

**RECONSTRUCTING THE FAMILY ENVIRONMENT: A COMPARISON
OF CARE ARRANGEMENTS FOR UNACCOMPANIED MINOR
ASYLUM-SEEKERS IN GREECE, BELGIUM AND THE NETHERLANDS**

By

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Executive Summary

“...the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”

– the Convention on the Rights of the Child

More than half of the world’s unaccompanied minors that seek asylum are doing so within the borders of the European Union. Upon arrival, one of the first steps taken by authorities is to engage in family tracing, with the hopes of achieving family reunification. However, this cannot always be realized. Consequently, unaccompanied minor asylum-seekers often spend years living in state care before reaching the age of majority.

That begs the question, without family present, how can a non-citizen child from a different linguistic and cultural background, experience the ‘family environment’. Who reconstructs this environment, and how? This thesis examines the right to a ‘family environment’ in the unaccompanied minor asylum-seekers context. In doing so, the main tools for reconstructing the ‘family environment’ are identified as the appointment of a guardian and placement in appropriate accommodation. Specifically, this thesis argues that the ‘family environment’ exists in the effective interaction between these tools. Using Greece, Belgium and the Netherlands as case studies, this thesis explores how the dynamics between guardianship and accommodation affect the well-being and development of unaccompanied minor asylum-seekers. Inspired by fieldwork undertaken for this project in Greece, this thesis concludes with recommendations for the creation of care arrangements in Greece that are reflective of the ‘family environment’.

Definitions

A *child* is defined by Article 1 of the Convention on the Rights of the Child as “any person under the age of 18, unless under the law applicable to the child, majority is attained earlier.”¹

Article 2(l) of Directive 2011/95/EU of the European Parliament and of the Council defines *unaccompanied minors* as “a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States.”²

Unaccompanied minor asylum-seekers are those that seek international protection by being recognized as refugees in the meaning of Article 1A of the 1951 United Nations Convention Relating to the Status of Refugees, which defines a refugee as a person who, “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country or return there because there is a fear of persecution...”³

¹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 1

² European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L 337; December 2011. Member States must transpose this Directive by 21 December 2013.

-Article 2(i) of the Qualification Directive of 19 April 2004 (2004/83/EC) reads: “unaccompanied minors’ means third-country nationals or stateless persons below the age of 18, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of the Member States;”

³ UN General Assembly, UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189. Article 1A(2)

Introduction

The fundamental principle behind international refugee law is that host states are to provide surrogate protection to those who are not able to avail themselves of national protection. Approximately four per cent of individuals seeking international protection in Europe are unaccompanied minors.⁴ In its preamble, the 1989 Convention on the Rights of the Child (CRC), sets out the basic tenet of its philosophy, recognizing that, “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.” Unaccompanied minors asylum-seekers (UMAs) are not only deprived of national protection, but of their families as well. As such, this thesis argues that host states have a second layer of obligation: to provide alternative care that is reflective of the family environment.

UMAs constitute a highly vulnerable group of children and adolescents that are in foreign countries without legal or customary caretakers. They are, by legal definition and actual circumstance, vulnerable many times over. Firstly, as children, second as children without family to care for them, and finally, as children navigating asylum systems on foreign soil.

The CRC provides that the child has “the right to know and be cared for by his or her parents”⁵. In accordance with this provision, relevant instruments pronounce the importance of family unity for such children by calling upon national authorities in host countries to engage in family tracing for the purpose of reunification. However, family reunification is not always possible, not in the best interests of the child or delayed in long processes. When family

⁴ UN High Commissioner for Refugees (UNHCR), UNHCR Global Trends 2012: Displacement, The New 21st Century Challenge, 19 June 2013. Pp. 28. Available at: <http://www.unhcr.org/51bacb0f9.html>

⁵ Article 7 CRC

reunification cannot occur, EU Member States are obligated to provide UMAs with “appropriate protection and humanitarian assistance”⁶ under International human rights law.

This thesis examines the right to a family environment in the UMA context⁷, and will explore the extent to which this “appropriate protection and humanitarian assistance” should reconstruct the family environment for UMAs. This exploration will serve to identify the main actors and environments that are provided for in International human rights and EU law as well as in soft-law guidance, which can be used as “tools” to build alternative care arrangements for UMAs that are reflective of the family environment. Children are defined by their dependence; consequently the involvement of certain adults in the lives of UMAs will be selected as one of the “tools”. In this thesis, the key actor in ensuring the quality of care arrangements for UMAs is identified as the appointed guardian, which acts as a focal point to ensure that an adequate care environment is determined and maintained. The second “tool” is the accommodation arranged for the UMA, which is identified as the key environment. Accommodation arrangements for UMAs not only provide a home, which is generally regarded as being at the center of family life, but also include material conditions and the presence of other actors in their day-to-day care. This thesis recognizes the family environment as existing at the point where adequate guardianship and accommodation intersect, and argues that the interaction between the two arrangements is key in providing for care arrangements that are reflective of the family environment.

⁶ CRC Article 22(2)

⁷ This thesis will focus on unaccompanied minor asylum-seekers in particular. However, a general lack of care and information can hamper the ability or motivation of an unaccompanied minor to exercise their right to seek asylum. Because Member States often place unaccompanied minors not seeking asylum and those that do seek asylum into the same care structures, unaccompanied minors that do not seek asylum will be referenced intermittently. Unaccompanied minors often live in their host countries with temporary status until they reach the age of 18. Consequently, while in state care (prior to being recognized as a refugee or returned to their home country) many formative years are spent in reception regimes.

Due to the inherent difficulty in defining the ‘family’⁸ and the variety of backgrounds that UMAs come from, this thesis will not present a specific family model and argue that States have the positive obligation to reproduce it. Rather, I will argue that the family environment is the basis for ensuring the well-being⁹ and development¹⁰ of the child, and its primacy should not be dismissed in the context of UMAs. Therefore, the primary function of the guardian and of accommodation arrangements should be to reconstruct the family environment. This means that the guardian must act in a parental role¹¹ and accommodation arrangements must be modelled appropriately.

The aim of this thesis is not to examine all aspects affecting the life of a UMA. For instance, although they are critical factors with respect to the well-being and access to rights for UMAs, asylum procedures, age assessment, legal and psychological counselling, medical care, education, access to employment and other issues will not be considered as being elements of the family environment, and are therefore beyond the scope of this thesis¹². Such issues will only be referenced with regard to how appropriate guardianship and/or accommodation can ensure their realization. This thesis sets out from the premise that the creation of an alternative care environment that is reflective of the family environment is the root structure from which all other

⁸ Discussed further in: 1.3.2 Formulating the ‘Family Environment’

⁹ What constitutes the “well-being” of the child has not been universally defined. In this thesis “well-being” shall include: “being healthy, free from abuse and exploitation, secure, access to basic needs, growing up in an environment where every child is respected, and generally happy”

-Lee, Yanghee. CHILD RIGHTS AND CHILD WELL-BEING. The 3rd OECD World Forum on “Statistics, Knowledge and Policy” Charting Progress, Building Visions, Improving Life Busan, Korea - 27-30 October 2009. Pp. 1. Available at: <http://www.oecd.org/site/progresskorea/44137252.pdf>

¹⁰ The roles that persons legally or customarily responsible for the child serve with respect to ‘development’ takes place in Chapter One. ‘Development’ includes: physical, mental, spiritual, moral, psychological and social development.

¹¹ The roles of parents will be discussed further in Chapter One.

¹² Consider this: Does a family normally *provide* medical care and education? Does a family *provide* psychological counselling to a troubled child? Does a family *provide* legal counsel to a trouble teen? No, the family *ensures* that the relevant professionals *provide*.

factors related to the well-being of the child grow. That is, the establishment of adequate guardianship and accommodation is the prerequisite for ensuring that the above-mentioned factors are effectively accessed.

Often, EU Member States fail to adequately concretize this foundation. Effective guardianship permeates every aspect of the child's well-being and serves to fill protection gaps that exist in care structures and legal procedures. The efficacy of guardianship is greatly affected by the form of accommodation in which UMAs live. To overlook specialized guardianship and accommodation is to deny the UMAs of not only a reliable adult advocate, but also a safe home, and, ultimately, their status as a child itself.

This thesis will examine how certain EU Member States are translating law into practice with respect to guardianship and accommodation arrangements, with a specific focus on the link between the two. This thesis will highlight the relevant new provisions contained the new Common European Asylum System package¹³, which was adopted in June 2013. Although these newly adopted directives and regulations do not have to be transposed into national legislation until 2015, it will be constructive to analyse the changes that have been made with respect to guardianship and accommodation arrangements for UMAs in order envisage the changing structure each in the near future.

Following the examination of the relevant International and EU standards, this thesis will analyse the domestic frameworks of Greece, Belgium and the Netherlands with respect to guardianship and accommodation for UMAs. Specific attention will be paid to the current practice in each country. The reasons for comparing these countries are three-fold. First, due to their

¹³ Given the scope of this thesis, the 2003 Reception Condition Directive and the recast Reception Conditions Directive will be the primary focus.

geographical locations on opposite shores of the EU, as well as their varying legal environments, these countries can serve to embody the diversity of legislation and practice in EU Member States. Second, due to the migration dynamics seen in each country, this comparison can highlight the challenges that are faced by destination countries versus transit countries. And finally, given the disparate law and practice of each state, their juxtaposition will also serve to underline good versus bad practices and the structural characteristics that act as obstacles or advantages in providing alternative care to UMAs.

In July 2013, the United Nations High Commissioner for Refugees (UNHCR) called upon Greece to "develop specific proposals for the strengthening, legally and practically, of the institution of guardianship, including of monitoring mechanisms"¹⁴ for unaccompanied minors. This thesis will conclude with recommendations for improving the guardianship and accommodation arrangements for UMAs in Greece, which, more than any other EU Member State, has been recognized as having an urgent ground-level problem in establishing adequate care arrangements for UMAs. Ultimately, the findings of the research undertaken for this study, and the recommendations that stem from it, can serve to reconcile reality with relevant law in order to inform pragmatic recommendations for improving the adequacy of care arrangements for UMAs in Greece through the development of a care model that ensures "appropriate assistance and humanitarian protection" that is reflective of the family environment.

This study makes use of three primary research methods. First, an extensive legal and conceptual analysis, which serves to situate UMAs in International human rights and EU law, is

¹⁴ United Nations High Commissioner for Refugees. *Current Issues of Refugee Protection in Greece*. UNHCR. July 2013. Pp. 7. Available at: http://www.unhcr.gr/fileadmin/Greece/News/2013/PCjuly/Greece_Positions_July_2013_EN.pdf

employed. Second, qualitative research methods were used to evaluate the policies and practice of the relevant domestic governments as concerns guardianship and accommodation arrangements for UMAs. Third, fieldwork was undertaken on the ground in Greece with both governmental and non-governmental actors that provide care and legal support to unaccompanied minors. Semi-structured interviews with open-ended questions were conducted with social workers and lawyers that work with unaccompanied minors on a frequent basis at both NGOs that provide assistance to unaccompanied minors and at three reception centers across Greece. Interview questions were designed to provide insight into the extent to which guardianship and accommodation were provided for UMAs.

The field research also involved an examination of 160 case files for unaccompanied minors that have passed through the offices of an Athens NGO¹⁵ over the last two years. Given the difficulty in acquiring reliable statistics on UMAs in Greece, scrutinizing these files was a valuable and dependable exercise as they contained official documentation from immigration authorities regarding the care arrangements for each child as well as the particulars of their situation based on interviews that the NGO conducted with them.

Chapter One will provide an overview of the recent growth of the UMA phenomenon in Europe. This summary will include the major statistics, demographics, migration routes and push factors for UMAs. This section also will include a discussion of recent studies, which highlight the psychological vulnerability of UMAs in post-migration care schemes. Moreover, the concept of the family in International and European law will be examined in order to elaborate on the

¹⁵ AITIMA provides free material and legal support to refugees and asylum-seekers. See website: <http://www.aitima.gr/en>

responsibilities of the State to care for children deprived of the family environment, a category under which UMAs fall.

Chapter Two will focus on the function guardianship and accommodation and the points in which they intersect. International human rights law as well as European law and soft-law guidance will be analysed in order to determine the functions of the guardian and the expected conditions of accommodation arrangements, with a specific focus on the recent revisions made to the relevant directives included in the newly adopted Common European Asylum System package.

Chapter Three will set out the current state of affairs for UMAs in Greece, the Netherlands and Belgium. An examination of the development of care arrangements and the correlating legislation and practice will occur. The effectiveness of the evolving approaches of each state will be scrutinized in order to shed light on the practices that have served to either solve, or aggravate, problems faced by UMAs. Attention will also be drawn to the practices the serve to reconstruct the family environment.

Finally, Chapter Four will conclude and present recommendations for the improvement of care arrangements for UMAs in Greece.

Chapter 1 ‘Family’ and the Unaccompanied Minor Phenomenon

In the 1990’s Europe saw a substantial increase in the amount of UMAs entering its territory.¹⁶ As the issue of UMAs in Europe came to light, they were quickly labelled Europe’s “invisible children”. This label was prescribed for many reasons. The primary reason is because UMAs fall into a blurry category legally, where International human rights law is interwoven with regional and domestic immigration law, asylum law, and family and children’s rights law; resulting in confusing and inconsistent protection regimes.

Indeed, human rights law has failed to construct a structurally sound home for UMAs.¹⁷ Immigration and asylum law tends to ignore the standpoint of children, which puts them in the shadows adult-centric policies.¹⁸ Furthermore, many of these children remain administratively invisible; undetected by national authorities, either because they fear detention or deportation, are unaware of the assistance they could gain from being registered in destination countries, or because they are hidden in trafficking networks. Compounding the problem of the invisibility is the unwillingness or inability of States to collect statistical information on unaccompanied minors. In Europe alone there are an estimated 100,000 separated or unaccompanied child migrants¹⁹, an unknown amount of which are undocumented.

Aside from military conflicts, several other push factors compel UMAs to migrate in search of asylum. Among these additional factors are natural disasters, and inequalities or discriminations based on gender, race, religion or political opinions. Furthermore, the actualities of “...poverty,

¹⁶ Bhabha J. “Seeking Asylum Alone: Treatment of Separated and Trafficked Children in Need of Refugee Protection”, *International Migration* 42 (1), (2004), pp. 142.

¹⁷ Bhabha J., “‘*Un vide juridique*’ Migrant Children: the Rights and Wrongs”, in Carol Bellamy and Jean Zermatten (eds.), *Realizing the Rights of the Child* (Ruffer and Rub, 2007), pp. 208.

¹⁸ *Ibid.*

¹⁹ Smith, Terry, *Separated Children in Europe Programme, Separated children in Europe: Policies and Practices in European Union Member States: A Comparative Analysis* (2003). Pp. 5

child abuse, and lack of opportunities reinforces the determination to exit, to make a bid for adventure”.²⁰ Finally, some UMAs are forced into trafficking networks against their will, where they are exploited for work, or vice, in Europe.²¹

The amount of refugees worldwide is relatively balanced between men and women,²² but the gender divide among UMAs is drastically lopsided, as ~80 per cent are boys²³ above the age of 14.²⁴ Many factors contribute to this circumstance, primarily, that boys are more vulnerable to being caught up in military hostility. It is sometimes the case that UMAs entering Europe are sold to human smugglers by their own families, who trust that they will be safely guided to their destination country in order to reunite with other family members.²⁵ Parents sending their children into the EU sometimes do so with an economic aim and tend to send boys as they view them as more likely to not only earn money, but be tough enough to handle the journey as well.²⁶

As the first decade of the new millennium progressed “the phenomenon of unaccompanied minors claiming asylum in the EU [had] become a more visible problem”²⁷. The turn of the century surge of UMAs in Europe served as a catalyst for the creation of specialized provisions in several EU Asylum Directives. Furthermore, the Committee on the Rights of the Child (CRC Committee)

²⁰ Bhabha, Jacqueline, *Arendt's Children: Do Today's Migrant Children Have a Right to Have Rights?*. Human Rights Quarterly, Volume 31, No. 2, May 2009, p. 437

²¹ Kane, J. Trafficking and Labour Exploitation. Daphne Programme. June 2007. Pp. 17. Available at: http://ec.europa.eu/justice_home/daphnetoolkit/files/others/booklets/02_daphne_booklet_2_en.pdf

²² United Nations High Commissioner for Refugees, *A Year in Crisis: UNHCR Global Trends 2011*, p. 33, available at: <http://www.unhcr.org/4fd6f87f9.html> [accessed on 15 February 2013]

²³ EUROSTAT. Asylum applicants considered to be unaccompanied minors by citizenship, age and sex. Annual Data 2012. Available at: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyunaa&lang=en

²⁴ *Ibid.*

²⁵ Boland, K. A report on Children of Afghan Origin Moving to Western Countries. Unicef. February 2010. Pp. 17. Available at: http://www.unicef.org/infobycountry/files/Book_children_on_the_move.pdf

²⁶ Bhabha, J. and Finch, N. (2006) *Seeking Asylum Alone. Unaccompanied and Separated Children and Refugee Protection in the U.S.*: Harvard Committee on Human Rights. Pp. 18. Available at: <http://library.law.yale.edu/sites/default/files/seeking-asylum-alone-us.pdf> [accessed on 12 February 2013]

²⁷ Frontex. *Unaccompanied Minors in the Migration Process*. December 2010. Pp. 3. Available at: <http://www.frontex.europa.eu/assets/Publications/Risk Analysis/Unaccompanied Minors in Migration Process.pdf> [accessed 2 August 2013]

General Comment No. 6 on Treatment of unaccompanied and separated children outside their country of origin directly addresses the situation of unaccompanied minors, as do many reports and studies published by a multitude of International human rights bodies.

Over the past few years the amount of UMAs lodging asylum claims in Europe has remained relatively stable. Currently, UMAs make up approximately four per cent of the migrant population²⁸ in Europe. In 2012, 12,785 UMAs lodged claims in the EU-27²⁹, accounting for 60 per cent of UMA claims worldwide.³⁰ As has been the case in recent years, most UMAs were from Afghanistan and a host of African and Middle Eastern countries, including Syria, where UMAs are fleeing military conflict en masse.

The main destination countries for UMAs in Europe are now Sweden, Germany, Belgium, Austria and the Netherlands. While migratory routes continuously fluctuate, it remains that a great majority of UMAs follow a South-North route, travelling by land and sea where most³¹ funnel into Greece before continuing their migration by land to EU countries farther North and West. Greece, the Netherlands and Belgium are all connected through a major intra-Schengen migratory route used by UMAs entering Europe through Greece³², who then move on to Italy – Germany – Belgium – the Netherlands – Sweden and Norway.³³

²⁸ UNHCR Global Trends 2012. *Displacement: the new 21st century challenge*. Pp. 28. Available at: <http://www.unhcr.org/51bacb0f9.html> [accessed 15 June 2013]

²⁹ EUROSTAT. Asylum applicants considered to be unaccompanied minors by citizenship, age and sex. Annual Data 2012. Available at: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyunaa&lang=en [accessed 11 June 2013]

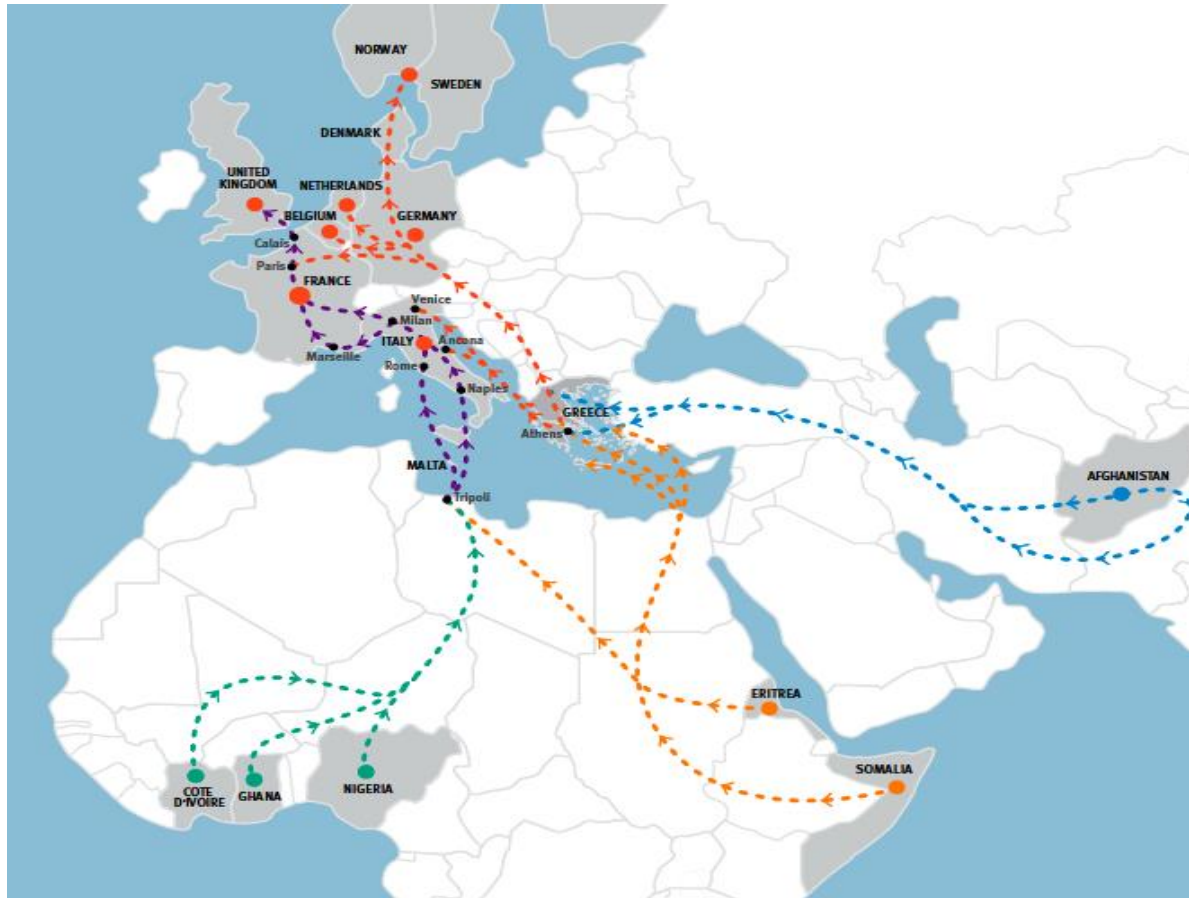
³⁰ UNHCR Global Trends 2012, *Supra* at 3. According to UNHCR statistical data (which does not include the United States of America) 21,300 asylum applications were lodged by unaccompanied minors in 2012.

