Zsófia Bende¹

Asylum Procedure in Italy through the eyes of unaccompanied minors

Keywords: asylum, Italy, unaccompanied minors, guardianship

Słowa kluczowe: Azyl, Włochy, małoletnich, opieka

Abstract

The main causes of leave behind their home for unaccompanied minors are fear of persecution, human rights violations, armed conflicts and civil unrest, sexual exploitation, domestic violence, abuse, severe deprivation, gender-based discrimination, forced military service, search for new opportunities, the intention of joining the family already staying in Europe. The main aim of the study is to give a short present of the asylum procedure the minors are passing through. Summarizes the barriers to access to asylum procedures, the role of the guardian, the legal, medical and social assistance system for asylum seeker minors and the possible outcomes of the procedure and opportunities of appeal.

Streszczenie

Procedura azylowa we Włoszech z perspektywy osób małoletnich bez opieki

Głównymi przyczynami pozostawienia domu za życia dla małoletnich bez opieki są obawa przed prześladowaniem, łamaniem praw człowieka, konfliktami zbrojnymi i niepokojami społecznymi, wykorzystywaniem seksualnym, przemocą w rodzinie, znęcaniem się, poważną deprivacją, dyskryminacją ze względu na płeć, przymusową służbą wojskową, poszukiwaniem nowych możliwości, zamiar dołączenia do rodziny już przebywają-

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¹ ORCID ID: 0000-0002-6552-4118, LLM, The Doctoral School of Public Administration Sciences at the National University of Public Service in Hungary. E-mail: zsofi.bende@gmail.com.

cej w Europie. Głównym celem badania jest krótkie przedstawienie procedury azylowej, którą przechodzą małoletni. Przedstawia bariery w dostępie do procedur azylowych, rolę opiekuna, system pomocy prawnej, medycznej i społecznej dla osób nieletnich ubiegających się o azyl oraz możliwe wyniki procedury i możliwości odwołania.

I. Introduction

The level of knowledge of the European Asylum System is usually very low in the refugees' countries of origin, therefore it is of particular importance to the arriving children what kind of and how thorough information they get, when they get it, and how well it is adjusted to their age. Furthermore, the use of language, the content and the wording play a crucial role in understanding and interpreting the information they are being provided.

It is especially important that children as quickly as possible, preferably immediately upon arrival are given clear information about their right to apply for asylum in any of the EU countries. Almost all European Union Member States are required by law to inform immigrants about their right to apply for asylum. This is especially important if refugees are being detained. In practice, however, the official legal information mostly means a unified text, without being specified and age-adjusted, meaning that a seven year old child receives the same information as an adult. It is, therefore, not surprising that children in many cases do not understand what was happening to them. Hence, it would be essential in all EU countries to establish special rules and procedures customized for children.

II. Reception and Treatment

States have a duty to assess the inclusion of special needs of vulnerable persons². The Directive 2013/32/EU called on states to assess the needs of asy-

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² Art. 22, Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

lum seekers in relation to the specific procedural safeguards, and to provide them with adequate support during the asylum procedure³.

In the process, the most important thing is that the state is responsible for processing the asylum application. According to the Dublin regulation administered by the unaccompanied minor requests to be the Member State to decide which members of his family members, siblings or relatives reside legally⁴. If there is No. family member, sister, relatives, the responsible Member State where the child has applied for asylum. It adds, however, that in the case where the child's best interests is in line with this. The Art. 6. states that the representative must be provided next to unaccompanied minors and provides guidance on the best interests of the child's assessment. The Dublin Regulation states that the representative must be provided next to unaccompanied minors, provides guidance on the best interests of the child assessment. And also contains rules on that situation does not occur through the application of the Dublin Regulation a situation where a Member State to give special requests are treated separately.

