
- Disappearance of unaccompanied minors
- Identification, treatment and protection of unaccompanied minor victims of trafficking

Rehabilitation, re-education, alternatives to detention of unaccompanied minor juvenile criminal offenders

### 3.3.1 Legal guardianship systems

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In the six participating countries, guardianship systems exist, varying in juridical form; tasks and roles assigned to the guardian; authorities in charge of training, appointing and supervising the guardians.

Guardianship can be organised by the Youth Welfare (Austria), the Ministry of Justice (Belgium), the Child Protection Departments (Bulgaria), the municipal authorities (the Czech Republic), custodial courts (Poland) or the General Directorate for Social assistance and Child Protection (Romania).

Although there may be a need for further harmonisation at European level in order to ensure the legal representativeness of a minor at all stages, each country acknowledges the fact that the appointment of a guardian is a clear measure of protection, ensuring the respect of the child's best interests throughout the duration of his stay in the host country, regardless from his legal status.

Save the Children: Statement of Good Practice (2004, p.16)

As soon as a separated child is identified, an independent guardian or adviser should be appointed - in a long-term perspective - to advise and protect separated children. Regardless of the legal status of this person (e.g. legal guardian, NGO worker) their responsibilities should be as follows:

- to ensure that all decisions taken are in the child's best interests

- to ensure that a separated child has suitable care, accommodation, education, language support and health care provision
- to ensure a child has suitable legal representation to deal with her or his immigration status or asylum claim
- to consult with and advise the child
- to contribute to a durable solution in the child's best interests
- to provide a link between the child and various organisations who may provide services to the child
- to advocate on the child's behalf where necessary
- to explore the possibility of family tracing and reunification with the child
- to help the child keep in touch with his/her family.

In order to ensure necessary protection for separated children, appointments of guardians/ advisers should be made within one month of a child being notified to the relevant authorities. The individuals carrying out these responsibilities may be drawn from a range of specialist backgrounds. However, in order to carry out their role effectively, advisers or guardians should have relevant childcare expertise and an understanding of the special and cultural needs of separated children. They should receive training and professional support, and undergo police reference checks.

- \* CRC, Art. 12
- \* CRC, Art. 18(2): States shall assist legal guardians to carry out child-rearing responsibilities.
- \* CRC, Art. 20(1): Children deprived of their families are entitled to special protection and assistance.
- \* CRC, Art. 20(3): The care provided to children deprived of their families shall take account of their ethnic, religious, cultural and linguistic background.
- \* CoE Young Migrants, para. 4,vi.
- \* ECRE (Children), paras. 16-18

- \* EU Dir. Reception, Art. 19(1): Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or representation by an organisation 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.
- \* EU Res., Art. 3(4&5): Member States should provide as soon as possible legal guardianship, or representation by an organisation which is responsible for the care and wellbeing of the minor, or other appropriate representation. The guardian should ensure that the minor's needs (for example, legal, social, medical or psychological) are duly met.
- \* Hague Convention, 1993
- \* Hague Convention, 1996, Art. 3: States where separated children have habitual residence can take measures of protection including guardianship or analogous institutions.
- \* Hague Convention, 1996, Art. 6: The Convention applies to separated children who are refugees or internationally displaced due to disturbance occurring in their own country.
- \* UNHCR Guidelines, para. 5.7
- \* UNHCR Handbook, para. 214
- \* UNHCR-AP, Part III, Goal 1(9): States, UNHCR, NGOs and other partners should address the needs of separated children, including their temporary placement in foster families or appointment of State or non-State guardians, and the monitoring of such arrangements.

## AUSTRIA

In Austria, if the parents of a minor cannot act or be appointed as guardians, the court has to appoint another person as guardian, taking into account the best interest of the minor. The provisions of guardianship apply to foreign as well as to national minors.

The youth welfare has to be informed when an unaccompanied minor is found and the parents are unknown. The youth welfare then has to file an application to the district's court to obtain the guardianship. When danger is immediate, the youth welfare can take all necessary action in the best interest of the child. The application for guardianship has to be filed within eight days to the court.

The youth welfare holds an interim guardianship position until a guardian is appointed formally by the court. The Court of Appeal is the regional court.

Usually, in the case of UAMs, if no relative can be found to be appointed as guardian, the court must appoint the youth welfare institution as guardian. In practice, the respective youth welfare institution then appoints a natural person e.g. a social worker as guardian.

In 2005, the Austrian Supreme Court of Justice ruled that the non-appointment of a guardian leads to a serious danger to the interest of the child.<sup>69</sup>

The main tasks of the guardian are:

- To look after and take care of the minor
- To protect his physical well being
- To supervise him
- To ensure his education and development of physical, intellectual, mental and moral values, - to foster his talents, abilities and interests as well as his scholastic and professional education.

## BELGIUM

In Belgium, the guardians are appointed by the Guardianship Service, depending on the Ministry of Justice.

The duties of a guardian are clearly stated in the sixth chapter of the [Programme-Law of 24 December 2002 on guardianship of UASC \(Art. 9 and 10\)](#):

The most common duties of guardians are:

- To ensure that all decisions taken are in the child's best interests
- To ensure that a separated child has suitable care, accommodation, education, and health care provision
- To ensure that the child has suitable legal representation to deal with her or his immigration status or asylum claim, or any other jurisdictional or administrative procedure
- To consult with and advise the child
- To appoint a lawyer for the child
- To contribute and make proposals for a durable solution in the child's best

<sup>69</sup> Decision OGH7OB209/05v\_0070OB00209\_05V0000\_000&TabbedMenuSelection=JudikaturTab

interests (voluntary repatriation / local integration / resettlement)

- To assist the minor to integrate into the new country and environment
- To advocate on the child's behalf where necessary
- To explore the possibility of family tracing and reunification with the child
- To administer the minor's assets

The guardians are involved in the best interest determination and identification of durable solutions.

Guardians take care that the following elements are ensured for every UAM in their best interest: accommodation; care arrangements; education; integration support; health services; monitoring/reporting on the situation of the child; family tracing, family reunification, Dublin II (DII) Regulation transfers; Refugee Status Determination (RSD) procedures: DII and RSD being conducted by the Immigration Office guardians must be present in decision-making / interviews; access to legal counselling / legal representation; identification of durable solutions / return / repatriation / integration

Two types of guardianship systems exist in parallel in Belgium: professionalised systems and benevolent or voluntary systems. Professionalised guardians are employees of NGOs who work in the social and legal sectors, while benevolent guardians are private persons who volunteer to become guardians.

Guardians are required to participate in compulsory training prior to taking up guardianship and have to attend a continuous training for the guardians at least once a year.

Training includes aliens' law, youth law, teaching skills, psychology and multi-cultural reception. In this context, guardians are also invited by the Commissariat General for Refugees and Stateless Persons (CGRA)<sup>70</sup> to familiarise themselves with asylum procedures. In addition, guardians are encouraged to attend conferences and seminars on UAM-related issues.

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<sup>70</sup> Commissariat General for Refugees and Stateless Persons (CGRA/CGVS): Administrative authority attached to the Federal Public Service (FPS) of the Interior, independent in its decision making. The Commissariat General examines all asylum claims and is competent to either grant or not refugee status.

The guardian carries out his assignment completely independently but remains under the supervision of the judge (“juge de paix”) and the Guardianship Service who may, in the event of negligence of the minor, bring an end to the guardianship or withdraw approval.

Individuals who help decide on the residence of the minor (that is, the staff of the Immigration Office or CGRA), or individuals engaged in judicial procedures against the minor, are not eligible to become guardians. Furthermore, guardians cannot be designated to a particular minor if they work in any reception capacity in respect of the UAM concerned.

According to the Law on guardianship, the Guardianship Service exercises daily supervision over the guardian’s substantial work. Twice a year, the judge receives the guardian’s report on the minor’s assets and personal situation and, especially, on the minor’s residency status, the tracing of family members, or the reception infrastructure in the country of origin of the minor, and the minor’s education.

The report also refers to work accomplished, and to problems encountered by the minor.

A copy of the report is sent to the Guardianship Service. Within two weeks of ceasing duty, the guardian sends the judge a final report on guardianship. A copy is transmitted to the Guardianship Service, as well as to the minor. The judge makes a report recording that the guardianship has been accounted for and approved, and discharging the guardian from further duties. Also, the judge settles conflicts between the guardian and the minor in matters related to the minor’s person or assets. In the same way, the judge may bring a guardian’s assignment to an end when the guardian fails to accomplish the duties with diligence or in the event of serious differences of opinion with the minor. At any time, the judge may ask the public prosecutor to hold an investigation concerning the minor’s social situation.

## **BULGARIA**

The social workers of the Child Protection Departments in Bulgaria provide family assessment and reintegration but do not represent the child legally. UAMs are referred to services, the final goal being the return of the child in the



family environment. According to Bulgarian legislation the child is represented legally by his parents. On special circumstances a guardianship shall be appointed to a child.

The body of guardianship and trust shall be the mayor of the municipality or an official appointed by him. He can appoint a guardianship council and trust over the child<sup>71</sup>.

## CZECH REPUBLIC

The municipal authority with extended powers:

- Acts as guardian and curator
- Takes urgent measures on behalf of the child and represents him when no guardian has been appointed for the child or until the appointed guardian takes up his function.

Where the child cannot be represented by either of his parents, the court shall appoint a curator who shall represent the child in proceedings or in specific legal acts (i.e. during the asylum procedure, for the residence of the child on the territory of the Czech Republic or during detention). This post of curator should generally be exercised by the Authority for the Social-Legal Protection of Children who will normally assign a person for this function.

The municipal authority shall attend the asylum proceedings and shall deal with school matters or social security benefits.

The guardian is the legal representative of the minor during his stay in the Czech Republic until the minor reaches 18 years.

If no natural person can be appointed as guardian, the court shall appoint the Authority for the Social-Law Protection of Children to be guardian.

Until the child is appointed a guardian or before the appointed guardian takes up his function, the Authority for the Social-Legal Protection of Children shall deal with urgent tasks in the child's interest and in the child's name.

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71 Family Code, ch.10

Provisions concerning the rights and duties of parents and children shall also apply to relationships between a guardian and a child. The guardian's function does not entail an alimentation duty for the child.

The court shall recall the guardian if he becomes unable to exercise the position of guardian or he violates his duties.

The curator is the legal representative of the minor who acts in the benefit of the child in certain matters, e.g. during the asylum procedure.

Thus, the court can also appoint a curator in the child's interest, apart from cases involving a conflict of interest between the child and his legal representatives or between more children of the same parents (property interests cases where parental responsibility is limited, or adoption proceedings).

The Authority for the Social-Legal Protection of Children can also appoint a curator for these types of case.

The court shall define the extent of the curator's rights and duties with regard to the purpose for which the curator was appointed in order to guarantee the protection of the minor's interests.

If an UAM has committed a criminal offence, he has the right to be represented by a lawyer. The lawyer is paid by the Czech Republic.

## **POLAND**

A guardian ("curator") is appointed by a custodial court in Poland to represent the minor in the procedure for granting the refugee status after the Border Guards request. If a person appeared as a minor during procedure, the Head of Office for Foreigners is responsible for applying to a custodial court. A custodial court has a list of persons who can be appointed as guardian. A guardian plays a social role and is not remunerated. Very often students of law who are volunteers in a Law Clinic play this role. The Head of Office for Foreigners shall inform in advance a guardian about the date and place of the interrogation. A guardian is responsible for informing the minor about the importance and

possible effects of the interview and the way of preparing for the interrogation. A guardian is allowed to ask questions and make comments during the interview.

The fact that the role of the guardian is on a voluntary basis can raise doubts whether the responsibilities of the guardian are properly fulfilled.

