
Institute of guardianship for unaccompanied children or children separated from parents/guardians

Analysis of the situation and
recommendations for improvement

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DEFINITION OF THE PROBLEM AND RESEARCH ISSUES

As of 2015, over a million people have passed through the Republic of Serbia, running away from conflicts and violence, in quest for safety or a better future in Europe. Out of that number, over 100,000 of those who have arrived have been children without parental care¹. Although the number of those who are passing through the so-called Balkan route has been significantly reduced after the closing of the borders in March 2016, many continue their travel irregularly, and at least one third of them are children, out of whom a great number travel without guardians. On their way, they often rely on smuggler networks and are exposed to a continuous risk of physical and sexual violence, abuse or exploitation.

Covering thousands of kilometres through several countries, children in that process as often as not remain invisible to the existing national child protection systems. Even when they are identified, the national child protection framework, limited by the territorial competence of the country in which the child is located, does not manage to provide the support system that would ensure safe continuation of the trip (Save the Children and the International Rescue Committee, 2017: 12). Particularly worrying is the fact that the current identification procedure does not ensure that all the unaccompanied children are adequately identified². Hence it is impossible to establish the precise number³ of unaccompanied children who have passed through or are currently in the territory of the Republic of Serbia. During the process of consultations in November 2018, it was assessed that between 400 and 500 unaccompanied children are currently staying in Serbia, who are at the risk of exploitation, violence, and human trafficking. Since children are leaving Serbia, the final number of children who have been ordered guardianship protection as well as the total number of professional workers and professionals who perform the guardian function remains unknown (Krašić B., et al., 2017: 61). All this significantly aggravates comprehending of the magnitude of the problem, and potential solutions that can improve the existing situation.

¹ For the requirements of this document, the term *unaccompanied and separated children* is used as it is defined in the General Comment 6 of the United Nations (UN) Committee for the Rights of the Child, and it is related to the children who are outside of their country of residence, or are in a situation where they need urgent protection, and they can be recognized as:

(i) „Unaccompanied children” (also called unaccompanied minors) are the children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so; or
(ii) „Separated children“ if they are separated from their previous legal or other primary care-giver, and who aside from that may be accompanied by other relative. (Žegarac, 2014: 14).

² Page 16, *Concluding observations on the combined second and third periodic reports of Serbia*, the UN Committee for the Rights of the Child, 2017, the CRC/C/SRB/CO/2-3

³ There are numerous difficulties in establishing the precise number of children without guardians who are in the Republic of Serbia. The Belgrade Centre for Human Rights points to the fact that “the number of unaccompanied children in the territory of Serbia is considerably higher than the number of the children who have been registered“, referring to the data of the Ministry of the Interior, which keeps records of the number of children without guardians, who have expressed the intent to seek asylum, and to the data of the Commissariat for Refugees and Migration on the number of such children who are accommodated in asylum centres. (Krašić B. et al., 2017: 20-21)

DEFINITION OF THE PROBLEM AND ACTUAL TRENDS

The latest wave of migrations towards Europe brought numerous challenges to all the states that are on the route, even when they have regulated procedures for guardianship. National legislative frameworks are not sufficiently flexible to ensure the compliance with the existing legal norms and formal procedures, and to at the same time provide measures and solutions that are in the best interests of the child who is mostly in transit through their country. Reasons for this are numerous and, for the requirements of this paper, we will focus only on those that pose chronic challenges⁴ for an efficient and quality system of guardianship protection of unaccompanied children who are found in the territory of the Republic of Serbia. Some of the biggest challenges are:

- Unreliable data on the number of children in need for guardianship protection, both at the national, and at the regional level;
- Aggravated timely and adequate identification of unaccompanied children; a high rate of “disappearances” of children and/or their exclusion from the social welfare system;
- Continuous exposure of the children to the risks of exploitation, abuse, violence, and human trafficking;
- Lack of capacities of the social welfare system to adequately respond to specific needs of every child in need for guardianship protection, both in terms of human and financial resources, and in terms of the necessary skills;
- Lack of coordination and multisectoral cooperation of a broader system of support, aimed to ensure the integrated approach to the protection of the child;
- Insufficient capacities for the provision of adequate and safe accommodation, and supporting services relevant to unaccompanied children;
- Insufficient opportunities for access to legal processes of migrations, and lack of cross-border cooperation;
- The transit nature of the stay of the children in the Republic of Serbia, as well as the manner of organization of their journey;
- Variable route of travel has given rise to a huge pressure on smaller municipalities, with minimum or no human capacities to comply with the existing regulations, which often results in unstandardized practice between different municipalities.

