



Spotlight on practices regarding guardianship for unaccompanied and separated children arriving in the EU from Ukraine

Collected through the European Guardianship Network

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This paper puts a spotlight on experiences and practices regarding guardianship for unaccompanied and separated children arriving from Ukraine into the European Union. These descriptions have been provided by members of the European Guardianship Network. It serves as a means to continue to exchange on challenges and responses between EGN Members and with interested stakeholders, as EGN will keep the paper updated when and as more information is received from other EGN Members.

In addition, in order to share experience and contribute to improvements in the support provided to children arriving from Ukraine, EGN is a member of a Reference Group of regional policymakers and networks for a Legal Study concerning unaccompanied and separated children arriving from Ukraine undertaken by UNICEF and Child Circle. The Legal Study will review international, regional and national legal frameworks, and produce recommendations for action, in particular as regards guardianship, care and custodial arrangements, access to humanitarian and international protection and best interests procedures for comprehensive and durable solutions. The Study will include a thematic consultations on guardianship in Autumn 2022. More general information can be read [here](#).

Belgium

Reported by Dienst Voogdij, 19 July 2022

All unaccompanied children from Ukraine are identified by the Immigration Department at Dienst Voogdij after their registration for temporary protection. Other services can also report unaccompanied children to Dienst Voogdij.

Belgium was already behind in appointing guardians to unaccompanied children before the invasion of Ukraine (Belgium has had a fairly high influx of unaccompanied children from Afghanistan for quite some time). The backlog has increased, causing a waiting list for the appointment of guardians. In certain situations, Dienst Voogdij appoints a guardian with priority (independent of nationality), for example for unaccompanied children arriving at the border whose entry into Belgian territory is refused, unaccompanied children with an indication of human trafficking or possible abuse, unaccompanied children with serious

medical and psychological problems and pregnant unaccompanied children or teenage mothers. In other cases, Dienst Voogdij follows the order of the waiting list, taking into account the availability of the guardians.

Challenges

In practice, Dienst Voogdij noticed a number of challenges in appointing guardians for Ukrainian unaccompanied children:

- There were a number of cases where Dienst Voogdij had appointed a guardian, but the child had moved to another Member State or returned to Ukraine. In other cases, it came apparent that one of the parents was in Belgium, which caused that a guardian had been appointed whilst it was no longer necessary.
- Guardians informed us that in many situations the child was very well taken care of by the accompanying family member. The role of the guardian was very limited in these situations. Because of the temporary protection, the child has access to certain rights (such as education, social services support, family benefits, study allowances) and a guardian is not always needed.
- In a number of situations, the role of the guardian was very important indeed, for example concerning unaccompanied children who were not properly taken care of, for whom the guardian had to take the necessary steps to request other suitable reception from the responsible authorities.

Current developments

Dienst Voogdij will start a project specifically addressing unaccompanied children from Ukraine with national AMIF funding in September 2022 that will run until the end of 2023. In this project, 4 employees of Dienst Voogdij will analyze the situation of each unaccompanied child from Ukraine before appointing a guardian. The intention is to first consider whether the child still meets the definition of an unaccompanied child (Is the child still in Belgium without their parents, ...?), and then to see which guardianship system is most suitable for the child.

In case the child is staying with a family member, Dienst Voogdij can look into directing the family member/acquaintance towards the system of foster parent guardianship ('pleegoudervoogdij') or the system of civil guardianship ('burgerlijke voogdij') if this is in the best interests of the child. Dienst Voogdij will then support the family member/acquaintance to take the necessary steps to court to request guardianship. If there is no family member/acquaintance to take up the guardianship, Dienst Voogdij will appoint a guardian under the specific guardianship arrangements for unaccompanied children. Problematic situations (requiring priority designation) will quickly be detected because Dienst Voogdij will come into contact with the unaccompanied children more quickly.

Dienst Voogdij is also looking at changing the role of the guardian for an unaccompanied child with temporary protection. The role of the guardian is less important in these cases than in the situation where an unaccompanied child has applied for international protection or has no residence. Not only does the procedural component disappear, access to certain rights also runs more smoothly (see above). This would implicate moving towards a kind of 'light system' of guardianship, where the guardian ensures that the rights of their pupil are respected

and detects problematic situations. In the case of a problematic situation, it is of course the intention that a guardian follows up thoroughly. A guardian can follow up more guardianships this way. Dienst Voogdij will develop specific guidelines in the near future.