As mentioned above, the guardian's role is limited to representing a minor in an asylum procedure, while everyday care shall be provided to a minor by a tutor from a children's home. The scope of the tutors' responsibilities is defined by [Act of 12 March 2004 on Social Care and Regulation of 14 February 2005 of the Minister of Labour and Social Policy](#). Tutors are responsible for carrying out all activities connected with everyday care, diagnosis of specific needs of a minor and fulfilling them, contacting a school for the minor to attend, contacting the family of the minor, collecting documentation on a minor and his family. A tutor should have a master's degree in one of the following subjects: pedagogy, psychology, rehabilitation, or social care.

## ROMANIA

If unaccompanied underage children apply for asylum, the asylum procedure is suspended until a legal representative is appointed. The public servant who registers the unaccompanied underage child will immediately request a legal representative to be appointed. The General Directorate for Social assistance and Child Protection (GDSACP), in the territorial area of the Romanian Immigration Office structure where the request for asylum was deposited, will appoint the legal representative. The GDSACP will appoint a person with a legal or social assistance background from its own personnel or of an authorised private body to support the child's rights and to assist the child along the entire asylum procedure. This "legal representative" is not empowered by any authority to act in the name of the unaccompanied minor. His main role is to escort and assist the minor. The representative is not appointed based on an order issued by a judge but based on an administrative order.

### Appointing a legal guardian in Romania

- A legal guardian has to be appointed as soon as possible
- The refugee status determination procedure is suspended until the appointment of a legal representative.

- The decision officer requests for a legal guardian to be appointed.
- The appointment is made by General Direction for Social Assistance and Child Protection.
- The Direction will appoint a person with higher education in law or social assistance from its own staff or from an authorised private organisation, which will uphold the child’s rights and participate together with him in the entire refugee status determination procedure.
- The document of appointing the legal representative will be sent to the Romanian Immigration Office, decision officer, who will include it in the personal file of the asylum seeker.
- Should it be determined that the person appointed by the General Direction for Social Assistance and Child Protection does not carry out his obligation to protect the interest of the child appropriately, or should he prove ill faith in carrying out this task, the Romanian Immigration Office may request the replacement of that person.

### 3.3.2 Protection mechanisms with regard to juridical, psycho-social, and medical assistance

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Save the Children: Statement of Good Practice (2004, p.24)

Separated children, regardless of age, should never be denied access to the asylum process. Once admitted they should go through the normal procedures and be exempt from alternative procedures including those relating to ‘safe third country’ (admissibility), ‘manifestly unfounded’ (accelerated) and ‘safe country of origin’ and from any suspension of consideration of their asylum claim due to coming from a “country in upheaval”.

- \* CRC, Art. 22
- \* 1951 Refugee Convention: Article 1 of the Convention makes no distinctions according to age. A person of any age can be recognised as a refugee.
- \* Council of the EU Conclusions on countries in which there is generally no serious risk of persecution, 1992
- \* Council of the EU Joint Position on the harmonised application of the definition of the term “refugee”. March, 1996

- \* Council of the EU Resolution on a harmonised approach to questions concerning host third countries, 1992
- \* Council of the EU Resolution on manifestly unfounded applications for asylum, 1992
- \* ECRE (Children), para. 22 - 23
- \* EU Res., Art. 4(1): Every unaccompanied minor should have the right to apply for asylum.
- \* EU Res. Minimum, paras. 26-27: Provision must be made for unaccompanied minors seeking asylum to be represented by a specifically appointed adult or institution. During the interview, unaccompanied minors may be accompanied by that adult or representatives of that institution. When an application from an unaccompanied minor is examined, his mental development and maturity will be taken into account.
- \* Protocol Relating to the Status of Refugees, 1967
- \* UDHR, Art. 14(1): "Everyone has the right to seek and to enjoy in other countries asylum from persecution."
- \* UNHCR-AP, Part II, Operative Para. 6: State Parties to the 1951 Refugee Convention call upon all states to take measures to strengthen asylum, giving special attention to vulnerable groups, including women and children.
- \* UNHCR Guidelines, para.4.1

At all stages of the asylum process, including any appeals or reviews, separated children should have a legal representative who will assist the child to make his or her claim for asylum. Legal representatives should be available at no cost to the child and, in addition to possessing expertise on the asylum process, they should be skilled in representing children and be aware of child- specific forms of persecution.

- \* CRC, Art. 12
- \* CRC, Art. 22
- \* ECRE (Children), para. 24
- \* UNHCR Guidelines, para. 4.2 & 8.3

Separated children should have access to health care on an equal basis with national children. Particular attention should be paid to their health needs arising from previous physical deprivation and ill health, disabilities, and from the psychological impact of violence, trauma and loss as well as the effect of racism and xenophobia that may be experienced abroad. For many separated children access to counselling is vital to assist their recovery.

- \* CRC, Art. 23: Children with disabilities have the right to enjoy a full and decent life and have the right to special care.
- \* CRC, Art. 24
- \* CRC, Art. 39: States shall take measures to promote the physical and psychological recovery and social re-integration of child victims.
- \* CAT, Art. 14: Victims of torture shall be able to obtain redress, compensation and rehabilitation.
- \* ECRE (Children) para. 36
- \* ECRE (Integration), paras 120-133
- \* EU Dir. Reception, Art. 13(2): Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence. Member States shall ensure that standard of living is met in the specific situation of persons who have special needs.
- \* EU Dir. Reception, Art. 17(1): Member States shall take into account the specific situation of vulnerable persons such as minors and unaccompanied minors.
- \* EU Dir. Reception, Art. 18(2): The best interest of the child shall be a primary consideration when implementing the provisions that involve minors.
- \* EU Res., Art. 3(7): Unaccompanied minors should receive appropriate medical care. Special medical or other assistance should be provided for minors who have suffered any form of neglect, exploitation, or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment, or armed conflicts.
- \* ICESCR, Art. 12: The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

- \* ICRMW, Art. 28: Migrant workers and members of their families have the right to receive urgent medical care.
- \* UNHCR Guidelines, paras. 7.9 - 7.11

## AUSTRIA

The rights of every child in Austria, irrelevant of their legal status, are protected by law. Austria has signed the [Convention on the Rights of the Child which has entered into force in 1992](#). The competence of the youth welfare is divided between the State and the provinces. The provinces are responsible for the implementation of the welfare law, thus are in practice responsible for the protection and care of the child. If a UAM needs psychosocial, juridical and medical assistance it is provided to him free of charge.

## BELGIUM

There are three different legal protection mechanisms:

→ 1. The provision on guardianship of unaccompanied foreign minor laid down in Title XIII, Chapter VI « Unaccompanied minor aliens », of the Programme Law of 24 December 2002 (Belgian Official Gazette of 31 December 2002) has created a specific system of guardianship for unaccompanied minors.

When an unaccompanied minor receives a definitive legal status to remain in the country (he is recognised as refugee, he has a permanent right to stay on humanitarian basis), the specific guardian assigned for unaccompanied minors ceases his duty.

He still has to organise a new guardianship (within the civil law) as for other orphans, for the minor.

→ 2. The [Title X, Chapter, II, Art. 389 of the Belgian civil code](#) organises a guardianship system applicable to Belgian children, or children who have a legal status, and who do not have their parents anymore.

→ 3. A system of residuary guardianship is organised by [Art. 63 to 68 of the law of 8 July 1976](#) (Organic Law of public centres for social assistance).

If the minor requests asylum, in which case he benefits from the temporary residency card issued to adults in a similar situation (Annexes 25 or 26, 25bis or 26 bis, he will receive a registration card (CIRE)).

The guardian is involved throughout the UAMs asylum procedure. The guardian makes the asylum request but the UAM may do so himself. The guardian prepares the minor for interviews and accompanies him. He introduces remedies at law. No hearing by an asylum authority may take place without the guardian being present (even at the Immigration office). If the guardian is absent or has not yet been appointed, the hearing cannot take place. If it nevertheless takes place, it must be considered as void and be reconvened in the presence of the guardian. In case of emergency the Guardianship Service can appoint another guardian temporarily.

The law provides that the staff members of the federal public service of the Ministry of the Interior's Directorate General, the Immigration Office, the General Commissioner for Refugees and Stateless Persons (CGRA) and the Permanent Appeals Commission for Refugees (CPRR) cannot be accepted as guardians as they are presumed to be in a conflict of interest with the minor.

Unaccompanied minors can also benefit from juridical assistance. There is however a difference in caring for Belgian minors and for UAMs. There is a difference in caring for Belgian minors and for UAMs. The guardian has to ask, without delay, the assistance of a solicitor ([Art. 9 § 3 of the guardianship law](#)). The guardian must ask for a lawyer to be appointed, if necessary via the office for legal aid in the district where the minor is residing. The minor is entitled to legal aid on two grounds: as minor and as a foreigner involved in the procedure for residency. Many bar associations (Brussels, Charleroi and Antwerp) have set up a specific group of lawyers who have voluntarily accepted to deal with unaccompanied minors' files either seeking asylum or not.

Moreover, generally and independently from any asylum procedure, the Youth tribunal can be seized by the Crown prosecutor on the basis of [Art. 36/2 of the law of 8 April 1965](#) relating to the youth's protection in order to take provisional measures towards the minor in danger. It is up to the judge to decide whether temporary measures should be taken and whether legal conditions foreseen under [Art. 36/2](#) are reunited.



Concerning early childhood, the National Office for childhood in the French (ONE) and in the Dutch (Kind en Gezin) community have a mandate to accompany and follow up the young child and his family by means of free services (consultations, access to kindergarten, etc.). These services are available both for UAMs and Belgian children.

## **BULGARIA**

Concerning Bulgarian minors who have been victims of trafficking and who have returned to Bulgaria, according to Bulgarian legislation, the President of SACP has the authority to propose to the Minister of Interior the imposing of administrative measures preventing the involvement of the child in secondary trafficking. These measures include restrictions for leaving the country, not issuing passports and replacing documents and confiscating those issued to underage persons. These measures started to be less effective since the Bulgarian accession to the EU due to the right of free movement of EU citizens. This makes it harder to trace disappeared minors when crossing national borders.

## **CZECH REPUBLIC**

Every UAM has the right to stay on the Czech territory until he reaches majority at 18 years. Social, psychological, medical care and education are guaranteed free of charge. When he reaches majority, there is the possibility to apply for permanent stay in the territory (as cases requiring special consideration). The conditions for this category of foreigners are thus different from other applicants for permanent residency. This category of foreigners does not even need to submit the extract of the Criminal Register of his home country. The right to apply for asylum and the right to an asylum procedure are guaranteed according to the Geneva Convention. The Czech Republic is a member state and ratified the [Convention on the Rights of the Child](#).

## **POLAND**

In the light of the Polish legislation, all unaccompanied minors have the right to education and medical care free of charge. Unaccompanied minors, both asylum seekers and irregular migrants, who are placed in a foster institution, have the right to psychological and legal assistance.

Unaccompanied minors are granted a visa/residence permit for a fixed period of time because they are suspected to be victims of trafficking in human beings

or they have already undertaken cooperation with the competent authority. They have the right to social benefits such as:

- Placement in a crisis intervention centre
- Food
- Necessary clothes
- Welfare benefit

Unaccompanied minor victims of trafficking are covered by the Programme of Support and Protection of Victims of Trafficking in Persons, providing following assistance:

- Translator's assistance
- In-country transportation
- Accommodation in the shelter
- Medical and psychological assistance
- Assistance while contacting prosecution agencies and a body of justice
- Organisation of safe return to the country of origin

## ROMANIA

### **General medical check-up and psychological assistance in Romania**

- The medical staff will carry out general medical examinations of the unaccompanied minors and the resulting information will be included in the personal files.
- If needed, UAMs will receive free medical help. In cases of emergency, they will benefit from emergency medical assistance.
- In case possible tortured / traumatised persons are identified, this will be mentioned in the medical report which is attached to the personal file of the asylum seeker, while also contacting the NRO psychologist in the accommodation centre.
- The medical staff will contact the socio-psychologists in the centre where the minors are to be accommodated, in order to inform them about the presence of the minor and about his health.
- Following the notification from the person in charge of registration and from the doctor, the psychologist will carry out a psychological evaluation on the degree of the UAMs intellectual development and on his emotional maturity when the minor arrives at the centre.