The above challenges limit the possibilities of the states to provide minimum quality standards, ensure individualized approach to every child, and to efficiently respond to the needs of the children. In the light of the above mentioned challenges, an adequate and meaningful assessment of the best interest is the key procedure that would ensure the best possible measures for each individual child. In these terms, the institute of the guardian in case of unaccompanied children is the starting and the most significant element of the

⁴ Those conclusions were derived from the overview of the available analyses and reports, consultations made for the requirements of this analysis in the course of November 2018, and direct experiences in the work with children without guardianship protection.

broader child protection system, and may play the key role in overcoming of numerous challenges in the support to children without guardians (the UNHCR, the UNICEF, and the International Rescue Committee, 2017: 9).

The discussion on the institute of the guardian is also becoming increasingly topical at the regional, particularly the EU level, bearing in mind the challenges that the countries of the European Union encounter, facing a great number of unaccompanied children, who select these countries as the destination countries, or are just in transit through them. The efforts in the strengthening of the institute of the guardian start from the assumption that guardians, in case of unaccompanied children, have the most important task to ensure the protection of the best interest of the child in a timely, efficient, and proper quality way. Hence in the past few years, a great effort was made to map out and offer good practices, and to make progress towards the process of standardization of practices between different countries.

In this respect, the Republic of Serbia has made significant breakthroughs for the purpose of adaptation of the existing policies and practices, in order to address some of the challenges in the identification of and support to children on the move. Using the existing legislative framework, additional guidelines, instructions, and rulebooks have been prepared, aimed to adapt the actual procedures and rulebooks, in order to respond to the new situation and to provide the support to the most vulnerable groups of children. These efforts have certainly yielded certain results and, even in the course of the most critical period, the institute of the guardian of unaccompanied children was applied to a certain extent. However, such a procedure has often served to meet formal requirements, with the lack of an adequate contact with the child, individualized approach, ensuring of meaningful participation in making the decisions that concern him/her, and in most cases it boiled down to the most urgent needs of children (very often related to the decisions on accommodation). In these terms, the opportunity was let slip to activate the institute of the guardian in the important processes that concern the child, starting from timely and proper identification of minors, procedures and measures for age assessment, assessment of vulnerability of a child, family reunification, all the way to the determination of long-term solutions and use of international instruments and the existing legal options that are available to the states. This was also recognized in the latest 2018 report of the European Commission⁵, where it is concluded that there is a need to provide “psychosocial support, adequate accommodation for unaccompanied children, and the sufficient number of guardians“.

This was also recognized by the Republic of Serbia and, therefore, in the past year, a series of significant steps and initiatives were made focused on the empowerment of this instrument. At the very beginning of the migrant crisis, the Republic of Serbia was one of the rare countries on the migrant route, which made a breakthrough in an attempt to adapt the existing procedures and protocols. Focusing on urgent needs that followed the development of the migrant crisis, the institutional capacities were simultaneously strengthened, and

⁵ Page 35, *Serbia 2018 Report, Communication on the EU Enlargement Policy*, Brussels, 2018

applications of the existing normative framework were additionally clarified, in order to respond to the growing needs. Thus already in July 2015, the Ministry of Labour, Employment, Veteran and Social Affairs (hereinafter: the Ministry) adopted the *Instructions for operation of centres for social work and social welfare institutions for accommodation of beneficiaries in the provision of the protection to and accommodation of minor unaccompanied migrants*⁶, which also define the procedure of appointment of a temporary guardian of a minor unaccompanied person. In the course of 2016, the *Standard Operating Procedures (SOPs): The protection of children refugees and migrants*⁷ were also developed, which were a major breakthrough in the clarification of the procedures of work of stakeholders in the field, particularly in the procedures of assessment of vulnerability, coordination, instruments for the assessment of the best interest of the child, simplification of referral procedures, etc. Additional efforts have been made with respect to the development of services of alternative care like introduction of field social workers, piloting of programmes of specialized foster care⁸, etc., promoting in such a way some of the best practices on the entire Balkan route. However, the stakeholders agree that the results are not satisfactory with respect to the provision of minimum quality standards in the provision of the protection services, and essential support to unaccompanied children.

The ambition of this report is to support the existing good practices, identify additional measures that should be examined for the purpose of improvement of the existing model, as well as to open the discussion on the actual concept of guardianship, offering solutions of other countries for some of the institutional and normative challenges which the Republic of Serbia is facing. For the above requirements, the institute of the guardian was taken as the starting and fundamental factor in further procedure of ensuring of the best interest of the child, ensuring his/her participation in processes that concern him/her, and measures for the purpose of his/her security and safety. The intent of the author is for this document to serve as the framework for opening of the discussion and providing of the forum for a constructive dialogue between decision makers. The expectation is that this report will serve as a working document in the process of definition of the next steps focused on the strengthening of the institute of the guardian.

⁶ *Instructions of the Ministry of Labour, Employment, Veteran and Social Affairs for operation of centres for social work and social welfare institutions for accommodation of beneficiaries in the provision of the protection to and accommodation of minor unaccompanied migrants*, No. 110-00-00469/2015-14, 10 July 2015.