³¹ Frontex, *supra* at 34

³² *Ibid.*

³³ *Ibid.* at 28

MAP 1: Common routes taken by UMAs³⁴



1.1 Psychological Trauma and Post-Migration Vulnerability

UMAs are at high risk of, inter alia, “...sexual exploitation and abuse, military recruitment, child labour...and detention.”³⁵ Additional vulnerabilities commonly exist among UMAs due to the tumultuous experiences that compelled them to leave their countries of origin, the extreme nature of their uprooting from all things familiar and the difficulty of their journeys to destination countries. The result is that, as a 2008 Belgian study on UMAs found, they are “five times more

³⁴ Human Rights Watch. *Caught in a net. Unaccompanied migrant children in Europe*. 2012, pp. 3. Available at: http://www.hrw.org/sites/default/files/HRW_CRD_migrant_brcohure_low.pdf

³⁵ UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6. Para. 3.

likely than accompanied refugee minors to elaborate severe or very severe symptoms of anxiety, depression and post-traumatic stress.”³⁶

The attention drawn to the phenomenon of UMAs in recent years has led to the publication of several studies across Europe that indicate their distinct psychological vulnerability, which is inherently susceptible to further distress in post-migration care regimes. Undoubtedly, similar circumstances may also aggravate the situation of adult asylum-seekers, but, given the heightened vulnerability of UMAs, inadequate care and violations of their rights “...will tend to have more pervasive, diffuse and long lasting consequences than when the same trauma occurs later in life.”³⁷

In 1998, a Finnish study of UMAs that were placed in a specialized group home while they waited on their asylum decision revealed the sensitivity that UMAs have to their reception arrangements. Researchers found that “procedures for dealing with asylum-seekers may contribute to high levels of stress and psychiatric symptoms in previously traumatized refugee children.”³⁸ Specifically, that study stated that, “post-migratory stresses faced by unaccompanied asylum-seekers may interact and exacerbate their emotional symptoms. It is most likely that the same kinds of problems are present in all countries which are receiving unaccompanied minors.”³⁹ Psychological studies of UMAs in the following decade have proved the universality of this statement, highlighting that relationship between guardianship, accommodation and the psychological wellbeing of UMAs.

Different accommodation arrangements have varied degrees of specialized provisions and

³⁶Derluyn, I, & Broekaert, 2008, 'Unaccompanied refugee children and adolescents: The glaring contrast between a legal and a psychological perspective', *International Journal Of Law & Psychiatry*, 31, 4, pp. 321.

³⁷Delfos, M.F. (2001). *The Developmental damage to children as a result of the violation of the rights*. In J.C.M. Willems (Ed.), *Developmental and autonomy rights of children: Empowering caregivers and communities*. Antwerp, Groningen, Oxford: Intersentia.

³⁸Sourander A. *Behavior problems and traumatic events of unaccompanied refugee minors*. *Child Abuse & Neglect* [serial online]. July 1998; 22(7):719-727. Available from: MEDLINE, Ipswich, MA.

³⁹ *Ibid.*

guardianship participation, and therefore have separate effects on UMAs. A 2008 study of the psychological stresses faced by UMAs in the United Kingdom found that those being moved to more independent low-support living arrangements experienced higher levels of psychological distress, which suggests that, “foster family living and high support may ameliorate posttraumatic stress, as well as provide general support.”⁴⁰ Similarly, a 2012 United Kingdom study found that 34 per cent of unaccompanied minors exhibited signs of PTSD, and that when unaccompanied minors were accommodated in foster care with an in-house guardian, as opposed to independent or semi-independent care without a close guardian, they were less likely to suffer from symptoms of PTSD associated with prior traumas.⁴¹

In the same vein, a 2007 study of unaccompanied minor refugees in the Netherlands found that those living in reception centers with large groups experienced greater levels of psychological distress than those living in foster care and small living groups.⁴²

The placement of UMAs in inadequate facilities is commonly practiced worldwide and is seen to aggravate their psychological wellbeing; manifesting through nightmares, sleep deprivation, anxiety and loss of appetite.⁴³ Even worse, as a means to cope UMAs across the globe are seen to engage in acts of self-harm (e.g. cutting, and other forms of self-abuse), extended hunger strikes and even suicide while in detention or detention-like facilities. Psychologists working with unaccompanied minors in Australia observed that, “self-harm was almost universal

⁴⁰Hodes, M., Jagdev, D., Chandra, N., & Cunliffe, A. (2008). Risk and Resilience for Psychological Distress amongst Unaccompanied Asylum Seeking Adolescents. *Journal Of Child Psychology And Psychiatry*, 49(7), pp. 730.

⁴¹Bronstein, I., Montgomery, P. and Dobrowolski, S. (2012), PTSD in Asylum-Seeking Male Adolescents From Afghanistan. *J. Traum. Stress*, 25: pp. 551.

⁴²Bean, TM, E Eurelings-Bontekoe, and P Spinhoven. 2007 "Course And Predictors Of Mental Health Of Unaccompanied Refugee Minors In The Netherlands: One Year Follow-Up." *Social Science & Medicine* 64.6 (n.d.): 1204-1215. Social Sciences Citation Index. Web. 19 Oct. 2013.

⁴³Bilboe HA., *Asylum Seekers in Australia: Turning Repression and Stress into Longterm Anxiety and Depression*. In: Warren B, editor. *Suffering the Slings and Arrows of Outrageous Fortune, International Perspectives on Stress, Laughter and Depression*. Amsterdam, New York: Rodopi; 2007. pp. 128

among unaccompanied minors. In one incident, 14 unaccompanied minors, as a group, stitched their lips in protest...”⁴⁴ Depriving UMAs of appropriate care, no matter how temporary, has been repeatedly documented as putting them at “serious risk of being damaged for the rest of their lives”.⁴⁵

As mentioned above, most UMAs are adolescents⁴⁶, above the age of 14. Adolescence is an important period between childhood and adulthood in which young people are developing their own sense of self, and separating from their dependence on family. The collapse of the family structure for UMAs disrupts the normal system of socialization that adolescents experience when transitioning into adulthood. In the migration context “adolescents are overlooked in programming”⁴⁷ and life in a new society makes “the process of identity formation a more difficult balancing act between two or more sets of cultural notions and values.”⁴⁸ What is more, UMAs gain, by necessity, a certain level of independence both on their journeys to destination countries and during the challenging lives they may have led in their home countries. As researchers have noted, “the dependency these children experience in everyday life and towards their future perspectives sharply contrasts with the independency they had to develop to survive in the difficult living and fleeing circumstances before”⁴⁹. What follows is that care arrangements for older UMAs must take into account the “evolving capacities of the child” (Article 5 CRC) and be specifically gauged to balance their need for independence without denying their greater needs for safety and

⁴⁴ *Ibid.*

⁴⁵ Liefwaard, T. *Deprivation of Liberty of Children in Light of International human Rights Law and Standards*. Antwerp: Intersentia, 2008. p. 1. Print.

⁴⁶ UN Children's Fund (UNICEF), *Adolescence, an Age of Opportunity: The State of the World's Children 2011*, February 2011. Pp. 12. Available at: <http://www.refworld.org/docid/4d6cfa162.html>

⁴⁷ Bruce, B. "Toward Mediating the Impact Of Forced Migration And Displacement Among Children Affected By Armed Conflict." *Journal Of International Affairs- Columbia University* 55.(2001): 35-58. British Library Document Supply Centre Inside Serials & Conference Proceedings. Pp. 42.

⁴⁸ Fantino, A. M., & Colak, A. (2001). Refugee children in Canada: Searching for identity. *Child Welfare*, 80, 587–596. Pp. 591.

⁴⁹ Derluyn I and Broekaert, *supra* at 322.

care in general.

This psychological perspective reveals that UMAs must benefit from extraordinary measures, which compensate for the loss of the family environment. The studies highlight the importance of the interaction between guardianship and accommodation; suggesting that living in small groups with a guardian present daily significantly curbs psychological distress and improves the well-being of UMAs.

1.2 Founding Family: A Conceptual and Legal Analysis

This section will explore the development of the concept of the family in international human rights law. Specifically, what constitutes the family environment, and the responsibilities of parental figures in relation to their children will be examined. Next, the expected role of the state in providing care to children deprived of the family environment will occur, with a specific focus on state responsibility for the care of UMAs.

1.2.1 The Notion of Family in International Human Rights Law

Adopted in 1948, the Universal Declaration of Human Rights (UDHR) set out to foster international cooperation and agreement by recognizing first and foremost in its preamble that the “equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” and that all “human beings...should act towards one another in a spirit of brotherhood.”

The familial discourse and the notion of humanity as a family is constant throughout the human rights narrative, and is recognized in the preambles of all instruments that make up the

International Bill of Human Rights and many other international human rights instruments.⁵⁰

The UDHR (Article 16), the International Covenant on Civil and Political Rights (Article 23) and the International Covenant on Economic, Social and Cultural Rights (Article 10) all define the family as the “natural and fundamental group unit of society”. As a microcosm of this universal family, the rights of the private family are made prominent in international human rights law. Specifically, the ICCPR recognizes the rights to marry and found a family (Article 23) and the right to be free from arbitrary interference with private and family life (Article 17). In addition the ICESCR recognizes the right to an adequate standard of living for one’s family (Article 7) as well as the right of the family to be “entitled to protection by society and the state” (Article 10).

1.2.2 Formulating the ‘Family Environment’

Despite the codification of its central importance, it remains impossible to universally define what constitutes a ‘family’, as the notion is realized in many constantly evolving forms. Consequently, international law provides for a vague and broad definition of the ‘family’.

While, especially in the West, the word ‘family’ may immediately conjure in the mind an image of a Father and Mother and two children, this clichéd notion is only one of a multitude of family models. Indeed, the nuclear family is “...a comparatively recent social structure, coinciding with the development of an industrialised society.”⁵¹ Though the ‘nuclear family’ is a recent development, its prominence is quickly disappearing, and in its wake “we have a new structure - the postmodern permeable family - that mirrors the openness, complexity, and diversity of our

⁵⁰ Including: the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child.

⁵¹ Van Bueren, Geraldine. *The international law on the rights of the child*. Dordrecht: M. Nijhoff, 1995. Print. Pp. 68

contemporary lifestyles.”⁵²

These new postmodern family structures, combined with other family models, some of which are recent developments, some steeped in long-held tradition and culture, result in an exhaustive list of family models. In its General Comment No. 19, the United Nation Human Rights Committee addressed this multifarious nature of the family, stating, “the concept of the family may differ in some respects from state to state, and even from region to region within a state, and that it is therefore not possible to give the concept a standard definition.”⁵³

The adoption of the CRC, the most widely ratified international treaty⁵⁴, indicated a newfound recognition for the establishment of broader rights and protections for children. But in order to define these rights, what constitutes ‘family’ must be evident. To that end, the preamble of the CRC introduced a new term, that of the ‘family environment’, into the human rights lexicon:

“...the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community...”

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding...”

The debate over the term ‘family environment’ first began with the 1959 Declaration on the Rights of the Child, which states:

“The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the

⁵² Elkind, David .*Ties That Stress: The New Family Imbalance*. Cambridge, Mass: Harvard University Press, 1995. Print. Pp. 1

⁵³ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 19: The right to social security (Art. 9 of the Covenant)*, 4 February 2008, E/C.12/GC/19, para. 2. Available at: <http://www.refworld.org/docid/47b17b5b39c.html> [accessed 2 September 2013]

⁵⁴ Only the United States and Somalia have failed to ratify the CRC. Ratification list available at: http://treaties.un.org/Pages/ViewDetails.aspx?mtldsg_no=IV-11&chapter=4&lang=en

responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security..."

When drafting the 1959 Declaration on the Rights of the Child, Peru submitted that ‘parents’ should be replaced with ‘family environment’ to reflect the broader notion of family that exists in different parts of the globe.⁵⁵ This proposal was rejected, but when the rights of the child became prominent enough to warrant the internationally binding CRC, the conversation was picked up once again.

The CRCs *travaux préparatoires* indicate that the use of the term ‘family environment’ was debated extensively. Countries participating in the drafting process sought to find a culturally sensitive and comprehensive term that would allow for the many family models in existence to be recognized without compromising the necessity of the child to benefit from an established caretaker(s).

In the initial drafting phase the debate over the term ‘family environment’ centered on the issue of children who were deprived of legal or customary caretakers. Article 11(1)⁵⁶ of the 1982 revised Polish draft of the CRC read:

1. *"A child deprived of parental care shall be ultimately entitled to the protection and assistance provided by the state."*

Several countries submitted proposals to replace ‘parental care’ with alternative language. Notably, “natural family environment”, “normal family environment”, “biological family” and “in cases where a child cannot be cared for by his parents or other members of his biological family”, where put forward.⁵⁷ Ultimately the drafters settled on the least rigid term, “his or her family

⁵⁵ Van Bueren, *supra* at 71

⁵⁶ The draft Article 11 became Article 20 in the final draft.

⁵⁷ Detrick, Sharon, J. E. Doek, and Nigel Cantwell. *The United Nations Convention on the Rights of the Child: a guide to the "Travaux préparatoires"*. Dordrecht: M. Nijhoff Publishers; 1992. Print. Pp. 298-300

environment”, which leaves room for a host of cultural practices and scenarios.

The CRC Committee, in its General Comment No. 6, clarified the necessity for the wide scope of the ‘family environment’.

“...the Convention reflects different family structures arising from various cultural patterns and emerging familial relationships [and] refers to various forms of families, such as the extended family, and is applicable to a variety of families such as the nuclear family, re-constructed family, joint family, single-parent family, common law family and adoptive family.”

1.2.3 The Role of Parents and Legal/Customary Guardians

The function of those legally or customarily obligated to care for their children is defined in Article 5 CRC, which elaborates upon who can fulfil the “parental” role, as well as the details of what that role entails:

“States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”⁵⁸

The role of the ‘family’ in providing “appropriate direction and guidance” to the child must be done in the light of the four main principles of the CRC. These principles are the best interests of the child (Article 3); non-discrimination (Article 2); the right to life, survival and development (Article 6); and the right to express his or her views (Article 12).

Regarding the parent or legal guardians relationship with the child, the CRC also acknowledges that: the child has the right to know and be cared for by his or her parents (Article 7); “parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern”

⁵⁸ Article 5 CRC

(Article 18); and that parents " or others responsible for the child" have the primary responsibility to provide the living conditions necessary for the child's development (Article 27). The state has the obligation to promote the family and ensure that the child has an adequate standard of living in order to prevent disruption within the family by taking "appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing" (Article 27(3)).

1.3 Parent Surrogate Role of the State

Historically, there has been the view that "the rule of a household is a monarchy, for every house is under one head", that of the husband, who oversees his 'kingdom'.⁵⁹ In the past, international human rights law has reflected the historical approach to "regard the family as akin to a tiny state in which parents are absolute monarchs."⁶⁰ Critics of International human rights law's codification of private and family life have argued that the long-standing tradition of the family acting as a kind of micro-state "authorizes public neglect"⁶¹, where the "children's needs and interests are managed by their parents"⁶², and the "government is not supposed to 'intervene'"⁶³.

Indeed, until recently children remained largely seen and not heard in international law as "the privatization of the family contributed to the general invisibility of children", where children

⁵⁹ Aristotle, Benjamin Jowett, and H. W. Carless Davis. 1920. Aristotle's Politics. Part VII. Oxford: At the Clarendon Press. Pp. 11. Available online at: <http://classics.mit.edu/Aristotle/politics.1.one.html>

⁶⁰ Van Bueren, *supra* at 72

⁶¹ Minow, M. Rights for the Next Generation: A feminist Approach to Children's Rights. 9 Harv. Women's L.J. 7 (1986). Pp. 8

⁶² *Ibid.* at 7

⁶³ *Ibid.*

remain under the jurisdiction of their parents.⁶⁴ But new developments in international human rights law are placing a “growing emphasis on individual rights and a gradual increase in the involvement of the state in the internal life of the family,”⁶⁵ especially as it relates to the care of children. Nowhere in the human rights canon is defining the role of the family more crucial than in the context of children’s rights, especially the rights of those without family, as the scope of a child’s rights depends largely on this definition.

Reference to children without parents first appeared in International law with the 1924 Declaration of the Rights of the Child, which states that, “the orphan and the waif must be sheltered and succored”⁶⁶. This proclamation was the beginning of a slow progression towards building a framework for the rights of ‘children deprived of the family environment’.

Article 6 of the 1959 Declaration on the Rights of the Child provides that “society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support.”

In accordance with the CRC, the rights of those “legally responsible for the child” are protected from state intervention unless “necessary for the best interests of the child”, such as in cases of “abuse or neglect” or in custody cases (Article 9). In other instances when a child’s parents may have died, been imprisoned, or become absent for other reasons, the state is then required to ensure the child benefits from appropriate care. Article 20(1) CRC specifically addresses state obligations in the context of children deprived of the family environment, stipulating that:

⁶⁴ Van Bueren, *supra* at 67

⁶⁵ *Ibid.* at 68

⁶⁶ Para. 2 of the Geneva Declaration of the Rights of the Child. Adopted 26 September, 1924, League of Nations. Available at: <http://www.un-documents.net/gdrc1924.htm>

“A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.”

1.3.1 State Responsibility for UMAs

The 1951 Convention Relating to the Status of Refugees does not give any guidance on the treatment of UMAs, and only mentions children in the context of the rights of their parents. However, the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons adopted recommendations that call for the state to provide for “in particular unaccompanied children, with special reference to guardianship...”⁶⁷

The CRC stipulates that states are obligated to “respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind” (Article 2). Relevant provisions in the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (Hague Convention) stipulates that contracting states have jurisdiction over refugee children and children who have been internationally displaced and are on their territory (Article 6). The Hague Convention also provides a framework for the responsibilities of the State to provide alternative care for such children. Most notably, in instances regarding:

- rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence (Art. 3(b));*
- guardianship, curatorship and analogous institutions; (Art. 3(c))*
- the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child (Art. 3(d));*
- the placement of the child in a foster family or in institutional care, or the provision of care by kafala or an analogous institution (Art. 3(e)); and*

⁶⁷ UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, A/CONF.2/108/Rev.1, Recommendation B(2). Available at: <http://www.refworld.org/docid/40a8a7394.html> [accessed 2 August 2013]

-the supervision by a public authority of the care of a child by any person having charge of the child" (Art 3(f))

The Principle of Family Unity is held as the highest consideration,⁶⁸ and family tracing is the first step to be taken when arranging a durable solution for a child deprived of the family environment. Article 22(2) CRC stipulates that States Parties should “trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family.”⁶⁹ For UMAs in EU Member States, the Dublin II Regulation⁷⁰ sets out that, if in the best interest of the minor, they are to be reunited with their family members⁷¹ that may reside in another Member State if that family member(s) can provide care to the child and if it is determined to be in the child’s best interests (Article 15(3)).⁷² Until a UMA is recognized as a refugee, the option for family reunification is either that provided for in the Dublin II Regulation, or to be returned to family members or relevant organizations abroad. It is not until a UMA is recognized as a refugee in an EU Member State that their family may legally join him or her in that state on the basis of family reunification. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification provides that for the purposes of family

⁶⁸ *Ibid.* at Recommendation B.

⁶⁹ Article 22(2) CRC

⁷⁰ European Union: Council of the European Union, Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, 18 February 2003, OJ L 50, 25; February 2003, pp. 1-10. Available at: <http://www.refworld.org/docid/3e5cf1c24.html>

⁷¹ Article 2(1)(i,ii,iii) defines ‘family members’ as:

- (i) the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens;
- (ii) the minor children of couples referred to in point (i) or of the applicant, on condition that they are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;
- (iii) the father, mother or guardian when the applicant or refugee is a minor and unmarried;

⁷² Article 8(3) of the Dublin III Regulation expands on this Dublin II provisions stating that “Where family members, siblings or relatives as referred to in paragraphs 1 and 2, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor”

reunification “first-degree relatives in the direct ascending line” or the “legal guardian or any other member of the family, where the refugee has no other relatives in direct ascending line or such relatives cannot be traced” can be granted legal residence in the Member State in which the unaccompanied minor resides.⁷³

However, it is inevitable that many UMAs cannot be reunified with their families, either because they cannot be found, or because it is not in their best interests. Article 22(2) CRC sets out that “In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment.”

The CRC fills many gaps that previously existed for UMAs in international human rights law. Article 22 CRC is the only article in a major international human rights treaty to grant special protection to asylum-seekers.⁷⁴ Article 22(1) sets out that UMAs specifically must benefit from specialized measures:

“States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.”⁷⁵

1.4 Conclusion

As the “natural and fundamental group unit of society”, the family is given primacy under international law. The Convention on the Rights of the Child “reaffirms the superiority of the

⁷³ 10(3) of the Family Reunification Directive

⁷⁴ Detrick, Sharon. *A commentary on the United Nations Convention on the Rights of the Child*. The Hague: M. Nijhoff Publishers, 1999. Print. Pp. 368

⁷⁵ Article 22(1) CRC

family environment, be it the ‘natural’ family environment or an alternative family placement (foster care, adoption) over other types of alternative care, subsumed under the term ‘placement in suitable institutions’”.⁷⁶

The right to family life for UMAs is made clear in international law. When a child is deprived of the family environment, there is a positive obligation to reunite the child with their family if it is possible and in their best interests. When family reunification is not possible, states must take measures to ensure “appropriate protection and humanitarian assistance” for UMAs that must be calibrated to the four main principles of the CRC. While the CRC does not define that family environment in detail, it does highlight the role of those responsible for the child to be responsible for the “upbringing and development” of the child with their best interests as the main concern (Article 7). As an imperative element of that responsibility, parents or legal guardians are primarily responsible for “securing the living conditions necessary for the child’s development” (Article 18). In addition, persons legally responsible for the child must provide “appropriate direction and guidance” to the child (Article 5). Given the right to a family environment, this indicates that the surrogate care provided to a UMA ought to follow a family-based model in order to ensure their well-being and development.

⁷⁶ Cantwell, *supra* at 19

Chapter 2 Tools for Reconstructing the Family Environment

This Chapter will build on the previous analysis by exploring the tools that Member States are expected to use in providing “appropriate protection and humanitarian assistance” to UMAs. Pinpointing features of the key actors and environments that serve to re-establish a sense of normality and family in the lives of UMAs will serve as a basis for the eventual examination of domestic law and practice regarding the care arrangements of the states that are put in focus for this thesis.

2.1 International Standards on Guardianship for UMAs

We have a duty to protect these children. The first step should not be to automatically decide on return, but rather to designate rapidly a guardian who would represent the interest of the child. This is the best protection against any abuse from traffickers, but also from possible negligence by authorities in the host country. A timely provision of proper guardianship is fundamental for the concrete application of the best interests of the child and it is central to establishing appropriate action for finding durable and suitable solutions for separated children.

