

Provision of legal aid to children on the move in Europe and Central Asia

Lessons from Bosnia and Herzegovina, Bulgaria,
Greece, Italy and Turkey

Produced by UNICEF

Regional Office for Europe and Central Asia

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Acknowledgements

The UNICEF Regional Office for East and Central Asia (ECARO) would like to thank Vanessa Sedletzki for conducting this study and writing the report. We would like to thank colleagues in the countries covered in this report for their contribution in writing or through phone interviews. Particular thanks to Ivan Mei and Andrea Grasso who organised and supported the field visit in Italy as well as the various actors and the young people and the intercultural mediators in Catania who took the time to meet and share their valuable experiences. The study was supported by Laurent Chapuis, then Regional advisor, Migration.

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CHAPTER 1.

Introduction



Context

Children on the move are in contact with the law due to their very situation, whether regular or irregular. Finding themselves in a country that is not their own, they rapidly become involved in complex procedures they may not fully understand to determine their legal status and right to stay in that country. Like all children, children on the move may also come in contact with the law for other reasons – as suspects, victims or witnesses, or parties to civil litigation, among others. Yet children on the move often have very specific needs in relation to accessing justice. For them, this right will likely need to be exercised in the context of:

- Administrative and judicial proceedings, as part of the asylum-seeking process and/or other proceedings to determine their right to remain in the country where they arrived;
- Deprivation of liberty linked to their migration status, either on their own or with their families, as part of administrative detention policies implemented in various countries of arrival;
- Appointment of a legal guardian, which requires judicial proceedings;
- Particular vulnerability to child rights violations as a result of their precarious situation and migration journeys; in particular exploitation, trafficking and other forms of violence from criminal networks, law enforcement agencies and societies at large;
- Increased risk of discrimination when seeking access to public services.

Access to justice is a human right for all children, and is integral to the right to an effective remedy. However, children on the move face multiple barriers to accessing justice. In addition to the wide range of challenges all children are confronted with when in contact with the law (particularly child-sensitive justice), children on the move face a number of specific obstacles, including:

- Language and cultural barriers, making it even more difficult for them to understand and interact with justice system professionals;
- Lack of information on their rights, entitlements and the functioning of the legal system and proceedings in a form that they can fully understand;
- Lack of personnel trained in child-sensitive approaches and knowledgeable about children's specific experiences and situation in the context of migration;
- Lack of trust in the justice system and/or public authorities in general, due to past experiences in their country of origin or during migration;
- Fear that seeking a remedy for rights violations or accessing services may negatively affect the asylum-seeking procedure or lead them to be identified and arrested;
- Potential conflict between migration management policies and determination of the child's best interests, when the latter conflicts with migration policy priorities;
- Difficulty of being recognized as individuals and having an individual assessment of their best interests (for children migrating with their family);
- Difficulties related to the appointment of a trained and competent legal guardian (for unaccompanied and separated children);

- Being confronted with a large number of actors (legal guardians, social workers, frontline workers at reception facilities, police, etc.), which can result in confusion and fear.

For these reasons, children on the move need to be provided with adequate support. Legal aid is a critical element of access to justice and the right to an effective remedy, especially in a context where access to information is limited and other forms of support and community ties are weak.

Objectives

The present study explores ways to ensure that children on the move have access to quality and timely legal aid and can effectively claim their rights, in order to guide UNICEF and its partners' interventions in this area.

To do so, the study:

- Describes the specific characteristics of effective access to legal aid for children on the move;
- Reviews and analyses practices for the provision of legal aid to children on the move in selected countries;
- Draws on lessons to suggest possible approaches;
- Provides recommendations on the ways UNICEF and its partners can further support and strengthen access to legal aid for children on the move.

Scope and definitions

The study focuses specifically on providing legal aid for children on the move. While legal aid is a right for all children and the study builds on existing standards for its provision, the focus here is on the particular challenges of ensuring that children on the move have access to the legal support they need to obtain access to justice and claim their rights. Rather than providing an exhaustive review of the topic, the study primarily builds on country-level experience, in order to feed into UNICEF's broader engagement on supporting children's access to justice by fleshing out key elements.

For the purpose of this study, 'children on the move' are defined in accordance with the UN working definition: "Children moving for a variety of reasons, voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers, and whose movement, while it may open up opportunities, might also place them at risk (or at an increased risk) of economic or sexual exploitation, abuse, neglect and violence."¹ This definition includes child victims of trafficking, asylum seekers and children who migrate for other reasons, such as the pursuit of a better life or fleeing from violence, and children displaced by conflict or natural disaster.

The definition of 'legal aid' used here adheres to the terminology of UNICEF's guidelines on child-friendly legal aid, according to which legal aid "encompasses legal advice, assistance and representation for children."² Accordingly, this paper considers legal aid to include the various forms of legal support that provide children with access to justice. This comprises legal information and

¹ Inter-Agency Group on Children on the Move, cited in 'UN High Level Dialogue on Migration and Development 2013: Why children matter', Background paper, United Nations, April 2013.

² UNICEF ECARO, 'Guidelines on Child-Friendly Legal Aid', Geneva, October 2018.

counselling on their rights and available remedies to claim them; legal representation (mainly for unaccompanied children without a parent acting as legal representative) and access to a lawyer in judicial proceedings.

Methodology

The study builds on a review of relevant national and international literature from selected countries. A survey was sent to UNICEF offices in several countries and complemented by phone interviews with UNICEF staff. Countries selected represent main points of arrival in the Europe and Central Asia region (ECAR), where UNICEF supports national efforts to respond to the rapidly growing need arising from significant new arrivals – even in high-income countries where UNICEF does not traditionally have a programmatic presence. One country visit was conducted (to Italy), and provided the opportunity to meet with a range of non-governmental actors, including young people on the move and cultural mediators and gather their views.

The main limitation to the study is its heavy reliance on secondary sources, although assessment of the effectiveness of the practices described builds on the views of practitioners on the ground. Informants provided very candid assessments of the situation and initiatives being implemented. Yet there are few comprehensive evaluations available of the support provided, hence the paper presents experiences that have not been fully evaluated for quality and effectiveness. Furthermore, children's views of their experience with legal aid could only be obtained in Italy, not in other countries.

Content

The study offers a rapid review of the guidance contained in international and European standards regarding key principles and obligations of States in relation to legal aid and how it applies to children on the move. It reviews practices for legal aid provision to children on the move in five countries of arrival (Bosnia and Herzegovina, Bulgaria, Greece, Italy and Turkey). It then provides a cross-cutting analysis of these experiences by underlining key lessons learnt, and ends with recommendations for the way forward for UNICEF and its partners' engagement in this area of work.

CHAPTER 2.

International and European standards: Key dimensions of legal aid for children on the move



International and European instruments, including provisions on legal aid for children on the move, include standards related to access to justice and legal aid in the context of child-sensitive justice proceedings, as well as standards focusing more specifically on situations relevant to children on the move. The following is not an exhaustive review, but aims to flesh out key provisions guaranteeing access to legal aid for children on the move.

Overarching principles

The guiding principles of the Convention on the Rights of the Child (CRC) and of child-friendly justice underpin the provision of legal aid to children on the move:

- *Non-discrimination.* Children on the move should have access to legal aid under the same conditions as other children in the country. Specific measures need to be taken to ensure that access to a remedy is effective for children on the move, through the provision of translated material and interpretation services as needed, and by interacting with children in a manner that is sensitive to their situation and the trauma and difficulties they face due to uprooting, as well as trauma linked to the migration circumstances and journey, isolation, gender, age, disability and other factors.
- *Best interests of the child.* The determination of the child's best interests is central to the provision of legal aid to children on the move. Legal aid needs to support a determination of the child's best interests and defend the child's views and interests, especially when there are conflicting interests, such as restrictive migration policies. The Committee on the Rights of the Child (CRC Committee) underlines the need for an individualized approach to determining the child's best interests, in particular for children in a vulnerable situation such as refugees and asylum-seekers.³ Among the procedural safeguards applying to the determination of the child's best interests, the Committee explicitly mentions free, qualified and independent legal representation.⁴
- *Right to life, survival and development.* The migration process significantly affects children's right to life, survival and development. Upon arrival in the destination or transit country, proceedings to determine children's residency and/or refugee status – and any other proceedings in which a child may be involved – can be traumatic and further affect their development. Fulfilment of the right to life, survival and development is closely related to the right to access to healthcare and education, as is the case for all children under the State's jurisdiction. The length of proceedings, possible conditionality for access to social services during these proceedings, and the stability – or instability – of their legal residency status and prospects can also have a significant impact on a child's development and long-term integration. Legal aid, and more broadly legal and administrative proceedings, should take these factors into consideration.
- *Right to be heard.* Article 12 of the Convention specifies that children should have the opportunity to be heard in any legal or administrative proceedings affecting them, and the CRC Committee has stressed that this includes immigration and asylum proceedings. Children on the move must therefore be heard on issues concerning them – including health services and education options – and be able to present their reasons for the asylum claim. They need to receive accessible information on their rights and entitlements, as well as means to ensure that their voice is heard and given due weight in the proceedings. This implies, in particular, the appointment of a guardian or advisor free of charge.⁵

³ CRC Committee, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Art. 3, para. 1), CRC/C/GC/14, 29 May 2013.