⁷ The *Standard operating procedures: The protection of children refugees and migrants* were developed in cooperation between the Ministry, the UNICEF, the UNHCR and the local NGO IDEAS in April 2016. However, although the majority of the consulted stakeholders agree that those guidelines were necessary, they mainly suggest that they came late, and that they are not applied consistently even today. The document is available on: http://www.udruzenjesz.rs/images/PDF/SOP_SER_6.5.pdf

⁸ This project was jointly implemented by the following organizations: The International Rescue Committee and Save the Children, in cooperation with the Centre for Family Placement in the course of 2016/17, with the intent to support alternative forms of care and to empower and increase the number of families that would be engaged in emergency care of children from the refugee and migrant population. You can find more details on the project on the link:

https://resourcecentre.savethechildren.net/node/12405/pdf/specialised_foster_care_for_unaccompanied_and_separated_children_in_serbia.pdf

METHODOLOGICAL FRAMEWORK AND LIMITATIONS

The nature of this document defined the qualitative methodological approach that enables presentation of a broader framework, which defines and determines the key topic of the research, as well as highlights specific issues that are concerning the guardianship over unaccompanied children. In these terms, the process included three phases and it took place in the course of November and December 2018, although, in the process of analysis, wider time frame was taken into account, as well as lessons learned and the development of the programmes that were geared towards improving the system in place.

- The first phase included the overview of the available literature and documentation, including the existing legislative framework, additional guidelines and instructions issued by the relevant institutions, as well as numerous materials that are the products of local and international organizations and institutions, both in Serbia and in Europe, with special reference to practices of the countries that are facing a great number of children in need for guardianship protection, and/or are a transit country to unaccompanied children. The review of literature served to understand the current situation, as well as to identify new trends and guidelines, resulting from the experience from inflow of a large number of unaccompanied children, who are in the process of transit. In this respect, internationally recognized recommendations related to the institute of the guardian, and the recommended principles and standards, were used as the framework for the analysis of the current situation in the Republic of Serbia and to offer answers to the challenges this topic poses to all the countries impacted by the crisis.
- The second phase of the project is the process of consultations with stakeholders relevant to this topic. It included the decision makers, participants in the processes concerning the definition and adoption of policies, procedures, and monitoring of the implementation of the existing protocols, as well as practitioners from the field: guardians, professional workers, and case managers from local centres for social work, with direct experiences in the work with children. Namely, the focus on *decision makers* was aimed to include influential individuals, who are effectively involved in the creation of policies and in these terms in a position to have influence on the generation of changes that will ensure durable breakthroughs in the lives of the children who are in need of guardianship protection. Those interviews covered experts/representatives of the relevant government authorities/bodies: ministries, the Commissariat, representatives of international organizations as well as representatives of the local civil society organizations (CSOs), and independent experts for the protection of children. The format of a semi-structured interview covered the issues related to a) The existing legal and normative framework, and its adequacy and adaptedness; b) How the interviewee or the organization see the institute of the guardian in the context of a broader child protection system; c) Views concerning the harmonization of the existing framework with international guidelines and recommendations and steps that should be taken. Additionally, two

focus groups were organized with *practitioners* having experience in direct work with unaccompanied children. The first focus group consisted of 'professional guardians' who are a part of the project which was, in the past year, piloted by the Ideas Research and Development Centre – the IDEAS, with the financial support of the UNHCR and the technical support of the Ministry of Labour, Employment, Veteran and Social Affairs. The second group of interviewees consisted of the representatives of the Centre for Social Work Palilula, which is, in the context of Serbia, one of the most burdened municipalities when we talk about unaccompanied children. The consultations through the focus groups were aimed to identify the lessons learned, as well as current concrete challenges in the implementation of services, as well as to understand the existing procedures and protocols and their adequacy for the current context.

Note: Although the importance of involvement of children and their views is undoubtedly of the greatest importance for the essential understanding of the relevance and quality of the existing model, direct consultations with children had not been planned in this phase, instead the existing sources were used, and consultations made with children within other programmes. The reasons for such an approach are based on several facts: a) A short time frame and the transitional nature of the stay of children in Serbia, do not allow ensuring of an ethical approach in the procedures of inclusion of children in consultative processes; b) Also, bearing in mind the theme of the research, the small number of guardians, and the relationship between the guardian and the child, which constitutes a potential conflict of interest in the context of consultations, it was not appropriate to involve children in this phase; c) A significant number of the existing information has been identified, which has been collected through other processes and, therefore, for the requirements of a document of this type, which is to do with the general guidelines, in this phase, does not justify the need for inclusion of children in the consultations. The intent of this document is to provide a general cross section of the identified good practices, the existing challenges, and any deeper intervention, elaboration of any of the recommendations, and/or testing and/or application of any of the models, would call for inclusion of children in the process of consultations.