According to the Directive 2013/32/EU⁵ and Directive 2013/33/EU⁶ should be designated a representative for unaccompanied minor asylum seekers when it is submitted to the asylum application. However, it does not speak to the guidelines that they should have already determined the representative when they discover unaccompanied minors by the authorities. It is already the states to decide, during the asylum procedure is to represent the interests of the child protection and the application process the same or a different person appointed. During each hearings, where the person is a child, the special needs of unaccompanied minors, who has knowledge of the subject of unaccompanied has to be presented⁷.

According to the Asylum Procedures Directive, the member states can order the investigation procedures to be executed expedited/at the border/in the transit zone⁸.

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³ Art. 24, Ibidem.

⁴ Art. 8, 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.

⁵ Art. 25, Directive 2013/32/EU of the European Parliament...

⁶ Art. 24, ibidem.

⁷ Art. 25, ibidem.

⁸ Art. 8, ibidem.

In addition, the Reception Conditions Directive states that Member States take measures as soon as possible to ensure that unaccompanied minors are representative represents and support in order to live in accordance with this Directive, the rights and fulfill its obligations. The unaccompanied minors shall be promptly informed of the appointment of a representative⁹. The representative should perform their duties in accordance with the principle of the best interests of the child, and must have the appropriate expertise. In order to ensure the development and social well-being of the child, the representative could removable down only when necessary. Organisations or individuals which/whose interests are or may be in conflict with the interests of minors unaccompanied, non-elected representative. The competent authorities shall undertake regular assessments, including also the need for a minor representation of unaccompanied tools are available¹⁰.

Unaccompanied minors who make an application for international protection shall, from the moment they are admitted to the territory until the moment when they are obliged to leave the Member State in which the application for international protection was made or is being examined, be placed: with adult relatives, with a foster family, in accommodation centres with special provisions for minors, in other accommodation suitable for minors. Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult applicants, if it is in their best interests. As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum¹¹.

According to the revised Qualification Directive (2011/95/EU) as soon as possible after the granting of international protection Member States shall take the necessary measures to ensure the representation of unaccompanied minors by a legal guardian or, where necessary, by an organisation responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or court order. Member States shall ensure that the minor's needs are duly met in the implementation of

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⁹ Art. 24, Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

¹⁰ Art. 23, *ibidem*.

¹¹ Art. 24, *ibidem*.

this Directive by the appointed guardian or representative. The appropriate authorities shall make regular assessments. Member States shall ensure that unaccompanied minors are placed either: with adult relatives; or with a foster family; or in centres specialised in accommodation for minors; or in other accommodation suitable for minors. In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity. As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum. If an unaccompanied minor is granted international protection and the tracing of his or her family members has not already started, Member States shall start tracing them as soon as possible after the granting of international protection, whilst protecting the minor's best interests. If the tracing has already started, Member States shall continue the tracing process where appropriate¹².

In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis¹³.

III. Asylum Procedure

When an unaccompanied minor applies for international protection, the Headquarters of the territorial State Police is required to issue a residence permit with which the minor receive assistance and protection from the SPRAR¹⁴. The application is confirmed by a guardian, appointed by the Judge for Guard-

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¹² Art. 31, 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.

¹³ Art. 10, 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 national.

¹⁴ Protection System for Asylum Seekers and Refugees.

ianship, who provides the whole procedure. The unaccompanied minors are vulnerable persons and after the police inform the Territorial Commissions, that schedules the personal interview as soon as possible.

According to the Committee on the Rights of the Child, during the hearing the vulnerable status of the minor should be taken into consideration. The interview must be conducted by representatives of competent authorities, who evaluates the detailed history and cultural background of the minor applicant, and decides whether refugee status can be granted to them or not¹⁵.

The substantive hearing is the most important part of asylum procedure since it grants the applicants an opportunity to share their comprehensive history and answer questions about their situation, so the authenticity of their background can be verified. The hearing is preceded by another interview that records the personal data of the minor, such as identity, family relations and migrant route. The primary purpose of substantive hearing is actually to ascertain a validity of persecution. According to the law a cultural mediator (a person with a professional degree granted by an institution of higher education in Italy) must be present in the interviews with the minor. The standard practice is that the interview of unaccompanied minors is conducted by an official who either is the senior member of the council or has the most experience in handling vulnerable minors¹⁶.

