



Ad-Hoc Query on UNACCOMPANIED MINORS APPLYING FOR INTERNATIONAL PROTECTION

Requested by SI EMN NCP on 16th March 2009

Compilation produced on 16th April 2009

Responses from BE, DE, EE, ES, LT, LV, HU, MT, PL, PT, RO, SI, SK, FI (14 in Total)

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.















1. Background Information

Republic of Slovenia is currently in the process of amending the International Protection Act. One of the things that we are aiming to improve is the accommodation and custody of unaccompanied minors applying for international protection. In this context we would like to examine existing good practices of the member states in this field.







2. Responses

		Wider Dissemination?	Which act governs the custody of unaccompanied minors applying for international protection?
	Belgium	Yes	In Belgium, the provision on guardianship of unaccompanied foreign minors is laid down in Title XIII, Chapter VI "Unaccompanied minor aliens" of the Programme Law of 24 December 2002 (Belgian Official Gazette of 31 December 2002). This law has been modified by the Programme Law of 22 December 2003 and of 27 December 2004 (a.k.a. Guardianship Act). A Royal Decree was approved on 22 December 2003 to implement the above-mentioned Chapter VI. This Royal Decree has been modified by the Royal Decree of 5 January 2005 (a.k.a as the Guardianship Royal Decree).
	Bulgaria		






Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

	Czech Republic		
	Denmark		
	Germany	Yes	<p>Custodianship is governed by the book on Family law („Familienrecht“) of the Civil Code of Germany („Bürgerliches Gesetzbuch“), more specifically sections 1773 through 1895. The Civil Code applies both to German nationals and to foreigners. Thus, there is no act which specifically governs custodianship for the particular case of an unaccompanied minor applying for international protection.</p> <p>However, the German Code of Social Law, book VIII (“Sozialgesetzbuch VIII”) comprises in section 42 a special provision on the requirement for the Youth Welfare Office („Jugendamt“) to establish accommodation and preliminary custodianship in cases where an unaccompanied minor arrives in Germany.</p>
	Estonia	Yes	Act on Granting International Protection to Aliens (entered into force 1 July 2006), Art 17 and Family Law Act (entered into force 1 January 1995), Art 92.
	Ireland		
	Greece		
	Spain	Yes	<p>A whole set of Acts has to be taken into consideration, nevertheless there is no a single and specific Act for such a theme. Civil Code and Spanish Constitution 1978, which states in art 148 and 149 that minors issues are competency of the regional autonomous communities and foreigner procedures are competency of the central state.</p> <p>Asylum Act 5/1984, as amended by Act 9/1994.</p> <p>Organic Act 1/1996 on legal protection of minors and relevant regional legislation of the Autonomous Communities, who have the competence as far as minor protection, is regarded.</p> <p>There is no specific protection legislation for minors applying for international protection.</p> <p>Organic /Act 4/2000 as general foreigners legislation, that includes a section on unaccompanied minors.</p>
	France		
	Italy		
	Cyprus		
	Latvia	Yes	Asylum Law of the Republic of Latvia, Art. 11, Art.20.
	Lithuania	Yes	Law on The legal status of the aliens and legal acts of the Republic of Lithuania regulating the custody and assistance for children who are left without parental care.
	Luxembourg		
	Hungary	Yes	Act LXXX of 2007 on Asylum Art. 35 Para. 6.






Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>If the person seeking recognition of refugee status is an unaccompanied minor, the refugee authority shall forthwith provide for the appointment of a representative ad litem (case guardian).</p> <p>The Child Welfare Authority shall appoint a case guardian according to the general rules: Act XXXI. of 1997 on the Child Welfare and Guardianship Administration Art. 87. Para. 4. Govt. Decree 149 of 1997 on Public Guardianship Authority and Proceeding in Child Welfare and Guardianship Cases Art 132. Para 1.e.</p> <p>Please note that the case guardian is in charge of the application for international protection but s/he does not fulfill any other task related to the minor (s/he does not protect, educate or provide care for the minor). The case guardian is usually a lawyer.</p>
	Malta	Yes	The Refugees Act Art. 13 (3) Legal Notice 243 of the same Act, Art.15.
	Netherlands		
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that their response is not disseminated further.
	Poland	Yes	Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws of 2003, No 128, item 1176), chapter 4, article 61.
	Portugal	Yes	Law 27/2008, 30th June , particularly Art. 79.
	Romania	Yes	<ul style="list-style-type: none"> * Law on protection and promotion of children's rights, no. 272/2004 (article 73); * Law no.122/2006 on asylum in Romania, with subsequent modifications and additions * GD no. 1251/2006 for approval of rules for the application of Law no.122/2006 on asylum in Romania, with subsequent modifications and additions <p>Guardianship</p> <p>After registering the unaccompanied minor alien as asylum applicant, Romanian Immigration Office shall immediately notice the competent authority for children protection whose territorial jurisdiction includes the accommodation centre, where the asylum application shall be lodged, in order to start the procedure of appointing a legal representative.</p> <p>The asylum procedure is suspended until the appointment of a legal guardian, but the unaccompanied minor has the right of asylum applicants during this time. According to the Law on Child Protection appointed guardians are staff members of the local Directorate for Child Protection (graduates of Law Faculty or of the Faculty for Social Assistance). The local Directorates for Child Protection are affiliated with the National Authority on Child Protection, which is under the authority of the Ministry of Labour, Family and Equality of Chances.</p> <p>The interests of a minor alien shall be represented by her or his own legal representative. The minor alien shall lodge her or</p>









Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			his asylum application by her or his own legal representative, and in the case the age of the minor is 14 the asylum application may be lodged personally. In case of an unaccompanied minor alien who manifested, orally or in writing, her or his will to be granted asylum, in front of the competent authorities, shall be registered as asylum applicant and her or his application shall be lodged when appointing her or him a legal representative.
	Slovenia	Yes	International Protection Act, Art. 16.
	Slovak Republic	Yes	Act No 305/2005, as amended, on Social Legal Protection and Social guardianship (§ 29) – defines the role of the body responsible for execution of social and legal protection of children and the social custody. Act No 480/2002, as amended, on Asylum – defines procedure, rights and duties of asylum seekers (including minors)
	Finland	Yes	The 26 § in the Act on the Integration of Immigrants and Reception of Asylum Seekers A representative may be assigned to a refugee child or a child applying for a residence permit or seeking asylum who is in Finland without a guardian or other legal representative. The representative exercises a guardian's right to be heard in matters pertaining to the child's person and assets, decides on the child's living arrangements and manages his/her assets as laid down in chapter 12, section 1 and 2, of the Code of Judicial Procedure, section 16 of the Administrative Procedures Act (598/1982), section 17 and section 18, paragraph 3, of the Act on the Application of Administrative Law, and the Guardianship Act (34/1898). The representative shall protect the child's interests, taking his/her ethnic, linguistic, religious and educational background into account. Before making a decision in a matter pertaining to the child's person or assets, the representative must discuss the matter with the child if this is possible in view of the child's age and developmental level and the nature of the matter. When making decisions, the representative shall take the child's opinions and wishes into consideration. It is not the representative's function to see to the daily or other care or upbringing of the child. The 14 § in the Administrative Procedure Act The right of a legally incompetent person to be heard shall be exercised by his/her guardian, custodian or other legal representative. However, a legally incompetent person shall self alone exercise his/her right to be heard in a matter pertaining to income or assets in his/her possession.
	Sweden		
	United Kingdom		
		Wider Dissemination?	Is the system of the custody of unaccompanied minors applying for international protection different than the system of the custody of nationals? If this is the case, what is the difference?









Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

	Belgium	Yes	<p>There is little difference between the system of guardianship of unaccompanied minors (governed by the so-called Guardianship Act) and the national regulation on custody (articles 389 a.f. of the Civil Code)</p> <p>Here are the main differences:</p> <ul style="list-style-type: none"> - A civil guardian is not obliged to accept the guardianship ↔ A guardian of an UM is. - A civil guardianship is unpaid. However more and more the judge awards some financial payment to the guardian, but there is no legally binding act for this. ↔ A guardian of UM is entitled to a yearly lump sum payment. - A civil guardian is under the supervision of a judge (juge de paix) and a supervising guardian will be appointed. ↔ A guardian of an UM has no supervising guardian, but the Guardianship Service together with the judge (juge de paix) is supervising. The Guardianship Service particularly focuses on the daily practical organisation of the guardians activities. - A civil guardian has to present the settlement of accounts concerning the management of his guardianship in the legal file of the judge; once a year. ↔ A guardian of UM has to present a report on the financial situation and on the personal situation of the UM at least twice a year to the judge. - A civil guardian has certain competences regarding the personal status of the minor, e.g. can give the consent in adoption, custodianship or emancipation and the granting of dispensation of the age requirement in case of marriage of the UM ↔ the guardian of an UM cannot give consent for marriage, adoption or emancipation of the UM. - Both systems contain a termination of the guardianship by right 'a parte pupilli' (e.g. in case of becoming 18). However a guardianship of an UM can also be terminated in case the UM receives a residence permit for an unlimited period - The guardian of the UM has the specific duty of searching for a 'durable solution' for the UM, this can be family reunification, return, or regularisation of its situation in Belgium. Specific to this procedure is that the guardian assists the UM in all procedures on the entry, stay, settlement and removal of the UM (eg also asylum procedure) - A guardian of UM can have the guardianship on up to 40 pupils ↔ it is exceptional that a civil guardian has the guardianship over so many pupils.
	Bulgaria		
	Czech Republic		
	Denmark		
	Germany	Yes	<p>The system is generally the same in both cases, except for the fact that in the case of custodianship of foreign nationals, the custodian may have duties which normally do not occur in the case of custodianship of German nationals, such as acting for the minor in matters pertaining to aliens law or asylum. This includes applications for international protection.</p> <p>There is, however, an exception to this rule: According to section 12 of the Asylum Procedure Act („Asylverfahrensgesetz“) and section 80 of the Residence Act („Aufenthaltsgesetz“), a foreigner who is at least 16 years of age shall be capable of</p>







Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.


			performing procedural acts in accordance with these acts. Thus, unaccompanied minors who are 16 or 17 years old can apply for asylum even without custodianship provided.
	Estonia	Yes	No, the system is the same. According to the “Act on Granting International Protection to Aliens” a person enjoying international protection has the right to receive during his stay in Estonia state pensions, family benefits, employment services and employment subsidies, social benefits and other assistance on the same grounds provided by legislation as permanent residents of Estonia. Guardianship is established for a child whose parents are deceased, missing or with restricted active legal capacity, or are deprived of parental rights. A court decides on establishment of guardianship on the application of a guardianship authority or of the person who is placed under guardianship. Guardianship is exercised by a guardian appointed by a court. A guardianship authority proposes the appointment of a person as a guardian.
	Ireland		
	Greece		
	Spain	Yes	<p>In general terms there is a general system for all unaccompanied minors, regardless if they are foreigners or not, based on the principle of the best interest of the Child and following the International Convention on the Rights of the Child.</p> <p>Nevertheless foreign accompanied minors or unaccompanied minors who apply for asylum are subject to some procedural differences, due to the specific asylum procedure that comprises deadlines, special requirements and a decision about the status of protection.</p> <p>Normally another element in the Spanish system that is very important, and makes a significant difference, is that the competency over the practical custody of the minors, regardless of their nationality, falls into the frame of the regional governments and not of the central government. The regional governments have a special Tuition Body called “<i>Comisión de Tutela del Menor</i>” which has the material custody, the representation as guardian and sometimes as legal representative and the competency on the rights of the minors. The final outcome of the custody of unaccompanied minors is the result of a balance between the central state procedure and the concrete situation of custody and integration. In this balance an important practical role is taken by the NGO which runs accommodation and housing , training, education and social assistance programmes with these minors.</p>
	France		
	Italy		
	Cyprus		
	Latvia	Yes	There are no differences between the system of guardianship and responsibilities of guardian/custody for citizen’s minors and unaccompanied minors applying for international protection. The guardian of unaccompanied minor represents the legal

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.




			interests/rights of minor during asylum procedure.
	Lithuania	Yes	Lithuania applies the same system of custody for both unaccompanied minors applying for the international protection and for nationals without parental protection. The accredited guardian in both cases takes care of the best interests of the child.
	Luxembourg	Yes	
	Hungary	Yes	There is a difference between the two systems. The custody of minor citizens requires the guardian to replace the parents. The guardian protects, educates and cares for the child. The case guardian of unaccompanied minors who apply for international protection is their legal representative in the RSD procedure. The care, protection and education is the responsibility of the psycho-social service in the Home for the Unaccompanied Refugee Minors. The case guardian covers only tasks of the legal representation during and related to the asylum procedure. The appointed case guardian has no authorization to represent the minor related to any other issues.
	Malta	Yes	No. In fact according to the Refugees Act Art. 13 (3) an unaccompanied minor shall be assisted in term of the legislation which applies for nationals i.e. the Children and Young Persons (Care Orders) Act.
	Netherlands		
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that their response is not disseminated further.
	Poland	Yes	Yes. The main difference is that the custodian of unaccompanied minor represents the interest of a foreigner only as his/her legal representative. According to art. 61 of Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland, the authority admitting the application for granting the refugee status, submitted by an unaccompanied minor applies immediately to the custody court having jurisdiction over the place in which such minor stays, with an application to establish a custody to represent the minor in the proceedings for granting the refugee status and place the minor in care and educational centre.
	Portugal	Yes	In addition to the stipulations of the general minor guardianship legislation, minors who are asylum or subsidiary protection applicants or beneficiaries may be represented by an organisation or a non-governmental organisation, or by any other legally prescribed form of representation. This representation is assured by a person acting on behalf of an organisation representing an unaccompanied minor as legal guardian, responsible for his/her assistance and well-being. In the case of a situation of risk to the minor citizen, his/ her custody is given to a guardian who replaces the parents. The guardian is responsible for the protection, care and education.