- Thomas Hammarberg, Former Council of Europe Commissioner for Human Rights ⁷⁷

There is no universally accepted definition of a guardian in international law, as its “precise definition, function and manner of appointment varies from jurisdiction to jurisdiction.”⁷⁸

The CRC specifies that legal guardians are responsible for the care of the child (Article 18(1)) and that States have an obligation to provide support to guardians through the creation and maintenance of “institutions, facilities and services for the care of children” (Article 18(2)). Article

⁷⁷ Save the Children, Core Standards for guardians of separated children in Europe : Goals for guardians and authorities, 2011. Pp. 1. Available at: <http://www.refworld.org/docid/4ee998592.html>

⁷⁸ International Committee on the Red Cross, 2004: Interagency Guiding Principles on Unaccompanied and Separated Children, p. 47.

6(2) CRC obliges States Parties to “ensure to the maximum extent possible the survival and development of the child”. The comprehensive responsibility of the state to provide alternative care to children deprived of the family environment “indicates the State’s direct, active and absolute responsibility to furnish special protection and assistance to the child”.⁷⁹ Article 20(2) CRC, outlines the state’s obligation to, “in accordance with their national laws ensure alternative care for such a child.” Alternative care does not necessarily have to exist in a state institution or be administered by a state employee.⁸⁰ What is required though, is that the state takes the necessary courses of action to ensure that “institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision” (Article 3(3) CRC) This obligation is not simply meant to protect the child’s right to life, but to obligate the State to “create an environment conducive to [the] physical, mental, spiritual, moral, psychological and social development of the child.”⁸¹

The CRC Committee, in its General Comment No. 6, sets out that the provision of guardianship for UMAs is a necessary practical measure that must be taken to protect UMAs from exploitation and discrimination.⁸² The CRC Committee notes that “the appointment of a competent guardian as expeditiously as possible serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child.”⁸³ The CRC Committee also

⁷⁹ Cantwell, Nigel, and Anna Holzscheiter. *Article 20 children deprived of their family environment*. Leiden: MartinusNijhoff Publishers, 2008. Print. Pp. 50

⁸⁰ *Ibid.*, at 51

⁸¹ Corcoran, J. and Salche, B. *Training Manual for Guardians and Social Workers dealing with unaccompanied minor asylum-seekers*. International Organization for Migration. 2010. Pp. 14. Available at: http://www.iom.hu/PDF/Training%20Manual_final_high%20resolution.pdf

⁸² UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, para. 24. Available at: <http://www.refworld.org/docid/42dd174b4.html> [accessed 2 September 2013]

⁸³ *Ibid.*, at para. 8

recommends that guardianship for UMAs should continue from the moment the child is identified until the child has reached the age of majority or is no longer on the territory of the State.⁸⁴

Speaking to the precise function of the guardian, the CRC Committee's General Comment No. 6 sets out that the guardian is meant to secure the best interest of the child and ensure that their views and opinions are considered in all decisions made regarding their care arrangements.⁸⁵ Specifically, the guardian:

*...should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered by, inter alia, the guardian acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child.*⁸⁶

In addition, CRC Committee guidance states that appointed guardians should be informed of, and involved in, all actions taken concerning the child⁸⁷ and should be familiar with the child's particular background.⁸⁸

Regarding the individual or organization that represents the child in this capacity, the CRC Committee recommends that close scrutiny should be applied to guardianship appointments of a "non-family adult or caretaker"⁸⁹ that may accompany a UMA. Such individuals should only be given guardianship responsibilities when they are "able and willing to provide day-to-day care" and able to "adequately represent the child's best interests in all spheres and at all levels of the child's life."⁹⁰

⁸⁴ *Ibid.*, at para. 33

⁸⁵ *Ibid.*, at para. 37 and 40

⁸⁶ *Ibid.*, at para. 33

⁸⁷ *Ibid.*

⁸⁸ *Ibid.* at para. 69

⁸⁹ *Ibid.*, at 34

⁹⁰ *Ibid.*, at 34

The CRC Committee lays down that State's should provide a legal representative for UMAs in status determination issues and that the guardian should not be expected to fulfil that role.⁹¹ The UNHCR has also stated that the role of the guardian "should be independent and distinct from the legal adviser in order to avoid a conflict of interest."⁹²

Beyond urging that specialized training be provided to guardians⁹³ working with UMAs, and that guardians should be subject to periodic review,⁹⁴ the CRC Committee does not elaborate on the structural framework of guardianship mechanisms for UMAs, but notes that individuals and organizations fulfilling guardianship roles should not be involved "directly or indirectly" in conflict.⁹⁵ UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum mirror the comments of the CRC Committee and add that, "an independent and formally accredited organization be identified/established in each country, which will appoint a guardian or adviser as soon as the unaccompanied child is identified."⁹⁶

2.1.1 European Union Standards on Guardianship for UMAs

Aside from binding obligations stemming from international treaties, asylum in the EU is primarily regulated through the applicable EU directives and regulations. However, in certain cases, the European Convention on Human Rights, and the case law of the European Court of Human Rights, has been applied to issues related to asylum-seekers.

⁹¹ CRC Committee General Comment No. 6 *Supra* at para. 36

⁹² United Nations High Commissioner for Refugees. UNHCR Comments on the European Commission's amended recast proposal for a Directive of the European Parliament and the Council laying down standards for the reception of asylum-seekers. (COM (2011) 320 final, 1 June 2011). Pp. 17. Available at: <http://www.refworld.org/docid/500560852.html>

⁹³ *Ibid.* at para. 95

⁹⁴ *Ibid.* at para. 35

⁹⁵ *Ibid.*, at 55

⁹⁶ UN High Commissioner for Refugees, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, February 1997, pp. 7 available at: <http://www.refworld.org/docid/3ae6b3360.html> [accessed 2 September 2013]

Despite the lack of language referring to foreigners in the ECHR, the European Court of Human Rights (ECtHR) has developed considerable case law regarding issues of migration. Namely, the cases have related to Article 3 (Prohibition of Torture), Article 5 (Right to Liberty and Security), Article 8 (Right to Respect for Private and Family Life) and Article 13 (Right to an Effective Remedy). Several of such cases have revolved around the treatment of UMAs, especially as regards guardianship and accommodation and will be examined later in this chapter.

The most relevant and binding law regarding the treatment of UMAs is formulated in a series of ‘secondary law’ EU directives and regulations, which were adopted throughout the 2000s, then revised, and adopted in 2013 as part of the new Common European Asylum System package, which seeks to harmonize asylum policy in the EU and alleviate the situation of countries that receive disproportionate amounts of asylum claims. The package includes the revised Asylum Procedures Directive⁹⁷, the revised Reception Conditions Directive⁹⁸, the revised Qualification Directive⁹⁹, the revised Dublin Regulation¹⁰⁰ and the revised EURODAC Regulation¹⁰¹.

⁹⁷ European Union: Council of the European Union, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013, L 180/60, available at: <http://www.refworld.org/docid/51d29b224.html>

⁹⁸ European Union: Council of the European Union, Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 29 June 2013, L 180/96, available at: <http://www.refworld.org/docid/51d29db54.html>

⁹⁹ European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L 337; December 2011, pp 9-26, available at: <http://www.refworld.org/docid/4f197df02.html>

¹⁰⁰ European Union: Council of the European Union, Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 29 June 2013, L 180/31, available at: <http://www.refworld.org/docid/51d298f04.html>

¹⁰¹ European Union: Council of the European Union, *Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of*

With respect to guardianship for UMAs, Article 19 of the 2003 Reception Conditions Directive¹⁰² states:

"Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an 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."

Article 23(2) of the recast Reception Conditions Directive sets out that the best interests of the child are to be the primary considerations when implementing the minor-related provisions of the Directive. Unlike its predecessor, the revised Reception Conditions Directive stipulates that four main factors are to be assessed in determining the child's best interests. These four considerations, then, act as specific guidelines for those representing unaccompanied minors:

- a) family reunification possibilities;*
- b) the minor's well-being and social development, taking into account particular consideration of the minor's background;*
- c) safety and security consideration, in particular where there is a risk of the minor being a victim of human trafficking;*
- d) the views of the minor in accordance with his or her age and maturity.*¹⁰³

Article 24 of the recast Reception Conditions replaces Article 19 of the 2003 Directive and uses the word "representative"¹⁰⁴ instead of "guardian":

large-scale IT systems in the area of freedom, security and justice (recast), 29 June 2013, L 180/1

¹⁰²European Union: Council of the European Union, *Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States*, 6 February 2003, OJ L 31; 6 February 2003, pp18-25, available at: <http://www.refworld.org/docid/3ddcfda14.html> [accessed 2 September 2013]

¹⁰³ Article 24 of the recast Reception Conditions Directive

¹⁰⁴ Article 2(j) of the recast Reception Conditions Directive defines 'representative' as: "a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of representative in respect of the unaccompanied minor, in accordance with this Directive."

Article 19(2) of the 2003 Reception Conditions Directive states that "legal guardianship" or "representation by an organisation" must be provided to a UMA, and attributes the same role to each actor. The guardian

“Member States shall as soon as possible take measures to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of the representative. The representative shall perform his or her duties in accordance with the principle of the best interests of the child, as prescribed in Article 23(2) and shall have the necessary expertise to that end. In order to ensure the minor’s well-being and social development referred to in Article 23(2), the person acting as representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives.

Regular assessments shall be made by the appropriate authorities as regards the availability of the necessary means for representing the unaccompanied minor.”

The details contained in Article 24 of the recast Reception Conditions Directive then leave Member States with “no other option than to provide representation through a system of legal guardianship”.¹⁰⁵ What is more, the Article also helps to clarify the difference between lawyers and representatives of UMAs.¹⁰⁶

The recast Reception Conditions Directive also increases the safeguards for UMAs by providing that the UMA must be “informed immediately” that they have an appointed representative; that the representative must have the “necessary expertise” to perform their duties; that changes in representation should only occur when necessary; and that representatives with interests that may conflict with that of the UMAs should be disallowed from performing said role.

However, the above-mentioned directives do not explicitly elaborate on the precise responsibilities of the guardian. This vague language allows for Member States to broadly interpret

effectually represents the child. According to the definition of ‘representative’ in the recast Reception Conditions Directive, an organization must “designate a person responsible for carrying out the duties of representative”. The words “guardian” and “representative” can be considered to be synonymous in this context. For the sake of continuity, the word “guardian” will be used throughout this thesis when not directly referring to the relevant provision in the recast Reception Conditions Directive.

¹⁰⁵ ECRE. *Comments from the European Council on Refugees and Exiles on the Amended Commission Proposal to recast the Reception Conditions Directive* (COM(2011) 320 final). September 2011. Pp. 24

¹⁰⁶ *Ibid.* at 25

this obligation, and generally speaking, there is a “...pervasive failure to appoint guardians to act in *loco parentis*, which has the predictable result that children are left to navigate the complexities of a strange new society and often hostile legal system alone.”¹⁰⁷ The result is that:

*At this moment, an unaccompanied child coming to Europe will receive different representation in every Member State. One child will get a professional to aid him during his or her reception and asylum claim, another a volunteer. One child will have a guardian specialized in legal issues of unaccompanied minors, another a general guardian having a responsibility for local elderly as well. One guardian may have 60 children in his or her care, another has one or two.*¹⁰⁸

Given the primary importance of the guardian, poor representation in this regard may in fact motivate the child to continue to migrate across the EU to a country that has a more comprehensive model in place, thus adding to problems of trafficking, exploitation and the disappearance of UMAs from accommodation centers.¹⁰⁹ For this reason, among others, certain human rights organizations have developed standards derived from the comparative study of best practices on guardianship from European countries. Namely, the European Commission funded a Defence For Children-led project to draw up 10 core standards for guardians of separated children in Europe, which include that:

- *“The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.*
- *The guardian ensures the child’s protection in every decision which affects the child.*
- *The guardian protects the safety of the child.*
- *The guardian acts as an advocate for the rights of the child.*
- *The guardian is a bridge between and focal point for the child and other actors involved.*
- *The guardian ensures the timely identification and implementation of a durable solution.*
- *The guardian treats the child with respect and dignity.*
- *The guardian forms a relationship with the child built on mutual trust, openness and confidentiality.*
- *The guardian is accessible.*

¹⁰⁷ Bhabha and Finch, *supra* at 99

¹⁰⁸ European Network of Guardianship Institutions *supra* at 12

¹⁰⁹ *Ibid.* at 7. The European Network of Guardianship Institutions notes that each country having a different system “...creates competition between Member States. Favourite destination countries with young migrants change quickly when rules and regulations change”.

- *The guardian is equipped with relevant professional knowledge and competences.*"¹¹⁰

In addition, the Separated Children in Europe Programme (SCEP) Statement of Good Practice elaborates on EU legal standards, stating that the guardian should provide oversight during age assessment procedures;¹¹¹ should communicate with the children's friends and peers; should ensure the existence of suitable accommodation; and should ensure that the child is able to practice his or her religion.¹¹²

The standards laid out in the EU Directives, coupled with the guidance provided by Defence for Children and the SCEP illustrate that the guardian acts as a mechanism for monitoring State care and a conduit for communication with the relevant actors. In addition, the guardian can act as a role model and confidant to the UMA. The recast Reception Conditions Directive reinforces the role of the representative by specifying the components involved in the best interest determination process. Furthermore, it strengthens the ability of the representative, who should have the "necessary expertise" to fulfil their role, to form a better understanding of the child's situation by requiring that representation be changed only when necessary, e.g. when conflicting interests have been detected.

In the UMA context, the combination of the functions that the guardian is expected to serve is then equivalent to that of parents in providing "appropriate direction and guidance" (Article 5 CRC) in having the "responsibilities for the upbringing and development of the child" (Article

¹¹⁰ Save the Children, Core Standards for guardians of separated children in Europe : Goals for guardians and authorities, 2011, ISBN: 978-90-74270-28-1. Pp. 73. Available at: <http://www.refworld.org/docid/4ee998592.html>

¹¹¹ Separated Children in Europe Programme, *SCEP Statement of Good Practice*, March 2010, Fourth edition, March 2010, pp. 25 available at: <http://www.refworld.org/docid/415450694.html>

¹¹² *Ibid.*, at 22

18(1) CRC) and in securing “the conditions of living necessary for the child's development” (Article 27(2) CRC)¹¹³.

2.2 International Standards on Accommodation for UMAs

The provision of accommodation for UMAs is more than a roof overhead. Without appropriate living facilities the normalcy of the family environment cannot be restored. Just as in guardianship, the conditions of the various accommodation models greatly influence the wellbeing of the child.

Article 20(3) CRC provides a short-list of possible ‘alternative care’ housing options for children deprived of the family environment:

“Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.”

This language is soft at best. The use of “could” and “inter alia” indicates that the CRC is only suggesting options, and not requiring States to follow specific models. Article 20(2) gives further room for states to determine accommodation arrangements by setting out that States Parties are to ensure alternative care “in accordance with their domestic laws”.

The first three options listed in Article 20(3) CRC are family-based forms of care. The final option of placement “in suitable institutions” extends the possibilities of accommodating unaccompanied minors more broadly. At the time of the CRCs drafting “institution” was a term that “had the sole connotation...of undesirably large and impersonal establishments “.¹¹⁴ The

¹¹³Article 27(2) states that parents or other persons responsible must secure living conditions “within their abilities and financial capacities”. In this case, the guardian’s capabilities would be limited by State, or other sources of, funding.

¹¹⁴ Cantwell, *supra* at 53

austere nature of institutions is perhaps the reason that “suitable institutions” was listed last in Article 20(3) CRC and qualified with “if necessary”. Though “suitability” must comply with the obligations of the CRC:

“...the term ‘if necessary’ is in practice invariably interpreted and justified more from the standpoint of the system (‘nothing else is available’) than from the standpoint of the child (‘at this moment, this will best meet the child’s needs’). As a result, ‘if necessary’ is seen to qualify an intrinsically undesirable care option to be used only for want of better. This surely does not constitute a constructive way of approaching potential alternative care solutions for any child.”¹¹⁵

The CRC Committee states that institutional care should only be used as a last resort in relation to long-term care arrangements.¹¹⁶ The CRC Committee also states that when selecting accommodation arrangements for unaccompanied minors their particular vulnerabilities, including those related to their age and gender, should be taken in account.¹¹⁷ Specifically, the child’s ethnic, religious, cultural and linguistic background should influence where he or she will be placed in accommodation.¹¹⁸ This is a responsibility that should fall to, or at least be monitored by, the appointed guardian.

The CRC Committee specifies that siblings should be kept together; children with family members living in the country of arrival should be allowed to stay with them unless such an arrangement is not in their best interests; changes in residence should be limited; and that “irrespective of the care arrangements for unaccompanied children”¹¹⁹ a “qualified person” should be available for “regular supervision and assessment” of the living situation in order to ensure the child’s “physical and psychosocial health, protection against domestic violence or exploitation,

¹¹⁵ *Ibid.*, at 56

¹¹⁶ *Ibid.*, at 61

¹¹⁷ General Comment No. 6 *Supra* at para. 40

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.* at 40

and access to educational and vocational skills and opportunities.”¹²⁰

Beyond the international binding law and CRC Committee guidance, the UNHCR and other international human rights bodies have laid out recommendations for how accommodation arrangements should be structured for UMAs. Caritas Internationalis, an international confederation that provides social services for vulnerable groups worldwide, suggests that a family-modelled approach is the optimal arrangement when placing unaccompanied minors in accommodation:

*“Community-based care can and should be implemented for unaccompanied children in transit and destination States. This model can be successfully implemented if there is a focus on culturally appropriate care which is small scale and which allows children access to community resources. Ideally, States should consider accepted domestic child welfare practice for placement of children in the most family-like setting possible.”*¹²¹

Similarly, the Secretary-General of the UN General Assembly has called upon States to model care arrangements after the family structure, by urging that States opt for foster placement rather than institutional care; stating that an emphasis should be placed on providing UMAs in accommodation that provides “family-like emotional support”¹²² and recommending that:

*“In order to improve the quality of care, centres should be organized in family-like units where a care-giver or “house mother” is responsible for a small group of children of varied ages. Children need access to adequate adult supervision, role models and caring family life. Re-establishing as normal an environment as possible for the child is vital...”*¹²³

With a view to the fact that the “breakdown of social structures and services accompanying major crises means that communities and States themselves may not be in a position to provide the

¹²⁰ *Ibid.*

¹²¹ International Committee of the Red Cross, International Rescue Committee, Save the Children/UK, United Nations Children’s Fund, United Nations High Commissioner for Refugees, World Vision International

¹²² UN General Assembly, Assistance to unaccompanied refugee minors: Report of the Secretary-General, 16 October 1995, A/50/555. Para. 4. Available at: <http://www.refworld.org/docid/3b00f2158.html>

¹²³ *Ibid.*, at 37(f)

necessary protection and care for children without families”¹²⁴, the Inter-agency Working Group on Unaccompanied and Separated Children established the Inter-agency Guiding Principles on Unaccompanied and Separated Children¹²⁵. These principles focus on the importance of community-based care, which is “preferable to institutional care as it keeps the child within his or her community and provides continuity in socialization and development”.¹²⁶ According to the principles, institutions are encouraged to establish forms of community-based care by supporting “groups of children who have spontaneously come together to form household units”¹²⁷. In order to foster the independence of adolescents, the principles recommend that “small group homes” or “supervised living arrangements” be established when appropriate.¹²⁸

2.2.1 European Union Standards on Accommodation for UMAs

The recast Reception Conditions Directive goes further than its predecessor and adds, with specific reference to minors, that Member States “shall ensure a standard of living adequate for the minor’s physical, mental, spiritual, moral and social development.”¹²⁹

Regarding the obligation on Member States to provide for an adequate standard of living, the recast Reception Conditions Directive uses almost identical language as its 2003 predecessor in reference to the primary needs of those seeking international protection. Article 17(3) of the recast Reception Conditions Directive stipulates that when an applicant does not have sufficient means to maintain an adequate standard of living that is “adequate for their health and to enable their subsistence”, Member States are to provide “material reception conditions”, which are

¹²⁴ Inter-Agency, Inter-Agency Guiding Principles on Unaccompanied and Separated Children, January 2004, pp. 2. Available at: <http://www.refworld.org/docid/4113abc14.html>

¹²⁵ *Ibid.*

¹²⁶ *Ibid.* at 43

¹²⁷ *Ibid.* at 54

¹²⁸ *Ibid.*

¹²⁹ Article 23(1)

defined in as including “housing, food, clothing and a daily expense allowance”¹³⁰. Article 2(i) defines an “accommodation centre” as “any place used for collective housing of asylum seekers”.

The 2003 Reception Conditions Directive stipulates, and therecast Reception Conditions Directive retains, the importance of specially designed reception conditions¹³¹ for vulnerable persons, which includes UMAs.¹³² The recast Reception Conditions Directive elaborates upon the special needs of vulnerable persons, adding that minors should “have access to leisure activities, including play and recreational activities appropriate to their age within the premises of accommodation centres...and to open-air activities”.¹³³

The recast Reception Conditions Directive uses the same language as the 2003 Reception Conditions Directive when providing specific guidance on accommodation arrangements for UMAs, which must be engaged “from the moment they are admitted into the territory”¹³⁴; only adding that Member States must consider the best interests of the child, as set out in Article 23, when deciding on housing arrangements;¹³⁵ a task that can be fulfilled by the appointed guardian. Both directives set out that “persons working in accommodation centres shall be adequately trained”¹³⁶. In addition, the recast Reception Conditions Directive adds that professionals working with UMAs should receive training not only before undertaking their duties, but on a continuous basis.¹³⁷

¹³⁰ Article 2(g) of the recast Reception Conditions Directive

¹³¹ Preamble, clause 9 of the 2003 Reception Conditions Directive and Preamble, clause 14 of the recast Reception Conditions Directive.

¹³² Article 17 of the 2003 Reception Conditions Directive and Article 21 of the recast Reception Conditions Directive

¹³³ Article 23(3) of the recast Reception Conditions Directive

¹³⁴ Article 19(2) of the 2003 Reception Conditions Directive and Article 24(2) of the recast Reception Conditions Directive

¹³⁵ Preamble, clause 8 of the recast Reception Conditions Directive

¹³⁶ Article 14(5) of the 2003 Reception Conditions Directive and Article 18(7) of the recast Reception Conditions Directive.