⁴ Ibid; Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the CRC Committee on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3-CRC/C/GC/22, 16 Nov. 2017.

⁵ Committee on the Convention on the Rights of the Child, General Comment No. 12, 'The right of the child to be heard', CRC/C/GC/12, 20 July 2009.

- *Dignity.* This principle is included in the Council of Europe Guidelines on Child-Friendly Justice, and emphasizes that “children should be treated with care, sensitivity, fairness and respect throughout any procedure or case, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity.”⁶ It goes on to outline how the justice system needs to treat children in all of its interactions with them. This is particularly relevant to children on the move, who may face stigma, discrimination and humiliation in justice and administrative systems.
- *Rule of law.* This principle, also included in the Council of Europe child-friendly justice guidelines, underlines the importance of access to independent complaint mechanisms and of a fair process in which children have access to legal advice and can appeal the decision made.

Key standards related to access to legal aid for children on the move

Numerous international and European instruments include provisions applying to access to legal aid for children on the move. Some focus on the rights of children in the context of migration, asylum seeking and/or as victims of trafficking and exploitation; others deal with child-friendly justice and access to justice in general. Some cover administrative justice and processes while others concentrate on civil and/or criminal proceedings. The objective here is to highlight the key elements of the international and European frameworks for providing legal aid to children on the move.

- *Access to justice.* All children are entitled to access justice. The right to a remedy is a core human rights principle and includes the right to appeal a decision. In their joint General Comment 23 (2018), the CRC Committee and the Committee on Migrant Workers stated that “Children should be able to bring complaints before courts, administrative tribunals or other bodies at lower levels that are easily accessible to them, e.g., in child protection and youth institutions, schools and national human rights institutions.” The EU ‘Return Directive’ also recognizes that third-country nationals concerned about a return decision should have access to an effective remedy to appeal the decision or seek a review of the decision before an independent and competent body.
- *Legal representation.* The CRC refers to the right of children deprived of liberty and children in conflict with the law to access legal assistance, as well as the right to special assistance and protection for children separated from their families and child refugees and asylum-seekers. Council of Europe guidelines also note children’s right to have their own legal counsel and representation in proceedings where there may be a conflict of interest with other parties involved and to free legal aid under the same, or more lenient, conditions as adults.
- *Appointment of a legal guardian for unaccompanied children.* In its General Comment on the treatment of unaccompanied and separated children outside of their country of origin, the CRC Committee requires States to appoint a guardian “as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State.” The guardian must have the expertise necessary to safeguard the interests of the child. When children are involved in legal proceedings, they should have access to representation and a legal guardian.⁷

⁶ Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the CRC Committee on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, 16 Nov. 2017.

⁷ Committee on the Rights of the Child, General Comment No. 6 (2005) ‘Treatment of unaccompanied and separated children outside their country of origin’ OHCHR, Geneva 2005.

- *Access to legal counselling by competent professionals.* Council of Europe guidelines specify that “lawyers representing children should be trained in and knowledgeable on children’s rights and related issues (...) and be capable of communicating with children at their level of understanding.” Likewise, joint General Comment No. 22 of the CRC Committee provides that children “should be able to receive advice and representation in a child-friendly manner by professionals with specialized knowledge of children and migration issues when their rights have been violated.”⁸
- *Information the child can understand.* The Council of Europe guidelines provide detailed guidance on the information that should be provided to the child (and parents or legal representatives), which cover the child’s rights in the proceedings, their nature and length, appeals and access to services, among other matters. The guidelines stress that: “The information and advice should be provided to children in a manner adapted to their age and maturity, in a language which they can understand and which is gender- and culture-sensitive.”⁹ Access to appropriate information is also mentioned in instruments protecting the rights of victims of trafficking, in particular the Palermo Protocol.¹⁰ Jurisprudence by the European Court of Human Rights underlined that access to information is an essential aspect of the right to an effective remedy in the *Rahimi v. Greece* case, in which a migrant child from Afghanistan received an information brochure that did not describe the procedure for filing a complaint and was not presented in a language he could understand....¹¹

⁸ Committee on the Protection of the Rights of all Migrant Workers and Members of their Family and the Committee on the Rights of the Child.

⁹ Guidelines of the Council of Europe Committee of Ministers on child-friendly justice, adopted 17 November 2010.

¹⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000), supplementing the United Nations Convention against Transnational Organized Crime, Art. 3(b).

¹¹ ECtHR, *Rahimi v. Greece*, No. 8687/08, 5 April 2011. For more details, see European Union Agency for Fundamental Rights, Handbook on European Law related to the Rights of the Child, 2015, p. 179.

CHAPTER 3.

Selected country experiences of provision of legal aid to children on the move



Bosnia and Herzegovina



Brief overview

Bosnia and Herzegovina (BiH) has become a key transit route for migrants heading towards Western Europe, with a sharp and sudden rise in arrivals since early 2018. During that year, authorities recorded the arrival of over 24,000 refugees and migrants, compared to only 540 in 2017.¹² By the end of June 2019, an estimated 7,234 migrants and refugees were temporarily residing in the country, of whom an estimated 21 per cent were children; almost all boys. Unaccompanied and separated children represent 31 per cent of all refugee and migrant children.¹³ Reception capacities remain largely insufficient.¹⁴ Coordination among government entities is a major challenge and international organizations, together with civil society groups and volunteers, have stepped in to support the response with humanitarian and other assistance in health, child protection and education.¹⁵

Legal assistance to children on the move: Experiences and partnerships

Legal assistance to children on the move in Bosnia and Herzegovina is primarily provided by an NGO, Vasa Prava BiH, with support from the United Nations High Commission on Refugees (UNHCR), in close collaboration with other stakeholders, primarily NGOs, international organizations and relevant local authorities, such as the country's Centres for Social Welfare.

Vasa Prava BiH is directly involved in all stages of legal aid provision to child asylum seekers in the country. It provides legal counselling and legal representation, upon authorization by the child's legal guardian. Once the asylum procedure is initiated and the child is informed of all procedural aspects, Vasa Prava makes sure that children are aware of other rights, such as appointment of a guardian, appropriate accommodation, formal documentation/asylum seeker card, interpretation services,

¹² UNICEF BiH, Country Office Annual Report, 2018.

¹³ Save the Children, 'Refugees and migrants at the Western Balkans route', Regional overview, April-June 2019.

¹⁴ Branislav Stanicek, Briefing to the European Parliament Think Tank, 14 November 19.

¹⁵ UNICEF BiH, Country Office Annual Report, 2018.

access to education, access to health care and birth registration of new-born children of asylum seekers and undocumented foreigners.

The United Nations High Commission on Refugees (UNHCR) and Vasa Prave BiH have held joint training sessions for other stakeholders working with unaccompanied child asylum seekers, including the Centres for Social Welfare, Ministry of Security Asylum Department, Ministry of Security Immigration Department, Foreigners' Affairs service and NGOs. Training focused on children's rights and implementation of the principle of the best interests of a child in all aspects and stages of the procedure. The translated UNHCR *Guidelines on Determining the Best Interests of the Child* were used as a key learning tool. Continuing educational training has enabled ongoing strong ties with relevant state actors, as a means to strengthen implementation of the guidelines in practice and to address identified gaps.

