IN WHOMSE BEST INTEREST?

Exploring Unaccompanied Minors' Rights Through the Lens of Migration and Asylum Processes (MinAs)

COMPARATIVE ANALYSIS OF THE NATIONAL REPORTS ON THE STATE OF THE ART

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List of Abbreviations

AA - Aliens act
AAH - Ad Hoc Administrator (Administrateur Ad Hoc)
AC - Aliens Centre
ASE - Public Welfare Services for Children (Aide Sociale à l'Enfance)
BCIA - Borders, Citizenship and Immigration Act 2009
BIC - Best interest of a child
BID - Best Interest Determination
CASF - Social work and family code (Code de l'action sociale et des familles)
CESEDA - Code for Entry and Residence of Foreigners and Right of Asylum (Code sur l'entrée et le séjour des étrangers et demandeurs d’asile)
CNDA - National Court for Right of Asylum (Cour Nationale du Droit d’Asile)
CRC - UN Convention on the rights of the child
CRIP - service for receiving alarming information (Cellule de recueil des informations préoccupantes.)
DDD - Commissioner for Human Rights (Défenseur des Droits)
DPJJ - Direction of Judicial protection for young people (Direction de la Protection Judiciaire de la Jeunesse)
ECHR - European Convention on Human Rights
ECtHR - European Court of Human Rights
ECM - Every Child Matters policy framework
EU - European Union
fUAMAs - former Unaccompanied minor asylum seekers
IPA - International protection act
JCHR - Parliamentary Joint Committee on Human Rights
JDE - Children’s Judge (Juge Des Enfants)
LA - Local Authority
MECS - Children Social Houses (Maisons d'Enfance à Caractère Social)

NGOs - Non-governmental organizations

NRM - National Referral Mechanism for victims of trafficking

OCC - Office of the Children's Champion

OFPRA - French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Appatrides)

ONAD - National Observatory of decentralized social action

PIC - Legal-information centre for non-governmental organisations

SEECRAN - South East European child rights action network

UAMs - Unaccompanied minors

UASC - Unaccompanied Asylum Seeking Child

UAMAs - Unaccompanied minor asylum seekers

UNCRC - The United Nations Convention on the Rights of the Child
1 INTRODUCTION

The 21st century has been characterized by the increasing and omnipresent flow of migration world over due to economic, political, environmental, touristic and other reasons. While the population from the global West and North present mostly legal migrants travelling in organized and comfortable conditions, according to the “rules and system”, people from the global South and East often find themselves in the position of illegal immigrants, trespassing borders “secretly”, traveling under dangerous and exhausting conditions, without certainty of reaching their final destination alive. While legal migrants travel on “first class flights”, illegal immigrants are paying a much higher amount of money to cross borders on overloaded boats, hidden in trucks and/or on foot, walking for weeks. Illegal migrations are one of the most problematic issues of contemporary Europe, while the political approach of the European Union toward this issue is obviously both inefficient and insufficient. In addition there are significant differences among the European countries such as the fact that some are more preferred as final destinations, some are only transitional; internal differences of economic standards and wealth; different socio-political systems and approached towards illegal migrants etc.

In addressing this issue, European governments have the responsibility of providing UAMs with an adequate humanitarian response, appropriate care and security. According to the reviewed literature, UAMs have been long absent from debates and research concerning migration issues and have gained visibility only recently. Consequently, little is known about the complexity of this group’s international migration experience and process and the problems and risks they face in transiting from one country to another and, later on, the difficulties which await them at their destinations. Furthermore, statistical data on UAMs are extremely limited and this stands in the way of developing appropriate policies and responses for this most vulnerable group of migrants, not to mention the problems and risks that they face in transiting from one country to another.

The research project “In whose best interest? Exploring unaccompanied minors’ rights through the lens of migration and asylum processes (MinAs)” funded by the European Commission was carried out in four European countries (Slovenia, Austria, France and United Kingdom) between June 2014 and December 2015. Its aim is to identify structural drawbacks and make recommendations for policy improvements for UAMs. As a point of departure, the project leans on the two concepts explained further in the report; namely ‘best interests of the child’, (the BIC principle), which is embedded in the United Nations
Convention on the Rights of the Child (UNCRC) as well as the principle of ‘best interest determination’ (BID), as a political and bureaucratic tool to assure the minor’s best interests. The project explores whether and how the BIC principle and BID tool are embedded in the national legislation and implemented in the policy-making with regard to reception, protection, asylum and return procedures directed towards UAMs in the four mentioned countries.

Many European countries have not yet introduced BID procedures into their national legislation or documents/recommendations for dealing with UAMs. This gap allows too much room for arbitrary interpretation and implementation of the best interests of the child and, in some cases, even allows discriminatory discourse and practices. In order to contribute to fulfilling the national obligations set out by international law, as well as following the aims of the European Commission, the project analyses the practical, philosophical and phenomenological dimensions of the best interests of the child, which will facilitate a deeper understanding of the best interests of children as well providing a solid basis for proper implementation of the principle in practice.

This document represents a comparative analysis of the national state of the art reports of four countries on the rights of UAMs through the lens of migration and asylum processes. The comparisons we make are based on the most relevant and recent data available gathered in the national state of the art reports and on a short evaluation of the information on each of the topics: research concepts, existing statistical and demographic data, national legislation on the related subject and existing good practices.

Due to various national contexts (differences in available data, legislation, understanding relevant concepts and policies), the possibility of comparison of national state of the art reports is limited. Some differences lay in the starting point of conceptualizing research concepts. Furthermore, the countries included in the analysis differentiate according to the range of the phenomenon, legal options for gathering data on UAMs, existing research related to the analysed problem and also according to the available data on existing good practices. This document therefore encompasses the highlight of each report.
2 INTERNATIONAL PROVISIONS CONCERNING UNACCOMPANIED MINORS

The rights and issues relating to the BIC regarding UAMs, which are incorporated in the national legislations of the states of project partners derive from various international documents, conventions and directives, the most important being produced by the UN General Assembly and institutions within the European Union.

2.1 UN documents regarding BIC

The best interest of the child (BIC) is one of the underlying principles of the Convention on the Rights of the Child, namely Article 3, paragraph 1, which gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere. Moreover, it expresses one of the fundamental values of the Convention.

In the UNICEF’s Implementation Handbook for the Convention on the Rights of the Child, the third chapter concerns BIC. Even though the Working Group drafting the Convention did not discuss any further definition of “best interests”, and by 2007, when the Implementation Handbook was published, the Committee on the Rights of the Child has not yet drafted a General Comment on the principle, in its first 10 General Comments, issued between 2001 and 2007, it alluded to the principle and in some cases set out quite detailed explanations of the implications of applying it to individual children and/or to particular groups of children in particular circumstances (see below). With relation to UAMs, the Implementation Handbook gives some indication of what the “best interest determination” should consist of, by quoting the Committee on the Rights of the Child, General Comment No. 6 (2007; 38):

"At any of these stages, a best interests’ determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child’s life. A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process.

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1 The concept of the “child’s best interests” is not new. It pre-dates the Convention and was already enshrined in the 1959 Declaration of the Rights of the Child (paragraph 2), the Convention on the Elimination of All Forms of Discrimination against Women (articles 5(b) and 16, paragraph 1 (d)), as well as in regional instruments and many national and international laws.
The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques. Subsequent steps, such as 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 ...”

In 2013, the Committee on the Rights of the Child adopted a General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (Article 3, paragraph 1). The Committee defines the best interests of the child as a three-fold concept (2013; 4):

1.) a substantive right (the right of the child to have his or her best interests assessed and taken as primary consideration);
2.) a legal principle (meaning that if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child’s best interests should be chosen) and
3.) a rule of procedure: whenever a decision is made that will affect a specific child, group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child concerned.

According to the Committee, the concept of the child's best interests is complex, flexible and adaptable and its content must be determined on a case-by-case basis, “according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs. For individual decisions, the child's best interests must be assessed and determined in light of the specific circumstances of the particular child. For collective decisions – such as by the legislator –, the best interests of children in general must be assessed and determined in light of the circumstances of the particular group and/or children in general. In both cases, assessment and determination should be carried out with full respect for the rights contained in the Convention and it’s Optional Protocols” (2013; 9).

One of the most comprehensive guidelines on the formal determination of BIC is provided in UNHCR Guidelines on Determining the Best Interests of the Child (2008). As stated in the preface of the provisional version of the Guidelines, released in May 2006 (2006; 3), they

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“represent a part of the commitment (Agenda for Protection Goal 6.2.) by UNHCR to disseminate materials on the rights of refugee children, drawing on the Convention on the Rights of the Child and other international human rights laws. Information collected from a variety of reports, including Annual Protection Reports, as well as through participatory assessments, indicates that there is no consistency among field offices as to when and how best interest determinations (BID) should be carried out. The Guidelines identify the underlying principles that can be used to construct a framework for ensuring compliance with the Convention on the Rights of the Child in a formal BID. They set out the legal and other principles that will guide decision-makers in 1.) when to make a formal BID; 2.) who should make the determination and what procedural safeguards should be followed and 3.) how criteria should be applied to take a decision in a particular case”. A short fact sheet on the best interests of the child and BID guidelines is available also in Children – BID guidelines information sheet, published by UNHCR in June 2008.

Even though the concept of “the best interest of the child” might sound straightforward, experiences and feedback from practitioners in the field suggest that applying it in real-life situations can be challenging because considerations are often competing or even contradictory. As further implementation guidance was needed, the UNHCR developed the Field Handbook for the Implementation of UNHCR BID Guidelines, published in 2011. The Field Handbook offers more than details on how to implement the BID process for children: it goes beyond simply determining what a child’s best interests are, as it also suggests how to create and carry out a care plan that will serve those interests. According to the authors, the 2008 Guidelines remain the authoritative guide, but the Field Handbook is a complementary source of guidance which offers additional advice on how to carry out best interest determination process in practice3.

In 2014, UNHCR and UNICEF published a joint publication Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe. As stated in the introduction of the publication “the document aims to support States in the EU and EFTA in applying the BIC principle as a primary consideration when dealing with unaccompanied and separated children in their territory. This document recognizes that applying this principle may take a variety of forms and thus does not seek to prescribe any one set of structures or procedures. It does, however, offer suggestions of elements that States may choose to include so as to meet international legal standards and

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obligations” (2014; 11). The publication was primarily designed for use by policy makers and public and private institutions in the EU and EFTA countries concerned with the protection and well-being of UAMs, but it may also be of interest to other actors in child protection systems such as lawyers, social workers, representatives/guardians, the judiciary and children’s ombudspersons. As such, it probably represents the most comprehensive and elaborate document in the field, providing legal and operational frameworks, defining concepts and collecting good practices.

2.2 EU documents regarding BIC

Since the EU does not have any legislative capability in child protection, Member States are, to a certain point, independent in establishing their own child protection systems. To that end the promotion of the protection of the rights of the child is an explicit objective in the Treaty on European Union (Article 3(3). The other important documents from the field are the EU Agenda for the rights of the child and the EU Action plan on human rights and democracy who comprised work programmes aimed at turning that treaty based commitment into practice. EU initiatives concerning child protection generally focus on targeted interventions to address a specific dimension of a child's situation. Although all provisions of the Charter on Fundamental Rights of the EU (which all Member States have ratified) equally apply to children, it is Article 24 which lays down that children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests. As evident, the international protection of children's rights is rooted in the values and principles of the 1989 UNCRC which was ratified by all EU Member States.