¹³⁷ 25(4)

Article 24(2) of the recast Reception Conditions Directive and Article 19(2) of the 2003 Directive stipulate that UMAs be placed:

- a) with adult relatives;*
- b) with a foster family;*
- c) in accommodation centres with special provisions for minors;*
- d) or in other accommodation suitable for minors.*

The 2003 Reception Conditions Directive differs from CRC Committee guidance in that it allows for UMAs above the age of 16 to be placed with adults in accommodation centers.¹³⁸ However, the recast Reception Conditions Directive qualifies this statement by allowing this arrangement only if it is in the child's best interests.¹³⁹ Finally, both Directives state that "as far as possible, siblings shall be kept together..."¹⁴⁰

2.2.1.1 Trending Toward the Prohibition of Detention

Rationally, detention does not seem to fit in the category of "accommodation". However, placing UMAs in administrative detention or in detention-like facilities has been a common practice throughout the EU. States argue that, in order to protect children from disappearing or getting caught up with traffickers and other forms of exploitation, it is in the best interest of the children to restrict their freedom of movement. Consequently, the form of accommodation that many UMAs find themselves in is within detention, or detention-like, facilities. Therefore, the CRC Committee has laid out specific conditions that unaccompanied minors should enjoy when placed in detention, including that:

"Special arrangements must be made for living quarters that are suitable for children and that separate them from adults, unless it is considered in the child's best interests not to do so. Indeed, the underlying approach to such a program should be "care" and not

¹³⁸ Article 19(1) of the 2003 Reception Conditions Directive

¹³⁹ Article 24(2) of the recast Reception Conditions Directive

¹⁴⁰ Article 19(2) of the 2003 Reception Conditions Directive and Article 24(2) of the recast Reception Conditions Directive

“detention”. Facilities should not be located in isolated areas where culturally-appropriate community resources and access to legal aid are unavailable. Children should have the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel and their guardian. They should also be provided with the opportunity to receive all basic necessities as well as appropriate medical treatment and psychological counseling.”¹⁴¹

Restricting freedom of movement may be appropriate in certain cases, for instance, when a UMA may be especially vulnerable to trafficking. However, in most cases, UMAs in detention are there as a matter of procedure. In recent years the tides have begun to turn. In 2012, the CRC Committee declared, “States should expeditiously and completely cease the detention of children on the basis of their immigration status”.¹⁴²

Both the 2005 Asylum Procedures Directive and the recast 2013 Asylum Procedures Directive set out that a person should not be held in detention on the sole basis that they are applying for international protection.¹⁴³ The 2003 Reception Conditions Directive has little to say about the detention of asylum-seekers, other than that detention should be “specifically designed” to meet the special needs of the detainee.¹⁴⁴ However, the language of the recast Reception Conditions Directive seeks to further limit the placement of unaccompanied minors in detention or detention-like facilities. First of all, the recast Reception Conditions Directive uses identical language to the Asylum Procedures Directive and sets out that no one should be placed in detention “for the sole reason” that he or she is seeking international protection¹⁴⁵. Regarding minors, the recast Reception Conditions Directive states that Article 37 of the CRC, which sets down the rights of the child to be free from arbitrary detention, and to be treated with “humanity and respect” when

¹⁴¹ Para. 63 of General Comment No. 6

¹⁴² UN Committee on the Rights of the Child (CRC), *Committee on the Rights of the Child, Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration*, 28 September 2012. Para. 78. Available at: <http://www.refworld.org/docid/51efb6fa4.html>

¹⁴³ Article 18(1) of the 2005 Asylum Procedures Directive and Article 26(1) of the 2013 Asylum Procedures Directive.

¹⁴⁴ Preamble, clause 10 of the 2003 Reception Conditions Directive.

¹⁴⁵ Article 8(1) of the recast Reception Conditions Directive

in detention, should always be applied.

Therecast Reception Conditions Directive includes further language that makes it difficult for a Member State to legally justify keeping UMAs in detention, stating that only in “exceptional circumstances” may such an arrangement occur¹⁴⁶. If a UMA is detained they should be released “as soon as possible”¹⁴⁷ and at no point should UMAs be held in “prison accommodation”¹⁴⁸. Moreover, the revised recast Reception Conditions Directive adds that in situations where a Member State does place a UMA in detention the child must be separated from adults, provided with “personnel and facilities which take into account the needs of persons their age”, and be able to play and enjoy leisure activities.¹⁴⁹

2.3 ECtHR Cases

The ECtHR has judged upon two cases that involve issues of guardianship and accommodation for UMAs. In the 2006 case of *MubilanzilaMayeka and KanikiMitunga v. Belgium (Mubilanzilacase)*¹⁵⁰ the ECtHR found Belgium to be in violation of Articles 3, 5(4) and 8 ECHR¹⁵¹ for holding a five-year-old girl in administrative detention for two months alongside adults and without any special provisions for her care, including guardianship. In addressing this issue the Court stated, “A five-year-old child is quite clearly dependent on adults and has no ability to look after itself so that, when separated from its parents and left to its own devices, it will be totally disoriented.”¹⁵²

¹⁴⁶ Article 11(3) of the recast Reception Conditions Directive.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ Article 11(2) of the recast Reception Conditions Directive.

¹⁵⁰ *MubilanzilaMayeka and KanikiMitunga v. Belgium*, 13178/03, Council of Europe: European Court of Human Rights, 12 October 2006.

¹⁵¹ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html>

¹⁵² *Ibid.* at Para. 51.

In the 2011 case of *Rahimi v. Greece*¹⁵³ the ECtHR found that Greece was in violation of Articles 3, 5(1), 5(4) and 13 ECHR for detaining an unaccompanied minor alongside adults in conditions that amounted to inhuman and degrading treatment. Greece's Article 3 violation was also held in relation to the treatment of the minor after his release from detention as he was not provided with accommodation or transport to Athens, where he ended up sleeping on the streets until a local NGO found accommodation for him in an Athens hostel. The ECtHR paid particular attention to the fact that at no point was the child provided with a guardian that could have overseen his case and acted in his best interests in order to avoid the suffering experienced.¹⁵⁴

2.4 Conclusion

What follows from the analysis of International law is that the utility of the guardian is indispensable in the life of a UMA and is therefore a key actor involved in the state's obligations to ensure "appropriate assistance and humanitarian protection"¹⁵⁵. Moreover, as a party responsible for the child, the guardian has the "primary responsibility to secure...the conditions of living necessary for the child's development."¹⁵⁶ Thus, the guardian can serve as the primary facilitator in ensuring care arrangements that are reflective of the family environment. The CRC recognizes the legal guardian as having the same responsibilities as parents for "the upbringing and development of the child"¹⁵⁷. This provision also states that the "best interests of the child will be their basic concern".

With respect to unaccompanied minors, the CRC Committee has provided detailed

¹⁵³ *Rahimi v. Greece*, no. 8687/08, Council of Europe: European Court of Human Rights, 5 April 2011

¹⁵⁴ Council of Europe. Information Note on the Court's case-law. No. 140. April 2011. pp. 8. Available at: http://www.echr.coe.int/Documents/CLIN_2011_04_140_ENG_885334.pdf

¹⁵⁵ Article 22(2) CRC

¹⁵⁶ Article 5 CRC

¹⁵⁷ Article 18(1) CRC

guidance on the role of the guardian, calling guardianship a “necessary practical measure”, which should be taken as soon as the child is identified in order to ensure their best interests until they reach the age of majority. Namely, the CRC Committee states that this can be accomplished by the guardian acting as a link between all other actors in the child’s life. The CRC Committee also states that the guardianship role has boundaries. The guardian should not serve as a lawyer for the child and guardians must meet certain standards in order to fulfil their role.

In the EU, the 2003 Reception Conditions Directive and the recast Reception Conditions Directive both set out that Member States must ensure that a UMA is represented by a guardian,¹⁵⁸ who functions to compensate for the limited legal capacity of a UMA. This representation primarily includes that the guardian must look after the best interests of the child in order to ensure their well-being. The recast Reception Conditions Directive details the role of the representative by providing for four primary best interests factors that they must consider in their work. What is more, the recast Reception Conditions Directive provides that the representative must have the “necessary expertise” and sets out that representatives must not have conflicting interests in the fulfilments of their duties. The combination of these additions closely aligns the guardianship provision found in the recast Reception Conditions with that the guidance provided by the CRC Committee. However, unlike CRC Committee guidance, which calls for a guardian to be appointed upon identification of the child, the EU directives are looser, providing that the guardian should be appointed “as soon as possible”, which can have grave consequences.¹⁵⁹

Just as the guardian acts to safeguard the best interests of the child, so to do accommodation arrangements, which serve as an environment where material conditions exist and specialized

¹⁵⁸ ‘representative’ in the recast Reception Conditions Directive

¹⁵⁹ These consequences will be elaborated upon in Chapter Three.

individuals interact with the child to ensure their daily care. The CRC, the 2003 Reception Conditions Directive and the recast Reception Conditions Directive all list alternative care options hierarchically and place family-based options first. However, they remain vague in their description of the non-family-based options, going no further than calling for “suitability”.

The CRC Committee details that accommodation arrangements should cater to the child’s vulnerability as well as their social and cultural background. Moreover, the CRC Committee calls for a qualified individual, who is capable of overseeing the care of the child while in any form of accommodation, to be made available.

The recast Reception Conditions Directive adds new language requiring Member States to provide for a “standard of living adequate for the minor’s physical, mental, spiritual, moral and social development”¹⁶⁰ and that their best interest be considered when deciding upon housing arrangements¹⁶¹. The most significant changes made in the recast Reception Conditions Directive are present in the specific language which makes it very difficult for Member States to justify placing UMAs in detention. In addition, the recast Reception Conditions Directive allows that UMAs over the age of 16 may only be placed in accommodation with adults only if it is in their best interests, a crucial provision for the protection of UMAs in light of the fact that a large proportion of are 17 years old.

Non-binding guidance provided by the UNHCR, the CRC Committee, Defence for Children, the SCEP, Caritas International and the Inter-agency Working Group on Unaccompanied and Separated Children all specifically highlight the importance of placing UMAs in family-like care arrangements, even when in institutional care settings.

¹⁶⁰Article 23 of the recast Reception Conditions Directive

¹⁶¹Preamble, clause 8 of the recast Reception Conditions Directive

The interaction between guardianship and accommodation is made clear. Foremost, as a key actor appointed by the state to ensure the best interest of the child, the guardian must monitor the living conditions of a UMA and must ensure that they have been placed in an environment where a "standard of living adequate for the minor's physical, mental, spiritual, moral and social development"¹⁶² exists. The following chapter will serve to uncover the details of how the relationship between guardianship and accommodation manifests in practice.

¹⁶² Article 23 recast Reception Conditions Directive

Chapter 3: Constructing Care Systems

This chapter will set out the current situation of UMAs in Greece, Belgium and the Netherlands with respect to guardianship and accommodation. An examination of the relevant legislation and how it translates in practice will occur. With the psychological perspective, as detailed in Section 1.1, in mind, specific attention will be given to the structure of the institutional frameworks for guardianship and accommodation as well as their efficacy and the points in which they intersect.

3.1 Greece

Greece has three percent of the EUs landmass and only 2.25 per cent of its population. Yet, due to its geographical location on the periphery of the EU, 90 per cent of illegal immigrants use Greece as a point of entry into the EU.¹⁶³ The disproportionate amount of migrants that enter Greece has led to a collapse of its asylum system¹⁶⁴, and the UNHCR has described Greece as in the midst of a “humanitarian crisis which should not exist in the European Union”.¹⁶⁵

A major factor aggravating Greece’s ability to safeguard people seeking international protection within its borders is that Greece is in the throes of an economic crisis that has resulted in the highest unemployment rate in the EU. Coinciding with this downturn has been the rise of nationalist sentiments. Xenophobia is rampant and Human Rights Watch has described the

¹⁶³ *N. S. (C 411/10) v. Secretary of State for the Home Department and M. E. (C 493/10) and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, C-411/10 and C-493/10, European Union: Court of Justice of the European Union, 21 December 2011. Para. 87. Available at: <http://www.refworld.org/docid/4ef1ed702.html> [accessed 5 September 2013]

¹⁶⁴ European Federalist Party. Blogactiv.eu. *PRESS RELEASE – A new European asylum policy has been adopted!*. 17 June 2013. Available at: <http://europeanfederalistparty.blogactiv.eu/2013/06/17/press-release-per-centE2per-cent80per-cent93-a-new-european-asylum-policy-has-been-adopted/>

¹⁶⁵ United Nations High Commissioner for Refugees. *UNHCR says asylum situation in Greece is ‘a humanitarian crisis’*. 21 September 2010. Available at: <http://www.unhcr.org/4c98a0ac9.html>

growing amount of racist attacks as “epidemic”¹⁶⁶.

Another component that has lead to a disproportionate density of migrants and asylum-seekers in Greece is EU asylum law itself. EU Council Regulation No. 343, known as the Dublin II Regulation, provides the criteria that determine which EU Member States are responsible for examining an asylum-seekers claim. The Dublin II Regulation was, in part, created to avoid ‘asylum shopping’¹⁶⁷, and in doing so established that when “an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for asylum.”¹⁶⁸ The result has been that Greece serves as a kind of dead-zone where asylum-seekers are warehoused: waiting behind a line of over 40,000 pending asylum applications, time-consuming procedures and one of the lowest refugee recognition rates in the EU.¹⁶⁹

Until recently, asylum-seekers that entered the EU through Greece would be returned to Greece upon if they applied for asylum in a different Member State. In 2011 the Grand Chamber of the ECtHR, in the case of *M.S.S. v Belgium and Greece*, held that Belgium had violated Article 3 and 13 ECHR for expelling an asylum-seeker to Greece under the Dublin II Regulation. The Grand Chamber held by transferring the applicant to Greece, “Belgian authorities knowingly exposed him to conditions of detention and living conditions that amounted to degrading treatment.”¹⁷⁰

¹⁶⁶ Cosse, E. Human Rights Watch. *Greece’s Epidemic of Racist Attacks*. 26 January 2012. Available at: <http://www.hrw.org/fr/node/104821>

¹⁶⁷ View Definition in the European Migration Network Glossary at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/glossary/index_a_en.htm

¹⁶⁸ Article 10(1) of the Dublin II Regulation

¹⁶⁹ Eurostat news release. *Asylum decisions in the EU27 EU Member States granted protection to more than 100,000 asylum seekers in 2012*. 96/2013. June 2013. Available at: http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-18062013-AP/EN/3-18062013-AP-EN.PDF

¹⁷⁰ *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011. Para. 367. Available at: <http://www.refworld.org/docid/4d39bc7f2.html>

As a result of *M.S.S. v Belgium and Greece* most Member States suspended the transfer of asylum-seekers to Greece, which, although undoubtedly relieving some of Greece's burden, has done little to alleviate the struggle of asylum-seekers in Greece, which is revealed in the August 2013 case of *Horshill v Greece* where the ECtHR condemned Greece for once again violating Article 3 ECHR for submitting an asylum-seeker to degrading treatment during detention. Despite the recurring violations and disproportionate amount of irregular immigrants to Greece, the recast Dublin III Regulation does not significantly promote burden sharing among Member States and does not explicitly bar the collective suspension of transfers to a Member State with an inadequate asylum system.¹⁷¹

Given this scenario, unaccompanied minors struggle to get by when arriving on Greek soil. Furthermore, it sometimes occurs that minors who arrive in Greece with their family actually become unaccompanied post-migration, when their parents choose to seek asylum in a different country in hopes that they can bring their children along on the grounds of family reunification.

This section will outline the steps that Greek authorities have taken in an attempt to fall in line with EU standards as regards the guardianship and accommodation ofUMAs. Interviews conducted with stakeholders and statistics and experiences derived from the examination of UMAs case files and reception center visits will be used to reveal how developments in Greek law translate into practice.

3.1.1 The Greek Guardianship System

In 2012, Greece received only 75 asylum claims¹⁷² from unaccompanied minors, even

¹⁷¹ Article 33 of the Dublin III Regulation

¹⁷² EUROSTAT. Asylum applicants considered to be unaccompanied minors by citizenship, age and sex. Annual Data 2012. Available at:

http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyunaa&lang=en

though an estimated 5,000 enter the country each year.¹⁷³ According to Article 4(4) of Presidential Decree 114/2010 (P.D. 114)¹⁷⁴, an unaccompanied minor below the age of 14 cannot lodge an asylum claim on his or her own behalf. UMAs above the age of 14 must be found to be mature enough to understand the consequences of their actions in order to lodge a claim. P.D. 114 requires that the guardian must lodge a UMAs asylum claim if they are found to be immature in this regard. In practice though, the Greek immigration authorities rarely examine a UMAs asylum claim until they reach the age of 18.¹⁷⁵ In the meanwhile, UMAs, like adult asylum-seekers, acquire a “pink card” from the police that is renewable on a three to six month basis and acts as a temporary residence permit.

Presidential Decree 220/2007 (P.D. 220) transposes the 2003 EU Reception Conditions Directive. Regarding guardianship, Article 19(1) states:

As far as unaccompanied minors are concerned, the competent authorities shall take the appropriate measures to ensure the minor’s necessary representation. To this purpose, they shall inform the Public Prosecutor for Minors or, in the absence of this latter, the territorially competent First Instance Public Prosecutor, who shall act as a provisional guardian and shall take the necessary steps in view of the appointment of a guardian...

This article also extends guardianship to unaccompanied minors that have not applied for asylum. While such an arrangement may, textually, be in line with the Reception Conditions Directive, in practice it does not function, as the amount of Public Prosecutors for Minors to UMAs

¹⁷³ United States Department of State, 2012 Country Reports on Human Rights Practices - Greece, 19 April 2013. Section 2. Available at: <http://www.refworld.org/docid/517e6e32c.html>

¹⁷⁴ Presidential Decree 114/2010 on the establishment of a single procedure for granting the status of refugee or of beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (L 326/13.12.2005) [Greece], 16 November 2010, available at: <http://www.refworld.org/docid/4cfdadf2.html>

¹⁷⁵ Ziari, Olga. Lawyer at AITIMA NGO. Personal interview. Athens, Greece. 18 March 2013.

is massively disproportionate. All social workers and lawyers interviewed for this study stated that they saw very little participation by the Public Prosecutor in the lives of UMAs and that guardianship in Greece simply did not function.¹⁷⁶ Public Prosecutors themselves have expressed the impossibility of the guardianship task they are given, noting their lack of resources and limited jurisdiction in administrative issues.¹⁷⁷

While the Public Prosecutor for minors does regularly appoint the power-of-attorney to the lawyers of unaccompanied minors¹⁷⁸, they “rarely intervene in respect of issues linked to welfare or reception arrangements”.¹⁷⁹ Furthermore, the relevant Public Prosecutors scarcely appoint a short-term guardian that can engage in an initial best interests assessment or a long-term guardian that is capable of assisting with integration. In only one of the 160 case files examined did the Public Prosecutor take such measures. In that case the custody of two girls was given to their Uncle who did not have legal status in Greece and could have been deported or detained at any time. UMAs staying with compatriots or Greek citizens do so without any monitoring of their living conditions and without any authority meeting their caretakers. Even if Public Prosecutors did regularly see to it that unaccompanied minors were placed with functional guardians, there is no operative structure that trains and provides professional guardians, and no effective foster care model is in place.

Despite the fact that “Greek legislation does not provide for the possibility of reception

¹⁷⁶ One interviewee in particular stated that the ratio of unaccompanied minors to appointed Public Prosecutors was “one thousand to one”.

- M., Vasiliki. social worker at Apostoli reception center in Athens. Email interview. 12 Mar. 2013.

¹⁷⁷ UN High Commissioner for Refugees, *Unaccompanied Minors Seeking Asylum in Greece*, April 2008, p. 7. Available at: <http://www.refworld.org/docid/48abd557d.html>

¹⁷⁸ A review of the case files showed that if AITIMA request that one of their lawyers act as a legal representative, they were almost always appointed as such.

¹⁷⁹ UN High Commissioner for Refugees (UNHCR), UNHCR Position on the Return of Asylum-Seekers to Greece under the “Dublin Regulation”, 15 April 2008. Para. 21. Available at: <http://www.refworld.org/docid/4805bde42.html>

centers to perform the duties of a guardian vis-a-vis unaccompanied children”¹⁸⁰ in some cases the Directors of certain reception centers¹⁸¹ have been appointed legal guardians of unaccompanied minors that live on their premises. There are serious problems with such an arrangement. In 2012, the CRC Committee expressed its “...concern that the public prosecutors either are unable to assign the guardianship to a responsible person or agency, or transfer the guardianship to directors of the reception centres for minors, and that the duties of the temporary guardian are vague and unclear”.¹⁸² The Directors of reception centers are disinclined to take legal guardianship responsibilities because such an arrangement can put the care of large groups of children under the legal responsibility of one individual. Furthermore, because the arrangement is not provided for under Greek law, the legal obligations of guardians appointed in this manner are unknown. Finally, Directors have expressed that, through this arrangement, the state is effectively outsourcing its responsibilities with respect to unaccompanied minors.¹⁸³

Recently, Greece has slowly begun to implement its 2010 National Action Plan, which was created to combat the bottlenecking of its asylum system. In 2011, Law 3907¹⁸⁴ entered into force, which transposes the 2008 EU Returns Directive.¹⁸⁵ Law 3907 establishes a First Reception Service and a new independent Asylum Service. Both services aim to streamline asylum

¹⁸⁰ UNHCR, Unaccompanied Minors Asylum Seekers in Greece, *supra* at 52.

¹⁸¹ At the time of visiting the “Villa Azadi” reception center on Lesbos Island the Public Prosecutor had appointed the Director of “Villa Azadi” as guardian to all 55 unaccompanied minors who were residing there at the time.

¹⁸² UN Committee on the Rights of the Child (CRC), UN Committee on the Rights of the Child: Concluding Observations: Greece, 13 August 2012, CRC/C/GRC/CO/2-3. Para. 62. Available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_GRC_CO_2-3.pdf

¹⁸³ UNHCR, Unaccompanied Minors Asylum Seekers in Greece, *supra* at 56 and 57

¹⁸⁴ Law 3907 on the establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of Directive 2008/115/EC “on common standards and procedures in Member States for returning illegally staying third country nationals” and other provisions. [Greece], 26 January 2011

¹⁸⁵ European Union: Council of the European Union, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, 16 December 2008, 2008/115/EC, available at: <http://www.refworld.org/docid/496c641098.html>

procedures by employing specially trained civil servants. The First Reception Service is foreseen to establish First Reception Centers and to employ mobile units of reception teams that are capable of reacting to fluctuating migration patterns, informing migrants and asylum-seekers ¹⁸⁶ of their rights and referring them to services. The first Reception Centers established under Law 3907 are closed facilities in which an individual is to stay no more than 25 days.¹⁸⁷ The First Reception Centers are meant to quickly identify migrants so that authorities can conduct an individual assessment with an aim of placing them in appropriate facilities, initiating their removal, prolonging their detention if necessary or providing for their release based on their status. The First Reception Service also serves to identify and separate vulnerable groups like unaccompanied minors¹⁸⁸. Although the First Reception Centers are closed centers, unaccompanied minors are to be detained only as a last resort and only when "only when no other adequate and less coercive measure can be used for the same purpose ". Law 3907 sets out that, upon identification of an unaccompanied minor, they "shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age".¹⁸⁹

Law 3907 does not expand or alter the guardianship system in Greece. However, it does state that "before issuing a return decision" and unaccompanied minor is to be provided with assistance "by appropriate bodies...pursuant to Article 19 of P.D. 220/2207...who shall act accordingly".¹⁹⁰ Given the First Reception Services, projected, ability to provide initial accommodation for, and identify, unaccompanied minors, it could be argued that the inclusion of

¹⁸⁶ Article 32(1) of Law 3907

¹⁸⁷*Ibid.* at Article 11(5)

¹⁸⁸*Ibid.* at Article 11(2)

¹⁸⁹*Ibid.* at Article 32(4)

¹⁹⁰*Ibid.* at Article 25(1)

the above provision with strengthen the interaction between guardians and unaccompanied minors. However, as discussed in the previous section. Although Article 19 outlines a system of guardianship, it fails in practice.