- The third phase implies the analysis of qualitative data with the focus on the topics defined in the previous Chapter: a) Presentation of the existing model in the Republic of Serbia. b) Analysis of harmonization with the recommended standards and identification of concrete models and solutions that can respond to some of the challenges; c) Definition of final recommendations. The recommendations in these terms are grouped into: emergency measures in the area of improvement of the implementation of the existing framework; recommendations related to the requirements for harmonization and additional clarifications of the existing procedures; and finally the conceptual solutions that call for revisions of the existing legal and institutional framework. In these terms, the recommendations do not have the ambition to offer one-sided solutions, but will offer one and/or more alternatives

as the framework for opening of the dialogue between the professional public for the purpose of improvement of the existing model.

The privilege of consultations with a wider circle of experts, with the open framework that has allowed presentation of new ideas and solutions, generates different views and modalities and, therefore, the proposed recommendations are submitted as *working guidelines* that will serve to initiate a broader discussion on potential further steps in addressing this complex issue.

The limitations of this approach first of all are to do with the narrow specific topic it deals with - functions and capacities of the institute of the guardian as the key element of support to unaccompanied children. In this respect, this document is in no way the reference to the entire guardianship system in Serbia; or to all the problems of unaccompanied children in the Republic of Serbia. The report has primarily been made with the intent to serve as the framework for opening of the discussion and, therefore, in these terms, it is limited by the specific time in which it was made, i.e. by dynamic changes that are taking place in this field. Finally, the biggest flaw of this overview is inability to directly include the views and positions of unaccompanied children.

TERMINOLOGICAL AND CONCEPTUAL PRECEPTS

For the reasons of inconsistency in the use of the key terms through different international and local documents, for the requirements of this report, the key terms are to be understood as they are defined and determined in the Convention on the Rights of the Child, the General Comment No. 6 (Provision III - Definitions), and the UN Guidelines for the Alternative Care of Children, in the following way:

- A **child** is every human being below the age of eighteen years. This means that any instruments governing children in the territory of the State, cannot define a child in any other way.

A child without parental care (Žegarac, 2014: 12) refers to the children who are outside their country of residence, or are in a situation whereby they need urgent protection, can be designated as:

- **Unaccompanied children** (unaccompanied minors⁹), if they are not being cared for by some other relative or an adult who, by law or custom, is responsible for doing so; or
- **Separated children** if they have been separated from their previous legal or other primary care-giver, and who aside from that may be accompanied by other relatives.

When we talk about guardianship, the situation is additionally complicated because the same terms are differently used from one country to another. Therefore, it is important to

⁹The Law on Asylum of the Republic of Serbia, Art. 2 defines an unaccompanied child in the following way: „An unaccompanied minor shall be understood to mean a foreigner under 18 years of age who was not accompanied by his/her parents or guardians on his/her arrival to the Republic of Serbia, or who found himself/herself without the company of his/her parents or guardians after having arrived to Serbia.”

analyze the content of the definition, i.e. the functions defined by different terms that are used in the professional literature. For the sake of consistency, the following terms¹⁰ were used with the specified meanings:

The guardian: An independent person who is dealing with ensuring of the best interest of the child and his/her well-being and in this respect supplementing the child's limited capacities to participate in legal processes. The guardian acts as the legal representative of the child in all the processes that concern him/her, in the same way in which parents, who represent the interests of their children, would do it.

Representative or legal representative: Differs from a qualified lawyer, who provides legal assistance, speaks in the name of the child, and legally represents the child in written statements and personally in administrative and judicial proceedings, including asylum and other legal procedures, as stipulated in the national legislation.

Guardianship authority: the guardianship authority is an institution or organization that is in charge of employment, appointment, monitoring, supervision, and training of guardians. The role of the guardianship authority is defined in the national legislation.

KEY RESEARCH THEMES AND THE PURPOSE OF THE DOCUMENT

The report is aimed to identify, in addition to the overview of the current model of guardianship for unaccompanied children from the migrant and refugee population, the existing good practices and chronic challenges, by analyzing the institute of the guardian as the fundamental factor in the context of a broader child protection system. The existing framework was analyzed in terms of international trends and recommended guidelines for the definition of the institute, and solutions of other countries for some of the challenges which Serbia is facing. The third aspect involves examination of the institute of the guardian in a broader framework of the protection of children from the refugee and migrant population, including the need for cooperation with other stakeholders, both at the national and at international level.

The final part of this document presents practical recommendations for improvement of implementation of the existing system, its further regulation in the aspects in which it is incomplete and possible ways of reorganization of the existing concept of guardianship. The recommendations are presented in the form aimed to reply to the questions: what, why, and how, offering one or more solutions, as the framework for a broader discussion.

¹⁰ Taken over from the FRA, 2014:12. Originally the UN Guidelines for the Alternative Care of Children (A/HRC/11/L.13) and the UN Committee for the Rights of the Child, General Comment 6 (the CRC/GC/2005/6)

PRESENTATION OF THE CURRENT MODEL OF GUARDIANSHIP

HOW IS GUARDIANSHIP ORGANIZED IN THE REPUBLIC OF SERBIA?

