

Response of the MinAs Comparative Project¹

1. The MinAs project was an 18-month EU funded research project entitled “In Whose Best Interest? Exploring unaccompanied minors’ rights through the lens of migration and asylum procedures”. It involved research in four states - France, Austria, Slovenia and the UK. Each partner team produced a “state of the art” report on its national laws, systems and institutions and then carried out fieldwork consisting of at least ten interviews with unaccompanied minors (or young people who were formerly in that category) and ten experts working with unaccompanied minors in various capacities, such as teachers, NGO workers, foster carers, accommodation providers, lawyers and guardians. The four national reports formed the basis on which a comparative report was drawn. The project concluded with an international conference in Slovenia in November 2015 at which presenters discussed the situation in other EU states and Turkey as well as the four partner countries.
2. As might be expected, the context is different in the four countries. Slovenia is primarily a transit country rather than an intended destination (indeed some of the children interviewed did not know Slovenia was a country). France and Austria are both transit and intended destination countries. The UK is a destination country, although not necessarily one chosen by the young people themselves or before they set out.

Data and implications for policy

3. Since 2008, all EU Member States submit regular statistics on migration and international protection to Eurostat, in accordance with Regulation EC No. 862/2007. However statistics on unaccompanied minors in Europe are not widespread or consistent. This is the more so since the above regulation only requires member states to transmit data on unaccompanied minors who apply for international protection, as a result of which the most complete data on unaccompanied minors relate to those that apply for asylum. Since France, Italy, Spain and, to a lesser extent, Belgium, do not require children to apply for status (unaccompanied children may instead be entitled to institutional protection under domestic provisions on children’s welfare) even this information is seriously deficient. Slovenia, for example, keeps data on the number of applications for international protection but not on withdrawn or refused applications, nor on minors returned to neighbouring countries on the basis of agreements.²
4. A further confounding factor is that Eurostat data counts the total number of border crossings, not the number of actual human beings, meaning some people are counted on multiple occasions, inflating a sense of “threat” within Europe which appears to lead to harsher policy towards all asylum seekers. However, many would-be asylum seekers are afraid to give details to the authorities in transit countries for fear of forced return to a country where they have no prospect of supporting themselves because they have no family or friends or cannot speak the language. It is unlikely therefore that unaccompanied minors who are not claiming asylum would be willing to give information in the current climate of hostility towards refugees in Europe.

Key challenges, common issues across Member States and examples of problems and best practices experienced at each of the following three stages:

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² It should be noted that the UK used to return children to France and Belgium on the basis of a “Gentlemen’s Agreement”, likewise without keeping clear data, until a report by the Office of the Children’s Commissioner (Landing in Dover, 2012) led to the ending of the practice.