In order to address EU Directives, focus on the concept of the “best interest of the child” as the primary consideration in all actions relating to children, some of the main documents will be outlined next in chronological order. In 2003, the EU adopted the Council Directive Right to Family Reunification (2003/86/EC), which aims to establish common rules of law relating to the right to family reunification. The intention is to enable family members of third-country nationals residing lawfully in the territory of the European Union (EU) to join them in the Member State in which they are residing. Article 5 of the Directive determines that
application for entry and residence shall be submitted to the competent authorities in order to exercise the right to family reunification, and "when examining an application, the Member States shall have due regard to the best interests of minor children". In 2008 the Return Directive (2008/115/EU) was adopted. It sets common standards and procedures for returning third-country nationals staying illegally in Member State territory, determines exceptions, and includes provisions regarding children. The Return Directive stresses that the "best interests of the child should be a primary consideration when implementing this Directive" (Paragraph 22, Article 5). In Article 10 on the Return and removal of unaccompanied minors it is determined that "before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child". Finally Article 17 on the detention of minors and families reads as follows: "The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal".

Due to the increase in the arrivals of UAMs to Member States, the European Commission adopted the EU Action plan on unaccompanied minors (COM (2010)213 final). It was written for the period 2010-2014. This document identifies the need for comprehensive child protection systems as one of the strands of preventive action; calls upon the EU and its Member States to regularly address child protection issues in human rights and migration dialogues with third countries; calls for financial programmes to support activities aimed at protecting, assisting and integrating (unaccompanied) children as well as post-return monitoring and follow-up. The action plan elaborates three main strands for action: prevention, regional protection programmes, reception and identification of durable solutions. The first step includes the prevention of unsafe migration and trafficking of children. Within this step, the BIC principle is included in the context of the fight against human trafficking. The second of the planned actions stresses that Member States should: "Reinforce the capacities of third countries to combat trafficking in human beings, as well as to protect and assist unaccompanied minors in accordance with the best interests of the child and international standards and conventions, regardless of their nationality". The second step of the Action plan includes reception measures and access to relevant procedural guarantees that should apply from the moment an unaccompanied minor is detected at external borders or on EU territory, until a durable solution is found. Within this part, the BIC principle concerns the issues of general accommodation and detention: "Unaccompanied minors should always be placed in appropriate accommodation and treated
in a manner that is fully compatible with their best interests. Where detention is exceptionally justified, it is to be used only as a measure of last resort, for the shortest appropriate period of time and taking into account the best interests of the child as a primary consideration. The third step applies to durable solutions that should be based on the individual assessment of the best interests of the child and shall consist of either: return to and reintegration in the country of origin / granting of international protection status or other legal status allowing minors to successfully integrate in the Member State of residence / resettlement.

With the purpose of ensuring that (among others) UAMs have a dignified standard of living and that comparable living conditions are afforded to them in all Member States, the EU adopted a Reception Conditions Directive (2013/33/EU). This directive sets standards for detention conditions of (unaccompanied) children and for access to education; provides rules on the protection of physical and mental health; requires Member States to take into account age-specific concerns and to ensure adequate living standards for children as well as access to rehabilitation services; provides rules for the placement and tracing of the families of unaccompanied children. The Directive determines: "When deciding on housing arrangements, Member States should take due account of the best interests of the child" (22nd paragraph). In addition, the best interest of the child is stressed in Article 23: "The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors". Member States shall ensure a standard of living adequate for the minor’s physical, mental, spiritual, moral and social development. In the second paragraph of Article 23 the Directive addresses some guidelines for "assessing the best interests of the child". Within the BIC assessment, Member States shall in particular take due account of the following factors:

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

Article 24 on unaccompanied minors stresses that Member States shall 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 representative shall perform his or her duties in accordance with the principle of the best interests of the child”.

Regarding suitable accommodation, the Directive determines that unaccompanied minors who make an application for international protection shall be placed: (a) with adult relatives; (b) with a foster family; (c) in accommodation centres with special provisions for minors; (d) in other accommodation suitable for minors. Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult applicants if this is found to be in their best interests. It also determines that tracing the family members of the unaccompanied minor shall be done whilst protecting the UAMs’ best interests.

Another important directive is the Asylum Procedures Directive (2013/32/EU). It establishes common standards of the asylum procedure with the aim of fostering efficient and fair asylum decisions and setting common quality standards that also include special provisions for children. In its 33rd paragraph it is determined “that the best interests of the child should be a primary consideration of Member States when applying this Directive”, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child. In “assessing the best interest of the child”, Member States should in particular “take due account of the minor’s well-being and social development, including his or her background”. Further, Article 25, “Guarantees for unaccompanied minors” stipulates that Member States shall ensure that a representative represents and assists the unaccompanied minor. The representative shall perform his or her duties in accordance with the principle of the best interests of the child and shall have the necessary expertise to that end.

Last but not least, it is important to mention the Dublin Regulation (604/2013/EU), which determines the EU Member State responsible for examining an application for asylum seekers requesting international protection under the Geneva Convention and the EU Qualification Directive, within the European Union, emphasizing the best interests of the child. Namely, the 13th paragraph stipulates that the best interests of the child should be a primary consideration of Member States when applying this Regulation. “In assessing the best interests of the child, Member States should, in particular, take due account of the minor’s well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her
background”. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability.

Article 6 which addresses guarantees for minors determines that in assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors: (a) family reunification possibilities; (b) the minor’s well-being and social development; (c) safety and security considerations, in particular where there is a risk of the minor falling victim to human trafficking; (d) the views of the minor in accordance with his or her age and maturity. In addition it is also determined that the Member State where the unaccompanied minor lodged an application for international protection shall, as soon as possible, take appropriate action to identify the family members, siblings or relatives of the unaccompanied minor within the territory of Member States, whilst protecting the best interests of the child.

Regarding the determination of the responsibility of the Member State, Article 8 stipulates that where family members, siblings, or relatives 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”. In the absence of a family member, a sibling or a relative the Member State responsible shall be the one where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interests of the minor.

The above-mentioned documents issued by the UN and EU do not fully establish a specific care procedure for UAMs in national contexts, nor does it specify their rights. National legislations instead include some of the specific provisions for UAMs, usually taking into account their vulnerability and lightening the provisions for their adult peers. Therefore diversity of procedures, key concepts and their definitions over EU Member States is inevitable.
3 DEFINITIONS

An analysis of national state of the art reports shows the diversity of key concepts and their definitions which are regarded as crucial for the analysed research problem. While some countries focus on concrete definitions, others stress terminological disparities from different backgrounds. Legislation, statistics and professionals can use several terms regarding the same issue in the same country. In addition to this, definitions do not always have a clear theoretical background so it could be difficult to either compare them or to search for the most suitable one.

The aim of this chapter is therefore to present some preliminary clarifications on the basic terms and concepts used on the national levels which address specific research issues connected with the project. The latter are further described using the terms and concepts used in the project´s partner states: unaccompanied minors; refugee status and status of subsidiary protection; best interest of a child and best interest determination procedures.

3.1 Unaccompanied minors

In Austria, the Act on Settlement and Residence defines an UAM as a minor foreigner who is not accompanied by his/her adult legal guardian (Article 2.17). Therefore the most common acronym used to describe unaccompanied minors is ‘UMF’ which either stands for unaccompanied minor foreigner (unbegleitete/r minderjährige/r Fremde) or unaccompanied minor refugee (unbegleitetes minderjähriges Flüchtling). However it is important to stress that the imprecise use of the ‘UMF’ carries the risk of marginalizing unaccompanied minors outside the asylum procedure (European Migration Network, 2010: 11).

Within the French context, a specific term is used - that of “mineur isolé étranger” MIE), which translates as isolated foreign minor. There’s no specific legal definition of a MIE included in French law, besides these minors fall within different legal regimes. The latter means that they should be considered “children at risk” under the Civil Code (Article 375), which involves the implementation of Children’s Welfare legal provisions (CASF - Code de l’Action Social et des Familles) with no restriction concerning nationality⁴; meanwhile their status as migrants or asylum seekers is regulated in the Aliens’ legislation (CESEDA - Code sur l’entrée et séjour des étrangers et demandeurs d’asile) and lastly the Asylum law.

⁴ In addition, in the French approach, there is no distinction between UAMs from extra-European countries and from European countries, contrary to the mentions included in the European approach (Council of Europe definition).
In Slovenia, terminology on UAMs differs according to the status of the minor. The official translation of the Alien’s Act (AA) addresses a third-country national minor without a status of international protection as an alien minor (mladoletni tujec). Irregular minors who applied for international protection are treated under the International Protection Act (IPA) which determines an unaccompanied minor (mladoletnik brez spremstva) as “a third-country national or a stateless person under 18 years of age who is in the territory of the Republic of Slovenia without either parent, or their previous legal/ customary primary caregiver”.

In the UK, UAMs are referred to as ‘Unaccompanied Asylum Seeking Children’, (UASC). The official definition is set out in the Immigration Rules (Paragraph 352ZD) as persons who are under 18 when their asylum application is submitted, who are claiming asylum in their own right (not as a dependent) and who have been separated from both parents and are not being cared for by an adult who, by law or custom, is responsible for doing so.

3.2 Refugee status, asylum status and status of subsidiary protection

The Austrian Act on Asylum establishes that a foreigner is to be granted asylum when it is credible that he/she has been persecuted in their country of origin according to the Geneva Convention (Article 3). According to the same Act, a foreigner is to be granted subsidiary protection when he/she has already been denied asylum status but a refoulement is prohibited because of a real and present threat against the person in the country of origin according to the European Convention of Human Rights (Article 8). The subsidiary protection is withdrawn when the threat/danger in country of origin no longer exists. The main authority to determine issues related to international protection is the Federal Office on Aliens and Asylum (BFA, Bundesamt für Fremdenwesen und Asyl) of the Ministry of Interior. When a person is denied asylum and/or subsidiary protection by the BFA, the person may submit a complaint against the negative decision at the Federal Administrative Court (Bundesveraltungsgericht) within two weeks after the first decision. The deadline for complaint is extended to four weeks if the applicant is an unaccompanied minor. While asylum is a permanent status, subsidiary protection is issued for one year the first time and is extended for two more years after the first extension if the conditions for subsidiary protection still endure.

In France, asylum refers to national and international laws (conventional and constitutional asylum). The preamble of the French constitution (1946), states that "any person persecuted by virtue of his actions in favour of liberty may claim asylum upon the territories
of the Republic”. Similar to other countries, the Geneva Convention is integrated into French law (the regulations concerning asylum are included in Book VII of the Code for Entry and Residence of Foreigners and the Right of Asylum). Concerning subsidiary protection (Article L 712-1 of CESEDA), this status is granted to “any person who does not fulfil the conditions of refugee status (…) and who establishes that he/she is exposed to one of the following serious threats in his/her country: death penalty / torture or inhuman and degrading sentences or treatments / serious, direct and individual threat to a civilian’s life or person because of widespread violence resulting from a local or international armed conflict situation.” The French Office for the Protection of Refugees and Stateless Persons (OFPRA) is an independent public institution which is in charge of examining applications for asylum. The OFPRA ensures the protection of persons granted refugee status. Its decisions are controlled in the second instance by an Administrative Court (the National Court for the Right of Asylum). At this point it is important to stress that the French system is not focused on UAMs seeking asylum. France grants institutional protection to UAMs who are not asylum seekers (called in some contexts undocumented children). In other words, in France an UAM can claim institutional protection without submitting an asylum application. UAMs seeking asylum are in a minority in the French context, for example according to obtained data (OFPRA activity report 2013) in 2013, only 367 out of 66 351 applications for asylum were submitted by UAMs.