The Republic of Serbia, as the signatory of the Convention on the Rights of the Child made the commitment to provide special protection and assistance to every child who is found in its territory, and who is temporarily or permanently deprived of the family environment. In this respect, the institute of the guardian, additionally clarified by the General Comment 6, presumes the responsibility of the state for the care about the best interests of the child who is found in its territory, his/her bringing up and development.

The normative framework of the Republic of Serbia presumes the institute of guardian for all the children who are found in its territory, regardless of their origin, or legal status in the Republic of Serbia, and this right is guaranteed through the entire legislative regulations. The Constitution of the Republic of Serbia¹¹ stipulates that “Generally accepted rules of international law and ratified international treaties shall be an integral part of the legal system in the Republic of Serbia and applied directly”; and foreign nationals in the Republic of Serbia shall have all rights guaranteed by the Constitution and law with the exception of rights to which only the citizens of the Republic of Serbia are entitled under the Constitution. Further on, individual laws¹² regulate in more detail the area of guardianship over unaccompanied children¹³, providing basic guidelines and defining the procedures and instruments that ensure access to such rights. In this respect, the legal framework that defines guardianship is to a large extent harmonized with good practices and international recommendations. First of all, it is commendable that the primary responsibility for unaccompanied children from the migrant and refugee population is unequivocally the responsibility of the body of social welfare, irrespective of their legitimate and legal status in the Republic of Serbia¹⁴.

¹¹ Article 16 and Article 17 of the Constitution of the Republic of Serbia, the *Official Gazette of the RoS*, 83/06

¹² The guardianship protection is defined by the provisions of the Family Law, and additionally also regulated by numerous other laws and bylaws, out of which the most important ones are: the Law on Social Welfare, the Law on Asylum, the Law on the Prohibition of Discrimination, the Law on the Fundamentals of the Education System, as well as the General Protocol on the Protection of Children from Abuse and Neglect, the Special Protocol on the Protection of Children in Social Welfare Institutions from Abuse and Neglect, and others.

¹³ The Family Law (Art. 6, paragraph 6) defines the obligation of the state in this respect, the *Official Gazette of the RoS*, 18/05, 72/11 – another Law and 6/15

¹⁴ There are numerous verified practices that point to the importance of and need to ensure that the competence for the care of unaccompanied children must be under the auspices of the social welfare system and/or local self-governments, i.e. regulated in the same way as for domicile children. This in no way may be the competence of the institutions that manage centres for asylum seekers and refugees. About the cases of Belgium and Sweden, see more in Byrne, 2015: 22-23

WHAT GUARDIANSHIP MODEL IS APPLIED?

The institute of guardianship is under the authority of the Centres for Social Work (the CSWs)¹⁵, as the institutions of social welfare in local self-governments, and guardianship over children coming from the refugee population is determined by the competent CSW, in the territory in which the child is identified. Such an approach also presumes a comprehensive and individualized approach to the child protection, and set of mutually linked and conditioned legal interventions and measures of social welfare in resolving of different problems. In this procedure, the guardian is not independent in the initiation of procedures and measures; instead the process involves a wide range of expert persons from the CSWs as well as from other relevant institutions, who jointly define the plan and the key decisions related to the child. The Law stipulates the possibility of direct guardianship (Article 131), which implies that the actual guardianship authority directly performs that function. Also, the employees in institutions of social welfare may be appointed as guardians (besides the spouses, a relative or a foster parent¹⁶) (a collective guardian, Article 130), which is often the case with the children who are accommodated in those facilities; and one person may be the guardian for a number of protégés (Article 129). However, the most frequent form of guardianship, prescribed for unaccompanied children, is the so-called *temporary guardianship* (Article 132). This Article prescribes that in case of a need for temporary protection of the personality, rights or interests of protégés, this form of guardianship may be provided to a „foreign citizen who is situated or has property in the territory of the Republic of Serbia”¹⁷

PROCEDURES OF APPOINTMENT, SELECTION, AND CONTROL OF THE WORK OF GUARDIANS

The Ministry additionally clarified the legal provision on the appointment of a guardian of an unaccompanied child, at the very beginning of the crisis, by the Instructions¹⁸. According to the Instructions, the appointment of a temporary guardian also defines the limited scope and contents of the powers that the guardian has, and they are mainly to do with the provision of an urgent and temporary accommodation in any of the social welfare institutions that has a separate unit for accommodation of minor unaccompanied migrants. Upon the determining of the accommodation and referral of a child to an institution, a new temporary guardian is appointed, again with limited powers. If the child due to different circumstances is transferred to any of the asylum centres, for example, when he/she expresses the intent

¹⁵ Article 12, the Family Law of the Republic of Serbia, the *Official Gazette of the RoS*, 18/05, 72/11 – another Law and 6/15

¹⁶ This legal possibility is not applicable to unaccompanied children who are foreign citizens, except in case their relatives have the citizenship of the Republic of Serbia.