UNICEF supported the Federal Ministry of Labour and Social Policy to develop guidelines and standard operating procedures on the protection and care of unaccompanied and separated children, which also outline steps for determining children's best interests. UNICEF then provided training on the application of these instruments and other related tools to the Centres for Social Welfare and other frontline workers.

Legal support for children on the move is also provided as part of refugee law clinics organized by UNHCR in cooperation with Vasa Prava BiH, the BiH Women's Initiative and faculties of law and political science.

Links with other types of legal aid for children in contact with the law

The generic state-sponsored legal aid scheme that exists in Bosnia and Herzegovina is housed in the BiH Ministry of Justice and managed through entities and cantonal legal aid centres (when they are present). Although there is strong mutual collaboration in some areas between Vasa Prava BiH and UNHCR, legal aid centres have had only limited involvement in asylum processes involving children, due to limited capacity and knowledge in the field of migration law, as well as the fact that they are rarely present in areas where migrants and asylum seekers are located. However, when legal aid centres working in the Sarajevo area, Mostar or Bihac encounter migration and asylum cases, they direct them to Vasa Prava BiH.

Bulgaria



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Brief overview

The number of arrivals in the country increased in 2019. Official data from August 2019 states that close to 1,500 new applicants for international protection arrived in Bulgaria, representing a 32 per cent increase compared to the same period in 2018. Over a third (550) were children, of whom most were unaccompanied or separated (76 per cent), and mainly from Afghanistan, Iraq and Syria.¹⁶

Legal assistance to children on the move: Experiences and partnerships

UNICEF Bulgaria has been providing legal aid to children on the move since 2016, including:

- Counselling on the asylum procedure, as well as on accessing universal services (health, education and social protection);
- Legal representation when unaccompanied and separated children are being detained because they were wrongly registered as adults or attached to unrelated adults;
- Support for family reunification.

UNICEF's support in this area builds on a programme cooperation agreement with the Bulgarian Helsinki Committee as the main implementing partner, as well as cooperation with UNHCR and the National Legal Aid Bureau.

UNICEF has also worked with these partners and in collaboration with the Ministry of Interior and the State Agency for Refugees, to conduct training to enable lawyers to provide legal aid to refugees and migrants.

¹⁶ UNICEF, 'Refugee and Migrant Response in Europe, Situation report # 33, June-September 2019. UNICEF ECARO, Geneva 2019

The partnership with the Bulgarian Helsinki Committee (BHC) and close cooperation with national authorities has led to law reform, changes in the practices of border and migration police and positive changes in judicial practice. Key developments between 2016 and 2019 included:¹⁷

- Amendments to the Law on Foreigners adopted in 2017 and 2019, stipulating that:
 - Unaccompanied and separated children cannot be detained and shall be referred to the Child Protection Department for implementation of child protection measures, and unaccompanied and separated children must be represented in migration proceedings by local social assistance directorates. This is a result of joint advocacy efforts by UNICEF, UNHCR, BHC and other partners.
 - Unaccompanied and separated children can have temporary residency in Bulgaria until reaching age 18, to ensure access to services and entitlements, as well as to protect them against forced return, thus giving legal status to those who have not applied for international protection or whose applications were rejected. Social assistance directorates are to undertake protection measures in accordance with the Child Protection Act after assessing the best interests of the child. A provision was also added to allow for extending, on humanitarian grounds, legal residency in Bulgaria of children after they turn 18.
- Changes in secondary legislation building on these amendments, introducing provisions for immediate referral to social assistance directorates, representation, possible police protection, interpretation and legal aid for unaccompanied children in national immigration procedures, as well as for assessing and determining the child's best interests during these procedures. A provision was introduced to identify an adult responsible for the child by law or custom, in order to stop the practice of appointing unrelated adults as children's guardians.

Following legislative reforms beginning in December 2017, and as a result of UNICEF-supported strategic litigation by the BHC and other organizations providing legal aid, Bulgaria's administrative courts developed a steady flow of jurisprudence mandating that the detention of unaccompanied migrant children is unlawful and in contradiction with basic standards for child care and protection. UNICEF-supported litigation also resulted in reducing the period of detention from more than three months, prior to 2016, to nine days as of December 2019.¹⁸

Links with other types of legal aid for children in contact with the law

The provision of legal aid to children on the move is part of UNICEF's 'access to justice' programme, which also includes: technical support for legislative changes to guarantee the rights of children in contact with the law (including asylum), strengthening data on children involved in legal proceedings, and the provision of legal aid and specialized training for professionals, among other initiatives.

¹⁷ This information was extracted from a UNICEF Bulgaria Note, 'Children on the move: Steps towards stopping immigration detention of unaccompanied and separated children (UASC) in Bulgaria', December 2019.

¹⁸ Ibid.

Greece



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Brief overview

Greece is a major point of arrival for refugees coming both by land and by sea. UNHCR data indicate that by mid-December 2019, over 71,000 persons had arrived in Greece during the year, compared to approximately 50,500 in 2018.¹⁹ According to September 2019 data from UNICEF, the total number of migrant and refugee children present in the country had reached 34,800, including 4,616 unaccompanied and separated children,²⁰ compared to 2018 totals of 27,000, of whom some 3,500 were unaccompanied or separated.²¹ The overwhelming majority of unaccompanied and separated children are boys. About a third are accommodated in shelters or supported independent living apartments, while others are placed in hotels and identification centres – many of which are unsafe, causing children to move frequently.²² Lack of adequate accommodation for all unaccompanied children is an ongoing concern.

Fulfilment of family reunification procedures mandated by EU law remains a challenge. The procedure allows family members of a third-country national residing lawfully in certain EU Member States to enter and reside in that country. It is a way for children arriving in one EU country to be relocated with their family in another EU Member State. A UNICEF-supported study by the Deputy Ombudswoman for Children's Rights pointed out that rejection rates for refugee status for unaccompanied children was very high (56 per cent) and the level of family reunification transfers to other European countries was very low – more than three times lower than in 2018.²³ Unaccompanied children are also far more likely than accompanied children to see their application for family reunification rejected.²⁴

¹⁹ <https://data2.unhcr.org/en/situations/mediterranean/location/5179>.

²⁰ Refugee and Migrant Response.

²¹ Ibid.

²² 'Refugees and Migrants'.

²³ 'Refugee and Migrant Response'.

²⁴ Greek Ombudsman and UNICEF, 'The rights of children on the move', summary, Annual Report 2018.

The process for children applying for asylum involves an initial interview, which mainly consists of gathering key information about the child's identity, and a second interview to review the application for asylum, which typically takes place months after the first interview. During the second interview, children may or may not be represented by a lawyer. If the decision reached is negative, children can file an appeal, for which they are entitled to legal representation. The Appeal Authority can refer the child to the Ministry of Interior to request humanitarian status. In principle all children should be referred through this procedure to obtain humanitarian status, but in practice this is not the case.

If children are not recognized as refugees or granted humanitarian status, they can be arrested, kept in protective custody and deported once they turn 18, although deportation is rare. Once released from detention, these children and adolescents typically end up on the street.

Children under 15 cannot apply for asylum on their own, but must do so through a legal representative. In principle, the public prosecutor acts as the legal guardian; but in practice, s/he delegates this function by appointing a representative, whose role is to safeguard the child's best interests during proceedings.

Legal assistance to children on the move: Experiences and partnerships

Upon arrival, children receive a booklet with child-friendly information, published by the Asylum Service of the Greek government, with support from the European Commission.



Extract from child-friendly booklet on asylum seeking procedures in Greece, available at <<http://asylo.gov.gr/wp-content/uploads/2018/01/I-am-under-18-ENGLISH-min-ilovepdf-compressed1.pdf>> last accessed 14 February 2020.

Legal assistance to child asylum seekers is usually performed by NGOs engaged in providing a range of services to children and families on the move. It is therefore integrated into a broader support package. Children hosted in shelters are provided with legal aid, among other services. Shelters typically have a lawyer on-site in charge of advising them. Children in emergency shelters, including safe zones in refugee camps, also have access to a lawyer as part of broader service provision. The International Organization for Migration (IOM) also provides legal aid in the emergency hotels it manages. Finally, homeless children have access to legal aid through NGOs, if the latter manage to reach them.

Two experiences of providing legal assistance to children on the move are of particular relevance. One is supported by UNICEF and the IOM and managed by the NGO Solidarity Now. The other is implemented by Defence for Children International-Greece (DCI).