In Slovenia, international protection is determined by the International Protection Act (IPA) and refers to the refugee status (status begunca) and the subsidiary form of protection (subsidiarna zaščita). Refugee status is granted to a third country national who, owing to well-founded fear of being prosecuted 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 or, owing to such fear, is unwilling to avail himself of the protection of that country, or a stateless person, who is outside the country of his former habitual residence as a result of such events and is unable or, owing to such fear, unwilling to return to it (IPA, Article 2). Meanwhile the status of subsidiary form of protection is granted to a third country national or a stateless person, who does not qualify for a refugee, when substantive grounds exist to suspect that upon his/her return to the country of origin, or in case of a stateless person, the country of last residence, the person would face real risk of being subject to serious harm (such as death penalty or execution; torture or inhumane or degrading treatment or punishment, serious and individual threat to a civilian's life or person by reason of
indiscriminate violence in situations of international or internal armed conflict). (IPA, Article 2)

Similarly, the UK takes its definition of a refugee from the 1951 Geneva Convention relating to the Status of Refugees, which is included in Paragraph 334 of the Immigration Rules and Regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006. Further specifications for the treatment of claims by children are set out in Paragraphs 350-352ZB of the Immigration Rules. Humanitarian protection is granted to those who qualify for protection pursuant to Article 3 of the European Convention on Human Rights or Article 15 of the Refugee Qualification Directive for a reason which is not covered by the Refugee Convention. This is set out in Paragraph 339C of the Immigration Rules and applies to those who face the risk of torture or inhuman or degrading treatment or punishment, death penalty, unlawful killing or 'serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict'.

In the UK, the legal right to stay is called 'leave to remain'. This leave is granted or refused by the Home Office, a department of the central government. When granted, it may be indefinite or time-limited; it may also be subject to conditions such as not working. To be lawful, immigration decisions must be taken in accordance with the Immigration Rules. These Rules are policy statements which do not have the force of either an Act of Parliament (primary legislation) or a Statutory Instrument (secondary legislation). However they must be given effect by the Secretary of State acting through its officials.

3.3 Best interest of a child

In Austria the BIC principle has been incorporated into the Civil Code; its Article 138 states that in every matter related to a minor, especially in matters of custody and personal contacts, the 'welfare of the child' (Kindeswohl), is to be followed as the leading principle. According to this, important criteria for the implementation of the BIC principle are: (1) adequate nutrition, medical, and sanitary care, housing and education, (2) care, security, and protection for the physical and spiritual integrity of the child, (3) the appreciation and acceptance of the child by his or her parents, (4) the promotion of the child's skills and development, (5) taking into account the child's opinion in due consideration of his or her understanding and skills to build opinion, (6) avoiding damage to the child through a measure against his or her will, (7) avoiding the risk for a child to become the subject of an

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5 Note that the latter is 'subsidiary protection' as per the Refugee Qualification Directive, but has been subsumed within humanitarian protection under the Immigration Rules.
assault or violence, (8) avoiding the risk for the child to be brought or withheld unlawfully or suffer other kinds of damage, (9) trustworthy contacts of the child to both parents and an important reference person (10) avoiding loyalty conflicts and feelings of guilt on the part of the child, (11) observation of the rights, claims, and interests as well as (12) observation of the living conditions of the child, his or her parents, and his or her broader environment. However the German Kindeswohl does not fully reflect the ambitious content of the ‘best interests of the child’ concept. On the other hand the Federal Constitutional Act on the Rights of Children (BGB1. I Nr. 4/2011) establishes that every decision relating to children either by public or private institutions should be taken in due consideration of the BIC principle (Article 1). The law lacks further elaboration of the concept.

BIC is known as ”the superior interest of the child” in French (intérêt supérieur de l’enfant). Since it is a general principle which should guide authorities' actions and decisions concerning children (but with no clear definition) it may be easily manipulated. The concept can be defined by the lawmaker in relation to different areas concerning children, but also by the authority who has to investigate, assess and put it into practice regarding specific situations of every child. As a consequence, the concept is composed of two main aspects: on the one hand, it's a general principle which has to be taken into consideration in law, policies and decisions related to children, and on the other hand, it's a dynamic concept that can evolve and adapt itself to each situation depending on the geographic and cultural context.

In Slovenia it can be said that the BIC principle is the standard, whose meaning is defined by each field in a different way (depending on circumstances). It is also necessary to stress that in some legislation provisions, namely the Marriage and Family Relations Act, Civil Procedure Act, the phrase/term 'interest of a child’ instead of best interest of a child is used. However, there is no explanation on what the phrase/term (best) interest of a child exactly means. For example, Article 6 of the Marriage and Family Relations Act implies that ”it is in interest of a child to develop in a healthy way”. In this article parental rights are also determined; to assure conditions for healthy growth, coherent personal development and competences for the autonomous life and work of a child. Deriving from the UNCRC (Article 3), the Marriage and Family Relations Act in Article 5.a determines that ”in all activities and procedures affecting a child, parents, other persons, state authorities and bearers of public authority must act in the child’s interest”. Similarly, the Civil Procedure Act (Article 408) explicitly requires from the court protection of the interest of a child in legal and parental lawsuits ex officio. On the other hand, a national legislation review shows that the interest of a child is
not fully incorporated in Slovenian migration (AA) legislation. Namely, Article 82 of the AA stipulates that “the police shall issue the alien minor with a return decision where his guardian for special case, having carefully considered all circumstances, establishes that this is in the best interests of the alien minor”. In the AA, the principle is only mentioned in this article and law does not require that the principle should guide the decision of the guardian. BIC is, however, mentioned in the IPA, which says that “in proceedings in which the applicant is an unaccompanied minor, the principle of the best interests of a child must be considered”.

In the UK there is no formal procedure for determining the best interests of UAMs. Instead the process is to first consider whether the child qualifies for asylum or humanitarian or subsidiary protection. If protection is refused, the next step is to assess the child’s best interests. UASC leave is normally granted for three years or until the age of 17.5 unless satisfactory reception arrangements are deemed to exist in the country of origin or the child is assessed to be 17.5 or more years old. However, the Children Act (1989 s17) provides that “It shall be the general duty of every local authority … to safeguard and promote the welfare of children within their area who are in need”; its Section 20 creates a duty to provide accommodation to children in need within the geographical area where there is no person who has parental responsibility for them; whilst its Section 31 it imposes a duty to take a child into care where he or she is suffering or is likely to suffer significant harm unless taken into care. However, s31 is rarely used for UAMs who are usually looked after under s20. Turning to a later piece of legislation, s11 of the Children Act 2004 provides that any children’s services authority in England and various National Health Service bodies must make arrangements for ensuring that their functions are discharged “having regard to the need to safeguard and promote the welfare of children”. Finally, as already noted, s55 of the BCIA is also relevant, setting out as it does the best interest duty placed on the Home Secretary.

3.4 Best interest determination procedures

Although national law prescribes that in every matter related to a minor the ‘best interest’ of the child should be given primary consideration, Austria lacks a formal ‘best interest determination’ mechanism. The Child and Youth Welfare Services are entrusted with the guardianship of an unaccompanied minor through a court decision and may transfer some of

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6 Home Office, Assessing an asylum application from a child, paragraph 17.6.
their tasks to the child care facility in which a minor is accommodated (see 6.5. Guardianship and Advocacy). In case of a difficult or extraordinary situation, the child-care facility in charge of the minor may contact the Child and Youth Welfare Services of the respective Land and a meeting is arranged to take decisions in favour of the minor.

In France neither formal procedure nor legislation states the BID of UAMs. Nonetheless, lawmakers as well as the authority who should investigate, assess and put the BIC into practice regarding the specific situation of each child might use a range of guidelines and practical tools including the Committee on the Right of the Child’s General Comments and Council of Europe Guidelines and Recommendations. Since 2007 and the reform of legislation regulating child welfare, a support group for child welfare consisted of 30 experts has been constituted; they published guidelines in order to provide interpretation that can help in the process of implementing the BID7. They are working on the implementation of the BID focusing on all children and not specifically UAMs.

There is no evidence of a single formal procedure for determining the best interests of an unaccompanied child in Slovenia. However, in 2012, rules were approved on the statutory representation of UAMs, provision of adequate accommodation, care, and treatment of UAMs outside the Asylum centre or its branch, which define the representation procedures for UAMs. Within this Act, UAMs were recognized as a special vulnerable group.

There is no formal process for the determination of a child’s best interests in the UK. For a minor citizen in court proceedings, this would be made by the family court. For a separated child in the asylum system, an assessment is made only if asylum and humanitarian protection are refused. There is no defined process and consideration is usually brief as it is considered that a grant of leave to remain in the UK until the age of 17.5 adequately addresses the child’s best interests.

7 Groupe d'appui à la protection de l'enfance, »la notion d'intérêt supérieur de l'enfant dans la loi réformant la protection de l'enfance«, septembre 2011.
4 BACKGROUND INFORMATION ON UNACCOMPANIED MINORS

There are numerous interlinked reasons why UAMs seek entry to individual countries. For example, a study conducted by Etiemble (2001) identified the following five categories of reasons for leaving a country of origin, which are still relevant now:

- Exiles fleeing a region at war or persecution: generally asylum seekers, options for their return are very difficult.
- Proxies sent to the West by their parents to continue their education or work and send money to their family back home.
- Exploited victims of trafficking (prostitution networks, criminal activities, begging, etc.).
- Runaways.
- Wanderers. These minors were already living on the street in their home country and, in the course of their travels, have crossed several borders.

Of course there can also be other common reasons for departure, such as family reunification, misinformation about the asylum procedure in the country of origin. In addition, UAMs can belong to several of these categories or move from one category to another.

In 2014, Austria ranked ninth among industrialized countries with respect to the number of asylum applications received in one year (UNHCR, 2014). In 2013, 17,503 asylum applications were submitted in Austria. In 2015, as of end of September, the number of asylum applications reached 56,356 and is expected to reach 82,500 by the end of the year. In 2013, 1,187 unaccompanied minors applied for asylum in Austria. As of September 2015, the number of asylum application submitted by unaccompanied minors reached 6,175. The minors were mostly from Afghanistan and Syria.

Most of the unaccompanied minors in Austria seek asylum (European Migration Network, 2010: 12; 32). However, there is no valid data available on unaccompanied minors who reside in Austria without having applied for asylum (Fronek and Rothkappel, 2013: 13).

of these children seem to be victims of human trafficking although secure numbers are missing here, too (cf. European Migration Network, 2010: 39).

While reliable aggregate statistics about UAMs are unavailable in France, we can establish some trends from various sources. Namely in April 2013, according to the Direction of Judicial protection for young people (DPJJ), there were around 9000 UAMs in France. It should be noted that this estimate does not include the 3000 UAMs living in the French Ultramaran department of Mayotte. On an indicative basis, we should underline that in 2013, 113 772 minors (national and foreign) were cared for by the Children’s Welfare Services (Slama and Bouix, 2014). Therefore, UAMs represent only 6% of the overall number of children cared by the ASE, which approximately corresponds with the share of foreigners in the French population (estimated at 5,8%). Most UAMs are males (80%) (Slama and Bouix, 2014) while this share only represents 59% of the national minors cared for by the ASE. Most of these are between 15 and 17 years old. The Direction of Judicial protection for young people (DPJJ) recently published an implementation report for the period from the 1st of June 2013 until the 31st of May 2014. During this period, 4042 cases were assessed as UAMs, 636 left the care provisions during the same period (including 205 who left the provision when they became adults), 47% of them were 16 years old and 87% were boys. According to these data, UAMs in France are mainly from Sub-Saharan Africa (61%), Asia (16%) and to a lesser extent from North Africa and the Middle East (13%). Most of them are based in the following French departments: Paris (442), Nord (258), Seine Saint Denis (247), Val d’Oise (183) and Bouches du Rhône (176). The strong presence of UAMs in Paris is due to the attractiveness of the capital city whereas the strong presence of UAMs in Seine Saint Denis can be explained by the presence of the biggest French airport (Roissy Charles de Gaulle) considering that the arrival of migrants by air has increased in the past few years. There is a lower number of UAMs arriving to other departments.