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.






	Romania	Yes	<p>Unattended under-age benefit from the same protection legally offered to national minors in difficulty.</p> <p>There are one difference regarding accommodated:</p> <ul style="list-style-type: none"> • Unaccompanied minors will be accommodated with the accompanying relatives, with no regard to the degree of kinship. • Unaccompanied minor asylum seekers under the age of 16 will be accommodated in the Centers of the General Direction for Social Assistance and Child Protection, or in the centre of an authorized private organization. <p>Asylum seekers over 16, who do not have the means to support themselves, can be accommodated in the reception and accommodation Centers of RIO, until the expiry of the 15 days after a final and irrevocable decision of rejecting the application for a form of protection has been issued.</p>
	Slovenia	Yes	<p>The custody of minor citizens requires from the guardian to replace the parents. The guardian protects, educates and cares for the child. The guardian of unaccompanied minors who apply for international protection is their legal representative in the determination procedure. The care, protection and education is the responsibility of the psycho-social service in Asylum Centre.</p>
	Slovak Republic	Yes	<p>An appointed guardian for an unaccompanied minor is his/her representative acting in all legal processes related to asylum/family reunification/ assisted voluntary return. Daily care for UAMs is provided by a special facility for UAMs. They are treated equally, as other children in Slovakia, taking into consideration their age, culture, religion, language, etc.</p> <p>In case of a guardian appointed for a Slovak minor, the range of his/her responsibilities are defined by the court. The guardian can but not need to replace all duties of parents – it depends on the court decision.</p>
	Finland	Yes	<p>The Finnish Child Welfare Act applies to all children in Finland, including the asylum seeking children. See also above.</p>
	Sweden		
	United Kingdom		

		Wider Dissemination?	What is the selection procedure for the appointment of the guardians and which criteria apply for the selection? Who are usually the guardians, who appoints them? Are they present already on filing the application for international protection? Is the function of the guardian honorary or paid – who covers the expenses?
	Belgium	Yes	<p>* Selection procedure and criteria</p> <p>Candidate-guardians have to file their application with the Guardianship Service. Here are some of the selection criteria that may apply</p> <ul style="list-style-type: none"> - to have the right motivation and feeling with the problem of unaccompanied minors - to have the abilities to organise and coordinate - to have some knowledge in the area of the rights of aliens and youngsters

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<ul style="list-style-type: none"> - to have some professional experience regarding social, psychological and other follow-up - availability to accompany the minors through the different procedures - to be at least 18 years of age, no maximum age - there are no nationality conditions prescribed in the law to become a guardian. The guardian should have a residence permit for an unlimited duration. - to be able to provide a certificate of good behaviour <p>Persons who help to decide on the residence of the minor (that is staff of the Immigration Department or Office of the Commissioner General on Refugees and Stateless Persons), or individuals engaged in judicial procedures against the minor, are not eligible to become a guardian. Furthermore, guardians cannot be designated to a particular minor if they work in any reception capacity in respect of the minor concerned.</p> <p><u>* Who are guardians and who appoints them?</u></p> <p>Two types of guardianship systems exist in parallel in Belgium: professionalized systems and benevolent or voluntary systems. Professionalized guardians are employees of NGOs who work in the social and legal sectors, while benevolent guardians are private persons who volunteer to become guardian. The majority are benevolent guardians. It is the Guardianship Service treats the applications and finally appoints the guardians.</p> <p><u>*Are they present already on filing the application for international protection?</u></p> <p>The unaccompanied minor can file an application for asylum on his own, even before a guardian has been appointed. It is however common that a guardian has already been appointed before the application for asylum is made, in that case the guardian can make the application for asylum in name of the unaccompanied minor. So both the unaccompanied minor and the guardian can file the application for asylum.</p> <p><u>* is the function of the guardian honorary or paid – who covers the expenses?</u></p> <p>The guardian receives for every guardianship a yearly lump sum payment of 500 euro, as well as a lump sum expenses payment of 85 euro (for faxes, stamps, photocopies, etc.) and a reimbursement of the travel expenses. The guardian has the fiscal and social status of self-employed. In case of a professional guardian, the payments will be made to his/her organisation. A guardian can have up to 40 unaccompanied minors, in practice this will only be the case for professional guardians. It is the Guardianship Service (dependant of the Federal Public Service of Justice) who will make the payments.</p>
	Bulgaria		
	Czech Republic		
	Denmark		