Solidarity Now: Child and Family Support Hubs

Solidarity Now is UNICEF's main implementing partner in Greece. With support from UNICEF and IOM and financing from the European Commission, it manages 'child and family support hubs', which provide a range of integrated services.

The hubs offer a safe place where refugee and migrant children, women and families can receive services free-of-charge, including psychosocial and non-formal educational activities, legal and psycho-social support and targeted case management. The focus is on children and women, including survivors of sexual and gender-based violence and vulnerable families residing in campsites and/or urban areas in Central Greece, Central and Eastern Macedonia, Attica or Thessaloniki. Service provision includes:

- Child-friendly spaces where children and youth can engage in structured recreational and psychosocial activities in a safe space;
- Female-friendly spaces, where women and girls can engage in activities to improve their social and emotional wellbeing and build their confidence and resilience while receiving tailored psychosocial services in a safe space;
- Non-formal educational activities for children and adults and support for school enrolment;
- Identification and targeted case management of children at risk and vulnerable women and families, focusing particularly on unaccompanied and separated children, sexual- and gender-based violence survivors and people with a disability and/or illness;
- Provision of psychosocial and legal support, including appropriate referrals to other service providers when needed;
- Provision of accurate and tailored information to refugees and migrants on their rights as third-country nationals, the asylum procedure and how to access public and other services.²⁵

Defence for Children International-Greece: Children's Rights Helpdesk

DCI's branch in Greece manages a project offering legal aid to children on the move and in need of international protection. It operates in five regions (Athens, Lesvos, Evros, Epirus and Crete Island). The main goal is to fill the significant gap in the area of legal assistance and representation for refugee children.²⁶

Since 2018 DCI has been running a 'Children's Rights Helpdesk' to support children in regard to seeking asylum and receiving appropriate protection and humanitarian assistance to enable them to enjoy their rights under the CRC. The helpdesk:

- Provides legal assistance and representation to unaccompanied children, single mothers and families. It contacts relevant authorities to ensure that children can enjoy the rights to which they are entitled, it submits legal memos to support children's claims before national and international authorities and promotes children's access to services by liaising with service providers.²⁷

²⁵ Solidarity Now website, <https://www.solidaritynow.org/en/blue_dots/> Last accessed 18 December 2019.

²⁶ Defence for Children-Greece website, <<https://www.defenceforchildrengreece.org/can-you-hear-me>> Last accessed 18 December 2019.

²⁷ Defence for Children-Greece website, <<https://www.defenceforchildrengreece.org/we-provide-legal-assistance-and-rep>> Last accessed 18 December 2019.

- Holds information sessions for refugee children living in regions where DCI-Greece is present (Athens, Lesbos, Crete) to inform them about their rights, asylum-related legal procedures and any durable legal option available to them. Information sessions may be followed by individual legal support for children who wish to access DCI's services.²⁸
- Offers legal expertise, advice and workshops for lawyers, legal advisers and other professionals.²⁹
- Undertakes research in areas where children are exposed to risks, monitors the state and other actors, raises children's voices and develops proposals with their help, makes recommendations for strengthening and initiating dialogue with civil society.³⁰
- Carries out strategic litigation before EU and international human rights bodies, advocacy for law reform, awareness-raising on social change for child protection in Greek society.³¹

Guardianship

When children move with their parents, parents are the child's legal representatives. Since unaccompanied children under the age of 15 are not allowed to apply for asylum on their own, the local public prosecutor is responsible for appointing a guardian. The public prosecutor delegates representation to NGOs, based on their areas of expertise. Once appointed, the NGO represents the child. The appointment of a legal guardian is project-based, thanks to the engagement of NGOs, rather than state-supported. Very few refugee children are represented by the guardianship network in charge of all children without parental care in the country.

Links with other types of legal aid for children in contact with the law

Legal aid is traditionally provided through bar associations in the country. Yet access to legal aid for asylum seekers through local bar associations is still embryonic and has not reached the required scale to cover all children on the move. Very few lawyers are interested in engaging in this type of support. The objective is ultimately to have legal aid for children on the move funded from the state budget, like the 'regular' legal aid scheme. At present most children on the move only have access to a lawyer during criminal proceedings, when the child is accused or suspected of being in conflict with the law.

²⁸ Defence for Children-Greece website, < <https://www.defenceforchildrengreece.org/we-run-information-sessions>> Last accessed 18 December 2019.

²⁹ Defence for Children-Greece, website, < <https://www.defenceforchildrengreece.org/trainings>>, last accessed 18 December 2019.

³⁰ Defence for Children-Greece website, < <https://www.defenceforchildrengreece.org/field-research>>, last accessed 18 December 2019.

³¹ Defence for Children-Greece website, <https://www.defenceforchildrengreece.org/strategic-litigation-advocacy>, last accessed 18 December 2019.

Italy



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Brief overview

Arrivals of children on the move in Italy have varied significantly over the past five years. Following a significant surge in arrivals in 2014-2015, numbers began to plummet in 2018.³² While most people on the move arrive from the Mediterranean Sea, a number also reach Italy by land. For some Italy is the final stop on their journey, but for many it is a transit point on the route to other countries further north.

A 2018 IOM report estimated that the proportion of children present among people on the move in Italy reached 18 per cent for that year and has been oscillating between 11 and 19 per cent since 2013.³³ Among all child arrivals, 1-to-3 per cent travel with their families and an estimated 15 per cent are unaccompanied.³⁴ Approximately 95 per cent of these are boys, and the overwhelming majority are 16 or 17 years old.³⁵ Unaccompanied children are therefore usually close to reaching the age of majority.

The priority for accompanied children is to keep them with the family. Children are therefore subject to the decision made for the head of the family, particularly in relation to permission to stay. However, the law requires that a separate best-interests assessment be conducted for children.

For unaccompanied children, a significant issue is the transition to adulthood. While they benefit from significant legal protections as children or “minors”, these protections suddenly disappear as they turn 18, leaving them with limited options for obtaining regular status in the country. Upon arrival, they are placed in a short-term welcome centre, before being transferred to long-term accommodations. Italy’s Law 47/2017 (Legge Zampa) takes a rights-based approach, providing a solid framework for ensuring several safeguards for unaccompanied children. Under this law,

³² Data from Italy’s Ministry of Interior, 14 February 2020 update.

³³ IOM Italy, ‘Migrant children in Italy’, 4, Briefing, December 2018.

³⁴ Ibid.

³⁵ Data from Ministry of Interior Italy, 14 February 2020 update.

unaccompanied minors cannot be expelled from the country and are automatically granted a permit to stay. They can also apply for international protection. Upon reaching majority, young people are no longer entitled to receive care unless, based on a request by social services, the tribunal for minors allows them to receive support and protection until the age of 21.

Law decree 113/2018 repealed residence permits for humanitarian reasons, which offered a legal opportunity for migrants to stay in the country even if they were not granted international protection. Italy's legal framework thus reveals a significant gap between the support and protection unaccompanied children are entitled to before and after they turn 18. Options for a regular permit of stay therefore need to be explored while unaccompanied children still have access to significant support as minors. It also means that families traveling with children are equally at risk of not being granted a permit of stay if they receive a negative decision on their application for international protection.

Legal assistance to children on the move: Experiences and partnerships

Children and young people on the move are able to receive legal assistance at different moments, including immediately upon arrival and over a longer stay in the country.

Point of entry: Information briefing

Unaccompanied children and families arriving by sea receive a briefing from UNHCR on international protection and from the IOM in relation to trafficking. Save the Children conducts briefing sessions explaining the reception process and providing immediate legal information, in particular for those willing to apply for international protection. Save the Children was initially mandated by the Ministry of Interior to provide immediate support to children, but currently operates through a specific memorandum of understanding with the Ministry, under which prefectures can call them as needed.

Reception facilities: Access to legal information through social workers

When placed in care, in so-called 'community houses' or reception centres, unaccompanied children are supposed to receive legal information, mainly through the social workers and legal guardians who accompany them during efforts to seek a residence permit and access to services. In some cases a legal specialist is available, but it is mostly through non-specialized professionals that information is conveyed. However, young people interviewed during a country visit for this study do not recall having received legal information when arriving at a reception centre. According to them, the information provided was about the rules of the centre – not the laws of the country.