The number of asylum applications by UAMs in the UK has gone down substantially over the last five years. As the obtained data indicate, there were 2,000 less such applications in 2013 compared to 2009 and the great majority (above 80%) of applications among UAMs are made by males. In 2009, 2010, and 2011 the highest share of asylum claims were from UAMs who arrived from Afghanistan followed by Eritrea and Iran. However in 2012 the lead position was taken by UAMs from Albania. Approximately half of the UAMs' asylum applications are made by children aged 16 or 17. This means that the other half is made by

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9 Insee.
10 All data were provided by Home Office Statistics.
children aged 15 or less, representing around 2.5% of all asylum applications (Vine, 2013). It is important to stress that there are no statistics recording how individuals first entered the UK. However, 92.7% (1300 out of 1402) of applications by people claiming to be children between April 2011 and March 2012 were made from within the UK rather than at a port of entry (subject to the issues around recording of age-disputed applicants), following either clandestine entry, lawful entry with a visitor’s or other visa or having been trafficking at a younger age. Approximately 30% of all UAM entrants are believed to have been clandestine arrivals through the port of Dover alone (Vine, 2013). Data obtained show that in the UK, the total number of decisions regarding asylum applications made by children up to the age of 17 has fluctuated greatly over the last five years. Namely, from almost 3,000 in 2009 to less than 600 in 2012. Discretionary leave has been the most common decision, reached in at least half and some years two-thirds of the cases. The absolute number of children granted refugee status yearly has remained relatively stable, at around 200 (fluctuating between 159 and 298). Approximately one child out of five has been refused any kind of status. The number of decisions regarding children who have become of age has fluctuated in the last five years in a way which broadly parallels the number of decisions regarding other children. As was the case in this latter group, the absolute number of decisions granting refugee status has remained relatively stable, at around 50 (with a dip in 2012 when the total number of applications also dipped). What is most striking, however, is that refusal is by far the most common decision, reached in seven out of ten cases in 2013.

In comparison with Austria, France and the UK, Slovenia is mainly a transit country for UAMs; specifically, they leave soon after arriving and carry on towards the countries of Northern and Western Europe. According to data obtained by Slovene Philanthropy and the Ministry of the Interior, there have been some changes detected in the field, mostly that the majority of UAMs are now coming from areas of crisis (predominantly Afghanistan), and that a certain number of them remain in Slovenia for longer periods of time when they are granted international protection status. Most UAMs detected by the authorities in Slovenia apply for international protection. According to the data provided by Slovene Philanthropy (2009) and the Ministry of the Interior, a great majority of UAMs in Slovenia are boys between 14 and 17 years old. It is obvious that according to its strategic position, Slovenia represents one of the important entrances to the EU, therefore it is a transit State for UAMs from former Yugoslavian republics (Monte Negro, Serbia and Kosovo) and from Afghanistan, Syria, Algeria, Morocco and Bangladesh. In order to fully understand the data presented, it is

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11 Data presented in this report are collected and put together from different sources; namely Slovene Philanthropy, the Ministry of Internal Affairs of the Republic of Slovenia and the Alien’s Centre.
necessary to explain that Slovenia became part of the Schengen area on 21 December 2007, when controls at the borders with Austria, Italy and Hungary were abolished and at the same time certain measures regarding illegal immigrants came into force. UAMs who enter Slovenia irregularly are temporarily accommodated by the Police at the special department responsible for minors at the Alien’s Centre. According to obtained data the number of UAMs accommodated in the Alien’s Centre is in the last ten years has decreased on a general level. The highest number of UAMs accommodated in the Centre was in the year 2004, namely 112 persons. On the other hand UAMs who applied for international protection in Slovenia and had therefore been accommodated at the Asylum home in the period 2002 – 2014 totals 564 children. According to the data obtained by Slovene Philanthropy, the number of UAMs granted international protection in Slovenia in the period from 2001 until 2014 totals 33 children, in the years 2002, 2003 and in the years 2006 and 2014 no UAMs were granted refugee status in Slovenia.
5 MAPPING OF NATIONAL LEGISLATION DETERMINING PROCEDURES AND RIGHTS OF UNNACCOMPANIED MINORS

This section focuses on the question of how the principle of the best interests of a child is included in the national legislation and in other formal instructions that determine procedures and treatment of UAMs and to the role of the state in carrying out this principle in practice. To that end, the legislative framework on the procedures related to asylum and international protection application, age assessment, (family) reunification and deportation of UAMs is presented.

5.1 Access to care provisions

In Austria, during the admission procedure unaccompanied minors are accommodated in the facilities of the Bund, mostly in Traiskirchen, Lower Austria (1,800 unaccompanied minors as of July 2015). It is reported that Traiskirchen is over-crowded and lacks suitable infrastructure for minors. During the asylum procedure (after admission) unaccompanied minors are accommodated in one of the child-care facilities provided by the Länder. Basic care and services include health insurance, adequate supply and pocket money, costs for transportation, schooling and clothing as well as counselling (on return). Special provisions for unaccompanied minors cover pedagogical and psychological support, accommodation in different arrangements depending on the minors’ degree of self-dependence and need of care, a suitable daily routine, help with processing questions related to the minors’ identity and future prospects, if possible family reunification and the development of an integration plan for an autonomous living (e.g. school, training).

From his/her arrival in the French territory, every child at risk has the right to access care provisions under the common-law scheme. However, specific provisions apply since 31st May 2013, with the approval by the Ministry of Justice of a Protocol concerning sheltering, assessment, and orientation for UAMs, whose goal is to homogenize the reception procedures for UAMs all along the French territory by establishing a new assessment and sheltering procedure and by setting up departmental relocation of UAMs. When a young migrant requires protection from Welfare services, the ASE services, according to the law, have to offer shelter to the child during an initial period of five days. During this first period,
a first interview is conducted to evaluate if the young migrant belongs to the UAM category and falls under child protection provisions.\footnote{12 Protocol concerning sheltering, assessment, and orientation for UAMs, 31 May 2013.}

When UAMs arrive in France and fail to meet the legal conditions for entry into the French territory, many of them are deprived of liberty in transit zones at the border. When children arrive alone to a point of entry, the Border Police consider them UAMs. However, if they are accompanied by an adult, even if this adult cannot prove parental authority, the Border Police often detains the minor with the adult (Anafé, 2013a). Transit zones appear as a "juridical fiction" (Human Rights Watch, 2009) or as "lawless zones" (Médecins du Monde, 2002). The government considers them to be an extraterritorial space where special laws apply. This being the case, UAMs are unable to benefit from care provisions at transit zones (as minors at risk according to the law) because they do not fall under the national law. The law does not include any age restriction so minors can be deprived of liberty in the same way as adults, for up to 21 days. According to the law, UAMs are automatically entitled to a 'clear day' (protection against deportation during the first 24 hours). During the first moments of their arrival, UAMs are not yet legally represented. According to the law, an Ad-Hoc Administrator (temporary representative - AAH) must be automatically appointed.

In the UK, the proper procedure for the authorities faced with a person who claims to be a child and who is unaccompanied is to immediately contact the social services department of the local authority unless the person's appearance and demeanour strongly suggest that they are significantly over 18 years old (emphasis in the original) (Home Office (b) para 2.1). Certain bio-data (personal information) must be requested from the child for referral to the local authority. The child is taken into the care of the local authority in whose geographical area he/she has first been identified. As previously stated, the overwhelming majority of UAMs who arrive in the UK claim asylum. When an unaccompanied non-British child is discovered in the UK, he/she is usually subjected to a welfare interview and then an Initial Examination Interview (IEI). Children should only be detained for the shortest possible time to permit the interviews to take place and are entitled to proper safeguards for the IEI, including the presence of a responsible adult, an interpreter and an appropriate period of rest before the interview.\footnote{13 The Court of Appeal concluded that Initial Entry Interviews conducted without proper safeguards are not admissible as evidence against the child in Tribunal hearings: AN (A Child) and FA (A Child)v Secretary of State for the Home Department [2012] EWCA Civ. 1636.} Children should then be immediately referred to the social services department of the local government authority in whose geographical area they are found, which takes on day-to-day responsibility for their accommodation and care. On the
other hand, the Home Office is responsible for the processing of the child’s asylum case, determining what is in the child’s best interests and funding the child’s care and accommodation. The Department for Education is responsible for safeguarding and upholding the rights of all children under the UNCRC, including the oversight of social care and foster care.

In Slovenia, the rights of those people who apply for international protection or those who already have refugee status or subsidiary protection status are regulated by the IPA. The role of this law is to transfer the joint European asylum system into the national legislation. It determines basic principles, the procedures for the acquisition and deprivation of international protection, duration and content of international protection, the rights and obligations of the applicants for international protection and persons who obtained international protection. If an UAM is found at the border or elsewhere in Slovenia he/she is treated in accordance with the *Aliens Act*. On this basis, Police shall immediately call the Centre for Social Work to appoint a special case guardian to the UAM. If during the course of a conversation, the UAM asks for international protection he/she is accommodated in the Asylum home and treated in accordance with the IPA which determines that specific care and attention shall be provided to vulnerable groups (UAMs being one of these) who ask for international protection. Within 24 hours, an application procedure starts. A legal representative and legal adviser are appointed to the UAM. There is no time for the UAM to get to know the legal representative before the procedure (submission of the status request) starts. Procedures and rights of UAMs who apply for international protection are determined in Article 16, and when UAMs gain international protection status their rights and procedures are stipulated in Article 96 of the IPA.

5.2 Age assessment process

If the minor in Austria is not able to prove he/she is underage with an appropriate document, the Federal Office for Aliens and Asylum may order a multifactorial age assessment defined by the Act on Asylum (Article 2(25)) which should ensure minimum physical intervention and cannot be carried out through coercive means (Act on Aliens’ Police, Article 12(4)). In case that the suspicion concerning the age of the minor cannot be settled, then the decision should be taken in favour of the minor. In case of minority, the competent Child and Youth Welfare Services shall be contacted. The Act on Asylum does not provide any specific procedure for the carrying out of age assessment, therefore the Federal Administrative Court (*Bundesverwaltungsgericht*) and its predecessors, the Asylum Court
(Asylgerichtshof) and the Independent Federal Asylum Senate (Unabhängiger Bundesasylsenat), established the following criteria for age assessment in their various verdicts: obligatory involvement of skilled experts, the qualification of the expert, methods applied and information on the reliability of these methods. Despite their experience with asylum-seeking minors, officers of the Independent Federal Asylum Senate do not qualify as experts. Refraining from an expert opinion only where the age of the applicant is evident or obvious, the age claimed by the applicant shall receive consideration because the expert opinion may not be definite (European Migration Network, 2010; 29).

In France, Article 47 of the Civil Code establishes a presumption of legitimacy of foreign civil status documents and if the administration has a doubt on its validity, it may order a document inspection. When the documents are considered to be falsified, the involved declared-minors might be subject to penal prosecution. During an assessment interview, a young migrant is asked to explain his situation, his documents and how he got them, describe his country of origin and his family. He has to explain if he maintains links to his family and what his life conditions were in his home country. He has to describe in detail his migration path from the departure to the arrival in France. The medical age assessment, according to the protocol of the 31st May 201314 should be implemented only when documents are considered falsified (which it is not always the case in practice). Article 371-1 of the Civil Code requires the consent of the minor as a prerequisite but explicit and informed consent is lacking in a number cases15. The National Consultative Commission on Human Rights states that the consent of the minor or that of his legal representative is not systematically requested before assessing age through a medical examination. In addition, the existing case law provides that the medical examination cannot be at odds with the age stated by identification documents16. Finally it has to be noted that medical age assessment has to be a last resort17 and that in any case of persisting doubt this shall be resolved in favour of the child.