¹⁷ Article 132, the Family Law of the Republic of Serbia, the *Official Gazette of the RoS*, 18/05, 72/11 – another Law and 6/15

¹⁸ *Instructions of the Ministry of Labour, Employment, Veteran and Social Affairs for operation of centres for social work and social welfare institutions for accommodation of beneficiaries in the provision of the protection to and accommodation of minor unaccompanied migrants*, No. 110–00–00469/2015–14, 10 July 2015.

to seek asylum, the Instructions suggest that the appointed guardian should see off the child to the new accommodation, and the local competent CSW is to again appoint a new temporary guardian. In this way there is a fear that the institute of the guardian primarily boils down to the finding and maintaining of accommodation (Žegarac, 2014: 100), and frequent changes of accommodation of children often have nothing to do with the essential consideration of the best interest of the child, instead they are *ad hoc* solutions, related to migrant flows, and the decisions of the Commissariat, which identifies the centres for emergency care of unaccompanied children.

Thus defined guidelines give rise to numerous problems in practice and, therefore, it often happens that guardians are appointed with a significant delay and that the guardian of a child is changed even several times, that the timely exchange information between institutions is lacking, which additionally extends some measures and processes (Krašić B. et al., 2017: 61). The UN Committee on the Rights of the Child (hereinafter: the Committee) also pointed to those problems in the 2017 Report, requesting the establishment of clear coordination between government institutions, and synchronization of the principles and criteria for the assessment and operation between different government agencies, related to unaccompanied children¹⁹.

Bearing in mind the nature of movement of the migrant and refugee population, in practice, in most of the cases, the appointed guardian or other official person of a centre for social work is the case manager. Thus it happens that one case manager has between 50 to as many as 80 children for whom he/she has undertaken the guardianship obligation (the Public Policy Research Centre, 2017: 10; Save the Children and the International Rescue Committee, 2017: 8). Even with the introduction of additional professional guardians²⁰, the number of cases of children per guardian is still high (as high as up to 40 children) and, therefore, the need for additional social workers has been recognized. Although the law does not prescribe the maximum number of beneficiaries, it is clear that such an approach does not meet minimum standards²¹ in the protection of children, which recommend maximum 25 children per worker. Some of the consulted professionals suggested that the ideal number for the quality dealing with each individual child would be 15 protégés per guardian. This should be examined in the light of chronic and long-term absence of investments of the state in social offices and services, and particularly of the number of professional workers, and training for understanding of some of the key concepts in the protection of children (Žegarac, 2014: 77).

Under such circumstances, the guardian cannot properly satisfy even the formal minimum in order to comply with a procedure, and children remain deprived of the support that the

¹⁹ Page 16, *Concluding observations on the combined second and third periodic reports of Serbia*, the Committee for the Rights of the Child, 2017, the CRC/C/SRB/CO/2-3.

²⁰ The Project of the IDEAS implemented last year. In consultations with the IDEAS it was confirmed that this problem had been recognized, and, therefore, the increase in the number of guardians from 5 to 10 had been planned.

²¹ Minimum standards for the protection of children in humanitarian activity. The Child Protection Working Group (the CPWG), 2012.

guardian should provide to them. This also significantly diminishes the possibility of identification and reaction in case of particularly vulnerable groups of children. Such a solution, in addition to being unsustainable and unfunctional, neither meets even minimum quality standards, nor the key principles of timeliness and independence of guardians. Although meeting functional standards, under such circumstances, the guardian is not in the situation to properly fulfil almost none of the obligations defined by his/her mandate.

In an attempt to respond to the new situation in the best way, the guardianship authority (the CSW) as often as not directly plays the role of a guardian in dealing with unaccompanied children. In such a way, this measure, although envisaged as an exception for emergency situations (when measures are in question, which are to do with the child's safety, health, basic living conditions), has become and has remained, the commonest way of implementation of the institute of the guardian. Another frequently applied model is the collective guardianship, which is realized in social welfare institutions, the employee of which becomes appointed as the guardian of quite a number of children. This form of guardianship as well has similar weaknesses as the previous model, particularly with respect to the quality of individual approach to a child, as well as to the principle of independence, which is not complied with either.

Realizing the size of the burden of certain CSWs, the UNHCR and the local CSO IDEAS piloted, in the course of the last year, a new service of the so-called *professional guardian*²², which under the supervision of the local CSW provides additional support to a great number of unaccompanied children, considerably disburdening professional workers of the CSW. At the moment of preparation of this report, the service is provided in the territory of the municipality of Palilula, in cooperation with the local unit of the City CSW²³.