Estonia

Reported by Estonian Social Insurance Board, 19 July 2022

To date Estonia has received a small number of unaccompanied children from Ukraine. The response to these children is placed firmly with the National Child Protection system thus ensuring that they are perceived as children first and foremost thus paving the way for a proper needs assessment aimed at identifying an individual case plan. This is good practice which allows for a swift child focused care plan. A small number of Ukrainian children have been accommodated in an SOS Children's Village setting. In order to maintain and develop the children's cultural and linguistic needs the staff who will work with the children have been recruited from within the Ukrainian population. This too is an example of good practice.

Finland

Reported by ETU ry, 15 June 2022

In Finland, organising guardianship for unaccompanied children from Ukraine started Mid May 2022, when the first children started to enter the country. There are almost 30 000 Ukrainians in Finland today, 60 % are under 18. There are also some thousands of Ukrainians who can be in Finland for 90 days without a visa. The number of unaccompanied and separated children is growing every week, last week the number was 500-600 in total.

ETU ry., the guardianship network for volunteer guardians in Finland, cooperates very close with Migri (Finnish Immigration Service) and the reception centers. Many reception centers are just offices and have some healthcare and social service in the same place, but 80 % of all Ukrainian live in normal flats in the cities and municipalities. A discription of daily practise can be found [here](#).

France

Reported by French Red Cross, June 2022

A ministerial order was published on April 7, 2022 regarding unaccompanied minors coming from Ukraine. It is available in French here:

https://www.infomie.net/IMG/pdf/instruction_mineurs_isoles_ukraine.pdf

It states that assessment of unaccompanied children is carried out by the Departmental Council and in some cases the Prefecture.

Four different situations are identified:

- Unaccompanied children travelling alone
- Unaccompanied children coming with a Ukrainian institution
- Unaccompanied children separated from their family but travelling with a family person or a trusted person.
- Unaccompanied children coming to France but on their way to another EU member state.

In each of these situations, the order indicates the process for establishing who is exercising parental responsibility or guardianship for the child, or whether the child should be taken into charge by the French child welfare system. Specific provisions within the order on the provision of information, support and assistance to the child are limited. In practice, it appears that no independent legal representative as a "tuteur" or "an administrateur ad hoc" has been appointed by judicial authorities for these children in France up until now. It remains to be seen in practice to what extent temporary protection is really provided to children from Ukraine. Children are given access to child welfare protection, schooling, and healthcare services. Specific attention is also given to mental health and THB.

There is also a dedicated webpage with useful information for people coming from Ukraine <https://www.welcometofrance.com/en/welcoming-displaced-people-from-ukraine-in-france>

Germany

Reported by Bundesforum Vormundschaft und Pflegschaft e. V., June 2022

The German Institute for Youth Human Services and Family Law (DIJuF) has a [website](#) addressing unaccompanied and accompanied Ukrainian minors. The website is in German (with English plug in translation available), including some documents in Ukrainian.

One document is for the delegation of child custody. It is used by relatives who come with unaccompanied minors to Germany.

One document provides an analysis of the application of the family law legal framework applying to determining responsibility when children travelling unaccompanied or with adults who are not their parents, and the application of the Temporary Protection Directive (see https://dijuf.de/fileadmin/Redaktion/Hinweise/DIJuF_KJH_fuer_junge_Gefluechtete_aus_der_Ukraine_2022_03_28_aktualisiert.pdf) The document describes the circumstances in which parental responsibility/guardianship is being exercised over children arriving separated from their parents including through arrangements made under Ukrainian law with accompanying adults. It also indicates the provision the appointment of a guardian by the youth welfare office for a child who is unaccompanied or who is with an accompanying adult who is not acting as a guardian for them.

The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and SOS Children's Villages built a task force to support Ukrainian youth care facilities coming to Germany.

Greece

Reported by METAdrasi, 10 June 2022

Children from Ukraine entering Greece are mostly separated children. Even those children who arrive in Greece as unaccompanied children have been subsequently reunited with a relative who is a long-term resident in Greece. Usually, in case they are not accompanied by their mothers, their accompanying relatives have Ukrainian notarial documents, which only need an official translation in order to be enforced.

Children in institutional care evacuated to Greece

METAdrasi does not have direct contact with Ukrainian children in institutional care, as these are the responsibility of the Special Secretariat for the Protection of Unaccompanied Minors, which communicates directly with the relevant Ukrainian Ministry and handles the relevant issues.