There is no formal procedure for age determination in the UK. The Home Office (border officials, etc.) policy is to treat a person who claims to be a child as a child unless their appearance and demeanour strongly suggest that they are significantly over 18 years old

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14 Ministry Circular concerning UAMs reception procedures: sheltering, assessment, and orientation for UAMs, 31 May 2013.
16 Court of Cassation, 25th January 2001; Appeal Court of Versailles, 7th March 2014, n° 13/00326; Appeal Court of Paris 20 May 2011 n°11/02354; Guardianship Judge of Limoges, 3rd October 2003, n°2003/121
17 Article 232 of the Civil Procedure Code (Code de Procédure Civile)
(emphasis in the original). Responsibility for assessing age passes to the local authority which accommodates the child. It is important that assessment is holistic and complies with certain (limited) requirements set out in the case of London Borough of Merton, including that the assessment takes place over at least two interviews, is carried out by two social workers, that a responsible adult is present to support the young person and that the young person is informed of the preliminary conclusions of the assessment and given a chance to respond to them. The use of x-rays was abandoned after concern from the civil society and medical profession about non-therapeutic use of x-rays, though there have been periodic attempts by the Home Office to reintroduce x-raying. There is also a right to challenge an age assessment through judicial review though there are significant difficulties in practice, including access to legal advice and representation and evidencing their age. Concerns about a “culture of disbelief” regarding age assessment have been expressed by numerous bodies including the Parliamentary Joint Committee on Human Rights.

When being under age is under question in Slovenia two different processes are suggested by the AA and IPA. Namely Article 82 of the AA determines: “Where the identity of an alien minor is not ascertained and it is suspected that the person is not a minor, the police may establish the age of the person through experts”. Based on an expert opinion the police shall issue a declaratory decision on the age of the person. An appeal against the declaratory decision is permitted within eight days of service of the decision. The decision on the appeal shall be taken by the national ministry responsible for the interior. In the process of examination of a UAM’s application for international protection status on the basis of Article 44A of the IPA, a competent authority may order age inspection to be performed by a medical expert. UAMs and their legal representative shall be informed of the possibility of age determination in written communication and in the language that the UAM is able to understand. Written information shall include data on the inspection method and possible consequences in relation to application execution and on the consequences on the unjustified rejection of such an examination. Age determination inspection can be made only on the basis of written consent of UAMs and their legal representative. If the UAM and their legal representative do not allow the inspection without justified reasons, they are likely to see their application regarded as being of age. Rejection of the application may not be based solely on the rejection of the age determination. If after inspection there still exists some doubt as to age, the applicant is regarded as a minor.
5.3 Family reunification

According to the Austrian Act on Asylum (Article 35), the minor who is granted asylum or subsidiary protection (after first extension) has a right to family reunification. Also, if the asylum-seeker is an unaccompanied minor, the Federal Office for Aliens and Asylum shall search and support the minor in his/her search for family members in the country of origin, third countries and member states (Article 18(2)). Family reunion, however, usually fails because unaccompanied minors lose contact to family members and/or the cost for reunification (flight tickets, DNA tests\textsuperscript{18}) is too high for families (Fronek, 2010; 193). To this end, the Austrian Red Cross offers UAMs financial help and assistance in finding family members (ibid.). Family reunification may also fail due to long asylum-procedure since such a reunification is possible only until the 18\textsuperscript{th} birthday of a minor.

Minors who are admitted to the benefit of asylum status in France are entitled to apply for a family reunification procedure. Article L314-11\textsuperscript{8} of the CESEDA states that a residence permit can be provided to ’’a refugee (...) and the first degree relatives in the direct ascending line of the unaccompanied minor who has been recognized as a refugee’’. This only concerns minors who were granted asylum.

In the UK, unaccompanied children granted status have no right to family reunion, unlike adult asylum seekers, who have the right to reunion with a pre-flight spouse and minor children.

In Slovenia family reunification and the right to family integrity are stipulated in Article 47 of the AA and it states that an alien who resides in the Republic of Slovenia on the basis of a permanent or temporary residence permit shall be granted the right to the reunification, preservation and reintegration of the family with family members who are aliens. In accordance with this Act, the alien’s family members also include the parents of the minor alien with whom he has resided in a family community before his arrival. Family reunification is enabled also on the basis of Article 17 of the IPA. A person under international protection may apply for reunification with his family members. If the relevant authority establishes that the criteria for family reunification are fulfilled, it shall issue a decision granting the family members equal status as the person lodging the request. The family members’ obtained status shall cease on the day of cessation of status of the person lodging the request. In the past, Slovene Philanthropy offered financial support in some cases for family reunification.

\textsuperscript{18}Only in the state of Upper Austria does the Youth Welfare Authority cover the costs of DNA tests. http://umf.asyl.at/Themen/Familienzusammenfuehrung/
5.4 Return policy

According to the Austrian Federal Act on Aliens Police if the decision for deportation concerns an UAM, the Federal Office for Aliens and Asylum must ensure that the minor is delivered to a family member, a legal guardian or an appropriate institution in the target country (Article 46(3)). An unaccompanied minor can be expelled when he/she poses a threat to “the public security of the Republic of Austria” unless it is in the best interest of the minor in accordance with the UNCRC (Article 66(3)). Minors shall not be taken into detention pending deportation (Article 76(1a)). Moderate means shall be applied for minors under 16 if the moderate means fulfils the function of a detention pending deportation (Article 77). If not, the minor younger than 16 can be taken into detention provided that he/she is provided with appropriate accommodation and care for his/her age and development and the minor should be separated from adults (Article 79). If the parent of the minor is to be taken into detention pending deportation, the minor shall be taken into detention with the parent unless the Kindeswohl requires a separate detention. The detention of the minor shall not exceed two months (Article 80). Minors who have reached the age of 14 can be submitted to criminal identification by the police in federal provinces if the foreigner does not reside legally in the federal territory (Article 99).

As a general principle, in France foreign minors are not in an irregular situation in terms of their immigration status and as a consequence they cannot be deported. Articles 511-4 and 521-4 of the CESEDA exempt UAMs from deportation and from an eventual obligation to leave the French territory. However, a Children’s Judge may order a return provision if the child’s best interests advises one to do so19 (any stakeholder surrounding the child has to be consulted and good reception conditions have to be guaranteed in the return country). This solution is rarely used in practice but when the child expresses the wish to go back to his home country, it could be a suitable solution. For example between 2002 and 2005, a bilateral agreement between France and Romania allowed French authorities to return Romanian UAMs20. On the 1st of February 2007, another agreement was made in order to allow authorities to return Romanian children but which was then censored by the French Constitutional Council on the 4th of November 2010.

In the UK unless asylum is granted return to the country of origin is treated by the authorities as the default “durable solution”. Return is presumed to be the best outcome not

19 Appeal Court Paris, 7 December 2004, n°04/08249.
only in policy but even by the courts, as set out in this headnote from the Upper Tribunal which, in effect, sets out the State’s definition of a durable solution for these young people: “For an unaccompanied asylum seeking child, the best durable solution is to be reunited with his own family unless there are good reasons to the contrary. Where reunification is not possible and there are no adequate reception facilities in the home country, an appropriate durable solution may be to grant discretionary leave during the remaining years of minority and then arrange a return to the country of origin ....\textsuperscript{a1}.

In Slovenia the legal framework on return is set out in the Aliens Act; Chapter VI defines the procedure of forced removal of an alien. The body designated to implement the forced removal is the Police. Generally speaking, the removal can be either voluntary or forced and the law differentiates between the two procedures, yet none of them foresee any specific measures for the cases of removal of separated children. There are only two criteria for deciding whether UAMs will be returned to their country of origin or a country ready to accept them: (1) that a suitable reception is provided for the minor in the country where he/she is being returned to; (2) that the return is not incongruent with the European Convention on Human Rights and its’ amending Protocols. However the law does not include any detailed procedure for establishing whether a suitable reception will in effect take place in the reception country (Slovene Philanthropy, 2011; 35-36). The conditions for the prohibition of deportation of an alien are determined in Article 72 of the AA.

\textsuperscript{a1} JS (Former unaccompanied child – durable solution) Afghanistan (head note, (3)) [2013] UKUT 568 (IAC).
6 ENTITLEMENTS OF UNACCOMPANIED MINORS

On a general level, UAMs have little control over many areas of their lives, often for reasons such as unfamiliarity with the structure of healthcare provision in the host states, language barriers that may exist, etc. Since they are vulnerable children in need of support, there is a statutory duty upon states to safeguard and promote their welfare. However UAMs’ entitlements in host states are based on humanitarian, economic and public health arguments which support the timely provision of appropriate care to this vulnerable group of children. The goal of this section is to present basic entitlements to UAMs whether they seek asylum or not.

6.1 Accommodation

In Austria, the basic services provided for asylum seekers include accommodation facility which respects human dignity (Agreement on Basic Care and Services Article 6(1)). Special provisions for unaccompanied minors entail that unaccompanied minors shall be accommodated in Wohngruppen for unaccompanied minors with extensive care requirement, in Wohnheime for self-sufficient unaccompanied minors and betreutes Wohnen for unaccompanied minors who act self-sufficiently under expert supervision/instruction (Article 7(2)). UAMs leave the child care facility when they turn 18. In practice, due to insufficient offer for child-care facilities by the Länder, unaccompanied minors may spend up to several months in at the initial reception centre.

In most cases, Children Welfare Services (ASE) in France is in charge of providing care provisions to UAMs whether they seek asylum or not. As a part of their protection task, ASE has to provide material, educational and psychological support to children at risk. It also has to meet all the children’s needs and has to work with a legal representative in order to find an adequate orientation. ASE has also to provide accommodation according to Article L221-2 of the Social Action and Family Code (CASF). The choice of accommodation is made on the basis of the minor’s age, his degree of autonomy and the places available. Various contributions underline that a significant number of UAMs are accommodated in hotels (Rongé, 2014a, 2014b, 2014c, Cornière, 2014, Rosenczveig, 2014, Pryzbyl, 2012) depriving
them of the possibility of obtaining adequate educational and social support and health assistance.

Once the initial identification process is completed and if the young migrant is considered an UAM, provisional administrative protection becomes judiciary protection, in application of Article 375-5 of the Civil Code. The Children’s Judge (or the prosecutor) orders a placement and decides (guided by the Ministry of Justice - DPJJ) which administrative department will take care of the minor. The placement conditions must be settled regarding the best interests of the child: the French Ombudsman (Défenseur des Droits) states that the reception facility has to be in accordance with the best interests of the child in light of the youth’s personality, his age, his origin, the existence of family relationships and his life plans in order to determine the child’s protection and support needs.\(^{25}\)

In the UK, accommodation should legally be based on an assessment of needs. Children remain in the care of the local authority until the age of 18. After this, they are entitled to what is called ‘leaving care support’ under the Children (Leaving Care) Act 2000. This particular piece of legislation was adopted in response to evidence that the average home leaving age for the general population was 22, while looked-after children (including British ones) were moved into independent living at 16-17 years old. It is important to highlight that this act provides that support must continue, either to 21 or to 24 for those in full time education or training.\(^{26}\) Former unaccompanied children benefit from this provision either if they have leave to remain or if they are awaiting a final decision on their application or appeal. They do not if they have been refused all forms of leave to remain and their appeal rights are exhausted.

Concerning the kind of accommodation, all children accepted as under 16 are placed in foster care (private homes) or children’s homes (local authority run), depending on the policy of the responsible local authority. Those 16 or 17 are accommodated in foster care, children’s homes or shared accommodation, which is either privately owned and rented by the local authority without staff or is run and staffed by an accommodation provider under contract to the local authority. There are no “asylum homes” though some children in Kent are initially placed in Millbank Induction Centre before being moved into shared semi-independent accommodation.