- Asylum seekers who are possibly traumatised / tortured persons will benefit from psychological counselling.

### 3.3.3 Disappearance of unaccompanied minors

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The disappearance of UAMs from reception facilities is a common problem in all the countries. Given the fact that reception centres for UAMs are open centres<sup>72</sup> in some states and that many minors know of the high probability that their request for asylum will be rejected and they would thus be deported, the disappearance of minors from the reception facilities can be a real problem.

As a consequence, almost all the countries have established a mechanism to inform the police in the case of disappearance of a UAM. In Belgium, for instance, in addition to the police, the Guardianship Service or the guardian has to be informed, and, for minors who have entered the country irregularly, the Immigration Office should also be informed. In the Czech Republic the municipal authorities, the court and the Ministry of the Interior are informed. The information on missing children is entered in the police's register that is open to the public.

## AUSTRIA

In Austria, centres accommodating minors are open facilities. Therefore the disappearance of minors is a problem. If a minor below the age of 14 disappears from the Crisis Centre *Drehscheibe*, the local police is informed within 24 hours, if a minor above the age of 14 disappears; police is informed within 48 hours. When a minor disappears, the police record all data available (name of the person, appearance, age, picture, etc) in its files where the data is stored until the person is found. All local police stations are informed about the disappearance and an immediate search for the missing child is initiated.

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72 Open Centre – The open reception structures or open centres are managed by Fedasil and take charge of the reception of asylum seekers who are in the first phase of the asylum procedure. These centres guarantee housing and material assistance to the asylum seekers as soon as their request is introduced. The “open” character of the centre means that residents can freely get in and out of the centre (with some limits to be respected though). They have access to medical services, social assistance, assistance to children, second hand clothing, etc. Asylum seekers who do not choose to live in the reception centre that was assigned to them do however not receive any financial assistance.

In the Crisis Centre *Drehscheibe* in Vienna, a card containing the Centre's address is issued and handed to the child. The card also contains a picture of the minor. When the minor disappears and subsequently is picked up somewhere, he/she often has this card with her/him and can be identified. Furthermore, the card facilitates establishing contact with the Centre *Drehscheibe*.

## BELGIUM

The Guardianship service registers a high number of UAM disappearances. These numbers should however be considered carefully and one should note that most of these disappearances concern minors who had no guardian appointed yet and who left the reception centre the day following their admission in the Orientation and Observation Centre (OOC). Some disappearances also concern the same person, known under different identities and/or referred several times to the Guardianship Service.

Disappearances often concern minors originating from Maghreb countries or Roma people. Most of them are only transiting through Belgium and aim at reaching the UK or another country where they have family. The situation of the UAMs of Roma origin is more specific as these minors are usually accompanied by a member of their family, sometimes even by their own parents but the latter are also residing irregularly in Belgium.

There are legal provisions detailing which measures should be taken in case of disappearance ([Circular of the public prosecutors, 11 October 2004](#); [Ministerial Directive on the search for missing persons, 20 February 2002, adapted on 20 April 2003](#)): the police should be informed and should in turn inform other competent authorities such as Child Focus in case of a worrying disappearance.

In Belgium, a UAM is considered as having left the reception structure 24 hours after his absence has been noticed. Upon these 24 hours, the police are informed about the absence of the UAM as well as the guardian or the Guardianship Service. When it is a UAM having been intercepted at the airport without legal entry to the country, the Immigration Office is also duly informed.

If the UAM is in a particularly vulnerable situation, the centre informs the police immediately after one has established the disappearance without notice from the centre. The guardian and Guardianship Service are equally informed at the same time. Particularly vulnerable UAMs are UAMs younger than 13 years old, minors suffering from psychological disorders or mental health problems and UAMs victim of trafficking.

Child Focus, the European centre for missing and sexually exploited children is a foundation based on Belgian law recognised as being of public utility and whose objective is to implement every possible action in order to find missing children and fight against their sexual exploitation.

## BULGARIA

The Bulgarian Ministry of Interior is responsible for undertaking measures in case of missing people. The Ministry is working on the improvement of the legal framework for the search for persons, in particular for missing juveniles and minors. A draft Instruction on the Search Activity of the Ministry of Interior has been drawn up, and an automated information system for the persons sought is being developed.

## CZECH REPUBLIC

Disappearance of UAMs in the Czech Republic is a real problem. UAMs disappearance is closely related to migration trends.

Socio-legal protection shall primarily focus on children who repeatedly run away from their parents or another natural or legal person responsible for the child's upbringing. In the case of UAMs, some run away from the *Blue School*. The *Blue School* works closely with the Police, with the municipal authorities, the court, and with the Ministry of the Interior. The Ministry of the Interior registers missing children through a Police register which is open to the public. The Czech Republic is in the process of preparing a new methodology to react to this new phenomenon of missing children.

In the *Blue School*, incoming children are admitted to the admission department where all receiving procedures and also preventive medical examination and introductory interviews in the presence of interpreters are carried out. Also, children who ran away and were held by the police or who have come back are

placed in this department. Such children are placed into an appropriate educational group after having spent three days in the admission department.

## POLAND

Poland: "The fact that children know their chances of being granted refugee status are slim is cited as one of the reasons why the majority of unaccompanied asylum-seeking children placed in various kinds of care units in Poland in 1999 and 2000 escaped from them. Indeed, approximately 80 per cent of children disappeared from such institutions "without a trace and without anyone assessing the child's situation or asking questions"." (Jahnsen, M. (2005) *Children without Protection in Europe*. Stockholm: Save the Children).

Disappearance of UAMs is a serious problem in Poland. The scale of this phenomenon is not determined because of lack of detailed statistics on disappeared unaccompanied minors. There is also a lack of procedures based on international cooperation that shall be used in a situation of disappearance of UAMs. Strict limitation on exchange of personal data including pictures of unaccompanied minors is an additional difficulty in the process of searching disappeared minors on the international level.

UAMs disappear from custodial-educational centres and from children homes. The phenomenon of disappearance of unaccompanied is connected with migration trends in which Poland plays the role of a transit country. Probably for some unaccompanied minors crisis centres or children homes is only a stop on their way to Western Europe and most of them are in contact with smugglers.

Additional problems are minor asylum seekers who come to Poland with their parents or a parent and then disappear from a reception centre while the parents are staying. In most of the cases, parents do not want to inform the Police about their disappearance. Probably those children are smuggled to Western Europe. They disappear without even taking any documents with them. They become unaccompanied minors in a serious risk of abuse.

As a conclusion, there is a strong need for detailed statistics on disappeared unaccompanied minors and creation of emergency procedures that should be implemented at national and international level in situations of unaccompanied minors' disappearances. There is also a need for creation of international

network including agencies from the countries of destination, transit, and origin competent with respect to searching disappeared minors.

## ROMANIA

The disappearance of a minor has to be reported within 24 hours to the local Police station either by the parents, the legal tutor (in case the parents are not in the country/deceased/unknown) or by the local authorities in charge with the protection of the minor (social assistants from the general Directorate for Child Protection, from Placement Centres or Transit Centres). The Police is responsible for the investigations no matter if the missing children are Romanian citizens or foreigners.

In order to keep track of disappeared UAMs, each country should have a national register of missing children in accordance with the law on protection of personal data. Best practices identified include an internal website of the Ministry of Interior [Czech Republic] and a daily updated database [Romania].

Another example of facilitating the finding and identification of disappeared UAMs is a card containing the reception centre's address that is handed to the child. The card also contains a picture of the minor. When a minor disappears and subsequently is picked up somewhere, he/she might still have this card with her/him and can be identified. Furthermore, the card facilitates to establish contact with the reception centre [Austria].

### 3.3.4 Unaccompanied minors victims of trafficking: identification, treatment, protection

The results from the STOP 2000<sup>73</sup> study on "Trafficking of Unaccompanied Minors for Sexual Exploitation in the EU (Belgium, Italy, Germany and The Netherlands)" conducted by IOM shows that, in spite of the prevailing shortcomings in the statistics, there is a widespread belief among public authorities and social workers that trafficking in minors for sexual exploitation is increasing, as well as other forms of forced labour such as irregular employment, begging and stealing.

73 IOM Brussels, ISBN 92-9068-108-X

Protection of trafficking victims requires rapid identification and should avoid automatically charging them as criminals and/or deported. While asylum systems rely on claimants being aware of their rights, the majority of trafficked persons are unaware that they might be entitled to protection – a fact which is exploited by traffickers. Proactive identification of trafficking victims by law enforcement and immigration authorities is vital, but the similarity of some trafficking scenarios to smuggling and illegal employment makes this a difficult task. As a result, many countries have created screening processes, established referral mechanisms and trained police and social workers to spot possible trafficking cases.

Minors who are victims of trafficking are in an especially vulnerable position and are in need of additional protection in order to overcome traumas they might have experienced and to prevent that they fall again in the hands of traffickers. In some countries, they are referred to special centres where their protection can be ensured more easily. In Austria for example, girls and women of more than 16 years old are received in a special shelter for women. In Bulgaria, minor victims of trafficking are referred to a specific centre for children who have been victims of violence.

A special issue to be considered are minor victims of trafficking from other European Member States as in some countries they are not granted the same protection and status as UAMs from third countries, as it is the case in Belgium.

The **UNICEF Guidelines on the Protection of Child Victims of Trafficking, 2006** are based on UNICEF's "Guidelines for Protection of the Rights of Child Victims of Trafficking in South Eastern Europe" 2003, that were later adapted to other regions. The goal of the Guidelines is to set out standards for good practice with respect to protection of and assistance to trafficked children.

[http://www.unicef.org/ceecis/0610-Unicef\\_Victims\\_Guidelines\\_en.pdf](http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf)



## AUSTRIA

Minors are trafficked to Austria mostly from South Eastern or Eastern Europe for the purpose of sexual or labour exploitation. A lot of them are forced to steal and beg. As there are neither specialised centres for minor victims of trafficking, nor data collection mechanisms on child trafficking in place, this shows only part of the overall picture.<sup>74</sup>

The Intervention Centre for Trafficked Women of the NGO Lefö/IBF<sup>75</sup> (Counselling, Education and Support for Migrant Women) provides shelter to female victims of trafficking above the age of 16 and offers a wide range of services such as accommodation, medical and psychosocial assistance, and assistance during trials and interviews, integration activities and others. Lefö/IBF is financed by the Austrian Ministry of the Interior and the Ministry for Women and is reachable via an emergency hotline 24 hours a day.

In Vienna, if an unaccompanied minor is picked up, he is referred to the Crisis Centre *Drehscheibe* of the City of Vienna. The Centre provides temporary placement care and protection for ten foreign minors. Eight social pedagogues are employed. The Centre tries to identify the child in close cooperation with the respective Embassy of the country of origin and, if in the best interest of the child, organises the return. The return of the minor to the country of origin is monitored for six months.

As a practice, when a guardian other than the parents of a minor comes to pick up a minor at the centre, the person must have a legal certificate which states that he/she is allowed to obtain the custody of the child. (Often, legal acknowledgements are presented but they are only valid for border crossing).

If a minor victim of trafficking is picked up in one of the provinces of Austria other than Vienna, he is referred to the care taking institutions of the Youth Welfare of that respective province.

<sup>74</sup> The Austrian Ministry of the Interior in cooperation with IOM Vienna is currently implementing a project co-funded by the EC which aims to develop guidelines on data collection in the field of THB. The results of this project should foster a standardised approach on data collection across the EU.