Additional notes on reception

METAdrasi provides accommodation, food, psychological and legal support to mothers from Ukraine with children over six years old at the Dormitory, while mothers with children under six years old are accommodated in a Shelter. It should also be added that Greek lessons are offered to both adults and children and already several Ukrainian mothers and children are attending the Greek classes. As far as we know, Ukrainian children are normally enrolled in Greek schools without any particular difficulties, unlike what happens for unaccompanied and non-accompanied asylum-seeking or refugee children of other nationalities who face significant bureaucratic difficulties during their education and which may ultimately deprive them of access to education.

Spain - Catalonia

Reported by Generalitat de Catalunya, June 2022

The Directorate General for Child and Adolescent Care in Catalonia has issued [a general directive](#) of action relative to the circuit and management of the files of persons under aged, displaced by the Russian invasion of Ukraine, without family references in the territory of Catalonia. The unofficial translation into English to be found [here](#).

This Directive sets out the general principles that apply in relation to the arrival of children and in particular the protective function which is to be exercised by the Directorate General for Child and Adolescent Care. This protective function may include public guardianship where necessary. It also sets out the criteria for the recognition of provisional guardianship by local foster families.

The Netherlands

Reported by Nidos, 18 July 2022

When the flow of Ukrainian refugees to the Netherlands started, the Dutch Ministry of Justice and Safety, the Dutch Child Protection Board and the Dutch guardianship authority for unaccompanied and separated children, Nidos, received signals that Ukrainian children without parents were also among the Ukrainian refugees.

In consultation with these three organizations and as an immediate response, it was then decided to make a distinction between children who needed acute care and reception and children who did not. From that moment on, unaccompanied children who needed acute care and reception could be registered with Nidos, so that Nidos could take care of these children in their small-scale reception facilities and reception families.

All other children who were taken care of by family members, befriended host families or who stayed in a shelter offered by a municipality together with caring adults, could stay there for the time being. However, all these reception places were screened by the Child protection Board.

For all Ukrainian children who are in the Netherlands without parents, it is necessary to investigate how parental authority is exercised over them. If this investigation shows that the parental authority cannot be sufficiently exercised, a guardianship measure must be requested at the Court. According to an agreement between the Child Protection Board, the Ministry of Justice and Safety and Nidos, this task was assigned to the Child Protection Board. At the same time, it was agreed that any guardianship measure would fall to Nidos (or exceptionally to the William Schrikker Foundation in case of physical or mental disability).

In this initial phase, three bottlenecks became apparent:

1. Is the parental authority insufficient if, for example, parents are able to maintain contact with their children from Ukraine? Lawyers in particular struggled with this question. A guardianship measure is a serious child protection measure for which there is a strict legal threshold. If a parent appears to be able to make important decisions about their child over the telephone from the country of origin or a third country, a guardianship measure is too heavy, according to the Child Protection Board. On the other hand, Nidos indicated that they have the experience that it is almost impossible for parents in a war situation to exercise their parental authority and/or monitor the development of their child. Exercising parental authority from a distance in a society that is foreign to the parents and the child is not sufficient to gain insight into and make an assessment of the safety/context and to be able to make careful decisions in the interest of the child. In addition, it is insufficient to only realize adequate reception and guidance for this target group. A (temporary) guardian can, in line with and together with the parents/legal guardian in Ukraine, make decisions about important matters in the child's life, such as adequate care and guidance, education, banking, medical care, support with the residence procedure, care/ assistance and durable solutions, including possible return.

2. A second bottleneck arose around the unique residence status of these Ukrainian children. The Dutch Civil Code describes for which target groups Nidos can be charged with guardianship. An important criterion is that there must be an asylum application. This is not the case with Ukrainian children now that they are allowed to travel through Europe without a visa. In the meantime it has become clear that they can invoke the Temporary Protection Directive of the European Union and they will be called upon by the Migration Services (IND) at any time to apply for asylum after registration in the Netherlands. This is necessary to be able to receive temporary protection. Article 16 of the Temporary Protection Directive also provides for unaccompanied children with legal guardianship, or where necessary representation by an organisation which is responsible for the care and well-being of minors or by any other appropriate representation.

3. The third bottleneck arose around the question whether the Child Protection Board had sufficient capacity to conduct all the parental authority investigations.