a. Reception

5. It quickly became apparent during this research that there is little consistency across the four countries in the way they treat unaccompanied minors. In the UK almost all unaccompanied minors are funnelled into the asylum process, while in France, foreign children are not treated as illegal immigrants until the age of 18, meaning there is no need for them to apply for any residence status until they become of age. In Slovenia, children may be initially placed in an accommodation facility with movement restrictions (in practice a detention facility) until a special case guardian decides together with the child whether they should enter the asylum procedure. Although they had claimed asylum, children told researchers that they had not known what asylum was.
6. Although the asylum procedures vary across the four countries, nevertheless the problems of UAMs stemming from the procedures are quite similar. Many issues are related to the interviews in which UAMs explain their identity, how they came to the country and why they are asking for protection. In all four countries it is stressed that UAMs are poorly or not informed at all on the asylum/international protection procedure awaiting them. This is especially true for the first interview. Consequently UAMs have no insight in the role of the interviews and the characteristics of procedure they are involved. In all four analysed countries it is stressed that UAMs are not treated as children first in the interviews and interviews are far from being child friendly. UAMs undergo procedures where they may feel intimidated, feel like “criminals”, or that they have no opportunity to express their opinion.
7. Another important issue across the four countries is the role of interpreters in the interviews that authorities have with UAMs. The main problems are: interpreters simplify the stories of UAMs and summarise their exhaustive answers in a few sentences, translations may be biased, bad translation can cause misunderstandings, the quality of some interpreters is poor, interpreters’ body language/comments etc. reveal disbelief of the child’s account. In some cases (in France and Slovenia) state authorities do not provide interpreters who speak the child’s language.
8. France, Slovenia and Austria all have a guardianship procedure though it is not consistently implemented. In particular, in Austria guardians are not appointed until the child is allocated to one of the nine *Länder*, but because of delays in allocation this means they go through crucial parts of the procedure without a guardian. Within the UK, Scotland has legislated for provision of guardians but the UK government continues to insist guardians are not necessary for unaccompanied children in England, despite abundant evidence of the fragmented nature of the formal support system.
9. Age assessment procedures are one of the most controversial parts of the procedures for UAMs. In Austria, Slovenia and the UK, age assessment is used in cases where the authorities express doubt regarding the declared age of the UAM; in France it is a part of the assessment procedure which is a necessary step prior to the inclusion of the UAM (as a child at risk) in the institutional protection system. In the most disputable cases unaccompanied minors are still subjected to age assessment processes in which several procedural safeguards are completely ignored. Often unaccompanied minors are not informed about the procedure.
10. Some methods used are extremely humiliating (measuring the size of testicles), while some are hazardous to health (x-rays). There is no consistent practice in how age assessment is carried out. Some states continue to practise the classical methods of bone development

estimation while some others practise a combination of methods including examination of dental maturity, body hair and other signs of puberty. Experts from all countries involved in the project emphasise the methods used in age assessment (either medical or based on social evaluation) are unreliable and can only allow an approximate assessment of age with a significant margin of error (at least plus or minus two years), yet young people are frequently deemed to be one or two years older than they state. It is of great importance to establish universal, child friendly regulations regarding age assessment procedures. The most significant features of these regulations should be that unaccompanied minors are fully informed about all the aspects of the procedure itself, particularly about the right to give consent prior to medical examination, or refuse the procedure (in full or in part). Medical methods of age determination should be abandoned across Europe since they violate the dignity of the child and / or expose the child to unnecessary risks.

b. Protection

11. In Slovenia there are no suitable accommodation facilities for minors. There is a need for development of suitable accommodation facilities which would meet all the basic needs of unaccompanied minors. Studies have revealed that the foster family system which is present in some European countries is, from the minors' perspective, the option with which are most satisfied. Establishing foster families as one of the main forms of accommodation arrangements for unaccompanied minors should be considered.
12. In Austria the main problem is the inadequate infrastructure awaiting minors at the federal initial reception facilities, where they stay during the asylum admission procedure. The procedures are lengthy and minors become trapped in this temporary sub-optimal situation. The cases where unaccompanied minors are accommodated in care facilities of the *Länder* instead of the initial reception facilities immediately after their arrival in Austria represent best practice examples.
13. Since an agreement on basic care and services for asylum-seekers was concluded between the federal government and nine *Länder* in 2004 (*Grundversorgungsvereinbarung*) the living conditions of asylum-seekers have improved considerably. The law entails additional special provisions for unaccompanied minors such as support for education and training, help with processing future prospects of the minors and family reunification if possible. In practice, however, the realisation of these special provisions frequently fail due to the work load of the agencies involved and inadequate resources (e.g. therapy for traumatised minors).
14. In France, children who are in the (often lengthy) initial assessment phase, which determines whether they are under 18 and unaccompanied, may not be provided with accommodation at all, particularly in Paris and Marseille. Some children were sleeping in car parks, Metro stations, hospital waiting rooms or on the street, unless friends or relatives could accommodate them. Some were accommodated in a "gymnasium" (shelter), with a daily selection process for those to be permitted to spend a night there. Other children were accommodated in hotels, usually having been provisionally placed there by a judge pending a final decision on their identification assessment. However, in both Poitiers and Paris, the research team found some children had been accommodated in hotels for 7-12 months with often poor hygiene and safety and no provision for their development. In addition there are a number of unaccompanied children in the camps at Calais and Dunkirk who are living in wholly unsuitable conditions (counted by Help Refugees at 423 in the Calais camp alone in February 2016). UK Border Force officials walk through the Calais camp but do not take the

details of young people who approach them and say they are unaccompanied children with a relative in the UK (directly observed by a MinAs research member in February 2016).