<sup>75</sup> LEFÖ/IBF Homepage: <http://www.lefoe.at/design/content.php?page=a&lang=de&content=181>

In 2004, the National Task Force against Trafficking in Human Beings (THB) was set up. The Group is composed of representatives of various ministries as well as representatives of Austrian Federal States, NGOs and research institutes and meets on a regular basis in order to coordinate and streamline national activities in the fight against THB. In 2007, the first National [Action Plan against Trafficking in Human Beings](#)<sup>76</sup> was compiled. Under heading 1.5., the creation of sub working groups was specifically mentioned in the National Action Plan and subsequently the sub working group on child trafficking has been created.

The *Round Table Child Trafficking*, a platform of NGOs, IOs, research institutes and a representative of the City of Vienna, meets on a regular basis to share information and coordinate activities in the fight against child trafficking.

### Recommendation:

- o establish adequate and coordinated protection and assistance mechanisms for minor victims of trafficking
- o raise awareness on the issue of child trafficking amongst various stakeholders
- o improve identification mechanisms
- o foster cooperation between different stakeholders
- o collect data on child trafficking

## BELGIUM

The detection of UAMS appears to be not very satisfying in spite of the progress made since the Guardianship Service was put in place. Different official services still neglect to notify the Guardianship Service about a minor for whom they are not competent. Concerning the UAMs who are not residing in a reception centre but who are living with “relatives” or “friends”, only little verification is made about the quality of this reception mechanism. There is no monitoring by an official authority of the link between the child and the person(s) hosting him. The procedure for victims of trafficking is neither very accessible nor well adapted to minors: it is a heavy and risky process while there would actually be other alternatives.

76 Nationaler Aktionsplan gegen Menschenhandel:  
<http://www.legislationline.org/upload/legislations/00/d7/0c35cd8e53e6f4de8d53d4af214.pdf>

In order to benefit from the status as victim of trafficking, the unaccompanied minor must fulfil following three conditions:

- Leave the person or the network having exploited him.
- Be followed up by one of the three reception centres specialised in the reception and assistance of victims of trafficking.
- Lodge a complaint against the traffickers or trafficking network or make a declaration against them.

### Recommendations:

1. Regarding detection, one should improve information to these official services and administrations treating UAM files, targeting services essentially dealing directly with minors: the public prosecution service and youth judges, Youth Assistance Services, schools (as schooling until 18 is compulsory, although schools would have no legal obligation to inform the Immigration office or the Guardianship service about the presence of UAM). One should also set up a univocal and clear mechanism of referral towards the instances who are not legally obliged to refer minors.
2. Regarding reception of UAM victims of trafficking, one should give priority to direct orientation to a small specialized structure adapted to the potential victim. One should also improve security of children found at the border and being transferred to one of the two Observation and Orientation Centres in order to avoid the risk of being caught again by their traffickers. The number of staff as well as their vigilance should be increased. Precise rules should be established and respected, especially in centres hosting victims of trafficking. In a next step, ordinary schooling possibilities should also be provided.
3. Concerning administrative and judiciary procedures: one should improve the quality of the hearings of minors in all administrations having to take hearings of children. Each UAM should be heard. During a hearing, reception and information given should be improved. The agents in charge should be better trained; premises should be adapted; multiple auditions should be avoided.

4. Concerning the residency status, it is recommended to mention all UAMS (asylum seekers or not) in an official record such as a waiting list or foreigners record. This would allow for a better follow up and facilitate the process in case of disappearance.

One should not make the link between the status of “victim of trafficking” and conditional cooperation with Justice. Alternatively, one could create a status of “objective victim” (which would require a change in the legislation). One should also foresee a real status for the UAMS.

UAMS who have been exploited in another EU country and who enter Belgium should be able to benefit from the status as victim of trafficking.

5. Concerning the guardianship, one should foresee a legislative modification in the definition of “unaccompanied minor” in order to allow UAMS originating from the EU (Romania and Bulgaria notably, holding important numbers of victims of sexual exploitation) to also benefit from the assistance available to other UAMS, such as being provided with a legal guardian.

## BULGARIA

- For children who are victims of trafficking, social workers take the following measures in Bulgaria: - They take care of the child in the Crisis centre for child victims of violence and trafficking.
- They organise an interdisciplinary team for supporting the child and the family, consisting of different professionals: representatives from Local police Departments, from schools, local juvenile delinquency committees, doctors, and psychologists.
- They notify the police, the court, and the prosecutor’s office in order to take immediate measures for preventing the risk of further attempts of taking the child abroad.
- They refer the child to social services, e.g. to Centres for public support who work with the child and the family.
- They enrol the child in the educational system

## CZECH REPUBLIC

The Program of Support and Protection for Victims of Trafficking in Human beings<sup>77</sup> has been ongoing in the Czech Republic since 2003. The goals are to provide victims with support and protection of their human rights, to motivate them to testify and thus to help the authorities responsible for penal proceedings to identify, prosecute, convict and punish the offenders. This program is also linked to the program of voluntary return. It deals with adult victims because stay in the territory of UAMs is granted by a court decision (See point 2.3 and point 2.5).

In these cases great involvement of NGOs is necessary. These NGOs are paid from the state budget.

## POLAND

On the base of the agreement between the Ministry of Interior and Administration and non-governmental organisation *La Strada*, the **Programme of Support and Protection of Victims of Trafficking in Person who are foreigners** is implemented. The following activities are carried out in the framework of the programme:

- Recognising of a victim's needs
- Case – management including counselling, support, assuring safety of a victim
- Translator's assistance
- In-country transportation
- Accommodation in the shelter
- Medical and psychological assistance
- Assisting a victims while contacting prosecution agencies and a body of justice
- Legalisation of residence
- Organisation of safe return to the country of origin

The Programme is coordinated by representatives of the Department of Migration Policy in the Ministry of Interior and Administration, Border Guards, the Police Headquarters, and the La Strada Foundation.

<sup>77</sup> The Program of Support and Protection for Victims of Trafficking in Human Beings - Referral mechanism for Victims of Trafficking in Human Beings. The goals of the Program are to provide the victims with support and protection of their human rights, to motivate the victims to testify and thus to help the authorities responsible for penal proceedings to identify, prosecute, convict and punish the offenders. This program is also linked to the program of voluntary return. The program deals with adult victims only since the stay in the territory of UAMs is granted by a court decision.

With regard to identification of unaccompanied minors who are victims of trafficking, elaboration of the algorithm of identification and treatment procedures of unaccompanied minors who are victims of human trafficking is the aim pointed out in the National Program on Combating and Preventing Human Trafficking 2007 – 2008 (see point 2.5).

## ROMANIA

In first instance unaccompanied minor victims of trafficking are identified based on their declarations. If there is any possibility to double check the declared identity with information from the country of origin, the Romanian Immigration Office is responsible for this process. Whatever the outcome of the identification procedure, all unaccompanied minor victims of trafficking are sent to Transit Centres administrated by the General Directorates for Social Assistance and Children’s Rights Protection, where they are under state protection and can benefit from medical care, psychological assistance and other forms of assistance. There are eleven Transit Centres all over the country run by highly qualified staff.

### 3.3.5 Unaccompanied minor juvenile criminal offenders: rehabilitation, re-education, alternatives to detention, possibility of removal from the territory

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In all the compared countries, the age threshold for being held accountable for crimes is 14 years. For UAM criminal offenders above that age, different practices are implemented. In the Czech Republic, for example, minors can be put into protective custody as an alternative to detention.

## AUSTRIA

In Austria, the Ministry of the Justice has signed a contract with an organisation called Neustart which assists sentenced persons e.g. during probation, in the implementation of out of court settlements, when they are released from prison etc<sup>78</sup> Neustart also works with minor offenders.

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<sup>78</sup> See also chapter on Legislation on Juvenile Offenders.

## BELGIUM

Belgium wishes to pay more attention to juvenile criminal offenders, due to specific concerns voiced by the Government of Belgium in the aftermath of the murder of Jo Van Holsbeeck in spring 2006, with a view to identify best practices among European partner States in the field of criminal minors legislation, rehabilitation and re-education schemes alternative to detention.

In this line, the Ministry of Justice is exploring mechanisms to ensure the collection of information in the countries of origin with a view on a possible reinsertion of young delinquents in their family/society with respect for international conventions protecting the rights of the child.

The provision of country information has always been strongly linked to the effective return of migrants. However, it appears today that there is a need for a more structural approach, in order to improve the level of information and definition of Best Interest of the Child assistance in responding to unaccompanied minors' requests, especially when they are in a particular vulnerable situation.

In this particular case, a number of specific conditions should be fulfilled before allowing the return of juvenile criminal offender to his home country: there should be an ordinance by the judge in charge and aspects of delinquency should be combined with the vulnerable character of the minor. Looking for durable solutions should be a priority.

## BULGARIA

In Bulgaria, minors who have committed an offence are treated as vulnerable and children less than 14 years of age are not held accountable for their crime. They are referred to local juvenile delinquency committees and do not face harsh conviction, in some cases they are referred to probation. Minors from 14 to 18 years of age are treated under special conditions, as described in the [Bulgarian Penal Code \(chapter 6\)](#). Until reaching majority child offenders are placed in special facilities. In accordance with the [Child Protection Act](#), the Child Protection Departments ensure the rights of every child, indicted or pronounced guilty for offence, to be treated in a way corresponding to his age, individual peculiarities and needs, respecting his personal dignity.

## CZECH REPUBLIC

The Court in the Czech Republic shall decide about protective custody, other kinds of alternative punishments or imprisonment (as the last possible punishment). The criminal responsibility in the Czech Republic starts at 15 years of age. This category of UAMs can be imprisoned or put in protective custody. The Czech Republic has a special prison for children who are between 15 and 18 years old. The Czech Republic can use as a measure institutional care<sup>79</sup> and protective custody. After a court decision ordering institutional custody has come into force, the municipality with extended powers arranges a time and a place for the child to be admitted to the appropriate facility for his institutional custody. Meanwhile it also invites the parents or other natural persons responsible for the child's upbringing to ensure that they hand the child over to the appropriate facility at the proper time, or to acquire their consent for the child to arrive alone. In case those parents or other natural persons responsible for the child's upbringing do not take over the decision of the court, the municipal authority shall submit the final decision for execution to the court.

## POLAND

### Examination of a juvenile's situation

A family judge commissions a judicial curator to examine the family, social, and economic situation of the juvenile (including family and social conditions, family relations, education, health conditions, social environment). Additionally, in special cases the situation of a juvenile can be examined by the following institutions:

- Representatives of a social organisation which works in the educational field if a juvenile is under the organisation's supervision
- Police, if the needed information does not require application of psychological and pedagogical qualifications
- Educators from diagnostic-consultation family centres if a specialist's opinion about the juvenile is required
- Educators from shelters for juveniles or from a borstal institution if a specialist's opinion about the juvenile is required or if the information on how the juvenile behaves out of a borstal and on the living conditions (social, educational, family) of the juvenile is needed.

<sup>79</sup> Institutional care – Placing a child (younger than 18 years old) into the care of an institution (e.g. children's home, facility for foreign children) in case the child has no parents or legal representatives who could take care for him. The decisions on institutional care are issued by the court.



## **Placement of a juvenile in the juvenile shelter and in the borstal institution**

A juvenile can be placed in a juvenile shelter if revealed circumstances suggest a placement in a borstal institution and there is reasoned concern of hiding of a juvenile and of erasing trails or there is a problem with confirmation of a juvenile's identity. A juvenile can also be placed in a shelter if revealed circumstances suggest a placement of juvenile in a borstal institution and a juvenile is suspected of commitment of a punishable deed defined in the [Criminal Code of 6 June 1997](#).

## **Interrogation of a juvenile**

Interrogation of a juvenile can be carried out by the police. During interrogation, parents or guardians or a defence attorney should be present.

See section 2.6 for more details on the legislation.