Informal centres: CivicoZero and the Intersos shelter

A number of mechanisms welcome children and young people who do not reside in formal care centres because: they have aged out of care, no longer have a residence permit or want to continue their journey without registering with the formal system, among other possible reasons. Save the Children has set up day-time centres called 'CivicoZero' in several cities along children's travel routes, including Rome, Catania, Milan and Turin. The centres are located in areas where children and young people often wait for opportunities to carry on their migration journey. The original idea was to provide children and young people on the move with a place to rest and basic amenities. But these practical facilities also serve as an entry point for other forms of support (e.g., psychosocial support, legal aid). Use of the centres is free and anonymous. CivicoZero has specialists who provide legal information to young people, but does not take on individual cases, although it may do so in exceptional cases involving strategic litigation.

INTERSOS is another non-governmental organization and UNICEF implementing partner, which provides shelter to unaccompanied children and young migrants, including mothers with young children, in Rome. The centre is informal and provides accommodation as well as a range of services

to persons who are no longer entitled to remain in the reception system or are in transit. In the case of unaccompanied children, INTERSOS refers them promptly to relevant authorities for actions falling under their respective mandates. When a new person comes to the centre, the initial interview includes a legal assessment of her/his situation. Critical cases can be referred to the Association for Legal Studies on Immigration (ASGI), which has a network of lawyers. INTERSOS and UNICEF developed a handbook designed to inform unaccompanied children and young migrants and refugees of their rights under Italian law.

Online platform U-report: Partnership between UNICEF and DLA Piper

Relying on the online platform 'U-Report' developed by UNICEF, the partnership supports lawyers at DLA Piper to provide legal advice to children and young adults on the move. Through the tool, young people can ask legal questions and receive answers from lawyers. The partnership between UNICEF and DLA Piper began in early 2019; since then more than 800 questions have been posed, and some 450 responses offered. Issues raised are mostly related to the permit of stay and mobility within the EU, but also concern, for example, access to a legal guardian. UNICEF is also promoting a series of short videos and longer live chats on specific topics of concern, such as family reunification and residence permits for study purposes.

Legal course: "Know your rights"

The 'Know your rights' project consists of a legal course and mentorship programme targeting young adults on the move, to strengthen their knowledge of their rights and ability to claim them. It is jointly managed by the Italian Coalition for Civil Rights and Liberties, DLA Piper and Probono Italia. Each session includes 20 to 25 participants and lasts for seven weeks, with weekly classes on various topics relevant to asylum seekers, refugees and others benefiting from international protection – such as, asylum legislation, labour law, education, health, contracts, police and the Italian justice system. The programme also provides for mentorship by lawyers, who advise young people on their objectives as part of their migration plan, including work prospects and career strategies. In 2019, three sessions took place in Rome and Milan.

Support to obtain a passport: 'Pass4you'

A key issue for people on the move, including children and young people, is obtaining a passport from the embassy or consulate of their country of origin. The document is usually requested by destination countries for issuing a permit of stay for work or study. Yet, such procedures typically take a long time, are costly, require legal knowledge to fill in the application and often necessitate the cooperation of the family of origin. The project "Pass4you" launched in October 2019 by ASGI and INTERSOS, with support from Save the Children, aims to facilitate the process by providing information and logistical support to children on the move during their interactions with embassies and consulates.³⁶

Legal guardians: Providing legal representation

Unaccompanied children in Italy are entitled to access to a legal guardian, whose role is to provide legal representation for the child in every aspect of daily life, including asylum or other residence permit procedures. The legal guardian is appointed by the Tribunal for Minors and is guided by the child's best interests. The 2017 law established a system of volunteer legal guardians – individuals who volunteer to accompany children on the move. To become a volunteer legal guardian individuals must be registered with the Tribunal for Minors and attend a training of at least 24 hours on unaccompanied children's profiles, the legal framework and psychosocial health-related issues. They can follow a maximum of three children simultaneously. Regional ombudspersons for children are mandated by law to select and train volunteer guardians. UNICEF has developed a model to provide volunteer guardians to offer children support and monitoring in cooperation with the Municipal

³⁶ ASGI, 'Minori stranieri non accompagnati: al via progetto PASS4YOU', 29 Jan. 2020, <<https://www.asgi.it/notizie/minori-stranieri-non-accompagnati-al-via-progetto-pass4you/>>

Ombudsperson in Palermo, and is collaborating with UNHCR to model a peer-to-peer support mechanism.³⁷

Cultural mediators

Cultural mediators act as intermediaries between young people on the move and reception centres, social services and other public institutions. Their role is to help young people understand the Italian system and culture and to support Italian services and institutions in their interactions with young people on the move. This service does not involve translation and interpretation, but rather facilitating communication and building trust with young people and helping other professionals interpret behaviours based on different cultural backgrounds, values, beliefs and social roles.

Families of origin

Although the focus of legal aid for children and young people is usually the country of arrival, where they may become involved in legal and administrative proceedings, actors on the ground have pointed to the important role of families of origin in communicating legal information. When young people have difficulties grasping what is being explained, or when they are tempted to go another – often irregular – way, liaising with families of origin, when possible and relevant, can help convey legal advice. In other cases, however, families and communities back home may also suggest a counter-narrative or inaccurate information that hinders, rather than helps, the process.

Link with other legal aid

Links with other forms of legal aid is limited, given the existing weaknesses in the juvenile justice system. UNICEF, however, collaborates with the Italian Pro Bono Network, a national association that works to foster a cultural and juridical environment conducive to the development of pro bono services within the Italian legal system and active dialogue with the international public-interest law community. The network consists of 30 law firms and 500 organizations. It is likely that practices piloted with children on the move, such as volunteer legal guardians, will benefit other children lacking parental care.

³⁷ See UNICEF and Garante per l'infanzia e l'adolescenza Comune di Palermo, 'The importance of the 'human factor' for refugee and migrant unaccompanied children in Italy: The Palermo model of volunteer guardianship', Programme brief, December 2019, <<https://www.unicef.org/eca/media/9386/file>> Last accessed 24 Feb. 2020.

Turkey



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Brief overview

Turkey has the largest registered refugee population in the world. Over 4 million refugees and asylum-seekers are currently registered in the country, of whom nearly 1.7 million are children. Nearly 3.7 million Syrians, including over 1.6 million children, are under temporary protection and mostly live in host communities. Turkey is also a leading transit country for unregistered refugees and migrants on the move. Since 2015, more than 1.1 million refugees and migrants have made the difficult journey from Turkey to nearby Greece. In 2019 over 183,000 people – primarily Afghans, Iraqis and Syrians – attempted to cross by sea or land from Turkey into the EU, a nearly 70 per cent increase over 2018.³⁸

The Law on Foreigners and International Protection provides for various types of legal status, which apply to all persons on the move, including children:

- Refugee status, as per the Geneva Convention;
- Conditional refugee status, for persons in need of international protection pending resettlement in a third country;
- Subsidiary protection, for persons who cannot be granted refugee status but are at high risk if sent back to their country of origin;
- Temporary protection for persons arriving in Turkey in a mass influx and requesting protection.³⁹

National law calls for children to enjoy equal rights, regardless of their status. Unaccompanied children are considered under the law as persons with “special needs.” The by-law on implementation

³⁸ UNICEF Turkey, ‘Humanitarian Situation Report’, 2019.

³⁹ Neva Öztürk, Gökçen Taner and Ersoy Kontaci, ‘Needs assessment regarding legal assistance services within the scope of children’s right to access to justice’, Project report, UNICEF and the Union of Turkish Bar Associations (UTBA), 2018.

of the Law on Foreigners recognizes the centrality of the best interests of the child, provides for child-sensitive proceedings and includes provisions for the protection of unaccompanied children.

Neither the Law on Foreigners nor the regulations covering its implementation include specific provisions for legal assistance to children on the move. But they do include provisions regulating access to legal assistance for all applicants for international protection: access to a lawyer and legal counselling services, as well as free legal aid for those who cannot afford to pay.

Legal assistance to children on the move: Experiences and partnerships

The UNICEF country office in Turkey works with government and non-government partners to provide legal counselling and legal assistance to children on the move through a variety of cooperation modalities. The focus is on strengthening technical capacities to respond in a culturally and age-appropriate manner to children from different nationalities and backgrounds, through programme cooperation agreements with expert NGOs and partnerships with statutory authorities, including local bar associations and the Ministry of Interior.