\(^{25}\) “The placement conditions have to be settled regarding the best interests of the child (…) the best interest determination has to be made in light of the youth’s personality, his age, his origin, the existence of family relationships and his life plans in order to determine the child’s protection and support needs” (Décision du Défenseur des Droits n° MDE/ 2012-179, 19 novembre 2012).

\(^{26}\) s23C and 24B Children Act (amended) 1989.
In Slovenia accommodation for alien minors is stipulated in Article 82 of the AA. It is stated that an alien minor shall be accommodated in agreement with a special case guardian in adequate accommodation facilities for minors, where he will be guaranteed the rights referred to in the preceding paragraph. If this is not possible, an UAM shall be accommodated at the Alien centre. In practice those UAMs who do not apply for international protection live in the Alien centre which functions as a detention centre with restrictions on personal liberty. The IPA determines accommodation for UAMs who apply for or have already obtained refugee status or status of subsidiary protection. Article 15 of the IPA stipulates that accommodation of vulnerable applicants should take into consideration specific situations with regard to material conditions of reception, medical and psychological counselling and care. The responsible authority shall provide suitable accommodation and care for UAMs. The relevant authority shall inform the legal representative on the manner in which the accommodation and care are provided. Conditions for financial assistance for private accommodation are stipulated in Article 93 of the IPA. In this context it is important to highlight that UAMs accommodated in a special centre for minors or in other facilities suitable for minors, who has become of age during his accommodation, are eligible for financial assistance for private accommodation in the following two years after completion of their stay in these centres. Meanwhile, UAMs with international protection status shall be accommodated together with adult relatives, a foster family or in special centres for the accommodation of children or in another form of accommodation suitable for children. As far as possible, siblings shall be provided with joint care and accommodation, taking into account in particular their age and degree of maturity (Article 96 of the IPA).

Accommodation outside the Asylum home and its branches is determined by the Rules on changes and amendments of the Rule on implementation of legal representation of UAMs and of arrangements for ensuring suitable accommodation, provision and treating of UAMs outside the Asylum home and its branches (Official Gazette of the RS 36/14). Article 4 of these rules stipulates the conditions regarding accommodation outside the Asylum home. Experts stress the unsuitability of the Asylum home where most UAMs are accommodated. This is especially common in cases if the legal representative does not endeavour to find another solution. There are no durable solutions for accommodation of UAMs in Slovenia which would provide suitable 24h adult support.
6.2 Health care

In Austria, the Agreement on Basic Care and Services between the Bund and the Länder establishes that every asylum seeker is to be provided with health insurance either by the Bund (Article 3) or the Länder (Article 4) depending on the stage of asylum procedure. Upon arrival at the initial reception centre, a general health check-up is carried out for unaccompanied minors and other asylum seekers.

In order to benefit from health care provisions, UAMs in France have to provide proof of residence in France (which may be difficult regarding their situation) and to prove their identity to receive a health registration number. UAMs under institutional protection are entitled to full healthcare provisions to the same extent as national citizens (Universal Health Cover)\(^{27}\). In the event that they are outside institutional protection, they are entitled to the same health care as any other irregular foreigner, namely ‘State Medical Assistance’ (Code de la Sécurité Sociale, Article L. 115-6). The State Medical Assistance (AME) is less protective than the Universal Health Cover: it provides free basic health care but it involves a broad financial contribution of the patient to access specialised health care. It does not provide any Health registration number, which can make it problematic to be examined by some doctors who may refuse to provide health care to AME beneficiaries. While irregular foreign nationals have to furnish proof of at least three months’ residency, according to the case law UAMs are not obliged to do so (The Council of State stated that this requirement was incompatible with Article 3 of the CRC)\(^{28}\). While they are waiting to be registered in the State Medical Assistance, unaccompanied children can access basic and emergency health care in hospitals\(^{29}\).

Unaccompanied children in the UK should be registered with a general practitioner as soon as possible after arrival and have access to health care, dentistry and optician care on the same basis as any other child in care in the UK. Social services and the foster carer, if applicable, have the responsibility to ensure the child accesses to health care when necessary.

In Slovenia Article 75 of the AA stipulates that an alien who has been granted a temporary stay in Slovenia shall have the right to emergency health insurance pursuant to the Act governing healthcare and health insurance and to basic treatment. Healthcare of UAMs who

\(^{27}\) Ministry Circular of the 8th of September 2011 (DSS/2A/2011/351).
\(^{28}\) Council of State, 7th of June 2006, n° 285576.
\(^{29}\) Article L.6112-6 of the French Public Health Code (Code de la santé publique).
apply for international protection is dealt with under Article 84 of the IPA which specifies that they are entitled to health care under the same criteria as citizens of the Republic of Slovenia.

6.3 Education and schooling

Compulsory education applies to every child who resides in Austria permanently for a duration of nine years (Schulpflichtgesetz, Article 1) independent of the child’s nativity, gender, race, status, class, language and convictions (Schulorganisationsgesetz, Article 4). Most of the unaccompanied minors do not fall under compulsory education because they are older than 14 when they arrive in Austria. In practice, even for those who fall under compulsory education access to schooling may take up to six months after their arrival (European Migration Network, 2010). An enactment from 2012 by the Ministry of Social Affairs has opened the way to vocational training for asylum-seekers younger than 18 which was extended to those younger than 25 the following year in case of verifiable deficit of trainees in the respective sector.

In France, the law provides the right to education without any nationality restriction. According to a Ministry Circular dated 2nd October 2012, “school is everyone’s right, including all children regardless of their nationality, migrant status or past experiences”. Education is a right as much as a duty: education is compulsory for all children up to the age of 16, “for French and foreign children”. Nevertheless it appears that sometimes, municipalities (who are in charge of managing access to primary education) refuse to admit unaccompanied minors “pretending of a lack of places”. In the latter case, the child may appeal before the Administrative Court. After the age of 16 education is no longer a duty but the State shall take the necessary measures to facilitate access to education for those minors who wish to continue their instruction after the age of 16. The Ministry Circular of 20th March 2002 provides the possibility for foreign minors aged between 16 and 18 to pursue education but access is at the discretion of the Education authority taking into account the level of French spoken and the academic level of the candidate. Many UAMs did not have access to education in their home country or had limited access. As a result, authorities must

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31 Ministry Circular n° 2012-141 2nd October 2012.
32 Article L. 131-1 of the Education Code.
34 Article L 122-2 of the Education Code.
undertake an assessment of knowledge in order to elaborate an adapted and specific educational program meeting the children’s needs. After assessing the UAM’s language level, academic skills, experiences and areas of interest, an academic centre may decide to include the youth in a mainstream school if his level is sufficient. Otherwise, a specific institution may be appointed to take in charge the minor’s education. In addition, there are provisions allowing UAMs to integrate professional training diplomas. According to the Ministry Circular of 20th March 2002, a certificate of attendance to school may replace the identity card required to pass an exam.

In the UK a local authority must provide primary and secondary education through the Local Education Authority to any child in its geographical area, until the end of the academic year in which the child turns 16, as per sections 13 and 14 of the Education Act 1996. The education must be appropriate to the child’s age, ability and any special educational needs, as per the Education and Inspection Act 2006. Sections 85 and 9 of the Equality Act 2010 prohibit discrimination on the grounds of race in admission and treatment of pupils in schools.

In Slovenia alien minor school children who have been permitted to stay shall have the right to basic education as stipulated in Article 75 of the AA. The law on changes and amendments of the IPA in Article 86 stipulates that applicants are granted the right to a primary education. UAM applicants shall also have ensured access to education at the vocational and secondary schools under the same criteria that applies to citizens of the Republic of Slovenia.

6.4 Psycho-social support programs

In Austria, unaccompanied minors UAMs enjoy additional provisions which go beyond basic services (Agreement on Basic Care and Services Article 7). This includes measures for psychological stabilization and the building of trust. In case of need, socio-pedagogical and psychological support is to be provided. Psychological support for UAMs is usually provided by a psychologist through the care facility in which the minor is accommodated. Besides this, a number of associations exists which offer therapy to asylum seekers. Access to therapy is impeded by scarce resources and psychological support remains an underfinanced area.

36 Ibid.
37 This replaces s19B of the Race Relations Act 1976.
In France psychological support programs depend on each territorial Children Welfare services which implement its own support programs over each department (county). Sometimes care institutions hire their own psychologist who supports UAMs. In other cases, one psychologist is hired by different care institutions; in other cases social workers provide psychological support themselves. It is apparent that the psychological support is insufficient in the majority of cases.

There are no dedicated psycho-social support provisions in the UK, therefore UAMs may be able to access counselling or other mental health support through the Child and Adolescent Mental Health Service in the local area if necessary, subject to meeting criteria for access, waiting lists, language proficiency of the child or the willingness of service providers to work through interpreters. There may be ad hoc services provided by various charities and NGOs depending on the local area.

In Slovenia, psycho-social support programs are not directly mentioned in the AA. Article 87 of the IPA -regarding humanitarian assistance- stipulates humanitarian assistance provided mostly by the non-governmental, intergovernmental and governmental organizations active in the humanitarian field of work. This entails mostly the provision of material, cultural and psychosocial assistance, organized babysitting services, education of children, youth and adults and other forms of assistance to the applicants.

6.5 Guardianship and advocacy

According to the Austrian Civil Code, if a minor’s parents are unknown, the Child and Youth Welfare Services are entrusted with the legal guardianship of the minor (Article 207). The Child and Youth Welfare Services shall apply to the court within eight days to assume the guardianship (Civil Code, Article 211). Despite existing Austrian law, until 2005 legal guardianship for minor refugees was an unsolved problem. In 2005, the Supreme Court declared in its verdict that the minor should at all times be represented by a legal guardian according to the principles laid down in the Austrian General Civil Code Article 146. The guardianship shall encompass care and upbringing as well as asset management and legal representation according to Articles 160, 164, 167 of the Austrian Civil Code. Still, the assignment of a legal guardian for an unaccompanied minor may take up to several months in practice. Tough less frequently, foster parents are entrusted with the guardianship of the

39 http://umf.asyl.at/Themen/Obsorge/
minors if the minor has relatives in Austria. The Child and Youth Welfare Services outsources some of its guardianship tasks such as care and education to the child-care facility where the minor is accommodated and legal representation in asylum procedure to law firms or NGOs (Koppenberg, 2014). The guardianship encompasses care and upbringing as well as asset management and legal representation. Yet, many unaccompanied minors do not know whether they have a legal guardian and what his/her tasks are (ibid. 38).

In France, UAMs come under the competency of two different judicial authorities: the situation of risk places them within the jurisdiction of the Children’s Judge (Juge des enfants, JDE); whereas the lack of parental authority places them within the jurisdiction of the Guardianship Judge. According to the law, those two jurisdictions need to collaborate in order to distance the child from risk. When parents have been deprived of parental authority or if there is no family member in the French territory, the ASE is designated as guardian (it is called “guardian authority”). If some family members live in the French territory, the judge will set up a Family Council in order to designate the guardian. Guardians are responsible for the usual actions linked to parental authority such as medical treatment, school registration, sports registration, etc. If authorized by the Children’s Judge, the guardian (the ASE in most cases) may assume other special measures such as bank account registration. Even when they are under protection, UAMs still often lack a legal representative, Welfare Services cannot take decisions on behalf of the child and according to the Civil Code (Article 375-7) the Children’s Judge can only take punctual decisions. Usually, the Guardianship Judge appoints the president of the General Council as the minors’ guardian.

There are also two specific situations where the law provides the designation of an Ad-Hoc Administrator (temporary representative) in order to represent and support UAMs. Namely, when a minor is detained in the transit zone before entering the French territory and when he/she is seeking asylum.

There is no system of guardianship in England and Wales; while Scotland continues to pilot a non-statutory guardianship programme and Northern Ireland has recently passed legislation which will guarantee a guardian to all UAMs. UAMs therefore have no overarching 'legal representative' though they may be represented by a lawyer with respect to asylum or another immigration application.