Without a clear and functioning guardianship mechanism,UMAs in Greece do not exist legally and struggle to access asylum and care systems. This gap in the protection of UMAs appears from the very beginning of their experience in Greece, where they are often placed in administrative detention.

3.1.2 Accommodation Arrangements for UMAs

At a March 2013 conference concerning unaccompanied in Greece the Ombudsman for Children's Rights in Greece, Giorgos Moschos, stated that 397 immigrant children are known to be staying in accommodation centers in Greece while he estimated that thousands of others were either homeless or living in unknown situations.¹⁹¹ What he did not mention is the number of unaccompanied minors in administrative detention. At present, unaccompanied minors in Greece are often placed in detention, either because their age has been registered incorrectly or because National authorities refuse to recognize International and EU legal standards on detaining unaccompanied minors seeking international protection.

In 2012, the CPT Committee travelled to Greece and was appalled by the conditions that unaccompanied minors faced when in detention in Greece, calling their treatment by authorities and their lack of care “totally unacceptable”,¹⁹² not only under international standards, but

¹⁹¹ M. Korologou, No Account of Immigrant Kids in Greece. Greek Reporter, 23 March 2013. Available at: <http://greece.greekreporter.com/2013/03/23/no-account-of-immigrant-kids-in-greece/>

¹⁹² Council of Europe: Committee for the Prevention of Torture, Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or

according to Greek Legislation as well. Pursuant to Article 13(b) of P.D. 114 authorities “...shall avoid detaining minors” and “unaccompanied minors shall be detained for only the necessary time till their safe referral to adequate centres for accommodation of minors.”¹⁹³ However, police authorities continue to disregard their vulnerability and detain unaccompanied minors in deplorable conditions alongside adults.

Unaccompanied minors that avoid administrative detention, or that are eventually released, have a hard time finding a safe and secure environment in Greece. Most unaccompanied minors in Greece are largely left to their own devices, to navigate a new culture and country alone. Unaccompanied minors living outside of care networks are at a great risk of (re)victimization and exploitation. Still, due to the weak care infrastructure, unaccompanied minors continue to leave reception centers, or avoid them altogether, in search of better situations.

P.D. 220 initially put the responsibilities for implementing the full set of measures with respect to the reception and accommodation¹⁹⁴, of asylum applicants to the Ministry of Health and Social Solidarity. However, Greece’s asylum infrastructure is in a constant state of flux, and hands have been changed multiple times. In July 2012, Law 4052¹⁹⁵ transferred reception system responsibilities for asylum-seekers and unaccompanied minors to the Ministry of Labour, Social Security and Welfare. Moreover, operationalizing the new Asylum Service and First Reception Service, as stipulated in Law 3907, which will again change the responsible authority for asylum issues to the Ministry of Public Order and Citizen Protection.

In accordance with Article 19(2) P.D. 220, the Hellenic Police, who are responsible for

Degrading Treatment or Punishment (CPT) from 19 to 27 January 2011, 10 January 2012, CPT/Inf (2012) 1. Pp. 15. Available at: <http://www.refworld.org/docid/4f0ef1d62.html>

¹⁹³ According to Article 13(b) of Presidential Directive 114/2012

¹⁹⁴ Article 1(n) P.D. 220/2007

¹⁹⁵ Law 4052/2012, ‘Law regarding issues of Ministry of Health and Social Solidarity and the Ministry of Labour and Social Insurance for the implementation of L. 4046/2012’, [GG A 41/2012]

asylum claims, must ensure that UMAs are placed in appropriate accommodation with:

- a) adult relatives;*
- b) a foster family;*
- c) an accommodation center with special provisions for minors or in other suitable accommodation that protects the child from trafficking or exploitation.*

In the past five years the total capacity of reception centers for unaccompanied minors has increased to approximately 400¹⁹⁶. By all estimates this capacity represents only ~10 per cent of the unaccompanied minor population in Greece. On the whole, Greece employs an open reception center model for unaccompanied minors. Currently there are 10 official specialized reception centers for unaccompanied minors in Greece, which incorporate resources meeting the basic needs of the child (i.e. language classes, meals, and medical care), while also providing for freedom of movement. Other ad-hoc centers also exist informally. According to EKKA there is a lack of specialized infrastructure for unaccompanied minors under 12.¹⁹⁷ As a result these children are housed in hospitals or at an Orthodox Christian boarding house. Both of these institutions are clearly inappropriate forms of accommodation for vulnerable children. In the case of the boarding house, there is no acting interpreter and a social worker from a local NGO must take up this role when making special visits.¹⁹⁸

The 10 official reception centers operate under the administration of a variety of actors and are funded through a combination of European Refugee Fund and National budgets. Four of the centers are run by the State, through the National Foundation for Youth (EIN), an arm of the

¹⁹⁶Kalliopi, S. *Reception of asylum seekers and unaccompanied minors*. Seminar "Reception of asylum seekers in Norway and Greece: the role of local authorities". Thessaloniki, 23 May 2013. UNHCR. Pp. 6. Available at: http://webcache.googleusercontent.com/search?q=cache:n3G5_4E-tTAJ:www.udi.no/Global/UPLoAD/!%2520Tema/EOS/UNHCR%2520Reception%2520of%2520Asylum%2520Seekers,%2520en.ppt+&cd=2&hl=en&ct=clnk&gl=hu

¹⁹⁷ National Center for Social Welfare (EKKA). *Housing Management Service Requests: Asylum Seekers and Unaccompanied Minors*. Third Quarter Statistics 2012. Pp. 8. Obtained via email. Unofficial translation.

¹⁹⁸Manogloulou, Toula, social worker for Greek NGO AITIMA in Athens, personal communication, 2 March 2013

Ministry for Education; Theomitor, a state-run foundation; and the Centre for the Care of Children, an arm of the Ministry of Labour, Social Security & Welfare. The remaining six centers are run by a ARSIS, a Greek NGO that supports youth; the Hellenic Red Cross; and APOSTOLI, a philanthropic NGO of the Holy Archdiocese of Athens.

There is no uniformity in terms of the material conditions of the centers. For the purposes of this project the conditions of three reception centers were visited, including Villa Azadi in Agiassos on the island of Lesbos, and two centers in Athens, an EIN-run center and an Apostoli-run center.

Villa Azadi was established in 2009 after pressure came upon Greek authorities to shut down the Pagani Detention Center on Lesbos Island. The converted hospital, which sits isolated six kilometres above the mountain town of Agiassos, is permitted to house 55 unaccompanied minors at a time, but is often beyond capacity. Each year approximately 1,000 unaccompanied minors pass through Villa Azadi¹⁹⁹, where a limited staff attempts to orient the minors to life in the isolated center. At the time of the visit to Villa Azadi there was a camp coordinator, a social worker, one nurse, one cook, one lawyer, one Greek language teacher and two security staff. Most of the staff had not been paid in many months and the psychologist had to leave the center due to lack of pay. The unaccompanied minors had decorated their own “mosque” in one of the extra rooms, were fed three meals a day and could play in a soccer field outside. Still, it is difficult for an unaccompanied minor to have opportunities in the isolated confines of Villa Azadi and the center runs on a month by month basis, in constant jeopardy of being shut down due to funding issues.

¹⁹⁹Trubeta, S. *Reception Centres For Unaccompanied Minor Refugees: “Dead Zones”, “Stopovers” And “Bridges”*. COST Action IS0803 Working Paper. University of the Aegean. 2010. Pp. 9. Available at: http://www.eastbordnet.org/working_papers/open/documents/Trubeta_Reception_Centres_Unaccompanied_Minor_Refugees_100409.pdf

The EIN-run center is a former dormitory on the outskirts of Athens that houses both unaccompanied minors and mothers with children. The capacity of the center is 45 persons. Because it is funded under a program that is meant for adult asylum-seekers there are few provisions for unaccompanied minors. The staff consists of a director, two social workers, a cook, a supervisor and a Greek teacher. There is no official translator and on-site medical care is only available for babies. An unaccompanied minor that needs medical care must travel by public transport for long distances in order to seek medical care. The program that is in place does not provide for the funding of a psychologist.

The Apostoli-run center houses a maximum of 20 unaccompanied minors. Since May 2011 the center has housed 72 unaccompanied minors. There are nine staff members, including: a social worker, a psychologist, an occupational therapist, a Greek language teacher, threemembers of security staff, one volunteer interpreter, one janitor and one administrative worker. This center has the highest ratio of staff to unaccompanied minors and medical care is provided by either visiting doctors, Apostoli's social clinic in Athens or from other hospitals. Staff members are able to arrange group fieldtrips to museums, sporting events and other destinations around Athens. Language lessons are available in Greek and English as are lesson for musical instruments. The center also makes efforts to facilitate labour integration for unaccompanied minors that turn 18 while living at the center.

3.1.3 Obstacles to the Effective Interaction of Guardianship and Accommodation

Without a functioning guardianship system in Greece, there can be no interaction between accommodation and guardianship. The following sections highlight where the points of intersection are missed, and the resulting consequences.

3.1.3.1 Patchwork Guardianship: The Role of Social Workers and NGOs

"I believe that the accommodation system for unaccompanied minors suffers from the lack of basic things, such as the lack of guardianship [at] the shelters. The guardianship of minors by prosecutors is a thousand to one. Social services and social workers have a full picture of [unaccompanied minor's] needs and immediate access".²⁰⁰

- M. Vasiliki, social worker at the Apostoli Reception Center

When asked who children were likely to identify as their guardian, all social workers at reception centers responded that they were usually viewed as a guardian as they were responsible for the center. At a visit to Villa Azadi, a reception center on Lesbos, a minor referred to the social worker there as his "Villa Azadi Mother". Another social worker elaborated on her informal guardianship role, stating that she "used disciplinary measures when necessary, helped set goals and incentives, and provided rewards and encouragement".²⁰¹ Social workers at reception centers in Greece fulfil guardian-like duties in many ways. Specifically by, when possible: placing unaccompanied minors in educational institutes; handling social welfare issues; connecting them with legal services in order to know their rights; helping them have access to the health care and; placing them in other programs such as sporting or leisure activities.

The role of social workers at reception centers is crucial in providing daily care. However, these social workers are not appointed with a legal guardianship role. While a social worker may serve as a key resource, the capacity of one or two social workers at a reception center to fulfill such duties is limited, and can rarely stretch beyond the walls of the reception center.

Outside of reception centers, lawyers and social workers also interact with unaccompanied minors in order to determine what actions can be taken in their best interests. One social worker at an Athens-based NGO has dealt with more than 100 unaccompanied minors that are living outside

²⁰⁰ M., Vasiliki, social worker at Apostoli reception center in Athens, personal communication, 12 March 2013

²⁰¹ *Ibid.*

of state care in the past two years. She described her role in connecting them with services and resources:

*“They come here and I ask them how they are doing. If they have some medical problems I send them to the hospital. If they want to be put in a reception center I help them apply. If they want a tax number so they can work I help them. Sometimes we give them clothes, blankets or toys that we have collected.”*²⁰²

The result of Greece’s normatively passable, but functionally inadequate, guardianship system is that an unaccompanied minor’s well-being largely depends on whether or not they have a network of compatriots available to them and whether or not they are fortunate enough to fall into the right hands, i.e. those of sympathetic individuals from NGOs or private circles. This plurality of actors forms a kind of informal patchwork guardian. Puzzling together the role of the guardian in this manner is insufficient. While the care of unaccompanied minors is a dynamic process involving many actors, the guardian is to act as a key interlocutor between them; bringing cohesion and oversight to the care structure.

According to recent statistics provided by EKKA, the Greek National Center for Social Welfare, 322 unaccompanied minors were placed in Greece’s 10 official accommodation centers from April to September 2012.²⁰³ Given that the known capacity of these 10 centers is less than 400, it is clear that unaccompanied minors at these reception centers abscond frequently.

Also according to the data provided by EKKA, approximately 70 per cent of unaccompanied minors that applied for accommodation were placed in centers within a short time period²⁰⁴. EKKA explains that the 30 per cent unaccounted for were not placed for “various

²⁰² Manologlou, Toulas, social worker for Greek NGO AITIMA in Athens, personal communication, 2 March 2013

²⁰³ National Center for Social Welfare (EKKA). *Housing Management Service Requests: Asylum Seekers and Unaccompanied Minors. Second and Third Quarter Statistics 2012*. Obtained via email Pp. 12. Unofficial Translation.

²⁰⁴ *Ibid.*

reasons”, which likely includes that the unaccompanied minor disappeared, no longer wanted accommodation or had their reservation cancelled because they had not undergone medical testing on time.²⁰⁵

Data reviewed from the NGO case files showed that 47 percent of unaccompanied minors that were placed in accommodation left after a short period of time, in several cases on the first day. Twenty five per cent reported leaving because they did not like the conditions of the center. All social workers interviewed reported that unaccompanied minors rarely give warning before leaving the center because they intend to flee to other countries. Social workers explained many unaccompanied minors would often run away from the center, only to call months later, lost in other countries, without food or money and sometimes with injuries that they suffered when leaving the country.²⁰⁶

A social worker at an EIN-run reception center said that most unaccompanied minors left the center “right away” and, when asked how many abscond, the Camp Coordinator at Villa Azadi replied, “all of them”. At the EIN-run center unaccompanied minors are housed alongside mothers with children, which is not considered good practice and is not in line with the relevant EU directives, which call for unaccompanied minors to be separated from adults. The resulting dynamic is not that the mothers with children play a parental role. Rather, the unaccompanied minors at the center are often mistreated by the other adults living there and have cited this as the reason that they run away.²⁰⁷ The same social worker told the story of a female unaccompanied

²⁰⁵ According to procedure an unaccompanied minor must first undergo medical testing for HIV, tuberculosis, etc. in order to be placed in a reception center. A review of the case files showed that many unaccompanied minor do not complete these procedures, largely because they must find the hospitals that do the testing by themselves without any assistance or interpretation provided.

²⁰⁶ Maliotaki, Katerina, Camp Coordinator at VillaAzadi reception center in Agiassos, personal communication, 8 April 2011

²⁰⁷ Lafka, Maria, social worker at Athens reception center run by EIN, personal communication, 18 March 2013

minor that spent years in Greece trying to escape:

*There is a girl from the Ivory Coast that comes [to the reception center] and then she tries to go to another country. The police catch her and put her in detention and then she comes back. She has done this three times. One time she was in detention for a year.*²⁰⁸

The appointment of a guardian could serve to reduce the prevalence of run-aways by acting as a complaint mechanism for the minor. The guardian, as a trusted individual, could speak to social workers and camp directors on behalf of the child to ensure adequate measures were taken in relation to the situation of each child. The guardian could also communicate inadequacies in reception conditions to Government actors and other stakeholders that have the capacity to improve conditions. Furthermore, because the unaccompanied minors that abscond rarely inform social workers of their decision, a guardian that has worked closely with the child throughout their stay in Greece could serve to stay in contact with the child in order to maintain information on their whereabouts and find accommodation for them elsewhere.

3.1.3.2 On the Fringes

Data extracted from the files showed that **22**per cent of unaccompanied minors reported to have experienced homelessness while in Greece. Periods of homelessness were seen to have lasted for more than a year. Homeless unaccompanied minors are disconnected from care networks and are left largely on their own. An examination of the files showed that 20 per cent of unaccompanied minors reported being victims of violent hate crimes. None of the unaccompanied minors reported the crime to the authorities, likely because they feared that they would face detention or deportation rather than assistance. Most of those that reported being assaulted had already been in contact with immigration authorities and possessed deportation papers. Had they been appointed a guardian

²⁰⁸ *Ibid.*

upon identification, their homelessness, and the assaults that resulted, may have been avoided. At the very least, the unaccompanied minors could have had an authority to report their victimization to and to help them get assistance. In one case a UMA was attacked after being placed in a reception center and an Athens-based NGO was able to refer him to a support network for victims of such attacks. While it is undoubtedly good for an NGO to be able to provide this assistance, not all unaccompanied minors are aware of the capacity of NGOs to assist them. A guardian should be the gateway to those networks.

Homeless unaccompanied minors are also susceptible to arbitrary detention as a result of ethnic profiling and “stop and search” policies. In one case found within the examined case files, a homeless 16-year-old boy was randomly stopped on the street in Athens and placed in detention, leaving his 5-year-old brother and 6-year-old sister to live homeless in the park with compatriots. In this case he could have contacted his guardian who could have intervened on the boys behalf to get him released from detention; instead, he remained detained for more than a month. At the very least the guardian could have acted to ensure the care of his younger siblings.

3.1.3.3 No Way Out

An assessment of the files showed that 17 per cent of UMAs reported being placed in detention. The length of these stays ranged from two weeks to six months. Among those reporting detention were persons as young as 13 years old as well as a 14-year-old boy that was registered as being 30. Guardians could play a key role in monitoring age assessment procedures by advocating for the child; assisting them in bolstering their age claim; and keeping dubious authorities in check. Ensuring such an arrangement would allow the appointed guardian to act as a megaphone for the voice of the child stuck in detention.

In many of the reviewed cases a friend or compatriot of the unaccompanied minor came into the offices of an AITIMA to report that the minor was in detention and to request assistance in having him or her released. Without such notifications there is rarely a means through which an unaccompanied minor can come into contact with an individual that can act in their best interests.

3.1.4 Conclusion

Under Greek legislation unaccompanied minors, whether asylum-seeking or not, are to be appointed a guardian to ensure their best interests and are to be placed in accommodation. However, in practice the system does not function. All social workers at reception centers stated that the unaccompanied minors regarded them as a guardian-like figure, but those same social workers expressed their doubt about their effectiveness with respect to fulfilling the broad tasks of a formally appointed guardian. As the interviews, details from unaccompanied minors case files and EKKA statistics show, unaccompanied minors almost universally abscond from reception centers, yet thousands remain in Greek territory. Even the social worker at the Apostoli-run reception center, which had the smallest group of UMAs and the best resources and programs in place, stated that “the average stay of minors in our shelter is 8 months”.²⁰⁹ The lack of a functioning guardianship model in Greece exposes unaccompanied minors to a multitude of dangers that could be avoided or lessened if a guardian were available to the minor.

3.2 Belgium

In the last decade Belgium has become a major destination country for UMAs. In 2003,

²⁰⁹ One social worker highlighted the fact the these unaccompanied minors sometimes leave due to family reunification procedures, stating: “There are also the children that will go to another European country (family reunification) so they expect the legal process from three months to 1 year.”

-M., Vasiliki. social worker at Apostoli reception center in Athens. Email interview. 12 Mar. 2013.

only 419²¹⁰ unaccompanied minors lodged asylum claims in Belgium. By 2011 that number had reached 2,040, or 17 per cent of all UMA claims in the EU.²¹¹ In 2012, Belgium experienced a slight drop in UMA claims, which totalled 1,530, or 12 per cent of UMA claims in the EU. Like the rest of the EU, most UMAs in Belgium are male and 16 years or older.²¹²

As the numbers of UMAs have grown, Belgium has made significant changes to its care arrangement schemes as regards both guardianship and accommodation. In 2002, the CRC Committee, in its Concluding Observations on Belgium, recommended that Belgium approve the draft of Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002 on guardianship of foreign unaccompanied minors (the Guardianship Act):²¹³

*“...in order to ensure the appointment of a guardian for an unaccompanied minor from the beginning of the asylum process and thereafter as long as necessary, and make sure that this service is fully independent, allowing it to take any action it considers to be in the best interests of this minor”.*²¹⁴

But, it was not until 1 May 2004, in the midst of the *Mubilanzila* case, and under pressure from the ECtHR, that Belgium created a comprehensive guardianship system through the introduction of the Guardianship Act. In addition, the Law of 12 January 2007 regarding the reception of asylum seekers and other categories of aliens (Reception Law)²¹⁵ greatly limited the possibility of detention of unaccompanied and called for the creation of a specialized model for

²¹⁰ UNHCR. *Trends in Unaccompanied and Separated Children Seeking Asylum in Industrialized Countries, 2001-2003* (Geneva: July 2004), pp. 6. Available at: <http://www.unhcr.org/40f646444.pdf> [accessed 24 May 2013].

²¹¹ EUROSTAT. Asylum applicants considered to be unaccompanied minors by citizenship, age and sex. Annual Data 2012. Available at:

http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyunaa&lang=en

²¹² *Ibid.*

²¹³ Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002

²¹⁴ UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention : Convention on the Rights of the Child : Concluding Observations of the Committee on the Rights of the Child*, Belgium, U.N. Doc. CRC/C/15/Add.178 (2002). para. 28(c).

²¹⁵ Law of 12 January 2007 regarding the reception of asylum seekers and other categories of aliens. Original Dutch title: “Loi de 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers” Available at: <http://www.ecoi.net/belgium/nationallaw>

their reception. Despite these changes in law, Belgium has faced many challenges with respect to accommodation for unaccompanied minors, which has also influenced the efficacy of its guardianship system.