## **ROMANIA**

In Romania, there is no national policy concerning UAMs who are juvenile criminal offenders. Romania has so far not been confronted with a large number of cases and as a result has not shown interest in designing such a policy. If an unaccompanied alien minor commits an offence within the territory of Romania, the decision to be taken in his case depends on the gravity of the offence and is decided at court level by a judge. According to the Romanian legislation, in case of an under age minor who commits an offence, there are several possibilities to conclude the case:

- The minor can be sent back to his family and will be under the surveillance of a probation counsellor for a certain period of time;
- The minor is put in a re-education centre for a certain period of time. This decision will be taken by a judge.

These provisions can be applied only to Romanian minors. There are no provisions within the law regarding alien minor offenders.



# 4

## Data gathering and statistics: standards, availability, credibility, collection dissemination

The *Save the Children* report, *Child Migration and the Construction of Vulnerability*, clearly points out the need for more and better research on child migration. And indeed, since young people and children have been largely invisible in debates and policies concerning international migration, the information available is very limited.

The report also states that many of the violations of the rights of migrant children go unobserved and unrecorded either because the children have themselves been made invisible by the immigration system of the host state, or because receiving states routinely fail to collect the kind of data that would allow for the evaluation of the impact of their immigration controls on children.

Many of the estimates about specific types of migration are extremely crude, and based upon a series of extrapolations and assumptions, rather than “hard” facts about the numbers of people involved. Reliable data on child migrants are therefore even harder to collect. The lack of data is a major obstacle to the development of appropriate policies and responses for this most vulnerable group.

This section presents figures for 2005 – 2006 – and 2007 focusing on:

- Nationality
- Age
- Gender

- Way of entering the country (legal or illegal)
- Status in the country (asylum seeker, refugee, irregular)
- Victim of trafficking
- Duration of stay (and reason for leaving: left to another country, disappeared, returned)
- Number of disappearances
- Number of returns

The collection of statistical data on UAMs gives an overview of the migration trends related to UAMs which is crucial to assess the needs of this vulnerable group and to provide them with adequate reception, treatment and protection. Detailed information on this group is also required to counteract the negative and dangerous phenomenon of sexual and economic exploitation of UAMs and trafficking in human beings.

The statistics presented are not complete. Some countries collect only statistical information on particular groups of UAMs, for example asylum seekers. Others countries such as Belgium have developed a complex system of collecting and generating statistical information on UAMs. As a result the below statistics only show part of the picture concerning the migration trends of UAMs in Austria, Belgium, Bulgaria, the Czech Republic, Poland, and Romania.

The complexity linked to collecting the statistical information in each country and the incompleteness of the results shows in how far data collection and sharing at national and European and international level need to be improved.

In accordance with the recommendations made by European Parliament's Report on the EC's communication of 4 July 2006, 'Towards an EU strategy on the rights of the child', one option would be to reinforce and extend "Eurostat's mandate, with a view to developing and including a larger number of indicators relating specifically to children on child poverty and social exclusion, for example".

## Total identified UAMs by country 2005-2006-2007

	Austria	Belgium*	Bulgaria*	Czech Republic	Poland*	Romania
<b>2007</b>	854	1334	23	112	16*	30
<b>2006</b>	719	1502	73	140	20*	14
<b>2005</b>	838	1490	159	116		7

\* Belgium: Total number of new arrivals every year

\* Poland: Statistics exist only on asylum seekers

\* Bulgaria: The numbers of unaccompanied Bulgarian children abroad, according to the data available in SACP were 102 Bulgarian minors in 2007, and 170 in 2005-2006.

### AUSTRIA

In Vienna, statistics of the Crisis Centre Drehscheibe show 72 admissions of unaccompanied minors (UAMs) that have been referred to the centre in 2007. This is a major decline since 2006 where the number of referrals of UAMs to the centre was 312.

UAMs are brought to Austria for a certain period of time and for a certain reason (e.g. begging, pick-pocketing, sexual and/or other forms of exploitation). Often, the children stay in one city for a certain period of time and are then transferred to another city or even another country where exploitation continues.

One reason for the decline in the number of admitted UAMs in Austria is the transnational cooperation that has been established with Romanian and Bulgarian authorities. The assignment of Bulgarian and Romanian liaison officers led to a close cooperation and improved information sharing between Romanian and Bulgarian as well as Austrian authorities, diplomatic representations, law enforcement officials and social institutions. For example, the identity of a minor without documents or forged documents can be detected faster and more efficiently with the support of liaison officers.

Furthermore, trainings for social pedagogues and social workers were organized in Romania and Bulgaria. As a part of these trainings, two persons of each crisis centre in Bulgaria and Romania were trained for one week in the Crisis Centre Drehscheibe in Vienna.

**Recommendation:**

- Increased cooperation with NGOs, Embassies etc., including Roma institutions,

In Austria, the Ministry of the Interior holds a record of the number of UAM asylum seekers as well as the number of irregular migrants that the police have been in contact with.

Most UAMs arriving in Austria came from Romania, Afghanistan, Moldova, Algeria, Morocco, and from the Russian Federation. In 2007, the majority of UAMs in Austria were from Afghanistan, followed by Moldova and Morocco. In 2006 and 2005, the largest number of UAMs came from Romania. In general, UAMs arriving in Austria were mostly boys between 14-18 years old.

**Countries of origin – ten top countries for UAMs arriving in Austria 2007**

<b>Top 10 Countries of origin of UAMs in Austria 2007</b>			
<b>Country</b>	<b>Total</b>	<b>F</b>	<b>M</b>
AFGHANISTAN	128	2	126
MOLDOVA	82	6	76
MOROCCO	65	0	65
RUSSIAN FEDERATION	57	19	38
SOMALIA	55	18	37
SERBIA	53	13	40
NIGERIA	51	15	36
ALGERIA	41	0	41
IRAQ	29	0	29
GAMBIA	28	0	28
<b>TOTAL</b>	<b>589</b>	<b>73</b>	<b>516</b>

## Countries of origin – ten top countries for UAMs arriving in Austria 2006

Top 10 Countries of origin of UAMs in Austria 2006			
Country	Total	F	M
ROMANIA	154	68	86
ALGERIA	84	0	84
MOROCCO	61	0	61
SERBIA-MONTENEGRO	37	16	21
MOLDOVA	36	1	35
AFGHANISTAN	33	2	31
GEORGIA	30	7	23
NIGERIA	26	4	22
TURKEY	25	4	21
IRAQ	23	3	20
<b>TOTAL:</b>	<b>509</b>	<b>105</b>	<b>404</b>

## Countries of origin – ten top countries for UAMs arriving in Austria 2005

Top 10 Countries of origin of UAMs in Austria 2005			
Country	Total	F	M
ROMANIA	165	80	85
MOLDOVA	69	4	65
RUSSIAN FEDERATION	62	22	40
SERBIA-MONTENEGRO	58	18	40
ALGERIA	43	0	43
AFGHANISTAN	40	0	40
MONGOLIA	35	22	13
TURKEY	35	15	20
NIGERIA	27	4	23
BULGARIA	26	14	2
<b>TOTAL</b>	<b>560</b>	<b>179</b>	<b>371</b>

## Age distribution of UAMs in Austria 2005-2007

Age	Number of UAMs		
	2005	2006	2007
<b>0 - 3</b>	59	26	16
<b>4 - 6</b>	14	10	11

<b>7 - 13</b>	89	37	52
<b>14 - 18</b>	676	646	775
<b>Total</b>	838	719	854

## BELGIUM

In Belgium, most of UAMs welcomed in Observation and Orientation Centres will be further referred to second and third phase reception structures.

UAMs can be:

- Asylum seekers in exile requesting the host country's protection in line with the Geneva Convention. They usually wish to stay in the host country.
- Non-asylum seekers either intercepted by the police on the Belgian territory or signalled by other institutions or associations. These youngsters are sometimes called "mandated", street children, disappeared or lost children.
- Exploited minors, victims of human trafficking
- Children of Roma origin who do not wish to be taken in charge.

In Belgium, there are two institutions collecting statistical information about UAMs. One is FEDASIL, the other one is the Guardianship Service. Statistics collected by these two institutions refer to different populations. So figures are different. Unfortunately the two institutions are not coordinated with each other at the level of data and statistics.

Fedasil collects information on newly arriving UAMs who were referred to one of the first orientation centres in Belgium. The numbers collected from the guardianship service come to a higher total as they do not only take into account newly arriving UAMs to the two centres, but all UAMs they are aware of. Thus the numbers from the guardianship service count those minors newly arriving, on top of the ones already in Belgium.

UAMs who were referred to the guardianship service were mostly from Romania, Former Yugoslavia, Morocco, Afghanistan, Congo, India, Algeria, and Iraq. In 2007, the list of countries of origin for UAMs was led by Afghanistan, while in 2006 and 2005 the majority of UAMs were Romanian citizens.



In general, most of the UAMs in Belgium were boys from 14-18 years.

The number of UAMs who apply for the refugee status in Belgium is decreasing. In 2005, 584 UAMs applied for the refugee status, in 2006 491 UAMs, and in 2007 470 UAMs.

In 2007, 479 UAMs were granted “tolerated stay” which is a form of humanitarian protection.

In 2007, 9 UAMs were recognised as Victims of Trafficking (VoT), 14 in 2006, and 9 in 2005. All of them were victims of labour and sexual exploitation.

Average duration of stay of UAMs in 2005, 2005 and 2007 in the first orientation centres in Belgium

(Data from FEDASIL)

<b>Average duration of stay in days of UAMs in Belgium in the first phase of the reception process</b>			
<b>Year</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Total number of UAMs newly arriving in Belgium to one of the orientation centres	1490	1502	1334
Average duration of stay <b>in days*</b>	3.5	3.1	3.8

\*Average including also the immediate departures without address!

Average duration of stay of UAMs in 2005, 2005 and 2007 in the second phase reception centres in Belgium (not included: minors disappearing, those not interested in staying in the centres and those referred to others special institutions out of Fedasil’s centres)

(Data from FEDASIL)

<b>Average duration of stay in months of UAMs in Belgium in the second phase of the reception process</b>			
<b>Year</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Number of minors entering in the second phase of reception	402	406	374
Average duration of stay in the second phase <b>in months</b>	10.9	9.6	11.6

## Disappearances of UAMs in Belgium 2005-2007

Reasons for stopping taking charge	Number of UAMs		
	2005	2006	2007
Left to another country on the basis of the Dublin Convention			
Family reunion in Belgium	20	55	50
Family reunion in another country	2	5	6
Worrying disappearances	3	9	5
Departures without address	523	820	619
Returned to the country of origin by own means	3	0	0

## Returns of UAMs from Belgium with the assistance of IOM

	2005	2006	2007
Returned to the country of origin with the assistance of IOM	17	22	16

## Country of origin of UAMs in Belgium– top fifteen countries 2005-2007

(Data from FEDASIL)

Country of origin of UAM	2005	2006	2007
Afghanistan	103	123	184
Algeria	73	98	61
Angola	22	34	23
Cameroun	36	30	21
Congo (Kinshasa) (R.D.C.)	64	35	47
Serbia (Kosovo included)	158	231	204
Guinea	76	46	65
India	87	86	114
Iraq	106	83	76
Morocco	59	76	59
Moldavia	54	59	9
Palestinian Territories	42	29	32
Romania	144	205	90
Rwanda	23	18	18
Somalia	45	19	6
Other countries	398	330	325
<b>Total</b>	<b>1490</b>	<b>1502</b>	<b>1334</b>

## Age breakdown of UAMs in Belgium 2007

(Data from the Guardianship service)

Age	2007
0 - 3	13
4 - 6	23
7 - 13	274
14 - 18	1162
18 - 25	278
<b>Total</b>	<b>1750</b>

(Data from FEDASIL\*)

2005			2006			2007		
Age	Total without majors		Age	Total without majors		Age	Total without majors	
0-5	5	0.3%	0-5	4	0.3%	0-5	2	0.2%
06-10	18	1.2%	06-10	34	2.2%	06-10	35	2.6%
11	11	0.7%	11	22	1.4%	11	40	3.0%
12	41	2.7%	12	63	4.1%	12	59	4.4%
13	58	3.8%	13	107	7.0%	13	70	5.3%
14	93	6.1%	14	95	6.2%	14	121	9.1%
15	229	15.1%	15	235	15.5%	15	212	16.0%
16	472	31.2%	16	451	29.7%	16	382	28.8%
17	586	38.7%	17	510	33.5%	17	405	30.5%
	<b>1513</b>	<b>100%</b>		<b>1521</b>	<b>100%</b>		<b>1326</b>	<b>100%</b>

\*The Fedasil data comes from the 2 Observation and Orientation Centres. There is a margin of error at the counting but the data refers to the same UAMs.