It should also be mentioned that the procedures of recruitment, verification, trainings, and supervision over the work of guardians are insufficiently regulated. The Law stipulates that a guardian must be „the person who has personal characteristics and abilities required to perform the duty“. The assessment is left to the competent CSWs, which appoint guardians, define the plan of care, including the rights and obligations of the guardian, directly control his/her work, provide supervision and react on reports against the guardian and relieve him/her of the duty.

In the vague wording of the laws the qualifications of guardians remain unclear and, therefore, they are differently understood from one centre to another. The SafeGuard

²² See more about the IDEAS project on the Website www.ideje.rs

²³ This department, at the moment of research, had 38 employees, out of whom only 2 case managers for the work with the migrant population, 4 guardians and over 12,500 beneficiaries excluding the population accommodated in asylum centres. Both guardians and the CSW Palilula bear witness to significant breakthroughs in better quality assistance to children, as well as to the disburdening of professional workers of the CSW with the introduction of additional 10 professional guardians through the IDEAS organization. The data obtained in the course of consultations with the employees in the Centre for Social Work Palilula, in November 2018.

initiative²⁴ defines four *key competencies* as critical qualifications that the guardian should possess:

- a) Knowledge of the procedures and the legislative framework;
- b) Ability to build the relationship of trust with the child;
- c) Ability to recognize psychosocial problems with the child;
- d) Skills of cultural mediation and effective linking of the child with institutions.

The Italian model²⁵ of voluntary guardianship regulates the criteria that a guardian should satisfy even in more detail, even though we are talking about a voluntary arrangement:

- To be the Italian citizen or the citizen of some other EU countries, third countries or without citizenship with the regular residence permit and the verified fluency in the Italian language;
- To be over 25 years old;
- To fully enjoy civil and political rights;
- Not to have a criminal record and, currently, criminal proceedings are not conducted against him/her or other security measures are applied;
- Not to have any obstacles in relation to Article 350 of the Italian Civil Code, in particular:
 - That he/she freely manages his/her own assets;
 - Is not the subject of revocation, limitation or suspension of parental rights;
 - Has not been previously removed from the guardian duty;
 - Is not registered in the register of bankruptcies;
 - Does not have the record of improper behaviour, i.e. he/she is suitable from the moral point of view;
 - Has time and energy to perform the function;
 - Is not in conflict of interest with the child.

The experience of the IDEAS organization (the Public Policy Research Centre, 2017: 9) in the recruitment of professional guardians says that it had been easy to identify “young persons having previous experience in the work in refugee camps, but mainly without experience in the area of child protection“ and, therefore, they provided additional trainings by the UNHCR and the local centre for social work. The process of initial support to a guardian is also unclear as regards the access to resources and information, trainings, and professional supervision.

In the world there are several interesting initiatives in the form of networking, support by other experts, creation of societies and associations that gather together guardians and provide the platform that serves as the support both to their daily individual work, and to the analysis of the lessons learnt and further improvement and development of competencies. One of the examples is the European Network of Guardianship Institutions

²⁴ Recommendation 6, (the UNHCR, the UNICEF, and the International Rescue Committee, 2017: 12)

²⁵ This model is described in more detail in IV Chapter.

(the ENGI)²⁶ which, in the past few years yielded and promoted numerous examples of good practices, and significantly improved the international cooperation, coordination, and exchange information.

Efficient supervision and monitoring of the work of guardians is the key to ensure the quality guardianship system. This is the only guarantee that a guardian is playing his/her role in a proper way, bearing in mind that the mechanism of reporting is undeveloped. The programme of supervision over guardians is the obligation of professional workers of the centres for social work, i.e. case managers. In addition to the potential conflict of interest, such regulation exerts additional pressure on the employees in a centre for social work and, therefore, there is a justified concern that in the system of oversight, support of and supervision over guardians are not exercised in a quality manner. Legal obligations of guardians to report to the centre for social work boil down to annual reports and final reports on their work, and possibly extraordinary ones, if requested by the CSW. Although the cooperation of guardians and case managers on individual children is far more intensive, the actual framework remains unclear with respect to the assessment of the quality of the work of guardians, and the opinion and assessment of children who are protégés of guardians is completely lacking. The NIDOS organization offers an example of evaluation questionnaire²⁷, which is child friendly, which finally gives the opportunity to the child to evaluate the work of the guardian. This is particularly important for guardians of unaccompanied children from the migrant and refugee population to whom the only way to access services is precisely through the guardian. The recommendations suggest that, for every 30 guardians, there should be one supervisor who is exclusively deals with this task (the UNHCR, the UNICEF, and the International Rescue Committee, 2017: 12).