Asylum applications cannot be assessed without a substantive hearing. However, according to the national legislation there can be exceptions in specific cases when the written application form and confirmed personal data is sufficient. If forgoing the hearing is in the best interest of the minor, then the application can be assessed without a personal interview. In Italy, the Territorial Commissions can forgo the interview of traumatized or otherwise ill minors when it is recommended by a medical or psychiatric report. The interviews are prepared to fit the applicants' special needs since they are minors and thus require special treatment. The success of an interview can depend on many factors: frequent breaks during the hearings, whether the room it is

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¹⁵ *Kísérő nélküli és szüleiktől elszakított gyermekekkel való bánásmód a származási országon kívül.* Az ENSZ Gyermekjogi Bizottsága (CRC), CRC 6. sz. általános észrevétel (2005) (Note 31), Chapter 6.

¹⁶ D. Figueroa, *Italy: Protection of Unaccompanied Foreign Minors*, "Global Legal Monitor", 16 May 2017.

conducted in has a window or not, whether the walls are decorated with colourful pictures or it is just plain and boring. Due to their young ages, unaccompanied minors cannot speak about their situation like an adult. They express themselves in their own childlike way. Because of that, there is a great emphasis on creating a cheerful, safe atmosphere and using special interviewing techniques to ensure the success of the hearing. Meanwhile, the Territorial Commissions consider the special situation, family relations, age, any possible trauma or injuries suffered in the country of origin, and the reason of migration of minors¹⁷.

In Italy, the Territorial Commissions for International Protection and sub-commissions are the competent authorities in examining asylum applications and taking first-instance decisions. The Social Services of the Municipality provides assistance to the minor with the submission of the application and filling in the required form. After the Territorial Commissions have received the minor's application from the Immigration Office of the Police, there are maximum thirty days to hold the personal interview. And three working days after the substantive hearing the decision on the merits must be taken. In practice these are much longer and the administrative procedure usually lasts for several months (for example in Rome takes from 6 up to 10 months). But the lengthy procedure is not the only problem¹⁸.

IV. Barriers to Access the Asylum Procedure

Despite European and International laws require member states to grant refugee status, in practice unaccompanied minors face several difficulties in accessing the asylum procedure, starting with immediate deportation on the border with No. examination of their application or specific situation.

This goes against the principal of non-refoulement as defined in the Charter. There are aspects of asylum procedure that could discourage minors from

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¹⁷ *A kísérő nélküli kiskorúak menedékhez való jogának érvényesülése az EU-ban. Tanulmány a France terre d'asile francia civil szervezet koordinálásában*, ed. L. Delbos, Paris 2012, pp. 28–31, <https://helsinki.hu/wp-content/uploads/MAGYAR-szintezis.pdf> (1.08.2017).

¹⁸ L. Manca, G.G. Nucera, *Unaccompanied minors in Italy*, [In:] *Unaccompanied Minors in International, European and National Law*, ed. R. Rosskopf, Berlin 2016, p. 224.

applying, for example the length of the procedure, the refusal to provide an interpreter, the inadequacy of the guardian, and difficulties with obtaining the necessary documents¹⁹. The procedure that determines the age of the applying minor can drag out so that it makes the result moot and unreliable, denying them the right to be considered an unaccompanied minor and depriving them of the benefits of a child-friendly procedure. In most European Union countries a medical examination is the preferred method to determine the age of applicants, despite its results not being exact²⁰.

V. Role of the Guardian

The assistance of a legal representative is required for the minors during all legal procedures since they lack legal capacity. According to the EU minimum procedures directive, member states provide a representative for unaccompanied minors as soon as possible²¹. The guardian is responsible to:

- represent unaccompanied minors during legal procedures
- represent the organization responsible for the care and well-being of minors
- represent any other organization in the best interest of minors²².