## Country of origin of UAMs in Belgium with gender breakdown – top fifteen countries 2005-2007

Country of origin	Number of UAMs					
	2005		2006		2007	
	F	M	F	M	F	M
Afghanistan	0	103	1	122	1	183
Algeria	2	71	2	96	0	61
Angola	11	11	18	16	15	8
Cameroon	19	17	15	15	8	13
R.D. Congo (Kinshasa)	33	31	19	16	21	26
Serbia (Kosovo included)	122	36	172	59	146	58
Guinea	33	43	25	21	17	48
India	0	87	0	86	0	114
Iraq	4	102	1	82	0	76
Morocco	0	59	1	75	1	58
Moldavia	4	50	9	50	0	9
Palestinian Territories	0	42	1	28	0	32
Romania	57	87	92	113	35	55
Rwanda	12	11	9	9	12	6
Somalia	12	33	4	15	1	5
Total for top fifteen countries	<b>309</b>	<b>783</b>	<b>369</b>	<b>803</b>	<b>257</b>	<b>752</b>
<b>TOTAL for top fifteen countries</b>	<b>1092</b>		<b>1172</b>		<b>1009</b>	

## Status breakdown of all UAMs in Belgium 2005-2007

Data from Guardianship Service

Status in the country	2005	2006	2007
Referrals of UAMs	1875	1852	1750
Asylum seeker	584	491	470
Refugee status			
Tolerated stay			479
Irregular			
Victim of trafficking			9
Other			
UAM under guardianship (nombre de mineurs sous tutelle au 31/12/,,,,)			1713
Nombre de tutelles désignées annuellement			958

## UAMs – victims of trafficking in Belgium 2005-2007:

Country of origin of UAM	2005	2006	2007
	7	14	9
China, Morocco, Ghana, Ecuador	4 economic exploitation (household intern, market)	3 economic exploitation	6 economic exploitation
Soudan, Nigeria, Bulgaria	3 prostitution	5 prostitution	2 prostitution
		4 trafficking in persons 2 other	1 trafficking in persons

### BULGARIA

In Bulgaria, until now the age of repatriated children was between **14 and 17 years**; all of the repatriated children were girls from Roma origin. These girls were almost illiterate, having finished only first grade. The living standard of the families however is good. Most of these children have undergone measures under Juvenile Delinquency Law because they have perpetrated multiple acts of pick pocketing in the country and abroad.

The collection of data for the specified categories needs improvement in Bulgaria, and the establishment of a uniform information system is becoming indispensable since data is collected by various institutions.

Bulgaria deals with two different phenomena regarding UAMs: foreign UAMs residing in Bulgaria, and Bulgarian unaccompanied minors residing abroad.

The number of foreign UAMs in Bulgaria has decreased, from 159 in 2005 over 73 minors in 2006 to 23 UAMs in 2007. Regarding Bulgarian UAMs residing outside Bulgaria, the countries where they most frequently resided are Italy, Austria, Germany, Spain, Greece, France, the Netherlands, Belgium, Poland, the Czech Republic, Great Britain, and Turkey.

According to the data available in the State Agency for Child Protection the total number of Bulgarian UAMs residing outside Bulgaria for the period of November 2005-2007 is 272. The Child Protection departments in the area of

residence have developed action plans in which short and long-term objectives and measures have been taken for the psychological and physical recovery of children and for their social adaptation and reintegration.

The three crisis centres for children victims of violence and trafficking, established in 2006 but operational only since January 2007, have provided services for recovery and reintegration of 49 children.

An important partner of State Agency for Child Protection in providing care and counselling for child victims of trafficking and sexual exploitation is the non-governmental sector.

The largest number of cases of children who are victims of trafficking has been referred to the International Organization for Migration (IOM). In 2006 25 cases were referred, in 2005 25 child victims of trafficking were provided with care and counselling, and in 2004 13. A great part of these children come from small villages and towns in Northern Bulgaria, and others come mostly from the towns of Kjustendil, Sofia, Plovdiv and Sliven.<sup>80</sup>

The State Agency for Child Protection maintains a National Information System (NIS) containing data about all groups of children at risk, including the groups of children referred to in the Optional Protocol that need special protection.

## **CZECH REPUBLIC**

In the Czech Republic, the definition of the target group is the following: children

- a) Whose parents
  1. deceased,
  2. fail to fulfil the obligations arising from their parental responsibility, or
  3. fail to perform, or abuse, the rights arising from their parental responsibility;
  
- b) Who have been entrusted into the care of a natural person other than their parents, who however does not fulfil the obligations towards the child (hereinafter "persons responsible for the child's upbringing").

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<sup>80</sup> <http://www2.ohchr.org/english/bodies/crc/crcs46.htm>

- c) Who lead an idle or immoral lifestyle, particularly in cases where they neglect school attendance, do not work - although they do not have sufficient funds to maintain themselves, use alcohol or other substances, support themselves through prostitution, have committed a criminal offence or, if under the age of fifteen, have committed an offence that would otherwise constitute a criminal offence, repeatedly or systematically commit misdemeanours or otherwise threaten social harmony;
- d) Who repeatedly run away from their parents or another natural or legal person responsible for the child's upbringing;
- e) Who have been the victim of a criminal offence that would put their life, health, human dignity, moral education or property at risk, or who are suspected of being the victim of such an offence;
- f) Who are repeatedly placed into Facility for children;
- g) Who are asylum seekers separated from their parents or other persons responsible for their upbringing.

Most of UAMs in the Czech Republic came from Vietnam, China, India, and Slovakia. In 2007, 2006, and 2005 the significant majority of UAMs were from Vietnam.

The majority of them were boys in the age group of 14-18.

Regarding the legal status of UAMs staying in the Czech Republic, in 2007, 34 UAMs applied for the refugee status, in 2006 it was 68 UAMs, and in 2005, 36 UAMs.

The number of UAMs who disappeared from centres is significant and was about 50% of all UAMs in the last three years. In 2007, the number of disappearances was 66; in 2006, it was 72, and in 2005, 63.

Some of the unaccompanied minors were reunited with their parents with whom they returned to the country of origin. In 2007, 8 UAMs returned to their country of origin, in 2006, the number was 18 UAMs, and in 2005, 15 UAMs.

## UAMs in the Czech Republic, by countries of origin, 2005-2007

Country of origin of UAM in CZ	2005	2006	2007
Afghanistan	1	0	0
Algeria	1	0	0
Armenia	0	1	0
Bangladesh	1	1	0
Belarus	5	0	0
Bulgaria	11	3	2
Ceylon	1	1	0
Congo	0	9	2
China	27	19	15
Egypt	0	9	0
Georgia	0	3	2
India	15	19	1
Italy	0	2	0
Iraq	1	0	0
Israel	1	1	0
Cameroon	0	2	1
Kazakhstan	1	0	0
Kyrgyzstan	2	2	0
Liberia	1	0	0
Latvia	1	1	0
Mongolia	2	5	4
Nepal	0	2	0
Nigeria	2	1	2
Poland	1	0	1
Russia	2	1	0
Slovakia	4	15	11
Somalia	0	1	3
Serbia	1	0	0
Sudan	1	0	0
Syria	1	0	2
Turkey	1	1	17
Ukraine	3	3	2
Vietnam	29	30	42
Zimbabwe	1	1	0
No ctz.	0	7	5
<b>TOTAL:</b>	<b>116</b>	<b>140</b>	<b>112</b>



## Age breakdown of UAMs in the Czech Republic 2005-2007

Age	2005	2006	2007
0-14	22	33	44
15-18	94	107	68

## Gender breakdown of UAMs in the Czech Republic 2005-2007

	Number of UAMs					
	2005		2006		2007	
Gender	F	M	F	M	F	M
	37	79	33	107	29	83
<b>TOTAL:</b>	<b>37</b>	<b>79</b>	<b>33</b>	<b>107</b>	<b>29</b>	<b>83</b>

## UAMs in the Czech Republic 2005-2007, by status

Status in the country	Number of UAMs			TOTAL:
	2005	2006	2007	
Asylum seeker	36	68	34	138
Victim of trafficking	0	0	0	0

## Reasons for the centre to stop taking care of UAMs, 2005-2007

Reasons for stopping taking charge	Number of UAMs		
	2005	2006	2007
Disappeared	63	72	66
Returned to the country of origin with his parent	15	18	8

Source: 2005-2007 - Facility for children of foreign nationals, diagnostic facility, children's home with school, Educational Institute, Educational Care Centre, Primary and Special School

## POLAND

Poland is very often treated by migrants including unaccompanied minors as a transit country on the way to Western Europe. Regarding the status of unaccompanied minors in Poland, the following groups can be distinguished:

- i. UAMs who apply for the refugee status in Poland
- ii. UAMs granted any kind of humanitarian protection in Poland

- iii. UAMs in irregular situation (in the most of cases they passed the border illegally)
- iv. UAMs who are identified victims of human trafficking

Taking into consideration UAMs who apply for the refugee status in Poland and those who were granted any kind of humanitarian protection, most of them come from the Russian Federation more particularly Chechnya and Ingushetia. Some of them come from different countries such as: Somalia, Nigeria, Sudan, Morocco, Burundi, India, Bangladesh, Pakistan, Sri Lanka, Vietnam, and Belarus. The majority of them are boys.

With regard to UAMs who are in an irregular situation, most of them are Vietnamese boys. They pass the border to Poland illegally without documents. The Polish relevant authorities (in most of the cases the Border Guards) have problems with identification of these migrants.

In Poland, there is no general statistical information on unaccompanied minors. The Polish information system "POBYT" supervised by the Polish authorities including detailed information on foreigners in Poland (on border crossing, visa, decision on expulsion, etc) does not distinguish unaccompanied minors.

In consequence, information on unaccompanied minors is not generated by this system. This makes it difficult to collect and analyse information on the phenomenon of unaccompanied minors in Poland and to elaborate a procedure of reception, treatment, and protection which would address the special needs of this vulnerable and diverse group of migrants.

Thus, the below statistics related to UAMs in Poland are very limited and contain only data on UAMs who are asylum seekers. The data was compiled by tutors from the *Children's Home Number 9* (Warsaw) where all UAMs applying for asylum are placed.

In Poland, most of the unaccompanied minors applying for the refugee status are from the Russian Federation, mostly from the Chechen Republic and from the Republic of Ingushetia. Regarding unaccompanied minors in an irregular situation, it is likely that most of them come from Vietnam.

The majority of UAMs in Poland were boys in the age group of 14-18.

In 2006, about 20 UAMs applied for the refugee status; in 2007 the number was about 16.

Most of the unaccompanied minor asylum seekers stayed during 1-2 months in the *Children's Home*. Their stay is short because as for most migrants, including UAMs, Poland is a transit country to Western Europe. In the period from 2006 - 2007, 6 UAMs left to another country on the ground of the Dublin Convention to be reunited with parents or family.

Regarding the number of disappearances, 2 UAMs disappeared in 2006, and 3 UAMs in 2007.