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

	Germany	Yes	<p>Unaccompanied minors have to be taken into preliminary custodial care by the Youth Welfare Office as soon as the office becomes aware of an unaccompanied minor having arrived in Germany. As a rule, the Youth Welfare Office then makes a request for custodianship at the local custodianship court („Vormundschaftsgericht“), which is usually part of the Local District Court („Amtsgericht“). The court then appoints a custodian. Custodianship can be assigned to one person, several persons, the youth welfare office or associations. Custodians must be personally suitable to act as such with regard to their personal affairs and financial standing. In the case of unaccompanied minors, the custodian is often a member of staff of the Youth Welfare Office.</p> <p>As unaccompanied minors have to be taken into preliminary custodial care by the Youth Welfare Office as soon as they arrive in Germany, custodianship should be available when an application for international protection is filed. If an application is filed before a custodian is appointed, the application is considered as pending. However, unaccompanied minors who are 16 years of age or older can file an application even without the presence of a custodian.</p> <p>There are honorary and professional custodians in Germany. Honorary custodians can be compensated for expenses (e.g. travel expenses). They can also apply for an annual lump-sum allowance. Professional custodians (in most cases social workers) can be remunerated on an hourly basis. Youth welfare offices or associations cannot be remunerated for acting as custodians.</p>
	Estonia	Yes	<p>A court decides on establishment of guardianship on the application of a guardianship authority or of the person who is placed under guardianship. Guardianship is exercised by a guardian appointed by a court. A guardianship authority proposes the appointment of a person as a guardian. According to the “Family Law Act” the following persons shall not be guardians: minors, persons with restricted active legal capacity, persons who have been deprived of parental rights or from whom a child has been removed without deprivation of parental rights, persons who have been relieved of the performance of duties of a guardian or curator, persons who for some other reason are not capable of performing the duties of a guardian. In Estonia the guardianship is covered by Ministry of Social Affairs and supported by local authorities.</p>
	Ireland		
	Greece		
	Spain	Yes	<p>IN THE SPANISH LEGAL SYSTEM , IN ORDEN TO UNDERSTAND THE SYSTEM , WE HAVE TO MAKE A DISTINCTION BETWEEN:</p> <p>A) GUARDIANSHIP OR PROTECTION B) CUSTODY C) IN WARD CUSTODY D) LEGAL REPRESENTATIVE –REPRESENTATION BEFORE COURTS</p>

Disclaimer: *The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

THE APPOINTMENT OF THE GUARDIANS?

It is by law, and is, generally, the regional government in which the MENA asylum seeker lives, and their specific administration. But according to the upper classification, the guardianship or protection right initially is executed by the Regional Authority- delegated from the institution with competency in family, social affairs and or minors, etc.

Then the custody is normally executed by the Director of the Reception facilities where the minors are accommodated.

Then the in word custody or similar is also the same authority, according to cases.

And finally, if the person must be represented legally before courts or certain state institutions , an appointed by the state lawyer ,following instructions from the holder of the guardianship and the minor him or herself , will be in charge.

WHICH CRITERIA APPLY FOR THE SELECTION?

In case the regional administration considers that other person, physical or juridical person, could be in a better position to play this role, a third person (director of an accommodation facility, for instance, should apply to this body , in terms of demanding the custody , informing of it the central state and the proceeding bureau (OAR)

WHO ARE USUALLY THE GUARDIANS?

The civil servants , mainly social workers, who are called Social Case Officer , who work and act in the name of the body depending from the regional government, called generically “Comisión de Tutela del Menor “ o Delegated from the regional Government in charge of Family, Social Affaires, Minors,etc..

Custody, as a second stage from guardianship and in ward protection is provided by the responsible of the facilities , or NGO´s members , etc..

WHO APPOINT THEM?

By law and bylaw in the procedure, and regional protocols according to each autonomous community.









ARE THEY PRESENT ALREADY ON FILING THE APPLICATION FOR INTERNATIONAL PROTECTION?

Normally translators and lawyers appointed by the state are the ones in charge in the first step of the procedure. In a deeper stage , once the first application has been made, further interviews and the final part of the procedure including the proposal , the MENA asylum seeker will be assisted by the appointed lawyer and the holder of the guardianship, in some cases or in some others by a lawyer and an attorney in law.








IS THE FUNCTION OF THE GUARDIAN HONORARY OR PAID – WHO COVERS THE EXPENSES?

in most of the cases the state pays all these actors, as they are civil servants or actors paid by the state un the ir legal activity.




Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.