3.2.1 The Belgian Guardianship System

The Guardianship Act called for the establishment of a Guardianship Service under the auspices of the Ministry of Justice²¹⁶. In order to insulate unaccompanied minors from the trappings (i.e. detention, rapid deportation, etc.) that often exist in asylum channels, policy-makers chose to create the Guardianship Service within the Ministry of Justice, in order for the Guardianship Service to “have a more independent position vis-à-vis authorities with jurisdiction on migration and asylum affairs”.²¹⁷

Article 5 of the Guardianship Act defines an unaccompanied minor as a “national of a non-member country of the European Economic Area”²¹⁸ that is under the age of 18 and “not accompanied by a person exercising parental authority or guardianship”²¹⁹. Also according to Article 5, an unaccompanied minor is to be provided guardianship whether seeking asylum or not.²²⁰

Article 3 para. 2 of the Guardianship Act sets out that the Guardianship Service “shall coordinate and supervise the practical organization of the work of the guardians”²²¹ and provides that its primary tasks are to:

²¹⁶ Article 3(1) of the Guardianship Act

²¹⁷ European Migration Network. Belgian Contact Point. *Unaccompanied Minors in Belgium: Reception, Return and Integration Arrangements*. July 2009. pp. 19. Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/02a_belgium_national_report_on_unaccompanied_minors_final_version_11dec09_en.pdf

²¹⁸ Article 5 of the Guardianship Act

²¹⁹ *Ibid.*

²²⁰ *Ibid.*

²²¹ Article 3 para. 2 of the Guardianship Act

- appoint a guardian for unaccompanied minors;
- identify unaccompanied minors and oversee age assessment procedures;
- co-ordinate with the Belgian authorities responsible for asylum, reception and accommodation, and authorities in the country of origin;
- ensure that the relevant authorities seek a durable solution in the child's best interest as soon as possible;
- certify and select guardians, withdrawing their certification when necessary;
- keep account of all certified guardians, recording the amount of unaccompanied minors appointed to each guardian;
- ensure that appointed guardians receive appropriate training.²²²

The Guardianship Service is reachable around the clock. The Royal Decree of 22 December 2003, which implements the Guardianship Act, stipulates that “to provide permanent assistance, the guardianship department shall set up a 24-hour emergency phone line for guardians, the relevant authorities and any other interested person”.²²³ The Guardianship Act sets out that “any authority” that is aware of an unaccompanied minor within the territory of Belgium must immediately inform the Guardianship Service and provide them with all information they have in relation to the child²²⁴. The Guardianship Service immediately becomes responsible for such a person and, when the person in question is identified as an unaccompanied minor, the Guardianship Service immediately arranges for their initial accommodation appointment to a guardian.²²⁵ Upon appointment of the guardian all relevant authorities are to be notified and the unaccompanied minor “...shall receive details of the guardian's identity without delay, along with information on the guardianship arrangement”.²²⁶

²²² *Ibid.*, at Article 3 para. 2(1-7)

²²³ Article 5 of the Royal Decree of 22 December 2003. Taken from para. 16 of: *Defence for Children International (DCI) v. Belgium* - decision on the merits, Complaint No. 69/2011, Council of Europe: European Committee of Social Rights, 23 October 2012. Available at: <http://www.refworld.org/docid/514adf402.html>

²²⁴ Article 6 para. 1 of the Guardianship Act

²²⁵ *Ibid.* at Article 6 para. 2(3)

²²⁶ *Ibid.* at Article 8 para. 2

The “Service Droit des Jeunes” (SDJ) is a Belgian organization, which specifically works on issues related to unaccompanied minors.²²⁷ SDJ provides unaccompanied minors with an informational guide that provides details on guardianship arrangements and other issues they will face while in Belgium. With respect to guardianship the guide states that:

"Being an adult, your guardian is responsible for you and can take decisions with you about:

- your education,*
- your accommodation,*
- your leisure activities,*
- your choice of a lawyer etc.*

*Your guardian will help you through the administrative procedures, must ensure you are provided with medical care, and may also help you in contacting your family. Your guardian will help you plan your future...It is with your guardian that you can discuss the problems you encounter living in Belgium: problems at school, unsuitable accommodation, changing lawyer."*²²⁸

The guardian's responsibilities and tasks are outlined in the Guardianship Act and their key functions²²⁹ are to:

- "To help with the asylum application;"
 - "To appoint a lawyer;"
 - "To act as a legal representative in all proceedings – including to appeal negative decisions;"
 - "To be physically present at every hearing/interview;"
 - "To find accommodation for the child where the child is safe and feels well;"
 - "To look after the child's social wellbeing with regard to education, and mental and physical health."
- The guardian's relationship with the child's social worker will depend on the type of accommodation that the child is living in, but generally if the child is in accommodation with a social worker it will be the social worker that provides the day to day support such as taking the child to school, while the guardian will take legal decisions. If the child is living alone, the guardian will perform more of the other roles as well;"
- "To respect the religion, politics and psychology of the child;"

²²⁷ SDJ provides counselling service to unaccompanied minors and acts to protect and promote their rights. See: [Partner 2 - Service Droit des Jeunes - SDJ \(Belgium\). Promoting unaccompanied children's access to fundamental rights in the European Union. Available at: http://www.pucafreu.org/index.php/institutions-and-staff/partners/92-partner-2-service-droit-des-jeunes-sdj-belgium.](http://www.pucafreu.org/index.php/institutions-and-staff/partners/92-partner-2-service-droit-des-jeunes-sdj-belgium)

²²⁸ Service Droit des Jeunes. Available at: <http://www.sdj.be/admin/docmena/A5ANGL40pages.pdf>

²²⁹ Full table found in, European Network of Guardianship Institutions, *supra* at 13

- “To assist in family tracing... It is up to the guardian to reach a decision on whether it is in the child’s best interests to make contact with the family in the first place, and the immigration authorities ought to take the guardian’s recommendations into consideration;”
- “To seek a durable solution for the child. Guardians make a recommendation about this based on the child’s best interests, and the immigration authorities make the final decision;”
- “To explain the decisions to the child and ensure the child fully understands all processes;”
- “To manage the child’s finances;”
- “To help the child to access social benefits;”
- “To provide reports on the child; after the first 15 days and thereafter every 6 months, which are sent to the Guardianship Services”

The Guardianship Service registers an average of 1,800 unaccompanied minors each year²³⁰ and oversees the recruiting, training, monitoring, certification and selection of approximately 200²³¹ active guardians to work with them. There are two guardianship systems: the professionalized system and the volunteer system. Guardians working within the professionalized system are referred to as “employee-guardians” and are employees of NGOs that work in either social or legal spheres, e.g. Caritas International²³² or the Belgian Red Cross.²³³ Full-time employee-guardians typically have an education in social work and usually act as guardians for 25 children.²³⁴

The vast majority of guardians can be found in the volunteer system²³⁵, where two types of guardians operate. The first is the independent guardian, who is not employed by an institution

²³⁰ Service Droit de Jeunes & Fournier, K. (2011). *Closing a protection gap 'you need to earn the title of guardian'*, National report. Belgium. Service droits des jeunes. Pp. 15. Available at: <http://www.defenceforchildren.nl/images/20/1267.pdf>

²³¹ *Ibid.* at 15

²³² In 2012 Caritas employed 5 employee-guardians that worked with approximately 100 unaccompanied minors. See:

Caritas Internationalis, Caritas International Belgium and the US Conference of Catholic Bishops Migration and Refugee Services contribution to the Day of General Discussion on “The Rights of All Children in the Context of International Migration” of the United Nations Committee on the Rights of the Child.

Unaccompanied Minor Migrants Two Case Studies/Best Practices. September 2012. Pp. 2. Available at:

<http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/SubmissionsDGDMigration/Caritas.pdf>

²³³ Service Droit de Jeunes & Fournier, *supra* at 16

²³⁴ *Ibid.* at 16

²³⁵ European Network of Guardianship Institutions *supra* at 12

but acts as a guardian in the capacity of a self-employed independent professional.²³⁶ The independent guardian can take as many as 40 cases simultaneously, but normally takes far less.²³⁷ Volunteer guardians are private persons that choose to act as guardians. Volunteer guardians are different than independent guardians in that they do not take on more than two cases, as case amounts exceeding two would no longer be considered volunteer work.²³⁸

There is no prerequisite educational training needed for prospective guardians.²³⁹ In order to become a certified guardian an individual must take part in five days of training provided by the Guardianship Service. This training entails education on the “law concerning foreigners, on the laws on youth protection, on the legislation concerning the management of assets, with regards to elements of psychology and pedagogy, including elements of how to deal with a multicultural work environment.”²⁴⁰ After receiving certification guardians receive a manual to guide their work and must take part in continuing training at least once annually.²⁴¹

Article 11(2) of the Guardianship Act calls for the guardian to have “regular contact with the minor” in order to “develop a relationship of trust”.²⁴² However, given the ration of guardians to UMAs in Belgium, guardians only meet with children under their care twice a month on average.²⁴³

Guardianship is terminated for an unaccompanied minor when they reach the age of 18 or in case of death, adoption, marriage, emancipation, return to home country, disappearance of more

²³⁶ Service Droit de Jeunes & Fournier, *supra* at 16

²³⁷ *Ibid.*

²³⁸ *Ibid.* at 17

²³⁹ *Ibid.* at 18

²⁴⁰ *Ibid.* at 19

²⁴¹ *Ibid.*

²⁴² Article 11(2) of the Guardianship Act

²⁴³ Service Droit de Jeunes & Fournier, *supra* at 40

than four months, acquisition of nationality in Belgium or any other country in the European Economic Area, or when a parental authority becomes responsible for the child.²⁴⁴

3.2.2 Accommodation Arrangements for UMAs

Unaccompanied minors cannot be placed in detention centers in Belgium, except when the age of the individual is in question. In such instances the individual may be detained for up to three days to undergo age assessment procedures, which are supervised by the Guardianship Service. The three day time period is renewable once in exceptional circumstances.²⁴⁵

One of the first actions taken by the Guardianship Service is to contact the Federal Agency for the Reception of Asylum Seekers (FEDASIL), which is charged with organizing the placement UMAs in reception centers and providing for the material assistance of those centers. Article 2(6) of the Reception Law stipulates that material assistance consists of “accommodation, meals, clothing, medical, social and psychological support and payment of daily allowances”, and access to legal assistance²⁴⁶. This initial placement is the first of three reception phases that a UMA will experience in Belgium. Each phase is meant to act as a step toward a suitable accommodation arrangement based on each individual child’s needs.

The first phase is placement in an Observation and Orientation Center (OOC). Unaccompanied minors are to be placed in an OOC within 24 hours of arriving in the country, subject to any necessary age assessment procedure.²⁴⁷ There are currently 3 OOCs in Belgium with

²⁴⁴ Service Droit de Jeunes & Fournier, *supra* at 45. Article 23 and 24 of the Guardianship Act.

²⁴⁵ Article 41(2) of the Reception Law

²⁴⁶ Article 2(6) of the Reception Law

²⁴⁷ Article 41(3) of the Reception Law

115 places for unaccompanied minors²⁴⁸ and all are open centers that allow for freedom of movement. OOCs are to serve as short-term facilities and an unaccompanied minor is not to remain in such facilities for more than 15 days, with the possibility of a five day extension in exceptional circumstances²⁴⁹. All unaccompanied minors, whether asylum-seeking or not, can stay in OOCs, which are meant to “... allow the observation of the unaccompanied minor, in order to establish first its medical, psychological and social profile and detect any situation of vulnerability for its orientation towards an adequate care”²⁵⁰. During their stay persons working with the child use medical and psychological evaluations to determine which arrangement is most suitable in the second phase (e.g. placement in a specialized reception center for vulnerable persons, such as victims of trafficking, etc. or placement in a collective reception center²⁵¹). The guide provided by SDJ informs unaccompanied minors that OOCs are meant:

- *"To allow you to rest, understand where you are, come to terms with your new environment, think about what you want to do;*
- *To help you gather information concerning you and your situation;*
- *To get to know you better, through interviews, routine activities and contacts;*
- *To guide you: the team working together with your designated guardian, will look for the most suitable place for you to stay. After the weeks spent in the centre, you will have different options regarding accommodation, depending on your needs and available space."*²⁵²

²⁴⁸ European Migration Network. *The organisation of Reception Facilities in Belgium: Focused Study of the Belgian National Contact Point for the European Migration Network (EMN) in cooperation with the Federal Agency for the Reception of Asylum Seekers (FEDASIL)*. August 2013. Pp. 7. Available at: http://www.emnbelgium.be/sites/default/files/publications/be_ncp_emn_focussed_study_on_reception_fi nal_30_august_2013_2.pdf

²⁴⁹ Article 41(3) of the Reception Law

²⁵⁰ Article 2 of the Royal Decree of 9 April 2007 (which partially implements the Reception Law). Taken from: Declercq, F. *IMMIGRATION DETENTION AND THE RULE OF LAW. NATIONAL REPORT: BELGIUM*. Bingham Centre for the Rule of Law. May 2013. Pp. 24. Available at: http://www.biicl.org/files/6560_belgian_national_report_-_final_bc_edit.pdf

²⁵¹ European Migration Network. *Unaccompanied Minors in Belgium: Reception, Return and Integration Arrangements*(2009), *supra* at 32

²⁵² Service Droit des Jeunes, *supra* at 5

In the second reception phase separate authorities are responsible for unaccompanied minors that apply for asylum and those who do not. Accommodation arrangements for unaccompanied minors that do not apply for asylum are the responsibility of the Youth Welfare Services (YWS) of the Communities, which function regionally. The facilities of the YWS are meant to house minors in general and are not specifically designed for unaccompanied minors.²⁵³ Moreover, unaccompanied minors not seeking asylum may only stay in YWS facilities if they require assistance above and beyond that of basic “material shelter”.²⁵⁴ Consequently, there are problems with finding space for unaccompanied minors in such facilities and many seek accommodation in the facilities of Fedasil or its partners. Other options for unaccompanied minors not seeking asylum are to “stay with a foster family; live autonomously under supervision; or with the help of the Public Social Welfare Centre.”²⁵⁵

UMAs on the other hand remain a Federal responsibility, and are placed in collective open reception centers run by FEDASIL and partner organizations such as the Red Cross.²⁵⁶ With the exception of OOCs, there are no specific centers reserved only for UMAs in Belgium. Rather, UMAs are housed in sectioned-off areas of reception centers that also house adults. More than 50 collective open reception centers exist in Belgium and within these centers there are 1,302 places for unaccompanied minors.²⁵⁷ Such centers allow for freedom of movement and provide material assistance. During this second phase, UMAs are registered in schools, which is compulsory until

²⁵³ European Migration Network. *Unaccompanied Minors in Belgium: Reception, Return and Integration Arrangements*(2009), *supra* at 20

²⁵⁴ European Migration Network. *Unaccompanied Minors in Belgium: Reception, Return and Integration Arrangements*(2009), *supra* at 31

²⁵⁵ *Ibid.*

²⁵⁶ European Migration Network. *Unaccompanied Minors in Belgium: Reception, Return and Integration Arrangements*(2009), *supra* at 30

²⁵⁷ European Migration Network. *The organisation of Reception Facilities in Belgium* (2013), *supra* at 7

they reach the age of 18²⁵⁸. This second phase lasts from four months to one year and is meant to "motivate these young people to becoming autonomous and responsible persons".²⁵⁹

The SDJ guide given to unaccompanied minors informs that, in relation to the third stage:

*"You can ask your guardian and your training team at the centre about the possibilities of living on your own. They will help you to prepare yourself for your independence. Your guardian will play a pivotal role in your life until you are 18. Sometimes, your life outside the centre may be supervised by a family or another agency. Different options are open... Another solution is to live with a foreign family."*²⁶⁰

The third reception phase is meant to "provide more stable housing or autonomous reception that is best adapted to their situation. In the medium or long term, the aim is to set up a system where each unaccompanied minor, regardless of his/her status, will have accommodation provided by the most appropriate body."²⁶¹ In this final phase several options exist for the housing of an unaccompanied minor. First, an unaccompanied minor can find housing through a Local Reception Initiative, which is managed by the Public social Welfare Center and provides for individual housing units.²⁶² Second, an unaccompanied minor can live autonomously and the guardian will sign the rental contract for them. Third, an unaccompanied minor, especially a younger individual, may be placed with a host family, be it within their extended family that may reside in Belgium or with a different family.²⁶³ Fourth, an unaccompanied minor may live in accommodation arranged by the YWS. And finally, if none of these options are available due to

²⁵⁸ IOM. *Manual of Best Practices and Recommendations: Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors*. 2010. Pp. 112. Available at: <http://www.iomvie.org/temp/Final Manual EUMA 2010.pdf>

²⁵⁹ *Ibid.*

²⁶⁰ Service Droit des Jeunes, *supra* at 6

²⁶¹ European Migration Network. *Unaccompanied Minors in Belgium: Reception, Return and Integration Arrangements* (2009), *supra* at 34

²⁶² IOM, *Manual of Best Practices and Recommendations*, *supra* at 113

²⁶³ European Migration Network. *Unaccompanied Minors in Belgium: Reception, Return and Integration Arrangements* (2009), *supra* at 32

lack of capacity or other reasons an unaccompanied minor may live in an emergency shelter for vulnerable persons.

3.2.3 Obstacles to the Effective Interaction of Guardianship and Accommodation

Although Belgium has become the third most popular destination country for UMAs in the EU²⁶⁴, an estimated 50 per cent disappear from Belgium to continue their travels to either Sweden or the UK, or for unknown reasons²⁶⁵. Given the many factors involved in absconding it is not reasonable to expect a State to completely eliminate disappearances of unaccompanied minors and, given the current climate with respect to the detention of unaccompanied minors, limiting their freedom of movement could only be considered as a good alternative in specific cases (e.g. when a minor is at risk of being trafficked, etc.). That said, Belgium's current accommodation scheme is inadequate for both unaccompanied minors seeking asylum and those who are not.

In the past few years, due to the large inflow of unaccompanied minors to Belgium, accommodation arrangements for unaccompanied minors not seeking asylum have been especially problematic. In The 2010, the CRC Committee Concluding Observations on Belgium stated that:

a) Unaccompanied and separated children older than 13 years who do not file an asylum claim are denied access to reception centres and find themselves in the streets;
*b) Due to a lack of available places in reception centres, unaccompanied children may be housed in asylum centres for adults and in some cases excluded from any type of assistance.*²⁶⁶

²⁶⁴ EUROSTAT. Asylum applicants considered to be unaccompanied minors by citizenship, age and sex. Annual Data 2012. Available at:

http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyunaa&lang=en

²⁶⁵ European Network of Guardianship Institutions, *supra* at 11

²⁶⁶ UN Committee on the Rights of the Child (CRC), Consideration of reports submitted by States parties under article 44 of the Convention : Convention on the Rights of the Child : concluding observations : Belgium, 18 June 2010, CRC/C/BEL/CO/3-4, para. 74. Available at: <http://www.refworld.org/docid/4cb6ce902.html>

In the following year, Defence for Children International (DCI), an NGO that works to protect and promote the rights of children²⁶⁷ submitted a complaint²⁶⁸ to the European committee of Social Rights alleging that unaccompanied minors seeking asylum and not seeking asylum unaccompanied were being denied “social assistance (in the form of accommodation in a reception centre) in Belgium” and as a result “hundreds of unaccompanied minors have had to sleep... in the street or in unsuitable accommodation.”²⁶⁹ The “unsuitable” housing referred primarily to hotels where Fedasil was arranging emergency accommodation for unaccompanied minors and other asylum-seekers. The Guardianship Service reported that in 2010, 258 unaccompanied minors failed to receive accommodation through Fedasil.²⁷⁰ In 2012 DCI estimated that 612 unaccompanied minors were homeless²⁷¹ and that 668 unaccompanied minor had been placed in hotels.²⁷²

The complaint also alleged that unaccompanied minors who were not accommodated in reception centers were often lost and, consequently, were not appointed with a guardian through the Guardianship Service.²⁷³ While this complaint was made mainly with regard to unaccompanied minors not seeking asylum it is important to note that without the appointment of a guardian to represent them such a minor may not have access to information and may not be aware of his or her rights to apply for asylum. With respect to the complaint lodged by DCI the European

²⁶⁷Defence for children website: <http://www.defenceforchildren.org/>

²⁶⁸Defence for Children International (DCI) v. Belgium - Complaint No. 69/2011, Council of Europe: European Committee of Social Rights, 27 June 2011. Available at: http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC69CaseDoc1_en.pdf

²⁶⁹*Ibid.* at 12

²⁷⁰Defence for Children International (DCI) v. Belgium - decision on the merits, Complaint No. 69/2011, Council of Europe: European Committee of Social Rights, 23 October 2012. Para. 46. Available at: <http://www.refworld.org/docid/514adf402.html>

²⁷¹ Separated Children in Europe Programme. Newsletter No. 39. Spring 2013. Pp. 23. Available at: <http://scep.sitespirit.nl/images/12/91.pdf>

²⁷²(DCI) v. Belgium - decision on the merits (2012), *supra* at 96

²⁷³(DCI) v. Belgium - decision on the merits(2012), *supra* at 125

committee of Social Rights found violation of Article 7(10), 11(1) and (3) and Article 17 of the revised European Social Charter.²⁷⁴

In reaction to *DCI v Belgium* Fedasil eliminated the practice of placing unaccompanied minors in hotels.²⁷⁵ In addition, Fedasil began to cooperate with its partners in order to increased spaces for unaccompanied minors. For instance, in 2012, the Belgian Red Cross recognized that “the housing of unaccompanied minor asylum-seekers in Belgium is a growing concern, especially as no dedicated centre exists across the country”²⁷⁶. As such the Belgian Red Cross has initiated a project which has led to the opening of spaces for UMAs in separate wings of pre-existing reception centers for adults and families. In addition the Belgium Red Cross has identified focal

²⁷⁴Council of Europe, *European Social Charter (Revised)*, 3 May 1996, ETS 163

Article 7(10): “With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake...

10) to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.”

Article 17: “With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1)
a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
b) to protect children and young persons against negligence, violence or exploitation;
to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
2) to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Article 11: “With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia*:

1) to remove as far as possible the causes of ill-health;...
2) to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

²⁷⁵ AIDA. Asylum Information Database. *National Country Report: Belgium*. 2013. Pp. 47. Available at: http://www.asylumineurope.org/files/reportdownload/aida_belgium_may2013.pdf

²⁷⁶ Red Cross EU Office. Mapping of the migration activities of European National Red Cross Societies: 2012-2013 Update. BELGIUM, French Community. Pp. 9. Available at: http://redcross.eu/en/upload/documents/pdf/2013/Migration/BELGIUM%20french_mapping_FINAL_08%202012.pdf

points “among the staff of the reception centres in order to deal with specific issues in a more personal and experienced way”²⁷⁷

3.2.4 Conclusion

During, and in the years following, the *Mubilanzila* case Belgium took many positive steps with regard to guardianship and accommodation for unaccompanied minors. The Guardianship Act provides for a specific department, the Guardianship Service, to oversee the monitoring of the unaccompanied minor population and to certify and monitor guardians. The Guardianship Act also provides an exhaustive list of the responsibilities and tasks for guardians, which are aligned with the four basic principles of the CRC and amount to the guardian playing a surrogate parental role in the life of the child. The Guardianship Service takes responsibility of the child immediately upon identification. Furthermore, it is flexible when certifying guardians, allowing for two different system to exist. Moreover, an average of 200 guardians are active each year. Still, because guardians are responsible for as many as 40 children at once, the amount of time that they can spend with the child is limited.