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40 Decree n° 2009-398 of the 10th of April 2009
In Slovenia there are different terms used to describe a guardian which differs depending on the procedure particular to the separated child. In the case of the removal of separated children who are, according to the legislation, irregularly residing in Slovenia, the Police must immediately inform the Centre for Social Work which in turn, must immediately appoint a *special case guardian* for the child (82 Article of the AA). In 2012, the Protocol on cooperation between the Centres for Social Work and the Police on the implementation of assistance to unaccompanied alien minors under the Alien Act was signed. With this Protocol, the Centre for Social Work Postojna becomes the territorially authorized Centre for Social Work; which appoints its professional workers to perform the tasks of the guardian with regard to alien minors who enter the state irregularly and are temporarily accommodated by the Police at the Alien Centre in Postojna (Slovene Philanthropy, 2013; 15). According to the IPA, all UAMAs must have an appointed legal representative prior to beginning the international protection procedure. An amendment to the IPA that entered into force in December of 2010 further expanded the responsibilities of the legal representative. Prior to the amendment of the Act, the tasks of the legal guardian were limited to representation of UAMs in the international protection procedure and the protection of their benefits and interests. The 17th amendment to the IPA has expanded the tasks of the legal guardian to representation in the areas of health protection, education, protection of property rights and benefits (Slovene Philanthropy, 2011; 13). Children whose asylum procedure have been completed and are granted international protection status, guardianship is stipulated in Article 96. A decision on the appointment of a legal representative is issued by a local Centre for Social Work. As a legal representative a relative or a separated child’s companion or a representative of the organization specialized in working with children may be appointed. Detailed instructions on the execution of legal representation of UAMs are stipulated in *Rules on changes and amendments of the Rule on implementation of legal representation of UAMs and of arrangements for ensuring suitable accommodation, provision and treating of UAMs outside the Asylum home and its branches* (Official Gazette of the RS 36/14). The rules determine (among other things) the execution of power of the legal representative and the process of training procedures and its content for legal representatives of UAMs.
6.6 Financial support

Currently, the daily rate for an unaccompanied minor ranges between 39 and 77 EUR for the rent, operating costs and personnel costs of the respective child-care facility whereas the amount for a national minor in out-of-home-care starts at 120 EUR (Glawischning, 2014; 5). Unaccompanied minors receive 40 Euro monthly pocket money. Also, minors receive 200 Euro for school needs and 150 Euro for clothing annually.

In France the Children Welfare Service offers resources to cover the expenses of daily living such as food expenses, transportation, and administrative procedures. The amount depends on the youth’s situation and on the department involved and may be weekly or monthly. The first reception care is funded by the State (to the departments which are in charge of Children Welfare) up to 250 euros per day and per child.

For unaccompanied children in the UK, the Home Office pays the local authority at the following rates: Under 16, £95.00 per day; 16/17, £71.00 per day. For FUAMs leaving care, the Home Office pays the local authority a flat rate of £150 per week for each young person over the threshold of 25 children. There is no payment if the authority is responsible for less than 25 care leavers who were unaccompanied child asylum seekers.

In Slovenia there is no available data regarding the amount of assets that an institution or UAMs are granted from the state. Aliens who have been granted a temporary stay in the country are entitled to an allowance granted in the amount and manner specified for financial social assistance by the Act governing social support allowances (Article 75 of the AA). Entitlement to financial support is mentioned in Article 83 of the IPA in relation to the accommodation outside the Asylum Home or its branches. Applicants for international protection status accommodated outside the Asylum home or its branches who have no income or whose accommodation and care are not provided free of charge shall obtain financial assistance.

6.7 Employment

In Austria employment for foreigners is regulated by the Act on Employment for Foreigners. Article 1 of this law excludes individuals with asylum status or subsidiary protection from

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41 As an example, in the French Department of Nord, the Welfare Service provides 334,5 euros per month to each UAM. AutonoMIE, September 2013.
42 Protocol concerning sheltering, assessment, and orientation for UAMs, 31 May 2013.
provisions of the law. For asylum-seekers a work permit is required. Generally, asylum-seekers are given a work permit for seasonal work in the hotel and restaurant industry and agriculture for duration of six months. If the person is admitted to the asylum procedure for three months or is protected from deportation, the person can be employed provided that the condition and the development of the labour market allow the employment of the foreigner (Article 4). In reality, it has been reported that the procedure is complicated because the employer needs to acquire an employment permit for the foreign person, which may take up to a couple of months (Fronek and Messinger, 2002).

In France the right to employment is granted to all minors over 16 years of age. When they are in professional training instruction, UAMs have to apply for a provisional work authorization to the DIRECCTE (State Labour department). When they have been admitted into care before 16, they might apply to the Prefecture for an anticipated “private and family life” residence permit.

In the UK, UAMs with either protection status or limited leave to remain are entitled to work on the same terms as British children. The right to work continues while an application to extend leave or an appeal is outstanding but there may be difficulties for the young person to prove their right to work (or study) whilst awaiting a decision or appeal.

In Slovenia the right to employment of UAMs is not mentioned among the rights of aliens granted a temporary stay according to the AA. The law stipulates that aliens can receive a temporary residence permit in case they wish to reside in Slovenia for employment reasons. According to Article 85 of the IPA an applicant for international protection status may work if his identity is indisputably established. He may start working one year after lodging the application. The asylum applicant may obtain a work permit for the period of three months with a possibility of extension or cessation in the event that his asylum procedure has come to a close. The applicant may be given access to vocational training.

43 As previously pointed out, as a general rule in France all foreign children are exempted from obtaining an authorization of residence to remain in the territory.
7 EXISTING BEST PRACTICES REGARDING UNACCOMPANIED MINORS

The main purpose of this chapter is to present specific programmes for UAMs, the roles of participating institutions with a focus on NGOs and the type of support they offer to minors. Good practices are presented through the concept of assuring the best interest of the child and children’s rights – both in their inherent features and in their potentialities. At this point it is important to stress that not all of the presented best practices are national practices, some of them derive from international (European) projects or programmes. The purpose of this is twofold; either there are no identified best practices on the national level (Austria); or they are an important acquisition from the national point of view (Slovenia).

The Network for Child-Care Facilities for Unaccompanied Minors (Netzwerk für Betreuungsstellen von Unbegleiteten Minderjährigen Flüchtlingen) represents a best-practice example in Austria. The Network is coordinated by the Austrian NGO Asylkoordination. Currently, 35 child-care facilities for unaccompanied minors from different Länder participate in the Network. The Network meets four times a year and discusses the condition of unaccompanied minors at child-care facilities and allows for exchange of information and experience among care workers. The meetings are open to the broader audience interested in the topic. The importance of the Network is two-fold: While the Network allows the identification of Länder-specific differences and shortcomings on one hand, on the other hand it helps identifying common challenges faced by unaccompanied minors in Austria. This form of networking and exchange among professionals who in their daily profession work with unaccompanied minors offers an important reference for policy change in Austria which should be recognized by Austrian policy makers.

Another example of a promising good practice in Austria is the two-year project on the identification and implementation of core standards for guardians of separated children initiated in 2012 with the financial support of the EU DAPHNE III program. Among the partners is the Austrian NGO Asylkoordination Österreich. Standards for guardians have been developed therein on the basis of workshops and interviews with (former) UAMs and their legal guardians to identify the problems and challenges they face. These standards are:

1. the guardians of the UAM should consider the best interests of the child and their

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44 Defence for Children-ECPAT the Netherlands (coordinator), Asylkoordination Österreich, Bureau d'accueil et de défense des jeunes (service droit des jeunes), HFC “Hope For Children” UNCRC Policy Center, Bundesfachverband Unbegleitete Minderjährige Flüchtlinge e.v., Irish Refugee Council Ltd., Defence for Children International Italia, Conselho Português para os Refugiados, Slovenska filantropija.
protection and development in every decision they take. (2) They should assure the cooperation of the UAM in every decision which affects them. (3) They are responsible for the security of the UAM. (4) The guardians act as the advocates of the UAM. (5) The guardians act as a bridge between the UAM and other involved actors. (6) They assure the speedy identification and implementation of permanent solutions. (7) They treat the UAM with respect and dignity. (8) They establish a relationship with the child based on trust, openness, and discretion. (9) The guardians are available to the child. (10) The guardians have professional knowledge and skills. This project is demonstrative of the significance of devoted NGOs and the financial support of international organizations and supranational institutions in bringing the serious gaps in policies concerning the UAM into the national political agenda. The above-described project is an example of good practice on how UAMs can be integrated into the socio-political processes the outcomes of which affect them directly. Besides making room for the experiences and suggestions of the UAM, this project also provides concrete measures necessary to meet the standards developed by the project.

In France there is a specialized care provision for young foreigners who have reached the age of majority which may constitute an example of institutional good practice. Article L112-3 of the CASF (Children's Welfare Act) provides the extension of ASE protection services to young adults up to 21 years old who still have difficulties which might undermine their stability and development. In addition, Article L222-5 of the CASF provides an extension of care for young adults under the age of 21 who face social integration problems because of their lack of financial resources or family support. This is referred to as the "young adult contract". This extension of care provisions does not replace the necessity of obtaining regular immigration status. The application must be sent within three months before reaching the age of majority and has to be approved by the General Council, whose decision can be appealed before the Administrative Court.

The “young adult contract” represents a French example of good practice as it provides financial support, accommodation, legal, educative and psychological support. Obtaining this care extension creates easier access to a residence permit.

Furthermore, there is a range of NGOs in France supporting UAMs. Most of the care institutions and children’s houses are managed by NGOs under the public service delegation; they have various degrees of independence and some are developing good practices in the

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45 Have difficulties which might undermine their stability and development.
46 The law provides an extension of care for young adults under the age of 21 who face social integration problems and because of their lack of financial resources or family support.
47 Council of State 21st April 2000 n° 210291.
local context (partnership with schools, institutions, health care institutions, legal support provided to UAMs after they have reached the age of majority, psycho-social support programs...). Some NGOs and association groups are working with children who lack protection. For example, the association *Hors la rue* 5 (based in the Paris conurbation) is in charge of detecting and supporting foreign minors who lack protection in order to lead them towards institutional protection. This NGO tries to raise awareness about the issue amongst institutional actors, politicians and organisations, on national and international levels. Another important NGO in the field is called *Adjie*. Based in the city of Paris, it provides legal support to minors who have been rejected by the children’s welfare services before or after they reached the age of majority or to those for whom care provisions are insufficient. Another active organization is *Médecins Du Monde*, which provides health basic care and social support for UAMs lacking in protection. Activist groups have appeared recently in different contexts, mainly in Paris, to provide humanitarian help to UAMs living on the street. One good example of such an activism network is the *Réseau Education Sans Frontiers* which acts throughout various departments in order to support foreign children and young people in educational institutions.

In the UK there are several organizations working with UAMs, but at the policy level it is necessary to first highlight the Scottish Government’s *Do the Right Thing* action plan, which outlines clear service protocols, including work with voluntary bodies. It recommended the development of a similar strategy in the UK to put child welfare first and encourage joint cooperation between departments. The Scottish Guardianship Pilot received a highly positive evaluation (Crawley and Kohli, 2013) and, while it is only one possible model for a guardianship system, it would be desirable for the rest of the UK to follow suit and pilot possible guardianship models for all unaccompanied child migrants. For example, The Children’s Commissioner commended the practice followed in the east of England, which includes three airports and two major seaports, whereby the police obtaining the necessary bio-data from newly arrived children (the powers for which exist under the Police and Criminal Evidence Act and the Immigration and Asylum Act 1999) and then refer the child directly to the local authority, thus bypassing the time-consuming and potentially frightening handover to immigration officers (Matthews, 2012; 50). This is an example of the standard practice being rearranged to give effect to the best interest principle.