	France		
	Italy		
	Cyprus		
	Latvia	Yes	The Orphan's court takes a decision on appointment of the guardian for unaccompanied minor and decision on accommodation of unaccompanied minor during the asylum procedure. According to the provisions of the Asylum Law the guardian is appointed when the asylum application has been submitted. The guardian of unaccompanied minors receives the salary from Orphan's court as a permanent employee but it's not a special salary relating to representation of unaccompanied minors during the asylum procedure.
	Lithuania	Yes	If The Migration department determines that the asylum applicant is an unaccompanied minor, he is accommodated in the Refugee reception centre (hereinafter the Centre). Then the Centre submits an application regarding the grant of custody to the administration of the municipality in which the centre is based. The Centre assigns its' employee (social worker) as a guardian to each unaccompanied minor, who takes care of the minor during his stay in the Republic of Lithuania. The Law determines that a guardian of the unaccompanied minor can only be the Centre or a natural person (if he is available). The guardians are not present on filing the application, the application for the guardianship is filled by unaccompanied minor himself/herself. When the application reaches the Migration department, by the decision of the Department the unaccompanied minor is accommodated in the Centre, and the administration of the district where the centre is based in coordination with the Children rights protection service assigns the guardian. The Refugee reception centre assigns an employee, who receives salary from the budget of the Centre. A natural person can also be a guardian. Then the State provides him/her with a donation for the alimony of the minor.
	Luxembourg		
	Hungary	Yes	According to the current regulation and the practice evolved the appointed case guardians for the asylum procedure are lawyers (residing and practicing in the locality). Their appointment is issued on the request of the refugee authority (Office of Immigration and Nationality-OIN) by the Social Office (Child Welfare Authority) of the local authority (municipality). This is a paid function. The expenses are covered by the municipality and reimbursed by the OIN. The appointed case guardians participate and represent the minor only in the asylum procedure, they are not present when the unaccompanied minor submits his/her application.
	Malta	Yes	Guardians are appointed by the Children and Young Persons' Advisory Board. Main criteria is that they must be working closely with the concerned unaccompanied minor. Usually the guardian is the residential social worker where the unaccompanied minor is residing. The guardian is appointed once the unaccompanied minor is admitted in the Home that specifically caters for his needs. This means that the guardian might and might not be present during the filing of asylum request. This depends on what stage the request is filled in. It is usually the residential social worker who is also the

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.









			guardian of the unaccompanied Minor who makes an asylum request.
	Netherlands		
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that their response is not disseminated further.
	Poland	Yes	In the most cases, custodians are recruited from The Law Advice Centre (“Law Clinic”), established in the frame of the University of Warsaw, Faculty of Law and Administration.. Student's work is provided free of charge to the clients who cannot afford a regular lawyer and is supervised by experienced practitioners and academic staff. The staff selection depends on the knowledge of the language and temporal availability.
	Portugal	Yes	Persons acting as guardians for unaccompanied minors who apply for international protection in Portugal are designated workers of the CPR (Portuguese Refugee Council), a Portuguese Non Governmental Organization that holds this function in the scope of the Portuguese Asylum Law (Law 27/2008, 30th June , Art. 16). The CPR is informed when the application is lodged. Given that very few unaccompanied minors file international protection applications in Portugal, the expenses are covered by the CPR’s overall budget, which, among others, includes some Ministry of Internal Administration funding.
	Romania	Yes	<p>A legal guardian has to be appointed as soon as possible</p> <ul style="list-style-type: none"> • The refugee status determination procedure is suspended until the appointment of a legal representative. • The decision officer requests for a legal guardian to be appointed. • The appointment is made by General Direction for Social Assistance and Child Protection. • The Direction will appoint a person with higher education in law or social assistance from its own staff or from an authorized private organization, which will uphold the child’s rights and participate together with him / her in the entire refugee status determination procedure. • Should it be determined that the person appointed by the General Direction for Social Assistance and Child Protection does not carry out his/her obligation to protect the interest of the child appropriately, or should he / she prove ill faith in carrying out this task, the Romanian Immigration Office may request the replacement of that person. <p>The legal guardian assists the child throughout the asylum procedure and during the age assessment process and he is paid by the General Direction for Social Assistance and Child Protection.</p>
	Slovenia	Yes	Persons acting as guardians for unaccompanied minors applying for international protection in Slovenia are permanently designated workers of the local NGO (Slovene Philanthropy). The selection depends on the location of unaccompanied minor, the knowledge of language and temporal availability. The guardian is present when the minor is filing the application. In Slovenia the function of the guardian is an honorary function.
	Slovak Republic	Yes	Guardians for UAMs are appointed by a court. Usually, it’s the Office of the Labour, Social Affairs and Family – responsible body for social legal protection and social custody (it’s public institution). Selection of the respective Office mostly depends on the location of an unaccompanied minor. The function of the guardian is not paid function. The