15. For those recognised as unaccompanied children following the Children's Judge hearing, the choice of accommodation should take into account the minor's age, degree of autonomy and availability of places. In practice however, the main factor is the availability of places, not a best interests assessment. The type of accommodation offered varies significantly across France. Best practice in terms of temporary reception facilities appeared to be a Red Cross first reception centre in the Val de Marne department (inside the Paris conurbation), where the children were safe and attended regular language classes and other recreational and educational activities (sports, cultural visits, etc.) There were, however, some children remaining for excessive periods at this kind of facility before final placement.
16. In the UK, the main concern is children aged 16-17 entering semi-independent accommodation with inadequate support, or even younger children being placed in this type of accommodation as a result of flawed age assessment. In addition because of the crisis in Kent, some children were being placed in accommodation a long distance from the social worker and the local authority responsible for them. The committee is likely to have more information on the UK situation from other responses with which to compare, so it is not discussed in more detail here.
17. Additionally, the comparative research concluded that, while legally in all four countries children have access to health care, in practice this is not always the case. While they usually have access to physical health care, access to psychological health care is more limited and psychotherapy proves to be an underfunded area. There is a lack of systematic psychological care/support. There are also intercultural differences and counselling may not be an appropriate course for unaccompanied children, particularly when they are not yet assured of long term safety or when they have already been compelled to tell their stories in a hostile context in the asylum interview.

c. Integration

18. The contemporary care system for unaccompanied minors in all four countries may involve multiple agencies and individuals (police, special case guardians, interpreters, social workers, legal representatives etc.). On the basis of our research we believe that such organisation often results in (1) diffusion of responsibility and (2) an inefficient information flow among agencies and individuals supporting the child. The formal support system is consequently too fragmented and often ineffective when organising status or educational opportunities, accommodation, leisure activities etc. A more responsive support system for unaccompanied minors should be enacted in all countries whereby one dedicated expert takes care of a small number of unaccompanied minors the entire way through the process. In this manner, the expert in question could monitor the efficiency of all procedures and at the same time be fully responsible for the overall situation of the unaccompanied minors.
19. In all four countries studied, the length of time it takes from the day the unaccompanied minor applies for international protection status to the day the status is approved is often too long and not clearly defined although in most states unaccompanied children are (at least theoretically) entitled to prompt consideration. Besides the chronic uncertainty which plagues their childhoods, this often leads to serious problems when they reach the age of 18

and lose the protections of children without having obtained a clear status. In all four analysed countries, the transition to 18 represents a serious change for UAMs as far as the provisions of care assured by the state.

20. It is necessary to introduce a softer transition from childhood to adulthood which would include comprehensive support towards achieving independence. Some countries have already put in place a so-called soft transition or interim period in which unaccompanied minors who have reached the age of majority maintain some of the benefits which facilitate them to access the labour market and start to live on their own while at the same time still receiving support, help and supervision. The interim period should provide unaccompanied minors with at least some financial support and assistance with finding accommodation and arranging other formal procedures. It is also advised to train minors who are in care to obtain at least the basic skills necessary for later independent life. Although in the UK, for example, leaving care provisions apply to migrant children, they are often disadvantaged by their inability to prove their status or entitlements when these remain unclear. Those who are refused asylum but are not removable to the country of origin are in a particularly precarious position since local authority support is normally withdrawn but without the right to work they become destitute. In Austria, access to schooling for youngsters outside compulsory education was limited, with an inadequate number of German classes (200 hours) and restrictive employment policies for third country nationals impeding minors' chances for successful integration and prospects for a better future.
21. Access to education is an important priority for UAMs and national laws and all four countries studied provide the right to education regardless of nationality. This can include also apprenticeships or other training. However, unaccompanied children often face delays in access to education. These are particularly acute in high intake areas where there are larger numbers of unaccompanied children, but may relate to hostility in these areas as well as pressure on places. There is also a need to increase the number of language lessons and improve the school level assessment procedure. The introduction of instruction tailored to the needs of unaccompanied minors is necessary in order to ease their inclusion into the regular schooling and later employment system.
22. In relation to family of origin, the UK system stands out in that a child recognised as a refugee has no right at all to family reunification and the Home Office rarely attempts to trace family members. The right to family reunion is in general very rarely obtained in any of the countries in this study. Due to the long procedures in obtaining status, minors turn 18 and consequently lose this right, as often occurs in Austria and Slovenia (In Slovenia unaccompanied minors only have the right for family reunification with parents, not minor siblings).

