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5.1.3 Legal representation and designating a legal guardian

Some EU+ countries amended their legislation to provide a legal guardian to a migrant child in a swift and efficient manner. In practice, however, civil society organisations reported delays in assigning a guardian mainly due to the high numbers of children needing support in some countries, such as France, Greece, Italy and Spain. Similar observations were published in the IOM's World Migration Report.

In France, the time required to appoint a legal representative varied considerably from one territory to another. The Ministry of the Interior was working with the Ministry of Justice to expand the pool of ad hoc administrators who are specifically appointed to support unaccompanied minors with their asylum applications. The minimum age for registration on the list of ad hoc administrators has been lowered from 30 to 23 years, and a provision has been made to register on the asylum list of administrators registered on the code of criminal procedures. A training programme on asylum for ad hoc administrators was deployed in 12 territories in 2020. The Ministry of the Interior, in conjunction with the Ministry of Justice, was also working on better information for institutional actors (prosecutors and prefectures) who are involved in the procedure for appointing an ad hoc administrator. In each territory, local actors were also encouraged to connect with each other in order to create clear circuits for the referral and appointment of ad hoc administrators.

Malta amended its Child Protection (Alternative Care) Act which came into force in July 2020. Immediately after the registration of the minor and issuance of identification documents, the Director of the Protection of Minors must request the court to provide for tutorship and/or curatorship.1282 However, the European Commission noted that delays in the appointment of legal guardians remained an issue and there was a limited pool of legal guardians.

In Greece, the legislation for the guardianship of unaccompanied minors (Law No 4554/2018) came into effect on 1 March 2020. This law sets out the terms for the appointment of a guardian who will be responsible for the integration of the child. The law also foresees the creation of a Supervisory Guardianship Board to manage the legal protection of unaccompanied minors.

Due to the absence of guardians after the METAdrasi network of guardians programme was terminated in March 2020, CSO HumanRights360 reported serious problems in the representation of unaccompanied minors younger than 15 years in processes related to reception and their identification. Child protection organisations (such as HumanRights360 and Arsis) stepped in to

provide a lawyer as a temporary guardian of minors and sign on behalf of the minors during registration at the RIC of Fylakio. HumanRights360 also observed that the children were not sufficiently informed about the different procedures related to asylum and the timeframe to collect evidence for the application was short. In addition, an NGO lawyer should not have a dual role as lawyer and guardian, for which they lack the appropriate training.[1283]

Greece signed a Memorandum of Understanding with the Netherlands to improve the guardianship system and reception facilities for unaccompanied minors in Greece. Reception facilities will be created for minors and experts from the Dutch foundation NIDOS provide give support to the guardianship programme.[1284]

Bulgaria amended the Asylum and Refugees Law to implement a significant change to the legal representation of unaccompanied minors in the asylum procedure. An unaccompanied minor who is an asylum applicant or beneficiary will now be represented by a lawyer who is registered with the National Legal Aid Bureau throughout the whole asylum procedure. The bureau published guidelines on representation in the Asylum and Refugees Act, Article 25 with a description of the activities to be carried out by the lawyer.[1285] The amended law also introduced required qualifications for the lawyers, and training on ensuring the best interests of a child will begin in 2021.[1286]

Before the amendment was adopted, the Bulgarian Supreme Administrative Court ruled in a case with procedural irregularities due to a lack of legal aid and social assistance when interviewing minors. The State Agency for Refugees (SAR) had rejected an asylum application by a woman with two children, which was appealed on grounds of violation of the Child Protection Act since the administrative body or court did not send the mandatory notification to the Social Assistance Directorate prior to the first interview and the social worker did not participate in the second interview. No legal aid was provided during the interview and the determining authority did not consider the best interests of the child.

The transition of a child into adulthood has been the subject of concerns and discussions, especially in regard to documentation, access to the labour market and the continued right to family reunification. Many children reaching the age of majority may face uncertainty about their situation and a lack of support, which makes them particularly vulnerable.

Despite a decision from the Independent Authority for Public Revenue (IAPR) which regulated the procedure to issue a tax identification number to unaccompanied children in Greece, METAdrasi reported that this had not been implemented and put in practice. Children older than 16 years often did not have legal access to the labour market and could not attend vocational training programmes without a tax identification number. In addition, there was a lack of accommodation for unaccompanied minors turning 19 years.[1287]

Finland amended its Act on the Promotion of Immigrant Integration which now entitles unaccompanied minors who have a residence permit to receive after-care until the age of 25 instead of 21. The act was amended in line with the equivalent age limit in child welfare after-care which was raised to 25 years on 1 January 2020.[1288]

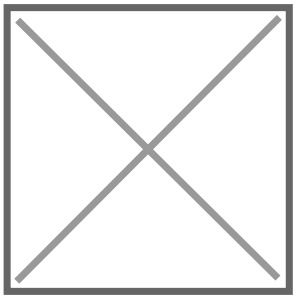
Save the Children in Sweden was concerned about minors who turn 18 years old and can lose many rights when reaching majority, such as the right to a legal representative. In addition, they often have to change accommodation and move into facilities with adults in another part of the country.[1289]

In Spain, a public consultation was prepared in 2020 and launched in 2021 when drafting a new legislation to finetune the documentation system so unaccompanied minors do not remain undocumented once they reach the age of majority.[1290] Several Spanish CSOs made recommendations for amendments to the legislation, especially with regard to identification, documentation, and the renewal of residence and work permits.[1291]

Following a CJEU ruling *(see Section 2)*, the Swedish Migration Agency updated its legal position on children's family reunification so that the age at the date of application determines the rules and criteria. In addition, the Migration Court of Appeal referred a case back to the Migration Board when two minors were returned to their home country and appealed on the grounds of significant procedural errors. The Migration Board had not appointed a public counsel for the children, which was required under the circumstances.

In Switzerland, the Federal Administrative Court ruled that the SEM must ensure the protection of an individual's rights and designate a legal guardian when an Ethiopian national claimed to be a minor. When identity documents are not presented, the SEM is obliged to carry out an overall assessment of the applicant's age. The Federal Administrative Court annulled the decision and remitted the case for a re-examination.

Training on legal guardianship was challenging in 2020 due to the pandemic, but some courses were made available online. Finland, for example, launched an online training programme on the work and processes for competent representatives, after which the guardian is issued a certificate to be able to represent unaccompanied minors.



[1282] Act No XXIII of 2019, An Act to substitute the Child Protection (Alternative Care) Act,Cap. 569, to provide for protection orders for minors, for alternative careand for suitable protection for those minors deprived of parental care orin the risk of being so deprived, and for matters that are ancillary orincidental thereto or connected therewith, July 16, 2019. https://legislation.mt/eli/act/2019/23/eng/pdf

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[1291] Spanish Commission for Refugee Aid | Comisión Española de Ayuda al Refugiado (CEAR) et al. (2021, February 18). *Pedimos garantizar los derechos de niños y niñas que llegan solos a España [We ask to guarantee the rights of children who arrive alone in Spain]*. https://www.cear.es/pedimos-garantizar-los-derechos-de-los-ninos-y-nina...





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