UNICEF primarily supports the provision of a range of services to children and their families on the move through the NGO partner Solidarity with Asylum Seekers and Migrants, located in Turkey's Southeast and West, and some other partners. While UNICEF does not directly support legal representation, legal aid is part of the set of services this NGO provides to children on the move. The NGO also has an emergency cash fund system that can be used for this purpose as part of the comprehensive care plan developed for each child following the social inquiry assessment. A team of lawyers, social workers and psychologists assist children to access a broad range of services (e.g., psychosocial support, language support and legal counselling and assistance related to immigration). Examples of legal counselling include guiding the child or family through the legal process and regulations for registration, informing them of their rights and entitlements, as well as help in accessing services and translation support. When a child files an application for international protection, the NGO lawyer follows the case through the bar association. Often the same lawyer will be appointed, providing some continuity in case management.

Through their support to bar associations and CSOs, agencies such as UNHCR ensure the provision of legal assistance (counselling and representation) to children and their families. Moreover, according to Turkish legislation, applicants for international protection can, upon request, benefit from free legal aid services to be provided by bar associations. Thus some bar associations have established specialized systems to assist the migrant population. UNICEF works with the Union of Turkish Bar Associations through a memorandum of understanding to promote the use of child-friendly approaches in legal aid services.

Link with other legal aid

In principle, legislative provisions regarding access to legal aid for all children apply to children on the move, as per the general constitutional principle of non-discrimination and equality before the law. This includes the appointment of a defence lawyer if a child is accused or suspected of having committed a crime or is the victim of a crime, and access to legal aid and exemption of court fees (based on resources) for children involved in civil and administrative proceedings.⁴⁰ As mentioned above, the Union of Turkish Bar Associations and UNICEF have been working to provide child-sensitive legal assistance, both to all children in Turkey and to children on the move. The partners produced a substantive report in 2018 covering all access to legal assistance in Turkey and highlighting the links between the various types offered.⁴¹

⁴⁰ Needs assessment for legal assistance . INCOMPLETE

⁴¹ Ibid.

CHAPTER 4.

Outstanding challenges



The experiences reviewed highlight many effective innovations, while at the same time pointing to several outstanding challenges, as detailed below.

Stability of the applicable national legal framework

When migration routes change rapidly and new countries are exposed to surges in arrivals within a very short timeframe, legal frameworks tend to evolve on an ongoing basis, to address emerging challenges and respond to the national political agenda. This creates instability in the legal framework, shifting legal options for children on the move and potentially making irregular migration more attractive – thus exposing children to risk and bolstering criminal networks. It also makes the provision of effective legal aid more challenging by requiring constant adaptation and updating of knowledge by professionals and potentially leading to changes in jurisprudence, fostering insecurity.

Ensuring the sustainability of legal aid for children on the move through state engagement

In some country experiences reviewed here (e.g., Bosnia and Herzegovina and Greece), legal aid for asylum-seeking procedures is project-based, relying on engagement by NGOs, rather than management by the State. It is largely disconnected from standard legal aid made available to other children in the country. While it may be challenging for governments to deal with high numbers of arrivals, including many unaccompanied children, efforts are needed to progressively develop a sustainable system of legal support for children on the move that is more closely linked to existing structures and resources. One way to begin overcoming this challenge is to promote a universal approach to legal aid that links legal aid for children on the move to the general legal aid scheme.

Availability of information on legal aid for children and families

For children to have access to a lawyer free of charge, in most cases a formal request must be submitted. Unaccompanied children with a trained legal guardian who is knowledgeable about judicial and administrative proceedings may be able to file such a request. In other cases, especially when represented by a family member, a child's access to legal aid may be hindered by lack of information. In Turkey, even though the law mandates that all applicants for international protection are entitled to legal aid – adults and children alike – children and families are often unaware of this right. Public authorities may not systematically inform them of this possibility. Yet the legal aid system can only start operating when the child formally asks for a lawyer.⁴² In Bosnia and Herzegovina, children are frequently not fully informed of their procedural guarantees and rights, such as the right to timely appointment of a guardian, which is crucial for procedural safeguards, free legal aid and translation/interpretation.⁴³

Spread of inaccurate legal information among children on the move

Inaccurate information among people on the move, including children, is widespread. This is due to many factors, including inaccurate or outdated information in and from countries of origin; unreliable sources, including social media; ill-informed peer advice; traffickers and smugglers who may spread inaccurate information to make people more dependent; and possible misunderstandings. Actors on the ground have highlighted that it is much more difficult to rectify inaccurate legal information than to provide first-hand knowledge, especially when such information comes from sources in whom the people concerned have greater trust than they may have for authorities in the country of arrival.

Conditionality of access to legal aid for children on the move

Access to certain forms of legal aid – in particular appointment of a legal guardian and assistance by a lawyer during proceedings – may be conditional. The two main conditions are related to age and resources. In Greece for example, the appointment of a legal guardian only applies to children under the age of 15, as per legislation. Yet the rationale for such an age limit – and for providing legal

⁴² Submission by UNICEF Turkey as part of this study.

⁴³ Submission by UNICEF Bosnia and Herzegovina as part of this study.

representation for children under 15 rather than for all children (under 18) – is unclear and leaves many unaccompanied children insufficiently protected.

Regarding assistance by a lawyer during proceedings, a study on legal aid in EU Member States conducted by the European Union Agency for Fundamental Rights using 2017 data found that only two countries, Belgium and Bulgaria, provide free legal aid to children without income requirements in all types of cases and regardless of their status (as immigrant, witness, plaintiff, asylum seeker, suspect/offender, victim). The study makes a distinction between asylum-seeking proceedings and immigration proceedings. In relation to asylum seeking, the report notes that “child asylum seekers enjoy free legal aid in all EU Member States under certain circumstances,” which in 21 Member States refers to income requirements.⁴⁴ Likewise, concerning immigration procedures, the majority of EU Member States set no minimum age to access legal aid, but income requirements apply in most. Several countries, namely Austria, the Czech Republic, Hungary, Lithuania, Romania and Slovenia, do not provide free legal aid, while in Croatia only unaccompanied children are eligible.⁴⁵

Dearth of specialized lawyers and other legal counselling professionals

The lack of specialized lawyers is a particular concern and reflects the overall lack of professionals trained to interact with children in contact with the law. Children on the move need lawyers who combine a specialization in children’s rights, including specific skills for interacting with children, and a specialization in asylum seeking and immigration issues, along with sensitivity to the experiences children and families may have gone through during migration. In many places, lawyers involved in asylum and immigration issues may not be competent to deal with children. This is an area that would benefit from further strengthening, in particular by working with bar associations, as is occurring in Turkey.

Access to documents, in particular from the country of origin

A key issue for people on the move, including children and young people, is obtaining relevant documents from the embassy or consulate of their country of origin, particularly birth certificates and passports. The documents are often requested to prove age and for issuing a permit of stay for work or study. Yet, such procedures typically take a long time, are costly and require legal knowledge to file the application. Access to all other forms of legal aid can be compromised if one document is missing. Thus strategies for facilitating access by children on the move to documents from their country of origin should be an integral part of legal assistance initiatives.

Disparities in implementation within a given country

While national legislation regarding children on the move may be in place, implementation may vary significantly from one geographic area of the country to the next. This significantly impacts the legal situation of children on the move, and in turn affects the quality and consistency of legal assistance provided. It is therefore important to identify such disparities and advocate for uniform implementation of the law across the country.

Considering child protection issues that may arise in the asylum application process

Asylum registration needs to be conducted in a timely manner and is largely dependent on the legal advice children receive. Yet the process itself can expose children to risk. In Turkey, for example, children are often registered upon entry into the country and issued an attestation of their intention to seek asylum. They are then left on their own to submit the official request. Sometimes in a matter of days, authorities and other stakeholders lose track of them, as they often decide to travel with a group of adults (countrymen, relatives, friends etc.).

⁴⁴ European Union Agency for Fundamental Rights, ‘Mapping minimum age requirements: Children’s rights and justice, 2018 < <https://fra.europa.eu/en/publication/2018/minimum-age-childrens-rights-justice/legal-aid-immigration>>, last accessed 3 January 2020.

⁴⁵ Ibid.