In the member states of the European Union, there are different models regarding guardians. In Italy, the appointment of a guardian is mandatory, and similarly to Malta and Germany legal representatives are not specialized in asylum procedures, moreover minors are represented by several people and organizations. The relevant departments (the Headquarter of the territorial State Police, the Directorate General of Immigration, the Juvenile Court, the Judge for Guardianship) receive a report when an unaccompanied minor arrive. The Judge for Guardianship must appoint a guardian within 48 hours of

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¹⁹ *Right to asylum for unaccompanied minors in the European Union. A study coordinated by France terre d'asile*, ed. L. Delbos, Paris 2012, p. 7, <http://www.france-terre-asile.org/images/stories/mineurs-isoles-etranangers/mi-an-consolide-web.pdf> (1.08.2017).

²⁰ T. Smith, L. Brownlees, *Age assessment practices: a literature review & annotated bibliography*. United Nations Children's Fund (UNICEF), New York 2011.

²¹ 2003. január 27-i 2003/9/EK tanácsi irányelv a menedékkérők befogadása minimumszabályainak megállapításáról, 19. Cikk.

²² 2005 december 1-i 2005/85/EK tanácsi irányelv, 2. Cikk.

receiving the communication from the Headquarter of the territorial State Police. In practice, there is a tendency to appoint a guardian even several weeks after the asylum request has been submitted and it has negative effects on the psycho-social well-being of the minor. Usually the social workers of the local government play the role and may be also referred to a welfare institution where the minor is domiciled. The request of appointment must be filed within thirty days of receiving the child. Special expertise is only required in a few countries. In most, Italy being one of them, expertise in asylum procedure is not required by law²³.

VI. Legal Assistance

During the asylum procedure professional legal council may be needed by minors to help them fill out and submit their application. In some countries lawyers are contracted for this purpose, so minors can be advised without being charged. In other countries legal advice is only available during the appeal proceedings if certain requirements are met. In Italy, legal assistance is provided in SPRAR centres by specialized non-governmental organizations at the behest of the guardian. They shall also represent the minor during the asylum procedure. However, not all unaccompanied minors are able to avail themselves of that legal assistance. Applicants can request legal advice from the Territorial Commission on their own expense. During the judicial review unaccompanied minors are entitled to receive legal advice free of charge²⁴.

VII. Social, Medical and Psychological Support

Persecution can cause minors to develop severe psychological problems that require the help of an expert. At the refugee camp unaccompanied minors may undergo physical and psychological evaluations and receive treatment if necessary. The role of social workers bears great importance since it is them who know unaccompanied minors and their history the most as they spend a lot

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²³ *A kísérő nélküli kiskorúak menedékhez...*, pp. 15–17.

²⁴ *A kísérő nélküli kiskorúak menedékhez...*, p. 22.

of time with them and establish a relationship of trust. Social workers help unaccompanied minors express their feelings, take care of them, and provide them social and psychological support when necessary during the procedure. In Italy, social workers also help unaccompanied minors to decide whether to apply for asylum or not²⁵.

VIII. Possible Outcomes of the Procedure

Asylum procedure may result in various outcomes depending on the country. For instance, in Belgium, Bulgaria, the Czech Republic, France and Ireland the options are very simple: rejection, refugee status or subsidiary protection. In other countries such as Finland, Germany, Greece, Italy, Malta and Sweden seeking asylum is the main, and often only, way to avoid deportation.

In Italy the regular procedure has four possible outcomes: 1) The Territorial Commission may decide to recognise refugee status, 2) To grant subsidiary protection, 3) To recommend to the Headquarter of the territorial State Police to issue a one-year residence permit on humanitarian grounds, health conditions, 4) Reject the asylum application and issue a return order²⁶.