### UAM asylum seekers in Poland 2006-2007 by country of origin

Country of origin of UAM	2006	2007
Russian Federation	14	2
Somalia	2	3
Bangladesh	1	2
Burundi	2	2
Belarus	1	0
India	0	1
Lithuania	0	1
Nigeria	0	1
Sri Lanka	0	1
Sudan	0	1
Uzbekistan	0	1
Vietnam	0	1
<b>TOTAL:</b>	<b>20</b>	<b>16</b>

### UAM asylum seekers in Poland 2006-2007, age breakdown

Age	2006	2007
0 - 3	0	0
4 - 6	2	0
7 - 13	5	4
14 - 18	11	13

## UAM asylum seekers in Poland by country of origin, with gender breakdown

Country of origin	Number of UAMs					
	2005*		2006		2007	
	F	M	F	M	F	M
Russian Federation	3	3	3	11	1	1
Somalia	0	0	0	2	0	3
Bangladesh	0	0	0	1	0	2
Burundi	0	0	0	2	0	2
Belarus	0	0	0	1	0	0
India	0	0	0	0	0	1
Lithuania	0	0	0	0	1	0
Nigeria	0	0	0	0	0	1
Sri Lanka	0	0	0	0	0	1
Sudan	0	0	0	0	0	1
Uzbekistan	0	0	0	0	0	1
Vietnam	0	0	0	0	0	1
<b>TOTAL:</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>17</b>	<b>2</b>	<b>14</b>

\* From September 2005

## UAM asylum seekers in Poland 2006-2007, by status

Status in the country	2006	2007
Asylum seeker	20	16
Other status	0	0

## Duration of file processing for UAM asylum seekers in Poland, 2005-2007

Institution	Duration of file processing / taking charge of UAM in the Children Home Number 9*	UAMs from Sept 2005-2007
Children Home Number 9	Under 1 month	2
	1-2 months	12
	3-6 months	5
	7-12 months	11
	13-18 months	2
<b>TOTAL:</b>		<b>32</b>

## Reasons for the Polish Children Home to not longer take care of UAMs, 2006-2007

Reasons for stopping taking charge in the Children Home Number 9	2006	2007
Left to another country on the base of the Dublin Convention - family reunification	4	1
Disappeared	2	3
Returned to the country of origin	0	0
Reunited with a parent on the base of the court decision	7	2
Turned 18 years old	1	5

Source: the Children Home Number 9 in Warsaw

### ROMANIA

The number of foreign UAMs in Romania has increased during the last years. In 2005, 7 UAMs were registered, in 2006, 14, and in 2007, 30 UAMs were registered. Almost all of them applied for the refugee status (5 in 2005, 14 in 2006, and 30 in 2007).

The main country of origin was Somalia with 2 UAMs in 2005, 9 in 2006 and 11 in 2007. The second most important country of origin in 2007 was Iraq with 8 minors coming to Romania.

Most of the UAMs were boys between 14-18 years old.

## Unaccompanied Minors Asylum Seekers in Romania by country of origin, gender, age and type of protection granted 2005-2007

Year	Number of declared minors	Country of origin	Gender		Age declared by the minor			Forensic Medical Expertise	Minors	Refugee Status Granted
			M	F	<14	14 – 16	16 – 18			
2005	7	Somalia	2		-	1	1	2	0	-
		Liberia	2		-	1	1	-	2	2
		Sudan	2		-	-	2	2	0	2
		Sierra Leone	1		-	-	1	1	0	1
2006	14	Somalia	9	1	-	-	10	7	9	8
		Georgia	2		-	-	2	2	1	-
		Iraq	1		-	-	1	1	1	-
		Zimbabwe	1		-	-	1	1	0	-
2007	30	Somalia	11	1	-	1	11	8	10	10
		Guinea	3		-	-	3	1	2	-
		Serbia	3	2	1	-	4	-	3	-
		Iraq	8		-	-	8	4	3	1
		Russia	2		-	-	2	-	2	-

Year	Number of minors	Countries	M	F
01 January–26 July 2008	45	India	20	
		Pakistan	11	
		Irak	6	
		Afghanistan	3	
		DR Congo	1	
		Russian Federation	1	
		Ivory Coast	2	
		Ecuador	1	

## Missing children in Romania

According to the statistics given by the General Inspectorate for Police-Department of Criminal Investigations, the situation of the Romanian missing children in the period 01.05.2007-30.04.2008 is the following:

- At 01.05.2007 there were 346 cases of unfound missing children in the evidence of the police
- 3,285 cases were under investigation. The age category was:
  - o 26 children aged 0-5 years;
  - o 173 children aged 6-10 years;
  - o 1083 children aged 11-14 years;
  - o 2003 children aged 15-18 years.
- A number of 3355 children (mostly Romanian), previously reported missing, were found.

In the majority of cases (95%) the children are leaving voluntary their homes. In 3.5% cases the children are lost (death by drowning, car/train accidents) and only 1.5% of the children are missing due to aggressions, abductions, or sexual exploitation.





# 5

## Management and availability of financial means

This section provides generic information about the different sources of financing; the specific funding of NGOs; minimum standards for the use of the funds and for the management of the means.

### AUSTRIA

State and province institutions responsible for the reception, protection and treatment of unaccompanied minors are financed out of the state budget. The youth welfare which is responsible for the well-being and protection of every child residing in Austria disposes of a certain budget each year made available by the respective Austrian province. For example, the Crisis Centre *Drehscheibe* in Vienna receives a certain amount of money for accommodation and meals for each child accommodated in the centre per day. Other operating costs such as heating are also financed out of this budget made available to the youth welfare.

As stated in the chapter on First Reception, asylum seekers are entitled to basic welfare support. The Basic Welfare Support Agreement concluded between the federal government and the nine Austrian provinces regulates amongst others who carries the costs for the care of asylum seekers: 60% are paid by the federal authorities, 40% are paid by the provinces.

In addition, funds are available from others sources such as the European Refugee Fund. Projects and services funded under the latter are assigned, managed and evaluated by the Austrian Integration Fund on behalf of the Austrian Ministry of the Interior.

## BELGIUM

In Belgium, the means given to Fedasil are covered by the budget of the Federal Public Service (FPS) for Social Integration. Fedasil receives a donation corresponding to one of FPS Social Integration's budget lines. Fedasil justifies the use of its means and presents a budgetary table annexed to the budget law. This table entails expenses and incomes among which the donation of the FPS Social Integration. Fedasil has several types of sources of financing. Europe is one of the main sources, the rest are own revenues.

Concerning the allocation of their means, the expenses are classified as follows:

- Human resources
- Functioning
- Investment
- Subsidies to partners (Red Cross, specific conventions, Local Reception Initiatives and communes).

### What would a UAM cost?

Reception of UAMs by Fedasil's partners is based on a basic allowance cost of 39.44\_/day/place for the Red Cross; and 39.10\_/day/place in Local Reception Initiatives. The difference comes from the pocket money they receive.

In addition, two specific conventions exist: one with the non-profit association Synergie 14 and the other with Mentor Escale. For the former, Fedasil provides funds aiming at supporting the functioning of this alternative reception structure; for the latter, Fedasil pays for 4 social workers.

### Which part of the budget is allocated for the reception of this target group?

For Fedasil's partners, the budget amounts to ca. 2 million Euros in 2008 for Local Reception Initiatives and to ca. 1 million Euro for the Red Cross centres.

For the UAMs hosted in federal reception centres, the expenses are global. One has to analyse the expenses made for minors exclusively in proportion to of the number of places occupied by UAMS.

Governmental \_ a budget is allocated to the FPS for Justice, which serves to pay the guardians who receive basic allowances. There are agreements between

the FPS Justice and the associations active in the reception of UAMS aiming at allowing their staff members to be recognised as guardians.

In addition to the conventions established in Belgium between Fedasil, the Social Welfare Services and the Red Cross in terms of “general” reception of UAMs, Fedasil has established conventions with organisations delivering a specialised follow up for UAMS.

The aim is to allow for the follow up of the UAM once the UAM has left the regular reception structure as well as to assist some UAMs who might have difficulties adapting to the general reception structure.

There is a convention with the non-profit association Mentor Escale, fully involved in the follow up of autonomy process of UAMS. Their activities are in line with the model of follow up that the UAM has experienced in the Fedasil network. Mentor Escale receives subsidies allowing them to assist 80 UAMS.

There is also another convention signed with the non-profit association Synergie 14. The specific objective is to organise a different reception framework, in smaller and more convivial context, mainly meant for those who did not adapt to the traditional reception system. Synergie 14 daily collaborates with the collective reception structures of the network. They can host 11 UAMs, out of which 4 places are reserved for emergencies.

The Federal Administration, more specifically the Finances Inspection Service, ensures proper use and imposed standards for the management of the funds.

## **BULGARIA**

In Bulgaria, the crisis centres in which children are placed after their repatriation are under the supervision of the respective municipality. The financial means for children in Crisis Centres are allocated after the decision of the Council of Ministers and can be updated regularly.

According to Bulgarian legislation, after the child – victim is returned to the family, financial support is given once for meeting the needs of the child.

In Bulgaria, NGOs are funded by sponsorship, development of projects, etc.

In 2006, the budget for social services allocated by the Bulgarian State was increased by 18,5%. The financial resources intended for maintenance costs, furnishing and equipment were raised considerably.

Decision No. 426 of the Council of Ministers dated June 05, 2006, amended Decision No. 21 of the Council of Ministers dated January 19, 2006 on the division of activities funded through municipal budgets into local, on the one hand, and delegated by the state on the other hand, and setting up standards for staff numbers and standards for maintenance costs with regard to services delegated to local governments by the state in the year 2006. These changes helped to introduce unified financial standards to sustain the Centres for Social Support, the Mother and Baby units and the Day Centre for children in the street. The Crisis Centres for Child victims of trafficking or violence are also a service delegated by the state, i.e. they are funded by the state budget through the budgets of local administrations.

The activities included in the annual National Programs for Prevention and Counteraction to Trafficking in Human Beings and Protection of the Victims are funded by the budgets of the National Committee for Combating Trafficking in Human Beings, the municipal budgets, the Ministry of Labour and Social Policy, the Agency for Social Assistance, the Ministry of Education and Science, the Ministry of Culture, the State Agency for Child Protection, the Central Committee for Counteracting Anti-social Behaviour of Juveniles and Minors, the Ministry of Interior, the Ministry of Health, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Finance, the Employment Agency, the National Justice Institute, the Council for Electronic Media, and by extra budget funds under projects and programs (programs of the International Organization for Migration and the International Development Agency, the International Labour Organization, the International Accounting Standards, the Embassy of the USA, etc.).<sup>81</sup>

## CZECH REPUBLIC

In the Czech Republic, the sources for financing the reception of UAMs consist of two parts: the state budget and the European Refugee Fund.

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<sup>81</sup> Ibid.

In the Czech Republic, NGOs are funded by the State budget, by the European Refugee Fund, and by other Grants.

Minimum standards apply to accommodation, diet, social, psychological, medical care, education, integration, and free time activities.

In the Czech Republic, financing is possible from different sources (ministries, funds and grants including). The drawback of this multi-source financing is that there is no possibility of central control.

## **POLAND**

In Poland, the cost of reception, treatment, and protection of unaccompanied minors is financed by the state budget. NGOs competent with regard to treatment and protection of unaccompanied minors are funded by the state's budget, European Commission funds and other grants.

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POLAND

## **ROMANIA**

All the activities carried on in favour of asylum seekers, aliens requesting any form of protection, refugees etc. are financed by the state budget. Each year the institutions, which have among their responsibilities to deal with these categories, have to prepare and submit an estimation for the next year's budget. On this basis the government will finance their activities. There are, at least 2 opportunities for the reallocation of funds during the financial budgetary execution in a 12 months period in order to adjust to the needs and the number of assisted persons.

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ROMANIA



# 6

## **Conclusion: Recommendations on the treatment, reception and protection of unaccompanied minors in Europe**

The results of the *“Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors”* project have led to the creation of this Manual, compiling information on international and European standards; providing practitioners with an overview of existing legislative frameworks in the six participating countries with regard to the definition of an unaccompanied minor, national reception and asylum procedures, policies linked to irregular migration and to migration inside the European Union, victims of trafficking and juvenile criminal offenders. The Manual also aims at highlighting actual practices, stressing both good practices and making particular concrete recommendations on the best way to provide unaccompanied minors with adequate treatment, protection and reception.