Access to children on the move can be problematic

The challenge of identifying and reaching out to children on the move is related to a lack of state engagement in the provision of legal aid. In Turkey for instance, more comprehensive provisions concerning children on the move, including access to NGOs and legal aid, could improve national immigration or asylum processes. As a result of such gaps, UNICEF-supported teams only have access to children once authorities make a request. Due to bottlenecks in the provision of legal aid counselling and services to children on the move, UNICEF regularly advocates with the Directorate General of Migration Management; the Ministry of Family, Labour and Social Services; and the Union of Turkish Bar Associations to expand the provision of legal aid to children on the move during the asylum-seeking process.⁴⁶

Deprivation of liberty for children on the move remains a major concern

At many points of arrival, children can be deprived of liberty solely on the basis of their status as migrants and/or asylum-seekers. In Bosnia and Herzegovina for instance, some children are placed in detention even though they are asylum seekers; often in closed facilities with limitations on movement. They are accommodated in facilities that do not fully meet minimum standards for humane and safe conditions and fail to provide a protective environment. In Bulgaria, it is thanks to active advocacy and strategic litigation by UNICEF and its main implementing partner, the Bulgarian Helsinki Committee, that the practice of detaining children on the move has been significantly reduced, further underlining the importance of legal aid and access to justice.

Reception conditions for children on the move often infringe their rights

Many children are not literally placed in detention, but are kept in highly inadequate conditions at reception centres. There, basic amenities to ensure a minimum adequate standard of living are lacking and risks of violence – including gender-based violence, as well as trafficking and other forms of organized crimes against children – are exacerbated. In addition to advocacy efforts, legal challenges to such conditions should be further explored. The European Court of Human Rights, for example, condemned France for its treatment of an unaccompanied 12-year-old Afghan child in a makeshift camp in Calais, because it found that the child had been left in “an environment completely unsuited to his status as a child and in a situation of insecurity rendered unacceptable by his young age”, amounting to degrading treatment.⁴⁷

Gender dimensions of legal aid receive little consideration

The issues faced by children and young people on the move may depend on their gender, which has a significant influence in their migration journey. The overwhelming majority of unaccompanied children are boys. Girls and young women on the move face greater risk of being victims of sexual exploitation and abuse, reflecting gender norms in the country of origin and the country of arrival, or they may be traveling with their own children. This affects their access to justice in general, their legal status in the country and the way legal aid is provided to them. While some gender-specific support is provided, the particular difficulties faced by females appear to receive limited attention, although these challenges can impact their access to legal aid in several ways. Traditional gender roles may prevent them from seeking legal help, if such areas are traditionally dealt with by men in their home society. Fear of being separated from their children if they are recognized as victims of trafficking and exploitation or domestic violence may prevent them from accessing a remedy, support and redress. Blackmail by traffickers or other perpetrators often builds on gender-specific threats tied to traditional beliefs and customs. Children’s relationships with their family in the country of origin or of arrival/destination may be affected by their experiences along the migration journey. These situations require specific approaches and knowledge, including for legal assistance, which currently appear to be insufficient in ECAR countries.

⁴⁶ Submission by UNICEF Turkey as part of this study.

⁴⁷ European Court of Human Rights, ‘Protection of minors’, Fact sheet, June 2019, referring to *Khan v. France*, 28 February 2019.

Legal aid is not the only factor hindering access to justice for children on the move

Numerous circumstances can prevent children on the move from accessing justice, as highlighted in the introduction to this study. The review of country experiences has permitted identification of several practical obstacles that need to be taken into account when developing interventions to promote access to legal aid:

- *Age determination issues.* Access to legal aid for children on the move, along with access to a range of other services and protective interventions, is related to their recognition as children or “minors” by authorities at the point of arrival. The appointment of a legal guardian, in particular, applies only to children. Yet for children traveling without reliable documentation, especially unaccompanied children, age determination procedures are not uniform, and children do not always receive the benefit of the doubt.
- *Child-sensitive proceedings.* Child-friendly justice is critical for all children in contact with the judicial system. Proceedings of specific relevance to children on the move, in particular administrative proceedings, need to be made more child-sensitive, including by: continuing to train staff to interact with children, ensuring that premises where interviews are held are welcoming and reducing wait times and the amount of paperwork required. The length of proceedings also poses a major challenge. In Greece for instance, lengthy procedures are the norm, creating “feelings of insecurity and futility, especially for children reaching adulthood.”⁴⁸ The problem is a result of inadequate handling of applications due to insufficient capacity, delays in the processing of claims and lack of clear and timely information to applicants and their legal representatives.
- *Clear legal status for all children on the move.* All children arriving in a country may not have access to a clearly defined legal status that allows them to enjoy their rights and access services like other children in the country. As underlined by the European Agency for Fundamental Rights in its research on the integration of young refugees in the EU, “these limitations, coupled with uncertainty about the outcome of proceedings, the fear of return and the absence of family and friends, can affect integration prospects and mental health, and make some vulnerable to becoming victims or perpetrators of crime.” This situation exacerbates difficulties in the integration process. Yet at the same time, “it is crucial that the asylum procedure allows sufficient time for the applicant to prepare for the interview, seek legal, medical and psychological assistance, and collect evidence to substantiate a claim.”⁴⁹ In Turkey for instance, the law provides for various types of status, including permits of stay on humanitarian grounds, which enable children to be identified and registered. In Greece, the legal situation for unaccompanied children who do not qualify for international protection is uncertain, hindering children’s development, inclusion and future prospects. Efforts made in 2016 as part of the EU-Turkey agreement to accelerate the processing of applications have led to restrictions on the enjoyment of rights, in particular freedom of movement on the island of entry.⁵⁰
- *Perceptions of children on the move in the justice system and society.* In countries of arrival, children on the move are often stigmatized and discriminated against. As reported in Greece, children on the move who are victims of trafficking, especially girls, are often seen as perpetrators rather than victims. Children on the move who are convicted for drug trafficking in criminal proceedings often receive harsher sentences.⁵¹ It is essential to raise awareness in the population and in the judiciary to ensure that children on the move are seen as victims, not perpetrators.

⁴⁸ Greek Ombudsman and UNICEF, Rights of children.

⁴⁹ European Union Agency for Fundamental Rights, ‘Integration of young refugees in the EU: good practices and challenges’, 2019.

⁵⁰ Greek Ombudsman & UNICEF, Rights of Children.

⁵¹ Interview with UNICEF staff in Greece.

CHAPTER 5.

Lessons learnt and way forward



This study has highlighted the multiple challenges of ensuring the effective provision of timely and quality legal aid to children on the move. The way forward draws on lessons learnt from the experiences reviewed. It focuses on the need to better recognize and integrate the provision of legal aid to children on the move with legal aid provisions in place for all children, while taking into consideration the specific obstacles children on the move may confront for accessing legal aid. Put differently, the UNICEF motto that “a child is a child” should fully apply.

Legal aid needs to be understood broadly and interventions should address all of its dimensions

When designing, implementing and monitoring initiatives aimed at improving access to legal aid for children on the move it is critical to consider the various forms of legal support required to access justice. These include: access to a lawyer free of charge, legal counselling, the availability of legal information accessible to children and families from various backgrounds, the appointment of a legal guardian for unaccompanied children and other elements that make legal aid effective, such as interpretation and cultural mediation.

Legal aid must be considered as a right that must be realized immediately upon arrival, even in a context of competing needs

Legal aid is rarely considered a priority for children on the move, given their multiple needs upon arrival. Material needs such as accommodation usually takes precedence. But focusing solely on children’s ‘basic needs’ is insufficient. As is true for all children, rights are indivisible and interdependent and the human rights approach applies here too. It is essential to provide legal assistance, including legal aid and information to children immediately upon their arrival. Legal aid is necessary to enable children to claim their rights and entitlements, be better protected from the multiple risks they are exposed to and to keep going with their lives. Early provision of legal aid is vital to ensuring children’s access to services without discrimination. If children are not identified, protected and followed in a timely manner through exchange of information among all relevant stakeholders, they are left on their own, without protection. They may fall through cracks in the system and be exposed to various risks, including smuggling, abuse and exploitation and trafficking. The long wait for administrative proceedings, along with legal constraints on international protection, demand a recognition that immediate legal counselling and representation is no less essential than the provision of material services. Interventions, including those deployed as part of a humanitarian emergency response, need to fully integrate legal aid. Such support needs to be very concrete and go beyond simply providing information. At that moment, children may be grappling with emotional distress following a traumatic journey and not be receptive to complex legal information.