During the reception crisis between 2009 and 2011, accommodation arrangements were especially problematic for UMAs in Belgium. During this time, the prevalence of homelessness was condemned by the CRC Committee, NGOs and the ESC. Fedasil and its it partners have reacted by increasing the amount of spaces available for unaccompanied minors in pre-existing reception centers and by halting the practice on placing UMAs in hotels. Still, reception centers that are specially designed for unaccompanied minors do not exist and unaccompanied minors typically live in large groups in institutionalized settings. Although guardians have detailed

²⁷⁷ *Ibid.*

responsibilities, without appropriate accommodation, or any accommodation at all, guardianship cannot function as it should. In Belgium these two key arrangements fail to effectively intersect.

3.3 Netherlands

From 2000 to 2003 the Netherlands was the main European destination country for UMAs, with 17,100 lodging claims, a total of 27 per cent of all unaccompanied minor asylum applicants in 28 industrialized European countries during that period.²⁷⁸ At that time, the Netherlands was a destination country primarily for UMAs from Angola, Iraq and Afghanistan.²⁷⁹ This extremely high rate of UMAs in the Netherlands can be attributed to the fact that the "...acceptance level was high and the level of care and representation was high."²⁸⁰ However, the system quickly became "...non-viable on the long term and the quality of representation and care was downgraded".²⁸¹ The Dutch Government reacted to the high numbers of asylum-seekers by adopting a "policy of determent"²⁸² within the asylum system in order to promote the return of unaccompanied minors to their country of origin.²⁸³

Consequently asylum applications lodged by unaccompanied minors quickly dwindled and by 2011²⁸⁴ only 485 unaccompanied minors had lodged asylum claims in the Netherlands; amounting to less than four per cent of all the unaccompanied minor asylum applicants in the

²⁷⁸ UNHCR. Trends in Unaccompanied and Separated Children Seeking Asylum in Industrialized Countries, 2001-2003 (Geneva: July 2004), pp. 5.

²⁷⁹ *Ibid.*, at 12

²⁸⁰ European Network of Guardianship Institutions, *supra* at 7

²⁸¹ *Ibid.*

²⁸² *Ibid.* at 45

²⁸³ Dutch National Contact Point for the European Migration Network (EMN). Unaccompanied minors in the Netherlands. Policy on reception, return and integration arrangements for, and numbers of, unaccompanied minors. February 2012. Pp. 50. Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/19a_netherlands_national_report_on_unaccompanied_minors_final_version_2feb10_en.pdf

²⁸⁴ In 2012, the Netherlands was the only EU Member State for which EUROSTAT did not provide statistics related to UMAs.

EU.²⁸⁵ Although strict procedures are still in place with respect to gaining legal residence in the Netherlands, UMAs that enter the Dutch care system benefit from an established care model that employs elements of a family-based model with respect to both guardianship and accommodation arrangements.

3.3.1 The Dutch Guardianship System

Article 1:245 of the Dutch Civil Code sets out that all minors are subject to the authority of either parent(s) or a guardian²⁸⁶ and that “guardianship over a minor is exercised by another person than the minor’s parent or parents”.²⁸⁷ The Dutch Civil Code stipulates that “authority over a minor covers the person of the minor, the administration of his property and his representation in performing acts on the field of civil law, both in and out of court.”²⁸⁸ With respect to the duties of the appointed guardian, Article 1:336 of the Dutch Civil Code states that “The guardian ensures that the minor is cared for and raised in accordance with the minor’s financial capital and property.”²⁸⁹ Article 1:247 of the Dutch Civil Code provides that “the words ‘care for and raise’...include caring, and taking responsibility, for the mental and physical welfare and safety of the child and promoting the development of his personality.”

All minors in the Netherlands that are “not subject to parental authority”²⁹⁰ are to be appointed with a guardian. With respect to unaccompanied minors, the Juvenile Court may appoint a temporary guardian in cases when “it is impossible for one or both parents, whether temporary

²⁸⁵ EUROSTAT. Asylum applicants considered to be unaccompanied minors by citizenship, age and sex. Annual Data 2012. Available at:

http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyunaa&lang=en

²⁸⁶ Section 1:245 of the Dutch Civil Code. Under 2. Available at:

<http://www.dutchcivillaw.com/civilcodebook01.htm>

²⁸⁷ *Ibid.*, under 2

²⁸⁸ *Ibid.* under 4

²⁸⁹ Section 1:336 Dutch Civil Code

²⁹⁰ Section 1:295 Dutch Civil Code

or not, to exercise authority over children”²⁹¹ or when “the existence or the whereabouts of one or both parents are unknown.”²⁹² Pursuant to Article 1:245 para. 1, “if the ‘moral or mental developments of a minor or his health a seriously endangered...the Juvenile Court may place this minor under custodial control...”²⁹³ As regards UMAs, Article 1:254 para. 2 states that the Juvenile Court may “only delegate guardianship to one of the legal persons who are acknowledged by the Minister of Justice as an institution for this purpose”.

For the past two decades the independent non-governmental organization Nidos, which functions nationally and is subsidized by the Ministry of Justice, has been the foundation responsible for the appointment of guardians for UMAs.²⁹⁴ With the permission of the child in question, Nidos submits a guardianship application to the Juvenile Court upon identification of the child.²⁹⁵ The organization itself is assigned guardianship, and not individuals. Article 1:303 of the Dutch Civil Code sets out that “...a Foundation as meant in Article 1, under point (f)²⁹⁶, of the Youth Care Act that has been charged with guardianship over a minor has the same powers and duties as any other guardian of a minor.”²⁹⁷ What follows from the Dutch Civil code is that Nidos is “...responsible for guarding UMAs’ interests and for their upbringing and development.”²⁹⁸ The

²⁹¹Section 1:253r Dutch Civil Code

²⁹²*Ibid.*

²⁹³ Section 1:245 para. 1 Dutch Civil Code

²⁹⁴Nidos Website: <http://www.nidos.nl/Nidospijler/De%20organisatie.aspx>

²⁹⁵ Dutch National Contact Point for the European Migration Network. *Unaccompanied minors in the Netherlands Policy on reception, return and integration arrangements for, and numbers of, unaccompanied minors*. February 2010. Pp. 56. Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/19a_netherlands_national_report_on_unaccompanied_minors_final_version_2feb10_en.pdf

²⁹⁶ Article 1 under point (f) of the Youth Care Act reads: “foundation: a foundation that maintains a youth care agency”

-Ministry of Health, Welfare and Sport. *Youth care in the Netherlands: The Youth Care Act* International Publication Series Health, Welfare and Sport no. 21. Pp. 20. The Hague, June 2005. Available at: http://www.oijj.org/sites/default/files/documental_8378_en.pdf

²⁹⁷ Article 1:303 of the Dutch Civil Code

²⁹⁸European Migration Network, *Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the Reception System in the EU Member States*, July 2006. Pp. 21. Available at: <http://ec.europa.eu/dgs/home-affairs/e->

primary focus of NIDOS is promoting the best interests of the child, monitoring and ensuring their education and care and identifying and preventing abuse, disappearances and “an existence of illegality”²⁹⁹

In 2011, Nidos employed 175 guardians, who must hold a degree in social work and must attend specialized courses run by Nidos in order to work as a guardian.³⁰⁰ On average each guardian works with 25 UMAs,³⁰¹ although some guardians are assigned with more than 100 cases.³⁰² The main focus of these guardians is not to directly provide day-to-day care to UMAs, but to supervise and coordinate the network of actors that do provide daily care to the child. This includes that the guardian “is the case manager and contact person for everyone involved in the life of the separated child, such as the mentor, the lawyer, the teachers, foster family etc.”³⁰³ Consequently, the amount of time a guardian will spend with a UMA will depend on their accommodation arrangements, which will be described in the following section.

3.3.2 Accommodation Arrangements for UMAs

In 2009 the CRC Committee expressed concern at the number of unaccompanied minors being placed in detention in the Netherlands³⁰⁴, as it was common practice to automatically detain an unaccompanied minor if they did not have identification documents. By early 2011 the practice

[library/docs/pdf/emn_reception_systems_booklet_publication_final_24_08_06_en.pdf](#)

²⁹⁹European Network of Guardianship Institutions *supra* at 49

³⁰⁰ Gate National Report – Defence for Children International/EPCAT - the Netherlands. Extended version. October 2012. Pp. 63 Available at: <http://www.defenceforchildren.nl/images/69/2186.pdf>

³⁰¹ *Ibid.*, at 45

³⁰² AIDA. Asylum Information Database. *National Country Report: the Netherlands*. 2013. Pp. 30. Available at: http://www.asylumineurope.org/files/report-download/netherlands_aida_report.pdf

³⁰³ GATE – National Report, the Netherlands (2013), *supra* at 61

³⁰⁴ UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention : Convention on the Rights of the Child : concluding observations : Netherlands*, 27 March 2009, CRC/C/NLD/CO/3. Para. 67. Available at: <http://www.refworld.org/docid/49d5f7a20.html>

was halted as the Dutch Minister for Immigration and Asylum declared that unaccompanied minors would only be placed in detention in “exceptional circumstances”.³⁰⁵

Depending on the age of the minor Nidos seeks different arrangements. Nidos places UMAs below the age of 13 with a foster family immediately, which then provides for the daily care of the child. In 2011, 40 per cent of all UMAs placed in some form of accommodation were placed with foster families³⁰⁶. In 2010 Nidos had placed more than 1,000 UMAs with foster families. Nidos employs guardians that specifically recruit foster families.³⁰⁷ Often, extended family members that live in the Netherlands act as foster families. Nidos seeks out such arrangements as they provide the “youngster with a secure basis, from which the youngster, while preserving his or her own cultural identity, can integrate in Dutch society.”³⁰⁸ When UMAs are placed with foster families Nidos retains guardianship authority. Article 1:299a of the Dutch Civil Code allows that the Juvenile court may appoint a foster caregiver as legal guardian only when, “with approval of the actual guardian” the foster family “has cared for and raised the minor for at least one year as if he belonged to his family...”.³⁰⁹

UMAs above the age of 12 are placed in a Process Reception Center, which is an open center, for a maximum of three months.³¹⁰ At this initial stage authorities decide whether the child will be integrated into Dutch society or returned to their country of origin. This decision is made

³⁰⁵ Platform for international cooperation on Undocumented Migrants. Picum Quarterly Newsletter. January-March 2011. April 2011. Pp. 18. Available at:

http://picum.org/picum.org/uploads/file_/EN%20Quarterly%20January-April%202011%20FINAL.pdf

³⁰⁶ GATE – National Report, the Netherlands (2013), *supra* at 39

³⁰⁷ European Network of Guardianship Institutions *supra* at 47

³⁰⁸ *Ibid.*

³⁰⁹ Article 1:299a of the Dutch Civil Code

³¹⁰ Available at the website of the Central Agency for Reception of asylum-seekers:

<http://www.coa.nl/en/about-us/reception-centres/locations-for-unaccompanied-minor-asylum-seekers>

in consultation with Nidos³¹¹, who will also determine which form of accommodation is suitable for a UMA following their time in the Process Reception Center, which includes placement in:

- small housing units or children's communal homes;
- the unaccompanied children campus; or
- a protected reception location.³¹²

The Central Agency for Reception of asylum-seekers manages these four reception arrangements for UMAs, which are all, with the exception of the protected reception locations, open facilities. The accommodation arrangements are loosely divided based on age, however, the main criteria for suitability considered by Nidos is the “development and maturity” of the child.³¹³ For UMAs aged 13-17 the most common placement is in small housing units or children's communal homes, where specialized youth care organizations are tasked with the day-to-day care and supervision duties. Each communal home houses 12 unaccompanied minors.

Unaccompanied minors in small housing units have more independence. Four children live together and each group is supervised by a selected social worker who is present 28.5 hours per week. Small housing units act as a stepping stone for some UMAs, who will move to an unaccompanied children campus “depending on their self-sufficiency, emotional resilience and age”.³¹⁴

The unaccompanied children campuses are large-scale facilities where staff members from the Central Agency for Reception of asylum-seekers are present 24 hours a day and the facilities are geared toward preparing UMAs for their future, whether it be focused on integration or return

³¹¹ AIDA. *National Country Report: the Netherlands*, *supra* at 37

³¹² *Ibid.*

³¹³ European Network of Guardianship Institutions *supra* at 46

³¹⁴ Available at the website of the Central Agency for Reception of asylum-seekers:

<http://www.coa.nl/en/about-us/reception-centres/locations-for-unaccompanied-minor-asylum-seekers>

to country of origin.³¹⁵ There are 250 available beds in the four protected reception campuses.³¹⁶ These campuses are often incorporated into pre-existing reception centers for adults and can house approximately 100 unaccompanied minors.³¹⁷

In 2008, as a reaction to the amount of UMAs that were disappearing from reception centers, the Central Agency for Reception of asylum-seekers began managing protected reception locations, which consists of “of a high level of supervision, including escorting young people in and out of the facility, and intensive coaching during their stay”³¹⁸. Nidos is responsible for identifying the unaccompanied minors that are at risk of being trafficked in order to secure their stay in these centers. These secure centers have been very successful in combating trafficking and few disappearances have been reported from protected centers.³¹⁹

Finally, one model exists, which was first piloted by Nidos in 2012, called "OWG+."³²⁰ The house is meant to combine reception and "living in a family setting".³²¹ The facility has two foster parents, a man and a woman, who are look after approximately 12 unaccompanied minors of all ages, but similar backgrounds.³²² The foster parents are third country nationals from the same region as most of the unaccompanied minors, which promotes " continuity in a child's upbringing

³¹⁵ Available at the website of the Central Agency for Reception of asylum-seekers:

<http://www.coa.nl/en/about-us/reception-centres/locations-for-unaccompanied-minor-asylum-seekers>

³¹⁶ EMN Focused Study 2013: The Organisation of Reception Facilities for Asylum Seekers in Different Member States. The Netherlands. 2013. Pp. 5. Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/19.netherlands_national_report_reception_facilities_final_en.pdf

³¹⁷ GATE – National Report, the Netherlands (2013), *supra* at 41

³¹⁸ Goeman M. & Van Os, C. *Closing a protection gap*. National report. Defence for Children International-ECPAT the Netherlands. December 2010. Pp. 22. Available at: <http://www.defenceforchildren.nl/images/20/1266.pdf>

³¹⁹ GATE – National Report, the Netherlands (2013), *supra* at 94

³²⁰ *Ibid.* at 46

³²¹ Separated Children in Europe Programme. Newsletter No. 39. Spring 2013. pp. 25. Available at: <http://scep.sitespirit.nl/images/12/91.pdf>

³²² GATE – National Report, the Netherlands (2013), *supra* at 46

and to the child's ethnic, religious, cultural and linguistic background".³²³ This model is a kind of compromise, which reacts to the reality that there are not enough foster families for all unaccompanied minors, but recognizes that large-scale facilities are not in the best interests of the child.

3.3.3 Obstacles to the Effective Interaction of Guardianship and Accommodation

The Netherlands has developed several types of accommodation for unaccompanied minors and each presents its own benefits and challenges. Among the housing options provided, the highest rate of disappearances among UMAs are from the large-scale unaccompanied children campuses³²⁴ and "guardians appear not to be able to protect the children against the harmful effects of staying in a large-scale campus facility."³²⁵

While social workers provide daily care in all other facilities run by the Central Agency for Reception of asylum-seekers, "when a child resides with a foster family no social worker is appointed (only a guardian)".³²⁶ When young minors are placed in foster families, Nidos retains legal guardianship, visits the foster family monthly and makes an evaluation of the situation every six months. However, foster families have reported that Nidos did not monitor the living conditions after the child was placed in their care.³²⁷ Moreover, due to the lack of participation of the guardian some foster families have complained that they have to fulfil the role of the guardian in certain aspects.³²⁸

3.3.4 Conclusion

³²³ Article 20(3) CRC

³²⁴*Ibid.* at 109

³²⁵*Ibid.* at 86

³²⁶*Ibid.* at 76

³²⁷*Ibid.* at 78

³²⁸*Ibid.*

Comparatively, the Dutch systems of guardianship and accommodation are effective. The Dutch Civil Code aligns the role of the guardian with that of the parental responsibilities set out in the CRC.

Nidos has an effective mechanism for placing young UMAs in foster care settings, with families either related to the child, or from their own cultural and linguistic background. UMAs that are not placed in foster care go through a three phase accommodation process, which builds off of guidance provided by the UNHCR, the CRC Committee, Defence for Children, the SCEP, Caritas International and the Inter-agency Working Group on Unaccompanied and Separated Children with regard to the creation of small living units that foster a sense of community and camaraderie. However, this model employs the use of large-scale facilities, which guardians are unable to visit regularly; thus leading to higher disappearances than from that of any other accommodation arrangement.

The OWG+ project is an interesting model which blends large-scale accommodation and foster care, which provides care to a small group of approximately 12 unaccompanied minors. This model results in a community-based setting, which is reflective of the family environment. If this pilot project grows, it would take only eight foster families to remove nearly 100 unaccompanied minors from large-scale reception centers, whereas it would take 50-100 foster families to do so under the normal model.

Conclusion and Recommendations

This thesis highlighted the primacy of the family environment in International law. It also showed that considerable similarities exist between the responsibilities of parents to care for their own children and the responsibility of Member States to ensure the care of UMAs.

“Children first, migrants second” is a mantra for those advocating for the rights of third country national children. To realize this slogan EU Member States must recognize the primacy of the family environment for UMAs that cannot be, or have not yet been, reunited with their families. The obligation of the state to provide an alternative family environment for UMAs requires that immediate action be taken, with gauged sensitivity by actors specialized in working with vulnerable children. Without sugar coating it, the reality is that for most UMAs life in EU Member States is highly institutionalized and the most common form of accommodation is found in large-scale reception facilities, where they live in repurposed hospitals, military barracks or hotels without adequate support from adults. The whole idea of a “suitable” institution in this context is oxymoronic. The omission in law of what explicitly constitutes “suitable” has dire consequences for UMAs. When EU Member States lack the will to provide “suitable” accommodation, they can attempt to justify the living conditions provided to UMAs on many grounds. When states have the will, they lack the guidance. That said, the dynamics of UMA migration, and the extensive obligations placed upon Member States to care for them, poses a very difficult challenge.

Through the examination of the guardianship systems and accommodation arrangements in Greece, Belgium and the Netherlands, the many challenges that exist in reconstructing the family environment for UMAs have been highlighted. What has been shown is that the tools for reconstructing the family environment exist, but they must be reconfigured.

While placing UMAs in family-based care, such as with foster parents or adult relatives, can immediately serve to reconstitute the family environment, given the distinct vulnerability of UMAs, these arrangements must still be closely monitored. Even when evaluations of the living environment are positive, an appointed guardian must still be available to connect the UMA with resources that are unique to their situation. For instance, a UMA may need a legal advisor for refugee status determination procedures, or specialized psychological counselling. Moreover, the guardian can help the UMA to maintain contact with their family members in other countries and can facilitate the continuity of the child's upbringing by connecting them to social networks and resources based on their cultural, religious and linguistic background. Indeed, even when placed in accommodation that is reflective of the family environment the guardian remains an integral part of that environment, and has many responsibilities to fulfil in order to ensure the well-being and development of UMAs.

Unfortunately, the majority of accommodation arrangements provided for UMAs, if provided at all, are large-scale reception centers. The result is that social workers become responsible for the daily care of UMAs. Social workers in such centers have neither the legal capacity to ensure that the best interests of UMAs are realized, nor the time to provide individualized attention. Consequently, when UMAs are placed in large-scale accommodation, the dynamic of the guardian changes.

The tides have slowly been turning against the institutionalization of UMAs. In the present, we are witnesses the slow disintegration of the practice of placing UMAs in detention. The ultimate goal ought to be halting the practice of placing UMAs in large-scale accommodation centers in favour of more family-based models. As discussed in Chapter One, an array of scientific studies from countries across Europe indicate that living in small groups and with an in-house guardian

greatly safeguards UMAs against post-migration psychological stress and increases their well-being and development. Therefore, Member States should strive to downsize reception centers into more manageable sizes. At the very least, large-scale centers should establish the practice of embedding guardians in large accommodation centers around the clock, so that they can form a bond with UMAs and act as a link between the UMA and other actors and resources.

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Recommendations

As the major gateway into the EU, Greece serves as a kind of first impression to UMAs. While many UMAs enter Greece with the aim of travelling to other EU Member States, others seek only a better life where their rights as children and asylum-seekers will be respected.

As outlined in the Section on Greece, the asylum system is currently undergoing changes with regard to the establishment of a First Reception Service under Law 3907. This First Reception Centers serve a function that is similar to that of the OOCs in Belgium and the Process Reception Centers in the Netherlands. When unaccompanied minors are identified, Law 3907 states that assistance is to be provided by "appropriate bodies...pursuant to Article 19 of P.D. 220/2207...who shall act accordingly".³²⁹ These "bodies" are the Public Prosecutors. And they are not "appropriate". Without a guardian engaging with an unaccompanied minor while in the First Reception Service, the child is susceptible to detention and expulsion. What is more, as Greece has proven over the years, despite the numerous ECtHR cases condemning its practices, many unaccompanied minors are released from detention or detention-like facilities (which the First Reception Centers are) without accommodation arrangements provided to them. Effective guardianship is crucial if the First Reception Service is to function as it should, by identifying vulnerable groups and ensuring "that they be given the proper procedure provided for".³³⁰

With an eye to the future and the provisions of the recast Reception Conditions Directive in mind, the following recommendations are meant to serve as guidelines for the creation of care structures for UMAs that are reflective of the family environment in order to ensure their well-being and development:

³²⁹*Ibid.* at Article 25(1)

³³⁰ Article 7(2) Law 3907

- Foremost, a specialized Guardianship Department should be established. To avoid a conflict of interest, this Department should function under the auspices of the Ministry of Labour, Social Security and Welfare and not the Ministry of Public Order and Citizen Protection, which Law 3907 has put in charge of asylum affairs and retains a major police component. This Guardianship Department should train, monitor and appoint qualified individuals to act as guardians. To conserve resources and maximize efficiency, the appointment of guardians should not be limited to civil servants. The Guardianship Department should seek partnerships with NGOs, who can provide qualified staff to act as guardians. This would not only ensure that the guardians have the necessary expertise, but could potentially relieve that financial burden on the state as such guardians could be financially compensated in part by their employers. Social workers that are already working in accommodation centers should also be empowered to act as legal guardians if they choose to do so as they already have the will, knowledge and day-to-day contact necessary to fulfill the guardianship role. Should such an appointment occur, additional staff should be brought in to carry out the tasks previously performed by that social worker.

- Second, guardians should be appointed immediately upon identification of the child in order to protect against homelessness and state abuse (i.e. detention, immediate expulsion, etc.) and help the child understand their situation and the procedures that they will go through.

- Third, given the amount of unaccompanied minors living in unknown situations, the Guardianship Department should have a dual approach. First, there should be appointed guardians who are vested with the legal authority to act in the best interests of the child. Second, due to the extremely high number of unaccompanied minors that live in unknown situation, in-office child's rights advocates should be made available for consultation in order to provide advice and connect unaccompanied minors with any resources they may seek.