In recent months, intensive consultations have been held at management and policy level with the Child Protection Board, the Ministry of Justice and Safety, the Association of Municipalities and Nidos to arrive at a process whereby protection and (guardianship) guidance are offered to Ukrainian children who are in the Netherlands without their parents, whether unaccompanied or with adults who are not their parents. In these consultations, much attention was paid to the above-mentioned bottlenecks, whereby the well-being of these children was central. Nidos has argued that for these children Nidos should assess whether temporary guardianship should be requested. This has been decided and came into force in the second half of June.

Current scenario

In this new scenario, the municipality signals whether a Ukrainian child is in the Netherlands without parents (or legal guardian) and contacts Nidos in that case.

1. A child under the supervision of a network is placed in municipal shelter, a child without supervision (unaccompanied) is immediately placed in Nidos care (reception family (<15) or small-scale reception facility (15-18)). In case of doubt, Nidos and the municipality will discuss the most suitable (immediate) reception.

2. Nidos uses an assessment framework to consider whether or not guardianship should be requested and provides reception together with the municipality. Nidos conducts an intake interview with the young person and (if possible) with the parents and the current caretakers. Main points to discuss during the intake:

- The wellbeing and needs of the child
- The right to temporary protection (in the Netherlands)
- The right to a guardian in the Netherlands and the right to waive one

(if the result of the assessment is that everything has been taken well care of from Ukraine (power of attorney has been arranged) and the child is doing well according to Nidos, Nidos will not request guardianship if parents in Ukraine and current caretakers say that

guardianship is not necessary according to them. In this case, Nidos will communicate that Nidos can always be involved if the conditions change)

- The guardian (of Nidos) works in an extension of and together with the parent(s) who have parental responsibility at a distance and current caretakers. Decisions are made jointly about important matters in the child's life (for example: adequate reception and guidance, education, banking, medical care, support with the residence law procedure, care/assistance and possible return).

3. Based on the intake interview with the child, parents and current caretakers, Nidos decides whether or not to submit a guardianship request to the Court. The basic principle here is that Nidos requests temporary guardianship for all Ukrainian children, unless the intake shows that:

1.

- child, parents and current caretakers do not wish the right to guardianship in the Netherlands to be exercised; and

- there is a network/family in the Netherlands to which the parents formally transferred the guardianship of the child and where it is clear that the network/family can bear associated responsibilities with regard to care and guidance; and

- Nidos has no concerns.

2.

The child and parents will be reunited in the very short term (in the Netherlands).

4. If the outcome of the intake is that Nidos will request for guardianship, a guardianship request will be sent to the Court in consultation with the child and the parents, which will include, among other things:

- the remark that it is a child with an asylum application (for all Ukrainians, submitting an asylum application is part of the access to temporary protection, as is subscribing yourself in a municipality)

- the remark that it is temporarily impossible for the parents to exercise their full parental authority and why

- the remark that child and parents wish to make use of the right to a guardian in the Netherlands

- document from the immigration services (IND) to indicate to the court that this action is being taken in the context of asylum.

- document with a ruling on the right to guardianship for unaccompanied minors under the temporary protection directive for a uniform interpretation by judges.

The outcome of the intake of Nidos can also be that Nidos will not request for guardianship: see under 6. what will be the consequences.

5. The Court will make a decision. It can provide Nidos with guardianship, which means that the responsibility for guardianship, housing and guidance until the age of 18 is automatically placed with Nidos. For the municipality, this means that Nidos will be responsible for the child from now on (for example: education, living allowance, bank account, health care, etc.), but it will still be possible for the child to stay within the municipal shelter with their

caretakers. The Court can also decide not to provide Nidos with guardianship: see under 6. what will be the consequences.

6. In all cases in which Nidos does not make a request for guardianship at the court or in which this request has been rejected by the Court, reception will be the responsibility of the municipality. Practical or more fundamental bottlenecks (such as responsibility for supervision) related to the absence of a responsible authority, will continue to apply to this group. The Municipality, the Child Protection Board and Nidos will therefore determine in consultation the suitable follow-up process for the child regarding suitable reception and guidance. If the child resides in a first reception facility for Ukrainian unaccompanied children of Nidos, the child will move to a suitable follow-up place in the municipality (where the young person was 'found'). If it is established that the current reception facility within the municipality is not sufficient, the child will move to a suitable reception facility, in consultation between the municipality, the Child Protection Board and Nidos. The Child Protection Board carries out a safety check with regard to (new) suitable reception facilities and, in the case of a host family, they screen this host family. In case there are serious concerns about the child, Nidos can still submit a request for guardianship to the court if the parents and/or child do not agree with a guardianship request.