Legal aid appears to be particularly effective when integrated into a range of services provided to children on the move

In most of the country experiences reviewed, legal aid is an integral part of the support services NGOs provide to children. The value of this approach is three-fold. First, it improves outreach to children by making legal aid available to children and families *where they are*, in their living environment. Secondly, it promotes a holistic approach to the support provided to children on the move, whether accompanied or not, by dealing with individual situations in a comprehensive manner and facilitating case management. Thirdly, service providers, often NGOs, know individual situations, are better trusted, can operate beyond the formal system and have the skills to interact with a population that has gone through difficult and often traumatic experiences, speaks a different language and has a different cultural frame of reference. In practice, this means that interventions supporting children on the move should fully integrate legal aid. By doing so, organizations can pool resources (such as translation and cultural mediation) across services and take a case-management approach to each individual situation.

Reaching the hard-to-reach requires approaches that address the barriers that affect access to the formal system

A number of adolescents on the move who have ‘aged out’ of care are likely to be outside the formal system, either because: they decided to go unregistered, they preferred to escape the formal system, they have fallen victim to organized criminal networks (e.g., trafficking and exploitation) or because they lost entitlements only available to children under 18, among other possible explanations. Adapting services, including legal support, to their needs and making them accessible is essential and requires specific initiatives. Informal reception centres, including daytime centres like CivicoZero in Italy, provide such services and offer accessible and anonymous legal counselling services in critical geographic areas where children and young people on the move are unreached by the formal system. Here, as in the formal system, legal aid is provided as part of a range of services.

Creating the conditions for children on the move to adequately receive legal aid is critical to the effectiveness of such support

Children have often experienced traumatic journeys; they may have been exposed to inaccurate information and may lack the capacity to fully understand what is being told to them. These situations may prevent them from accessing the legal information they need and taking adequate steps. It is essential to adequately assess how best to provide legal support to children by understanding the assistance provided from the child’s perspective. A child’s capacity to comprehend legal information and take necessary action needs to be included in the individual assessment of his or her overall situation.

The immediate appointment of a trained legal guardian for unaccompanied children is a critical precondition for effective access to justice and exercise of rights

As “minors” children on the move do not have the legal capacity to take certain steps – such as filing requests for permits of stay and other legal actions, including lawsuits, or even to address vital personal needs (e.g., related to health or education). Like all children deprived of parental care, they need a legal guardian. Given the time needed for various legal and administrative proceedings to unfold and the importance of legal representation in everyday life, the appointment of a legal guardian needs to be ensured as soon as possible upon the child’s arrival. The legal guardian needs to be adequately trained both in legislation applying to children on the move and in interacting with children from a different culture who may have gone through very difficult experiences during their journey.

Untapped resources, in particular in civil society, can be built on

The Italian experience shows the value of building on citizens’ willingness to help out when traditional human resources are strained by a sudden surge in arrivals. The Italian system relies on civil society volunteers to support unaccompanied children on the move in an area that is critical for legal support and access to justice. Italy’s experience demonstrates the importance of two key elements: a solid legal framework, including appropriate safeguards, and initial and continuing support for volunteers through training, advice and networking.

Cultural mediators need to be considered an essential resource to facilitate communication, including legal information

Italy’s experience also shows that cultural mediators play a critical role as intermediaries between authorities – or the overall system in the country of origin – and children on the move. Beyond interpretation, which is provided by official translators, cultural mediation involves building interpersonal relationships with children on the move and fostering trust to facilitate children’s understanding of legal information and access to justice more broadly; cultural mediators may assist children in proceedings.

Policy advocacy is the necessary corollary to action on the ground

Even when legal aid is provided to children on the move upon arrival, as part of regular service provision, other interventions may be guided by the overall policy context; in particular the legislative framework. Many, if not most, countries in ECAR have laws, policies and procedures that affect access to justice for children on the move – and consequently, the provision of quality legal aid. Analyses of policy and legislative gaps and needs assessments, conducted in consultation with relevant partners and public authorities, are useful for developing a shared diagnosis that provides the basis for advocacy efforts. As a result, policy change is instrumental to ensuring that children on the move have access to legal aid. As the experience from Bulgaria shows, advocacy for law reform can have a significant impact on the treatment of unaccompanied and separated children, including their access to legal aid and legal representation. With legal aid largely provided by NGOs supported by international and European organizations, stronger focus is needed on the recognition that legal assistance is part of state obligations to ensure the justiciability of children's rights⁵² and non-discrimination in the enjoyment of rights for all children within the state's jurisdiction.

Strategic litigation is a powerful instrument for changing policy and practice

Strategic litigation is also a sound approach worth investing in, as it can have a significant impact on both laws and practice. It serves to strengthen judiciary practice by setting precedents, and then consolidating jurisprudence through steady case law. In Bulgaria, strategic litigation has been used to significantly reduce detentions of children on the move. Likewise, at the European level, cases before the European Court of Human Rights have led to the development of solid jurisprudence regarding the rights of the children on the move.

Access to justice for children on the move, in particular legal aid, needs to be understood as integral to the access to justice agenda

Legal aid for children on the move is often perceived as a specific intervention for children in a particular situation, and therefore part of initiatives to promote children's rights in the context of migration. Yet access to justice for children on the move, in particular in asylum-seeking procedures, needs to be comprehended as *integral to access to justice for all children*. Building on the overall access to justice agenda and child protection system strengthens the ability to 'normalize' the situation of children on the move and include them in 'regular' child protection schemes. As a consequence, it is important to better link specialized legal aid for children on the move – usually linked to their residency status and/or asylum seeking proceedings – with other types of legal aid available to all children. At the national level, this means further building on existing legal aid schemes, structures and professionals and, importantly, working with partners specializing in child-friendly justice, as has taken place in Bulgaria and Turkey.

In Turkey for instance, legal aid for children on the move is increasingly linked with programmes for strengthening the overall capacity of bar associations and lawyers to provide child-sensitive legal aid, as well as to the country's ongoing judicial reform process, which aims to strengthen justice for children. To that end, UNICEF has been developing joint programmes with the Ministry of Justice and the Union of Turkish Bar Associations. From a broader regional and global perspective, it implies further developing expertise and guidance in child-friendly administrative justice, which is not fully addressed in the access to justice agenda. Other fields of child-friendly justice of particular relevance to children on the move, such as the involvement of child victims and witnesses in criminal

⁵² See CRC Committee General Comment No. 5 (2003), 'General measures of implementation of the Convention on the Rights of the Child' (arts. 4, 42 and 44, para. 6), CRC/GC/2003/5 27 November 2003: " (para. 24). For rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in the Convention and consistently referred to in the other six major international human rights treaties. Children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance"... " (para.25). As noted in paragraph 6 above, the Committee emphasizes that economic, social and cultural rights, as well as civil and political rights, must be regarded as justiciable."

proceedings, are currently receiving increased attention. In this context, consideration should be given to addressing additional barriers facing children on the move who are victims or witnesses of a crime and seek to access remedies.

Coordination among different stakeholders providing legal aid to children on the move is essential

Particularly in countries with high numbers of arrivals, the multiplicity of interventions can lead to overlaps and duplication of efforts – among UN agencies in particular. Using existing UN coordination mechanisms, where they are not yet being employed, would be valuable in this area of work.

Gender approaches need to be better incorporated into approaches to legal aid for children on the move, including mothers with children

Their migration experiences, as well as the multiple specific challenges they face in accessing legal aid, need to be fully considered and integrated into national strategies. This includes addressing specific fears, taking into consideration the specific nature of the violence to which girls on the move are exposed, issues related to motherhood and considering the impact of gender-related social norms in the culture of origin and of arrival.

Transnational issues related to the legal status of children on the move need to be included in legal aid provided in arrival countries

Obtaining access to administrative documents – in particular passports, but also birth and marriage certificates and school diplomas – requires cooperation with embassies and consulates, as well as bilateral agreements among countries of origin and arrival. Collaboration on these issues should be promoted, both by providing on-the-ground support to children on the move and by advocating nationally and internationally for swifter procedures.



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