- Fifth, child's right advocates should be trained and make efforts to promote their existence through the distribution of leaflets, or other practical outreach means, to children outside of state care by visiting locations in which they gather and establishing communication with immigrant networks. In-office staff should be available during the day and limited staff should be available

via a hotline at all times. These advocates should not be appointed as legal guardians, but should relieve the duties of guardians by providing basic information and assistance to populations that do not benefit from specialized protection and assistance.

- Fourth, given their close contact with UAMs, appointed guardians should collect and maintain statistics on their whereabouts, welfare and primary needs. Appointed guardians in and outside of reception centers should network in order to monitor the situations of UAMs with the aim of highlighting protection gaps and keeping track of runaways. A comprehensive register of the foremost problems that unaccompanied minors are facing in Greece should be kept based on the observations and experiences of both appointed guardians and child's rights advocates. These data should be presented to relevant stakeholders and state actors. State authorities should take the recommendations of the new guardianship office into account when making reforms to asylum and reception systems.

- Fifth, as a key factor in providing an alternative family environment, and to protect against absconding, appointed guardians should be placed within all accommodation centers. For every 20 unaccompanied minors there should be a minimum of one guardian present in accommodation centers at all times in order to facilitate communication and establish a trusting relationship.

- Sixth, UMAs should only be held in large-scale accommodation centers as a last resort and the ideal capacity of each center should be not more than 40. Within each facility efforts should be made to facilitate the creation of small living units, where groups of 5-10 unaccompanied minors have one primary social worker who oversees their care.

- Seventh, a pilot study should be initiated to identify adult third country nationals that are willing and capable of providing foster care for groups of UMAs. If such persons are identified, the Guardianship Service should establish a pilot project which would house 8 to 12 UMAs under the care of one family from a background similar to theirs. If the project is successful, it should be expanded.

Bibliography

Books:

- Aristotle, Benjamin Jowett, and H. W. Carless Davis. 1920. *Aristotle's Politics*. Oxford: At the Clarendon Press. Available at: <http://classics.mit.edu/Aristotle/politics.1.one.html>
- Bhabha J., “‘*Un vide juridique?*’ *Migrant Children: the Rights and Wrongs*”, in Carol Bellamy and Jean Zermatten (eds.), *Realizing the Rights of the Child* (Ruffer and Rub, 2007). Print
- Bilboe HA., *Asylum Seekers in Australia: Turning Repression and Stress into Longterm Anxiety and Depression*. In: Warren B, editor. *Suffering the Slings and Arrows of Outrageous Fortune, International Perspectives on Stress, Laughter and Depression*. Amsterdam, New York: Rodopi; 2007. Print.
- Cantwell, Nigel, and Anna Holzscheiter. *Article 20 children deprived of their family environment*. Leiden: MartinusNijhoff Publishers, 2008. Print.
- Detrick, Sharon, J. E. Doek, and Nigel Cantwell. *The United Nations Convention on the Rights of the Child: a guide to the "Travauxpréparatoires"*. Dordrecht: M. Nijhoff Publishers; 1992. Print.
- Detrick, Sharon. *A commentary on the United Nations Convention on the Rights of the Child*. The Hague: M. Nijhoff Publishers, 1999. Print.
- Elkind, David. *Ties That Stress: The New Family Imbalance*. Cambridge, Mass: Harvard University Press, 1995. Print.
- Liefwaard, T. *Deprivation of Liberty of Children in Light of International human Rights Law and Standards*. Antwerp: Intersentia, 2008. Print.
- Van Bueren, Geraldine. *The international law on the rights of the child*. Dordrecht: M. Nijhoff ;, 1995. Print.

Cases:

- Defence for Children International (DCI) v. Belgium - decision on the merits, Complaint No. 69/2011, Council of Europe: European Committee of Social Rights, 23 October 2012.
- Defence for Children International (DCI) v. Belgium - Complaint No. 69/2011, Council of Europe: European Committee of Social Rights, 27 June 2011.
- M.S.S. v. Belgium and Greece, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011.

- MubilanzilaMayeka and KanikiMitunga v. Belgium, 13178/03, Council of Europe: European Court of Human Rights, 12 October 2006.
- N. S. (C 411/10) v. Secretary of State for the Home Department and M. E. (C 493/10) and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform , C-411/10 and C-493/10, European Union: Court of Justice of the European Union, 21 December 2011.
- Rahimi v. Greece, no. 8687/08, Council of Europe: European Court of Human Rights, 5 April 2011

Legal Documents:

- Council of Europe: Committee for the Prevention of Torture, Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 27 January 2011 , 10 January 2012, CPT/Inf (2012) 1.
- Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5
- Council of Europe. Information Note on the Court's case-law. No. 140. April 2011.
- Council of Europe, *European Social Charter (Revised)*, 3 May 1996, ETS 163
- Dutch Civil Code. Available at: <http://www.dutchcivillaw.com/civilcodebook01.htm>
- European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L 337; December 2011.
- European Union: Council of the European Union, *Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast)*, 29 June 2013, L 180/1
- European Union: Council of the European Union, Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted, 19 April 2004, 2004/83/EC

- European Union: Council of the European Union, Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, 18 February 2003, OJ L 50, 25; February 2003.
- European Union, Charter of Fundamental Rights of the European Union, 7 December 2000, Official Journal of the European Communities, 18 December 2000 (OJ C 364/01).
- European Union: Council of the European Union, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013, L 180/60.
- European Union: Council of the European Union, Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 29 June 2013, L 180/96.
- European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L 337; December 2011, pp 9-26.
- European Union: Council of the European Union, Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States, 6 February 2003, OJ L 31; 6 February 2003, pp18-25.
- European Union: Council of the European Union, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, 16 December 2008, 2008/115/EC
- European Union: Council of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, 15 April 2011, 2011/36/EU.
- European Union: Council of the European Union, Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 29 June 2013, L 180/31
- European Union: Council of the European Union, Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 29 June 2013, L 180/96
- Geneva Declaration of the Rights of the Child. Adopted 26 September, 1924, League of Nations.

- Law of 12 January 2007 regarding the reception of asylum seekers and other categories of aliens (Reception Law)
- Law 3907 on the establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of Directive 2008/115/EC "on common standards and procedures in Member States for returning illegally staying third country nationals" and other provisions. [Greece], 26 January 2011, available at: <http://www.refworld.org/docid/4da6ee7e2.html>
- Presidential Decree (P.D). 220 on the transposition into the Greek legislation of Council Directive 2003/9/EC from January 27, 2003 laying down minimum standards for the reception of asylum seekers (Official Journal of the European Communities L 31/6.2.2003) [Greece], P.D. 220/2007, 6 November 2007, available at: <http://www.refworld.org/docid/49676abb2.html>
- Presidential Decree 114/2010 on the establishment of a single procedure for granting the status of refugee or of beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (L 326/13.12.2005) [Greece], 16 November 2010, available at: <http://www.refworld.org/docid/4cfdadf2.html>
- Royal Decree of 9 April 2007 determining the regime and rules of operation of the Observation and Orientation Centres for unaccompanied minors
- Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI "Unaccompanied minor aliens" of the Programme Law of 24 December 2002.
- Title XIII, Chapter VI "Unaccompanied minor aliens" of the Programme Law of 24 December 2002 (Guardianship Act)
- UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577
- UN General Assembly, UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189.
- UN Committee on the Rights of the Child (CRC), CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6
- UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 February 2008, E/C.12/GC/19.
- UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, A/CONF.2/108/Rev.1.
- UN General Assembly, Assistance to unaccompanied refugee minors: Report of the Secretary-General, 16 October 1995, A/50/555.

- UN Committee on the Rights of the Child (CRC), Committee on the Rights of the Child, Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration , 28 September 2012.
- UN Committee on the Rights of the Child (CRC), UN Committee on the Rights of the Child: Concluding Observations: Greece, 13 August 2012, CRC/C/GRC/CO/2-3.
- UN Committee on the Rights of the Child (CRC), Consideration of reports submitted by States parties under article 44 of the Convention : Convention on the Rights of the Child : Concluding Observations of the Committee on the Rights of the Child, Belgium, U.N. Doc. CRC/C/15/Add.178 (2002).
- UN Committee on the Rights of the Child (CRC), Consideration of reports submitted by States parties under article 44 of the Convention : Convention on the Rights of the Child : concluding observations : Belgium, 18 June 2010, CRC/C/BEL/CO/3-4.
- Ministry of Health, Welfare and Sport .Youth care in the Netherlands: The Youth Care Act International Publication Series Health, Welfare and Sport no. 21. The Hague, June 2005.
- UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention : Convention on the Rights of the Child : concluding observations : Netherlands*, 27 March 2009, CRC/C/NLD/CO/3.

Interviews:

- M. Vasiliki, social worker at Apostoli reception center in Athens, personal communication, 12 March 2013
- Manologlou, Toula, social worker for Greek NGO AITIMA in Athens, personal communication, 2 March 2013
- Maliotaki, Katerina, Camp Coordinator at Villa Azadi reception center in Agiassos, personal communication, 8 April 2011
- Lafka, Maria, social worker at Athens reception center run by EIN, personal communication, 18 March 2013
- Ziori, Olga. Lawyer at AITIMA NGO. Personal interview. Athens, Greece. 18 March 2013.

Reports:

- Asylum Information Database (AIDA). National Country Report: Belgium. 2013. Available at: http://www.asylumineurope.org/files/reportdownload/aida_belgium_may2013.pdf
- AIDA. Asylum Information Database. National Country Report: the Netherlands. 2013. Available at: http://www.asylumineurope.org/files/report-download/netherlands_aida_report.pdf
- Boland, K. A report on Children of Afghan Origin Moving to Western Countries.Unicef. February 2010. Available at: http://www.unicef.org/infobycountry/files/Book_children_on_the_move.pdf

- Caritas Internationalis, Caritas International Belgium and the US Conference of Catholic Bishops Migration and Refugee Services contribution to the Day of General Discussion on “The Rights of All Children in the Context of International Migration” of the United Nations Committee on the Rights of the Child. Unaccompanied Minor Migrants Two Case Studies/Best Practices. September 2012. Available at: <http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/SubmissionsDGDMigration/Caritas.pdf>
- Corcoran, J. and Salche, B. *Training Manual for Guardians and Social Workers dealing with unaccompanied minor asylum-seekers*. International Organization for Migration. 2010. Available at: http://www.iom.hu/PDF/Trainingpercent20Manual_final_highpercent20resolution.pdf
- Dutch National Contact Point for the European Migration Network (EMN). Unaccompanied minors in the Netherlands. Policy on reception, return and integration arrangements for, and numbers of, unaccompanied minors. February 2012. Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/19a._netherlands_national_report_on_unaccompanied_minors_final_version_2feb10_en.pdf
- ECRE. *Comments from the European Council on Refugees and Exiles on the Amended Commission Proposal to recast the Reception Conditions Directive* (COM(2011) 320 final). September 2011
- European Migration Network. Belgian Contact Point. Unaccompanied Minors in Belgium: Reception, Return and Integration Arrangements. July 2009. Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/02a._belgium_national_report_on_unaccompanied_minors_final_version_11dec09_en.pdf
- European Migration Network. The organisation of Reception Facilities in Belgium: Focused Study of the Belgian National Contact Point for the European Migration Network (EMN) in cooperation with the Federal Agency for the Reception of Asylum Seekers (FEDASIL). August 2013. Available at: http://www.emnbelgium.be/sites/default/files/publications/be_ncp_emn_focussed_study_on_reception_final_30_august_2013_2.pdf
- European Migration Network, Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the Reception System in the EU Member States, July 2006. Available at: http://ec.europa.eu/dgs/home-affairs/e-library/docs/pdf/emn_reception_systems_booklet_publication_final_24_08_06_en.pdf
- EMN Focused Study 2013: The Organisation of Reception Facilities for Asylum Seekers in Different Member States. The Netherlands. 2013. Available at: [http://ec.europa.eu/dgs/home-affairs/what-we-](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/19a._netherlands_national_report_on_unaccompanied_minors_final_version_2feb10_en.pdf)

- do/networks/european_migration_network/reports/docs/emn-studies/19.netherlands_national_report_reception_facilities_final_en.pdf
- Frontex. Unaccompanied Minors in the Migration Process. December 2010. Available at:
http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/Unaccompanied_Minors_in_Migration_Process.pdf [accessed 2 August 2013]
 - Gate National Report – Defence for Children International/EPCAT - the Netherlands. Extended version. October 2012. Available at:
<http://www.defenceforchildren.nl/images/69/2186.pdf>
 - Goeman M. & Van Os, C. Closing a protection gap. National report. Defence for Children International-ECPAT the Netherlands. December 2010. Available at:
<http://www.defenceforchildren.nl/images/20/1266.pdf>
 - Human Rights Watch. Caught in a net. Unaccompanied migrant children in Europe. 2012. Available at:
http://www.hrw.org/sites/default/files/HRW_CRD_migrant_brochure_low.pdf
 - Inter-Agency. Inter-Agency Guiding Principles on Unaccompanied and Separated Children, January 2004. Available at: <http://www.refworld.org/docid/4113abc14.html>
 - IOM. Manual of Best Practices and Recommendations: Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors. 2010. Available at: http://www.iomvie.org/temp/Final_Manual_EUMA_2010.pdf
 - Kane, J. Trafficking and Labour Exploitation. Daphne Programme. June 2007. Available at:
http://ec.europa.eu/justice_home/daphnetoolkit/files/others/booklets/02_daphne_booklet_2_en.pdf
 - Lee, Yanghee. CHILD RIGHTS AND CHILD WELL-BEING. The 3rd OECD World Forum on “Statistics, Knowledge and Policy” Charting Progress, Building Visions, Improving Life Busan, Korea - 27-30 October 2009. Pp. 1. Available at:
<http://www.oecd.org/site/progresskorea/44137252.pdf>
 - Platform for international cooperation on Undocumented Migrants. Picum Quarterly Newsletter. January-March 2011. April 2011. Available at:
http://picum.org/picum.org/uploads/file_/EN%20Quarterly%20January-April%202011%20FINAL.pdf
 - Red Cross EU Office. Mapping of the migration activities of European National Red Cross Societies: 2012-2013 Update. BELGIUM, French Community. Available at:
http://redcross.eu/en/upload/documents/pdf/2013/Migration/BELGIUM%20french_mapping_FINAL_08%202012.pdf
 - Save the Children, Core Standards for guardians of separated children in Europe : Goals for guardians and authorities, 2011. Available at:
<http://www.refworld.org/docid/4ee998592.html>

- Separated Children in Europe Programme, SCEP Statement of Good Practice, March 2010, Fourth edition, March 2010. Available at: <http://www.refworld.org/docid/415450694.html>
- Service Droit de Jeunes & Fournier, K. (2011). Closing a protection gap 'you need to earn the title of guardian', National report. Belgium. Service droits des jeunes. Available at: <http://www.defenceforchildren.nl/images/20/1267.pdf>
- Separated Children in Europe Programme. Newsletter No. 39. Spring 2013. Available at: <http://scep.sitespirit.nl/images/12/91.pdf>
- Smith, Terry, Separated Children in Europe Programme, Separated children in Europe: Policies and Practices in European Union Member States: A Comparative Analysis (2003).
- UN High Commissioner for Refugees, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997. Available at: <http://www.refworld.org/docid/3ae6b3360.html> [accessed 2 September 2013]
- UN High Commissioner for Refugees, Unaccompanied Minors Seeking Asylum in Greece, April 2008, p. 7. Available at: <http://www.refworld.org/docid/48abd557d.html>
- UN High Commissioner for Refugees (UNHCR), UNHCR Position on the Return of Asylum-Seekers to Greece under the "Dublin Regulation", 15 April 2008. Para. 21. Available at: <http://www.refworld.org/docid/4805bde42.html>
- United Nations High Commissioner for Refugees. UNHCR Comments on the European Commission's amended recast proposal for a Directive of the European Parliament and the Council laying down standards for the reception of asylum-seekers. (COM (2011) 320 final, 1 June 2011).
- United Nations High Commissioner for Refugees. *Current Issues of Refugee Protection in Greece*. UNHCR. July 2013.
- United Nations High Commissioner for Refugees, A Year in Crisis: UNHCR Global Trends 2011. Available at: <http://www.unhcr.org/4fd6f87f9.html> [accessed on 15 February 2013]
- UN Children's Fund (UNICEF), Adolescence, an Age of Opportunity: The State of the World's Children 2011, February 2011. Available at: <http://www.refworld.org/docid/4d6cfa162.html>
- UN High Commissioner for Refugees (UNHCR), UNHCR Global Trends 2012: Displacement, The New 21st Century Challenge, 19 June 2013
- UNHCR. Trends in Unaccompanied and Separated Children Seeking Asylum in Industrialized Countries, 2001-2003 (Geneva: July 2004). Available at: <http://www.unhcr.org/40f646444.pdf> [accessed 24 May 2013].
- United States Department of State, 2012 Country Reports on Human Rights Practices - Greece, 19 April 2013. Section 2. Available at: <http://www.refworld.org/docid/517e6e32c.html>

Journals and Papers:

- Bean, TM, E Eurelings-Bontekoe, and P Spinhoven. 2007 "Course And Predictors Of Mental Health Of Unaccompanied Refugee Minors In The Netherlands: One Year Follow-Up." *Social Science & Medicine* 64.6 (n.d.): 1204-1215.
- Bhabha, J. and Finch, N. (2006) *Seeking Asylum Alone. Unaccompanied and Separated Children and Refugee Protection in the U.S.*: Harvard Committee on Human Rights. Available at: <http://library.law.yale.edu/sites/default/files/seeking-asylum-alone-us.pdf> [accessed on 12 February 2013]
- Bhabha J. "Seeking Asylum Alone: Treatment of Separated and Trafficked Children in Need of Refugee Protection", *International Migration* 42 (1), (2004)
- Bhabha, Jacqueline, *Arendt's Children: Do Today's Migrant Children Have a Right to Have Rights?*. *Human Rights Quarterly*, Volume 31, No. 2, May 2009
- Bronstein, I., Montgomery, P. and Dobrowolski, S. (2012), PTSD in Asylum-Seeking Male Adolescents From Afghanistan. *J. Traum. Stress*, 25
- Bruce, B. "Toward Mediating the Impact Of Forced Migration And Displacement Among Children Affected By Armed Conflict." *Journal Of International Affairs- Columbia University* 55.(2001): 35-58. British Library Document Supply Centre Inside Serials & Conference Proceedings.
- Delfos, M.F. (2001). The Developmental damage to children as a result of the violation of the rights. In J.C.M. Willems (Ed.), *Developmental and autonomy rights of children: Empowering caregivers and communities*. Antwerp, Groningen, Oxford: Intersentia.
- Derluyn, I, &Broekaert, 2008, 'Unaccompanied refugee children and adolescents: The glaring contrast between a legal and a psychological perspective', *International Journal Of Law & Psychiatry*, 31(4)
- Fantino, A. M., &Colak, A. (2001). Refugee children in Canada: Searching for identity. *Child Welfare*, 80, 587–596.
- Hodes, M., Jagdev, D., Chandra, N., &Cunniff, A. (2008). Risk and Resilience for Psychological Distress amongst Unaccompanied Asylum Seeking Adolescents. *Journal Of Child Psychology And Psychiatry*, 49(7)
- Minow, M. *Rights for the Next Generation: A feminist Approach to Children's Rights*. 9 *Harv. Women's L.J.* 7 (1986).
- Sourander A. Behavior problems and traumatic events of unaccompanied refugee minors. *Child Abuse & Neglect* [serial online]. July 1998; 22(7):719-727. Available from: MEDLINE, Ipswich, MA.
- Trubeta, S. *Reception Centres For Unaccompanied Minor Refugees: "Dead Zones", "Stopovers" And "Bridges"*. COST Action IS0803 Working Paper. University of the Aegean. 2010. Available at: http://www.eastbordnet.org/working_papers/open/documents/Trubeta_Reception_Centres_Unaccompanied_Minor_Refugees_100409.pdf

Internet Sources

- Central Agency for Reception of asylum-seekers (NL): <http://www.coa.nl>

- Cosse, E. Human Rights Watch. Greece's Epidemic of Racist Attacks. 26 January 2012. Available at: <http://www.hrw.org/fr/node/104821> [accessed 22 October 2013]
- Defence for children website: <http://www.defenceforchildren.org/>
- European Federalist Party. Blogactiv.eu. *PRESS RELEASE – A new European asylum policy has been adopted!*. 17 June 2013. Available at: <http://europeanfederalistparty.blogactiv.eu/2013/06/17/press-release-per-centE2per-cent80per-cent93-a-new-european-asylum-policy-has-been-adopted/> [accessed 08 November 2013]
- European Migration Network Glossary at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/glossary/index_a_en.htm
- EUROSTAT. Asylum applicants considered to be unaccompanied minors by citizenship, age and sex. Annual Data 2012. Available at: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyunaa&lang=en [accessed 11 June 2013]
- Eurostat news release. *Asylum decisions in the EU27 EU Member States granted protection to more than 100,000 asylum seekers in 2012*. 96/2013. June 2013. Available at: http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-18062013-AP/EN/3-18062013-AP-EN.PDF [accessed 30 September 2013]
- Kalliopi, S. Reception of asylum seekers and unaccompanied minors. Seminar "Reception of asylum seekers in Norway and Greece: the role of local authorities". Thessaloniki, 23 May 2013. UNHCR. Available at: http://webcache.googleusercontent.com/search?q=cache:n3G5_4E-tTAJ:www.udi.no/Global/UPLOAD/!%2520Tema/EOS/UNHCR%2520Reception%2520of%2520Asylum%2520Seekers,%2520en.ppt+&cd=2&hl=en&ct=clnk&gl=hu [accessed 15 November 2013]
- Korologou, M. No Account of Immigrant Kids in Greece. Greek Reporter, 23 March 2013. Available at: <http://greece.greekreporter.com/2013/03/23/no-account-of-immigrant-kids-in-greece/> [accessed 10 May 2013]
- Nidos Website (NL): <http://www.nidos.nl>
- Service Droit des Jeunes. Information booklet for unaccompanied minors. Available at: <http://www.sdj.be/admin/docmena/A5ANGL40pages.pdf> [accessed 10 November 2013]
- Service Droit des Jeunes - SDJ (Belgium). Promoting unaccompanied children's access to fundamental rights in the European Union. Available at: <http://www.pucafreu.org/index.php/institutions-and-staff/partners/92-partner-2-service-droit-des-jeunes-sdj-belgium>. [accessed 10 November 2013]
- United Nations High Commissioner for Refugees. *UNHCR says asylum situation in Greece is 'a humanitarian crisis'*. 21 September 2010. Available at: <http://www.unhcr.org/4c98a0ac9.html> [accessed 15 October 2013]