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.










			guardian is present during the filing of the application.
	Finland	Yes	The representative is appointed as soon as possible after the child has submitted his/her application. The representatives receive payment for the time spent on each case. The representatives are appointed by district courts on the submission of the reception centre. There are no legal conditions for the appointment, but one should preferably be professional social or health worker. The representative can not be appointed from the same reception centre the child resides in. At the time being the ministry of the interior is responsible for training the representatives, but in the near future the Immigration Service is likely to bear the responsibility of the training's co-ordination.
	Sweden		
	United Kingdom		

		Wider Dissemination?	Where are the unaccompanied minors, applying for international protection, accommodated (in special facilities, special premises in asylum reception centres etc.)?
	Belgium	Yes	The unaccompanied minors who apply for asylum, as well as all other unaccompanied minors, will be transferred to an Orientation and Observation Centre where the minor will be in principle stay 15 days (once renewable). In a second phase the unaccompanied minor will be placed in one of the reception centres who have the capacity to host unaccompanied minors run by the Federal instance Fedasil or its partners. The third phase provides a stable housing or reception autonomy (with follow up). More info see also: Exchange of Information and best practices on first reception, protection and treatment of unaccompanied minors, IOM, September 2008, pp. 110-114. www.belgium.iom.int/index.asp?News_ID=518
	Bulgaria		
	Czech Republic		
	Denmark		
	Germany	Yes	There are many different kinds of accommodation for unaccompanied minors across the German Federal States („Bundesländer“). It is increasingly common, though, that unaccompanied minors are placed in so-called “clearing-houses” („Clearinghäuser“) during the first days or weeks of their stay in Germany. In these clearing-houses, social workers try to identify the individual needs of each minor and then decide where he / she should be placed after the clearing-period. Young children can be accommodated in foster families or orphanages. Older minors can be placed in residential care facilities for children and adolescents. Unaccompanied minors who are 16 years old or older can be required to stay in reception centres for (adult) asylum seekers.






Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			Such reception centres sometimes have special premises for young asylum seekers. Whether an unaccompanied minor (who is 16 years of age or older) is placed in a residential care facility or a reception centre for asylum seekers depends on his individual needs for youth welfare measures. The individual needs are examined and determined by a youth welfare office or a clearing-house.
	Estonia	Yes	An applicant who is an unaccompanied minor will be placed in the reception centre or a social welfare institution for the time of the asylum proceedings, and welfare services appropriate to the age of the applicant shall be guaranteed to him or her. An applicant who is an unaccompanied minor may be placed with an adult relative or a foster family if the recipient is suitable to take care of a minor. When placing an applicant who is an unaccompanied minor in the reception centre, a social welfare institution, with an adult relative or foster family, the rights and interests of the minor shall be taken into consideration above all. If possible, unaccompanied minors who are siblings shall not be separated from one another. In some cases the applicant who is an unaccompanied minor may be placed in the initial reception centre for the time of examination.
	Ireland		
	Greece		
	Spain	Yes	<p>They are always accommodated in special facilities or sometimes in special premises in asylum reception centres. The central criteria is that unaccompanied minors ,who apply for asylum , must have a special place .</p> <p>So the central government, and specifically the Ministry of Labour and Immigration, through the ERF, finances programmes , run by NGO, which provide these specific facilities. These NGO and other institutions, like religious congregations, manage these facilities and take in their hands the other social and legal aspects, providing and /or contacting the asylum seekers unaccompanied minors with other sources of social and legal assistance, filling up the rest of their requirements, including in this case the role of guardians or legal tuition.</p> <p>The legal representation, which falls into the legal custody but it is not the same, is normally carried out by a lawyer who acts in supreme interest of the minor and follows instructions from the legal guardian who might be the Director of the facility in which the MENA asylum seeker lives or the “Comision de Tutela del Menor” from the regional government.</p>
	France		
	Italy		
	Cyprus		
	Latvia	Yes	Unaccompanied minors, applying for international protection can be accommodated in the accommodation centers for asylum seekers „Mucenieki”, which is a structural unit of the Office of Citizenship and Migration Affairs of the Ministry of Interior, or with the guardian appointed by the Orphan’s court or in the children care institution.