During the assessment of applications the applicant's minor status, vulnerability and special circumstances shall be taken into consideration. This means that until the possibility of child prosecution cannot be disproved all minors shall be regarded as refugees during the procedure. Furthermore, there are criminal acts that are committed against minors that shall be taken into account; for example, forced military service of minors, forced labour, sexual exploitation of minors, child prostitution. It is important that the result of the procedure and its consequences are presented to minors in a way they can understand.

In practice there is no significant difference between first instance procedure and appeal proceedings. According to the principle of UN High Commissioner for Refugees, minors who are old enough to understand what refugee status means shall be informed about the process, kept updated of its status, and its outcome and its possible consequences. Moreover, in compli-

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²⁵ *A kísérő nélküli kiskorúak menedékhez...*, p. 24.

²⁶ L. Manca, G.G. Nucera, *Unaccompanied minors in Italy...*, p. 225.

ance with minimum procedural guarantees the legal possibility of an appeal shall be ensured²⁷. In Italy, the guardian is involved in both stages; an appeal shall be submitted or at least consented by them. In case of its rejection, the decision can be challenged in court. Due to their age, minors are issued a resident permit which validity can be extended later on if certain legal requirements are met; one of them is participation in various integration projects²⁸. In Italy against the negative decision of the Territorial Commissions, there is a legal possibility for the asylum seeker to appeal before the Civil Tribunal within thirty calendar days. Against the decision about the subsidiary protection or to request the issuance of a residence permit on humanitarian grounds. The Tribunal reject the appeal or grant international protection to the asylum seeker minor. The length of the process may be very long in practice, in some cases more than eighteen months. A final appeal before the highest appellate Court can be lodged within sixty days²⁹.

IX. Aspects of Asylum on the Border

According to the principal of non-refoulement³⁰, refugees shall not be returned to a place where their lives and freedom would be threatened. Furthermore, access to asylum procedure shall be ensured on the border since the applications must be assessed before a removal decision. Regarding unaccompanied minors an EU action plan states that reception rules and access to procedural guarantees shall be valid from the moment unaccompanied minors are found on the border of the European Union until their situation have been resolved³¹. It has great importance regarding the access to the asylum procedure, the guardian, and the interview and custody of children. In Italy, when

²⁷ UNHCR, *A kísérő nélküli menedékkérő gyermekekkel való bánásmódra vonatkozó elvek és eljárások*. (30. jegyzet).

²⁸ *A kísérő nélküli kiskorúak menedékhez...*, p. 37.

²⁹ L. Manca, G.G. Nucera, *Unaccompanied minors in Italy...*, p. 225.

³⁰ A menekültek helyzetére vonatkozó 1951-es Genfi Egyezmény, 33 cikk (2. jegyzet); A tanács 2004/83/EK irányelve, 21. cikk (3. jegyzet).

³¹ A Bizottság közleménye az Európai Parlament és a tanács felé: a kísérő nélküli kiskorúakra vonatkozó intézkedési terv (2010–2014), 4. fejezet, pp. 10–12, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF> (10.08.2017).

unaccompanied minors arrive at the border and seek asylum, an interview is conducted with them, and their situation is closely examined. Non-governmental organizations set up information hubs at airports, harbours and along in-land borders for refugees. These hubs established by the ministry of interior assist unaccompanied minors with providing an interpreter, finding accommodations, keeping in contact with authorities and locating relevant services that they may need³².

X. Summary

The level of knowledge of the European Asylum System is usually very low in the refugees' countries of origin and in practice unaccompanied minors face several difficulties in accessing the asylum procedure, starting with immediate deportation on the border with No. examination of their application. Although almost all European Union Member States are required by law to inform immigrants about their right to apply for asylum, in many cases they do not understand what was happening to them. It means for example that a minor receives the same information as an adult. In the future it would be essential in all countries of the European Union to establish rules and procedures specialized for children.

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³² CiR e Commissione Europea, Progetto s.A.B. servizi alle frontiere: cooperazione pratica. Rapporto nale, 2008, p. 22, http://www.cir-onlus.org/SAB_CIR_servizi_alle_frontiere_italiano.pdf (10.08.2017).

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