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48 Namely: Luton, Stansted and Norwich airports and Harwich and Felixtowe seaports.
There is also a number of NGOs doing important work for unaccompanied asylum seeking children. To name a few: The Refugee Council is a charity operating nationally. Its Children’s Panel provides a unique and holistic advice service for UAMs in the asylum process with its advisors frequently acting as the Responsible Adult. It gives guidance to professionals and carers. There is also The Refugee Children’s Consortium, a group of NGOs working on the issue of migrant children's rights at all levels of policy and practice, which seeks to feed into policy debates to improve children’s rights and shares information between members. In particular it was active in the campaign to withdraw the UK’s reservation to the CRC. A number of legal organisations are also active nationally on the issue of migrant child rights, including Coram Children’s Legal Centre, Migrant and Refugee Children’s Legal Unit and Just for Kids Law. Another one is the Immigration Law Practitioners’ Association which does not confine itself to child migrants but ran a three year Children Project which generated resources and training materials which remain in wide use despite the end of the project funding. Other important actors in the field are charities such as the Children’s Society, National Society for Prevention of Cruelty to Children and Barnardos, which focus on all children, not only migrant children, but have become involved in migrant children’s issues, particularly in relation to trafficked children. Although numerous organisations and charities operate at a more local level, particularly mentoring groups for children, and more broadly, migrant support groups. Last but not least it is important to mention The Office of the Children’s Commissioner since its reports have had positive effects on a number of issues. In particular, the termination of the “Gentleman's Agreement” under which children who did not claim asylum within 24 hours could be summarily returned to France or Belgium.

It is important to mention that in the UK the best interests of the unaccompanied asylum seeker child take second place to immigration considerations. Persistent efforts to resist this trend nonetheless make it possible to identify examples of good practice. Three civil society initiatives will be highlighted, followed by a governmental action plan originating in Scotland and a practical initiative for processing newly arrived children.

- The Immigration Law Practitioners' Association obtained charitable funding to run a three-year Refugee Children Project whose training and resources are identified by practitioners as a best practice example in the legal field, equipping lawyers to better enable migrant child clients to participate and to ensure their best interests were considered by the Home Office and the courts. Its annual conferences brought together migrant children and young people with practitioners and judges. This
project was time limited but the resources remain useful. ILPA also produced best practice guidelines for lawyers working with migrant children.

- *The Refugee Council Children's Section* advisors work with children in a holistic way which does not currently exist elsewhere in the system. Various other voluntary organisations run mentoring projects which are identified as best practice within local areas.

- *The Refugee Children's Consortium*, by bringing together NGOs and a wide variety of practitioners and other organisations, is able to share information and expertise across all levels from operational to policy, lobby for changes in the law such as the withdrawal of the immigration reservation to the UNCRC and influence operational practices by being represented as a body at Home Office stakeholder meetings.

In Slovenia, the Ministry of Work, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia in cooperation with the University of Ljubljana, and the Faculty of Social Work, has organized educational training for guardians of UAMs since 2014. In the past Slovene Philanthropy’s employees and volunteers were guardians for almost all the cases of UAMs entering Slovenia, but this changed with the amendments to the IPA. On the basis of past experiences *Slovene Philanthropy* was asked to prepare and perform educational training for candidates who applied for training on the basis of a Ministry call. With the active role of Slovene Philanthropy, this NGO can pass a substantial level of experience based knowledge as it also plays an important role in endeavours for better guardianship standards to assist unaccompanied minors. The other NGO working in the field is *PIC* which offers information and legal counselling to aliens regarding international protection. It helps the applicants for international protection with counselling regarding the procedure, their rights and duties or on the existing legal problems of the applicant. PIC also offers help and counselling to aliens in return procedures and cooperates with the International Organisation of Migration to offer full support to aliens. Within the project *Access to the territory and procedures for international protection* PIC provides regular visits to Police stations dealing with migrants who can ask for international protection, gather and analyse statistical data and converse with police officers. PIC also monitors irregularities on the part of police forces regarding migrant procedures and police custody facilities. In this regard they also visit the Alien Centre monthly. PIC also plays an active role within systematic changes and

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improvements of governmental policies and acts. All listed activities are a part of a project cofounded by the EU and are of limited duration.

As an example of good practice we also need to mention Management strategies on unaccompanied minors in the Republic of Slovenia 2005-2006 (2005) and 2009-2012 (2009), both written by Slovene Philanthropy. The latest strategy stressed evidence of a reduction in standards of protection and care for UAMs which are not in line with the CRC and do not assure special care and provision for UAMs in several aspects (full care for UAMs, lower standards of protection stemming from the IPA, possibilities of return decisions without a full analyses of their situation or request for international protection, inadequate accommodation facilities, numerous problems of the execution of rights of UAMs in practice). In addition Core standards for guardians of unaccompanied minors were developed under EU Daphne III programme Closing the protection gap 2.0, with the Slovene Philanthropy as a partner. Ten standards for guardians were highlighted on the basis of country assessment and analysis of the legal determinations regarding guardianship and its functioning in practice.
8 CONCLUSIONS

Despite common international (UN, EU) legal acts, documents and conventions implemented in national legislations, there is no general nor universal definition of UAMs in all involved states. Each use various terms for their description; for example unaccompanied minor foreigner or unaccompanied minor refugee (Austria), isolated foreign minor (France), alien minor (Slovenia) and unaccompanied asylum seeking children (UK). However, the common denominator of all the terms used is “minor”, one who is not accompanied by his/her legal adult representative. On the other hand in all four countries similar definitions are used for refugee status, which stem from the Geneva Convention. Differences appear in the case of other, short term protection; namely humanitarian protection (UK) and subsidiary protection (Austria, France and Slovenia\(^{50}\)). In all countries, UAMs are treated as a vulnerable group.

There is no formal procedure determining BIC in any of the examined countries, although this principle is incorporated into all national legislations relating to children. Furthermore BIC is the fundamental guide in every matter related to UAMs. In this sense BIC is realized through different legal institutions involved in the care of UAMs. On a general level BIC can be defined as a durable solution of living in a safe environment. It can, however, be said that this principle is the standard whose meaning is defined according to each single UAM case.

On the contrary, BID is not prescribed; frequently it is even not explained. Its understanding depends on interpretation of the authorized individual who decides or leads the procedure. In practice this means that BID is frequently not holistic for every single UAM, but it consists of a series of best interest provisions (e.g. where will the minor be accommodated, who will be his/her guardian, etc.). In order to achieve a certain level of BID, each state is attempting to find the best possible solutions and to that end they adapt the existing legislation (Slovenia, Austria and UK), or introduce guidelines deriving from international documents (e.g. France). The absence of formal BID procedures means that the implementation of the best interest of the minor in practice depends on the benevolence of public and private persons and institutions such child welfare services and social workers.

The statistics presented in this comparative report are not complete, nor are they fully comparable. Some countries collect only statistical information on particular groups of UAMs, for example asylum seekers (Austria and UK), other countries such as Slovenia began collecting data about this particular group of migrants only recently; namely in 2010. In all

\(^{50}\) In Slovenia the statuses of refugee and subsidiary protection are determined in the International Protection Act.
four countries there is no single institution that would collect data regarding UAMs; therefore data for the purposes of this report were obtained from various sources. As a result, the presented statistics only show part of the reality concerning the migration trends of UAMs in countries involved in the project. The complexity linked to collecting statistical information in each country and the incompleteness of the results demonstrates how much data collection and sharing at national and European and international levels need to be improved, because it provides a basis for developing appropriate actions to address these minors.

In all four countries, the asylum application procedure is regulated by legislation which guarantees certain rights. In all countries, from the time he/she has applied for asylum, until he/she is admitted to the asylum procedure, the minor receives basic care services (accommodation, food, clothing, etc.).

If the UAM is not able to prove his/her minority using an appropriate document, certain methods prescribed by legislation are used. For example in Austria the Aliens Police may arrange a multifactorial method for age assessment, (e. g. radiological examination) which should ensure minimum physical intervention and cannot be carried out through coercive means. In France, medical age assessment can be executed only when documents are considered falsified. Similarly, Slovenian law determines that the police may establish the age of the person through (medical) experts and it can be made only on the basis of the written consent of UAMs and their legal representative. Since there is no prescribed official age assessment method, the law does not allow UAMs to refuse to participate in the whole procedure, but they can refuse to participate in a certain part. Meanwhile there is no formal procedure for age determination in the UK and authorities must treat a person who claims to be a child as a child unless their appearance and demeanour strongly suggest that they are significantly over 18. When assessment is necessary it is important that it is holistic and complies with certain (limited) requirements. It can be said that in all four countries, age assessment procedures are loosely determined and consist of methods which are not always prescribed or unified. For example, the use of x-rays was abandoned in the UK, but in France, Slovenia, and Austria this method is still in use.

UAMs in all four countries have legal possibilities to family reunification with slight differences in conditions. Namely in France only UAMs granted asylum status can apply for reunification. On the contrary, in the UK UAMs granted asylum status have no right to family reunion.

Deportation of UAMs is regulated by the legislation in all countries. The latter determines conditions under which a minor can be deported. In Austria, Slovenia and the UK one of the
criteria for the deportation of an UAM is that this is in his/her best interest. Meanwhile in the UK, deportation is also treated as the default durable solution, in the event the minor is not granted asylum.

All rights regarding the entitlements of UAMs addressed in this comparative report are prescribed in the national legislations. However differences among all states can be seen in the implementation of these rights. For example in France a significant number of minors are accommodated in hotels, meanwhile in Slovenia they are accommodated in special centres for minors. In the UK and France, UAMs’ entitlements are equal to the citizen children (e. g. schooling). On the other hand there are entitlements which depend on the age and status of the UAMs (e. g. health, work and financial support).

All countries involved in the project have legal rules for the determination of financial support for UAMs. These amounts vary according to the specific situation (age, status and accommodation) of the UAM. All presented data refer to the general amounts earmarked to certain institutions involved in their daily care. In all countries except Slovenia the exact data on the amount of funds per organization of care of individual UAM are available. As national state of the art reports did not provide data on the monthly amount of money provided directly to the UAM for his/her everyday living expenses (other than those covered by state provision) this aspect cannot be compared among all four countries.

Meanwhile psychological support for UAMs is not regulated by legislation in any country; it is usually provided through the care facility in which the minor is accommodated or by NGOs and charities in the local area where the minors reside. With the exception of the UK, all countries involved in the project have certain forms of guardianship and advocacy for UAMs, but authorities in certain states differ. Namely legal provisions which differ in all countries give different authorities to guardians (schooling, health, legal representation, etc.). However the bottom line is that in the field of UAMs’ guardianship and advocacy there are significant differences which lie between the prescribed legislation and its real implementation. The latter was highlighted in the international report on Core standards for guardians of separated children in Europe51, which provides core standards that should inspire policies at national and European levels in order to improve the protection of separated children on our continent. It also highlights the need for harmonizing the quality of guardianship systems all over Europe and within countries where huge differences still persist.

51 Available at http://www.defenceforchildren.nl/images/69/1632.pdf
In each country involved in the project several best practices regarding UAMs were identified. Important actors in this area were revealed, in particular NGOs. These organizations are successfully putting their efforts into the monitoring of the practice and implementation of legislation of governmental institutions.

As this report’s aim was to compare the different legislative levers for the care of UAMs, the comparison indicated that the majority of national legislation directly and indirectly originates from EU and UN directives. Therefore all four countries included in the project are, on the declaratory level, more or less equal regarding the rights that UAMs have in their territory. On this basis an important question arises; namely the implementation of these rights in practice. The latter is the subject of empirical analysis involving experts and UAMs which will be subsequently presented in a special report.
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