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

	Lithuania	Yes	They are accommodated in the Refugee reception centre. In Lithuania there are two centers: Aliens registration centre under the State Border Guard Service (temporary domicile to foreigners who illegally entered/stayed in Lithuania and asylum seekers until the migration department takes a decision) and Refugee reception centre under the Ministry of Social Security and Labor (provides accommodation for aliens who receive protection in Lithuania and also all unaccompanied minors arriving to Lithuania).
	Luxembourg	Yes	
	Hungary	Yes	Unaccompanied minors applying for international protection are accommodated in the Home for the Unaccompanied Refugee Minors, which is a special facility. There might be cases when due to the very young age (under 14) they are placed and looked after in the national child protection facilities.
	Malta	Yes	They are accommodated in an Open centre, specifically aimed to accommodate minors.
	Netherlands		
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that their response is not disseminated further.
	Poland	Yes	Unaccompanied minors applying for international protection are accommodated in children's homes and in foster families.
	Portugal	Yes	In Portugal, there aren't any special facilities for unaccompanied minors applying for international protection. Unaccompanied minors aged 16 years or over are placed in accommodation centres for adult asylum seekers, the CPR's Reception Centre. If younger than 16, their representative, articulated with the national Social Security Services, shall seek adequate premises, for example, reception centres with special provisions for minors.
	Romania	Yes	Unaccompanied minors will be accommodated with the accompanying relatives, with no regard to the degree of kinship. <ul style="list-style-type: none"> Unaccompanied minor asylum seekers under the age of 16 will be accommodated in the Centers of the General Direction for Social Assistance and Child Protection, or in the centre of an authorized private organization. Asylum seekers over 16, who do not have the means to support themselves, can be accommodated in the reception and accommodation Centers of the RIO, until the expiry of the 15 days after a final and irrevocable decision of rejecting the application for a form of protection has been issued. <ul style="list-style-type: none"> As for under-age asylum seekers, these have the right to have access to compulsory education in the same conditions as under-age Romanian citizen. Unattended under-age benefit from the same protection legally offered to national minors in difficulty. For facilitating access to the Romanian education system, the unaccompanied minor asylum seeker on the duration of whole school year, from a free training course in Romanian language. The training course is organised by the Ministry of Education and Research, in collaboration with the Romanian Immigration Office. At the end of initiation course in Romanian, an evaluation commission, whose members will be decided through an

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>order of the Ministry of Education and Research, will test the level of knowledge of Romanian language, and will establish the level of registration in the adequate school year.</p> <p>After the minors get a form of protection they can list themselves into integration programmes. The activities of this programme are established according to individual needs of each demander and include among other activities, courses of Romanian language (same as for minors asylum seekers).</p> <ul style="list-style-type: none"> - sessions of cultural accommodation <p>Sessions of cultural accommodation are organized by the RIO personnel with the purpose of getting the minors acquainted with the traditions, habits and cultural values of the Romanian culture, and of offering practical information regarding the Romanian society.</p> <ul style="list-style-type: none"> - counseling sessions <p>Counseling sessions are realized by the RIO personnel with the purpose of information regarding the right that minors have in Romania and the concrete way of exerting these rights (right to a workplace, right to social assistance, right to medical assistance, access to education system and right to a house).</p> <ul style="list-style-type: none"> - psychological counselling have the roll to supporting minors who were granted a form of protection in Romania during the process of acquiring the abilities and the knowledge necessary for adapting to the Romanian society. <p>Because the minors have a low auto support potential, also they can benefit from free housing in the accommodation centers for asylum seekers and refugees (Bucharest, Timișoara, Galați, Rădăuți, Șomcuta Mare), centers where the aliens may live during the integration program;</p> <p>Note: * The asylum applications lodged by unaccompanied minors shall not follow the procedure at the border. The unaccompanied minors asylum applicants shall be granted the access to the territory and to the ordinary procedure. The asylum applications of the unaccompanied minors cannot be resolved by accelerated procedure</p>
	Slovenia	Yes	They are accommodated in special premises of Asylum Centre – Unaccompanied Minors' Ward.
	Slovak Republic	Yes	If an unaccompanied minor does not apply for asylum, s/he is placed in special facility for unaccompanied minors. In case of applying for asylum, s/he is placed in the asylum reception centre.
	Finland	Yes	<p>They are accommodated in group homes for unaccompanied minors. The facilities should be suitable for minors. There are also family group homes, but they are intended for unaccompanied minors with a residence permit. Usually these group homes are in connection with asylum centres for adults. Group homes are governed by the Child Welfare act.</p> <p>Applicants aged between 16-17 are living in sheltered accommodation connected with the reception centre. Some hundred of the applicants in the age 16-17 years have been accommodated in folk high schools under NUTUKKA-project.</p>
	Sweden		
	United Kingdom		

Disclaimer: *The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*