As a conclusion to this Manual, the experts would like to share the results of their exchange of expertise by making recommendations on vulnerability assessment of unaccompanied minors; on their basic social rights; on the appointment of legal guardians; on the first contact and referral to the reception system and on the asylum process; on return, reintegration and family reunification; on identification of unaccompanied minors and the methods to assess their age; on the disappearance of unaccompanied minors; on the particular vulnerable situation of children victim of trafficking and juvenile criminal offenders; and finally on the management of data and statistics.

Recommendations linking legislations and practices have been highlighted throughout the different chapters of the Manual and refer solely to the observations made in the six participating countries. The general recommendations presented hereafter are meant to be shared more broadly within the European Union.

## **VULNERABILITY ASSESSMENT**

All unaccompanied minors should be considered as vulnerable at all times, regardless from their social or ethnic background, physical condition or legal status. Accordingly, the protection of their rights as children should be given a prominent position and specific measures must be drawn up for them. Specific assistance (social, psychological, medical care and education) should be tailored to the individual needs of the child (e.g. Roma population, asylum seeker, irregular migrant, victim of trafficking). The right to stay in the territory should be ensured (for example subsidiary protection or the right of stay until 18 years). Every step of the procedure should be harmonised with the special needs of the child and the best interest of the child.

Member States are encouraged to take special measures on the basis of what is best for the individual child, as defined, in particular, by the UN Convention on the Rights of the Child and by the Office of the United Nations High Commission for Refugees, thereby ensuring that his vulnerability is being assessed and taken into account at all stages.

## **BASIC SOCIAL RIGHTS**

Migrant children including unaccompanied minors should enjoy access to education, training, and health care as basic social rights, ensuring the establishment of programmes and resources, from an intercultural perspective. All Member States and candidate countries should guarantee these rights, whatever the child's social or ethnic background, physical condition or legal status or that of his parents. Unaccompanied minors should not suffer from the adverse effects of a situation for which they bear no responsibility.

Unaccompanied minors who are in an irregular situation should equally enjoy the same rights. Their protection against discrimination-based violence in the fields of access to housing, health care and education should be strengthened by promoting the communication and counselling on legal rights and by



exchanging experiences in different European countries. With the aim to protect these minors as far as possible, cooperation should be reinforced at local, regional, national and European levels by disseminating reporting tools, recommendations and ethical guidelines.

The experts support PICUM's<sup>82</sup> (2007) recommendation that undocumented migrants be included as a specific target group in the EU Social Protection and Social Inclusion Process. Child Rights agencies should promote interventions that make migration for children and families in disadvantaged positions as safe as possible and interventions that increase their choice between staying in their country of origin and emigrating in terms of economic opportunities.

## **APPOINTMENT OF LEGAL GUARDIANS**

In situations where there is no responsible, competent and appropriate adult family member available, there is a need to appoint a professional well-trained legal guardian for unaccompanied minors in order to guarantee the respect of their best interests following their arrival in the host country. The guardians/tutors' mandate requires a clear legal frame clarifying terms of reference, allowing the guardian to represent the unaccompanied minor both legally and socially in an effective and independent way. There also is a need for further harmonisation at European level in order to ensure the legal representativeness of a minor at all stages.

## **ESTABLISHING FIRST CONTACT WITH AN UNACCOMPANIED MINOR AND FOLLOWING THE ASYLUM PROCESS**

Services who first establish a contact with an unaccompanied minor should ensure the presence of a psychologist and/of an interpreter. The personnel should be working independently from the juridical and police context.

After the first contact has been established, the unaccompanied minor should be given the opportunity to recover for some time. One should therefore avoid questioning him immediately.

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82 PICUM (2007) 'PICUM's comments on the communication from the Commission on "Policy priorities in the fight against illegal immigration of third-country nationals"', Platform for International Cooperation on Undocumented Migrants, Brussels, 12.02.2007.

With regard to the unaccompanied minor asylum seekers, the following standards should be adopted: keeping the interview to the minimum, as short as possible, and conducted in presence of a trustworthy person, i.e. someone having relevant childcare expertise and an understanding of the special and cultural needs of unaccompanied minors.

The interviewer should be specifically trained to speak with unaccompanied minors and should be assisted by an equally well trained and trustful translator. The objective is to reduce the effect of stress upon the minor. In order to avoid interviewing a minor several times on the same subject, it is advised sharing the information in one file and then circulating it among the various institutions concerned.

Following the interview, a team of professionals including guardian, psychologist, social worker in charge, should assess whether it is appropriate to transfer the minor to an institution after their interception, or whether his own wishes should be taken into account. Accordingly, the number of reception places for unaccompanied minors in an irregular situation should be increased.

Moreover, international standards on child protection must apply equally to unaccompanied minors arriving in the European Union via irregular immigration procedures.

## **RETURNS, REINTEGRATION AND FAMILY REUNIFICATION**

The voluntary return assistance and family reunification to unaccompanied minors should first be envisaged in line with the principle of “the best interest of the child”<sup>83</sup>, the UNHCR guidelines for repatriation of minors<sup>84</sup> and the Council Resolution on unaccompanied minors who are nationals of third countries<sup>85</sup>.

One should establish international cooperation and assistance procedures with the countries of origin ensuring that unaccompanied minors are properly returned to their country, under safe and dignified conditions in order to be

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83 *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”*. Art 3(1), UN Convention on the Right of the Child, September 1990.

84 UNHCR “Guidelines on Policies and procedures in dealing with Unaccompanied Children Seeking Asylum”, February 1997.

85 Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries, (97/C 221/03) OJ C221, 19.07.1997, p. 0023-0027.

reunited with their biological families and/or referred to appropriate institutions that will offer them effective protection.

This includes the need for family tracing and family reunification assessments with the support of national agencies acting for the protection of children and/or victims of trafficking (such as in Bulgaria or in Romania) and/or specialised international agencies such as the ICRC (family tracing) or IOM (assisted voluntary return programmes). The option of the return should be thoroughly assessed whenever there is a risk of serious harm being done, through, for example, child labour, sexual exploitation, violence or the risk of female genital mutilation, forced marriages, social exclusion or involvement in armed conflict.

The return component should always be reinforced by a reintegration component – including monitoring and follow up - for which particular funds must be made available.

Preparing and organizing the return of an unaccompanied minor to his country of origin requires a clear definition of competences between all actors involved (UAM, guardian, youth welfare etc.), providing each counterpart with the necessary feedback and information. One should promote the use of standardised forms.

## **IDENTIFICATION AND AGE ASSESSMENT**

In general, age assessment should respect the rights of the child and should take into account his vulnerability.

Age assessment should be institutionalized in order to guarantee minimum standards and to obtain reliable, comparable results. If the exact determination of age is not possible, the benefit of doubt should be applied in favour of the person.

When defining the age of a minor by means of one or other method, the risk of traumatising him should be reduced as much as possible. The use of fingerprints and photographs for children under 14 should be in accordance with national laws on data protection and with the [CRC \(Art. 8\)](#) and should only be allowed as a protective measure in order to be able to trace children and share the information among various countries but also amongst professionals only.

The recommendation that has evolved from the project is to share information on fingerprints and photographs only among recognised professionals active in the official institutions in direct contact with unaccompanied minors. The best tool for sharing this confidential information would be a specially set up and protected intranet to which only professionals such as employees of reception centres, the Ministry of Interior, guardianship services, and police services have access. This tool is in line with the recommendation on data and statistics in this publication.

## **DISSAPEARANCE OF CHILDREN**

Each country should have a national register of missing children in accordance with the law on protection of personal data. Since disappeared minors can migrate from one EU Member State to another without being intercepted at the border, these national registers should be linked at European level.

In general, a balance must be found between facilitating the search for disappeared UAMs and data protection. Data protection includes using data for the sole purpose of dealing with the unaccompanied minor; not keeping it longer than necessary and avoiding any reference to race, ethnic background or religious beliefs. When processing data regarding UAMs it must be ensured that this is done in accordance with the [EC Directive on Data Protection \(95/46/EC\)](#)<sup>86</sup>.

## **CHILD TRAFFICKING**

The experts promote the establishment of inter-ministerial and multidisciplinary working groups such as the national Task Force on Trafficking/Subgroup on Child Trafficking in Austria and the Austrian Round Table on Child Trafficking which both meet regularly, discussing various issues related to child trafficking, identifying gaps and formulating recommendations:

- Establish adequate and coordinated protection mechanisms for minor victims of trafficking
- Raise awareness on the issue of child trafficking amongst various stakeholders

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<sup>86</sup> EC Directive on Data Protection (Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995): [http://ec.europa.eu/justice\\_home/fsj/privacy/law/index\\_en.htm](http://ec.europa.eu/justice_home/fsj/privacy/law/index_en.htm)

- Improve identification mechanisms
- Foster cooperation between different stakeholders
- Collect reliable data<sup>87</sup>

Regarding reception of unaccompanied minor victims of trafficking, one should further develop small specialised structures adapted to this particular group.

## JUVENILE DELINQUENCY

The experts support the proposal “Towards an EU strategy on the rights of the child”, stating that “the EU define as ‘children at risk’ all children who are victims of a social situation that threatens their mental or physical health and/or exposes them to the risks of delinquency, both as actors and as victims; and that “Member States take measures (information campaigns, exchanges of best practice, and so on) to prevent children from being put ‘at risk’, including the prevention of juvenile delinquency”<sup>88</sup>.

## DATA AND STATISTICS

First data collection on children seeking asylum alone and the results of their asylum requests (with an eye on the risk of disappearances) and on children residing illegally in a country at national levels must be reinforced. Each country should improve its own statistical instruments accordingly. In addition to the data collection, there is also a need for more analysis and evaluation in order to map and assess trends, and draw policy recommendations and responses.

Data collected at national levels should be accessible at European level. This would allow for better analysis of data coming from different sources (as data may overlap) and therefore provide better results more broadly. Working methods to gather and share data should be standardised, reinforcing the cooperation with relevant intergovernmental and international organisations and research centres. Data should be reliable, exhaustive, detailed and up-to-date. Hence, there is a need for developing methods and standards to improve comparability, objectivity and reliability of data at European level.

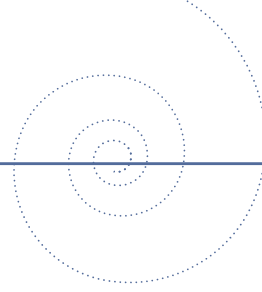
87 The Austrian Ministry of the Interior in cooperation with IOM Vienna and cofunding from the EC DG Freedom, Justice and Security is currently implementing a project on developing guidelines for the collection of data on trafficking in human beings, including comparable indicators, which aim to standardise and harmonise data collection across Europe as to improve the collection and comparison of data as well as to enhance cooperation and the capacity of the relevant national authorities and the EU in this field.

88 European Parliament resolution of 16 January 2008 : Towards an EU strategy on the rights of the child (2007/2093(INI)) <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0012+0+DOC+XML+V0//EN>



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<sup>89</sup> Legal Information System of the Republic of Austria:  
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The project entitled *“Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors”*, involving Austria, Belgium, Bulgaria, the Czech Republic, Poland and Romania, aimed at improving the overall efficiency of national agencies and service providers responsible for reception, protection and treatment of unaccompanied minors. The project increased the cooperation and information exchange between the six participating Member States. The results of these exchanges are compiled in the present *Manual of Best Practices and Recommendations*.

This publication is intended for government authorities and public institutions working on children, migration and refugee issues, law enforcement agencies, NGOs and social services, international organisations, expert researchers, policy makers and representatives from the European Commission.

## **Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors**

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