Effectiveness of EU law and policy provisions;

Do EU measures seeking to "mainstream" the best interest principle form a comprehensive and coherent whole?

Do the obligations they set out translate into sufficiently clear requirements for all national actors dealing with unaccompanied minors?

23. Huge differences in legal frameworks and practices between countries suggest that migration policies are hardly unified across the EU. Minors who travel to Austria or the UK via countries such as Greece, Bulgaria and Hungary report bad treatment by the police and other state officials. In transit countries they may be temporarily held in custody with no or very limited access to medical treatment. In France, numbers of children are destitute while

awaiting a decision from the Children's Judge on whether they are accepted to be under 18. Those who take shelter in the camps at Calais and Dunkirk are subjected to violence from police, including frequent indiscriminate tear gassing of the entire camp, as well as police failure to deal with serious racially motivated violence by others. Many of these children either have relatives in the UK or are able to speak good English; others hope to reach England because they have not felt safe to seek protection in any other country.

24. The Dublin III Regulation already provides for unaccompanied children's asylum claims to be transferred to another member state where they have a family member or relative legally present or claiming asylum. This obviously sensible and humanitarian provision is rendered ineffective by delays (it can take 11 months for transfer to occur even when all time limits are complied with), inaction by states which fail to make take-charge requests at all and lack of information for children who fear making an asylum claim in another country and being unable to reach their relative at all. There is a need for all member states to take a more co-ordinated and active approach to reuniting children with relatives under the Dublin III provisions.
25. Although in the UK there is a legal requirement to consider the best interests of unaccompanied children, in practice the "consideration" which appears in Home Office refusal letters is formulaic and fails to consider the child's individual circumstances, instead relying on a presumption that it is in the child's best interests to return to their family and country of origin but granting temporary leave until the age of 17.5. There is rarely, if ever, any consideration of the impact of the uncertainty or of the years spent in the UK on whether that temporary leave could be in the child's best interests. Indeed the asylum process fails to even seek the relevant information on which a best interests decision could be based. In the Netherlands, a more robust approach to making best interests decisions has been pioneered and funded by a non-state organisation, collecting the relevant information and making a recommendation as to the child's best interests in a holistic sense.³
26. We therefore conclude on the basis of our research that the EU member states are not sufficiently committed to the welfare of unaccompanied minors. Our research showed flaws in procedures, protection and respect for the rights of unaccompanied children. At times of "crisis", trends of securitisation and even criminalization of migration gain the upper hand overshadowing nation-states' commitment to universal norms. Given the increasing number of migrants even in the period since our fieldwork finished, it is reasonable to expect that the situation has already deteriorated for unaccompanied minors in all four analysed countries. Even in "non-crisis" periods, there is a conflict between states' policies towards children and those towards migrants and we believe that the status of migrant too frequently "trumps" the status of child so that control and exclusion measures take precedence over caring and protective obligations.
27. The national reports for each of the four countries and the comparative report can be accessed at <http://www.minasproject.eu/deliverables/>

³ Margrite Kalverboer and Carla van Os (University of Groningen, Department of Special Needs Education and Youth Care, Faculty of Behavioural and Social Sciences, Netherlands): [*The best interests of the child-model: facilitating decisions on housing and the asylum procedure of unaccompanied minor asylum seekers*](#)