The particular deficiency is reflected in insufficiently elaborated *procedures for lodging of the appeal against* or reporting on the work of guardians. Apart from principled provisions on the right to appeal, it is unclear in what way children are informed that they have got guardians, what their role, obligations and responsibilities are, what they can expect from them and to whom they can lodge the appeal if there is a reason for an appeal against the work of the guardian. It is indispensable to regulate the mechanism of appeal, to ensure that it is adapted to the context and children, as well as that it includes the mandatory timely reaction and clear binding procedures of operation in case of an appeal. This mechanism may be linked to the guardianship authority, but there is no obstacle for it to be linked to other institutions that exercise supervision over authorities/bodies, and which are, in their work, independent from the guardian.

Finally, we must also comment on the fact that the existing social welfare system, which delegates the responsibility to local self-governments, i.e. local centres for social work, is unsustainable in the context of continued migrations. With fluid migrant flows, and dynamic

²⁶ Within this network, by mapping out the best European practices, different instruments have been developed, which are aimed to strengthen the institute of the guardianship and to standardize the practice across Europe. More on: <https://engi.eu>

²⁷ Annex III, The Right to Be Heard and Participation of Unaccompanied Children, the NIDOS, 2014

changes of routes and the manner of concentration of refugees in smaller municipalities in border areas, facing a great number of refugees and migrants who, within a short time, happen to be in their territory, the existing framework does not offer a sustainable solution that will respond to the needs of refugees, as well as of social and professional workers engaged in the support to unaccompanied children. Such local communities have different capacities, knowledge and experiences and, consequently, pursue different practices, which additionally aggravates the consistent and quality response. Professor Žegarac stated “Serbia has retained a highly centralized system, and transferred a part of the responsibilities for the development of services, as well as the foundation rights over the centres for social work, to local self-governments. However, the regional level is lacking, indispensable for efficient functioning of different systems, even of the social welfare system, in the country of this size” (Žegarac, 2014: 98). When we talk about this group of children, it would be important to re-examine the existing framework, and to make use of the options for the development of services in the community, but to additionally obligate and support local self-governments that do not have the experience in the work with such children. This implies additional financial guarantees to the local self-governments in need, as well as the support in systematization and standardization of work between different municipalities.

MANDATE AND COMPETENCES OF GUARDIANS

The body of obligations of guardians is primarily defined by the care of the protégé, more precisely by taking care of his/her personality, representation, obtaining of the funds for sustenance of the protégé, managing and disposal of property of the protégé. Thus defined “Guardianship does not necessarily imply direct care of the person who is under guardianship. We are primarily talking about the legal representation and undertaking of various activities to protect the rights of the persons under guardianship in line with their interests.” (Žegarac, 2014: 17). However, the Law prescribes the duty of the guardian to visit the child, to undertake measures that will speed up the child’s training for independent life (care, raising, bringing up, and education of the child). A guardian is obliged to regularly report on his/her work to the competent centre for social work, to wit in the form of regular (annual) reports and the final report upon termination of guardianship, and possibly of an extraordinary report, at the request of the guardianship authority. Such reports should contain the most important data on the child, accommodation, health, bringing up, and education, and possible property, and on anything else that is of importance to the personality of the protégé.

A guardian, in the work, is guided by the detailed plan of care, which is adopted by the actual decision on placing under guardianship, and it determines the rights and duties of the guardian. The format of this plan²⁸ covers only the basic information: the list of goals, activities, deadlines, and the person in charge of carrying out the activity. Bearing in mind that the guardianship that is applied to unaccompanied children (as temporary guardianship),

²⁸ Annex 12, Plan of work of a temporary guardian (Milanović, 2017: 107)

is an additionally limited form of guardianship, which is mostly to do with the legal transactions or the work in terms of urgent and subsistence needs of the child, as well as with the frequency of changing of guardians, we can say that the institute of the guardian is doing very little for such children, relative to the space that the normative framework provides.

ACCOMMODATION AND SAFETY

In discussions with guardians, as well as with professional workers from the field, the biggest volume of their interventions, as well as the problems they encounter is to do with the *accommodation* of protégés. The problem of accommodation is most often defined as inability of the guardian to ensure, in line with the mandate, an adequate and safe accommodation to the child. Numerous reports corroborate that unaccompanied children, who are not accommodated in institutions of social type, are exposed to numerous risks of violence and exploitation, and are in an increased risk from smugglers and human traffickers. Guardians directly link the issue of *safety* to the nature of accommodation capacities in asylum centres, where collective fights, robberies, peer violence, and violence of adults appear on a regular basis (the Public Policy Research Centre 2017: 20). The reports point to the testimonies of minors that there are smugglers in centres, that daily fights, verbal intimidations by older men, thefts of telephones and clothes are taking place, as well as, as often as not, evening consumption of alcohol²⁹ (Krašić et al. 2017: 62; Save the Children and the International Rescue Committee, 2017: 11).

The situation differs from one centre to another, but the fact is that unaccompanied children, particularly boys, are as often as not accommodated in unsuitable collective centres, often in the same premises with adults. Although, according to the mandate, the guardian should participate in the process of making of the decision on accommodation of the child, he/she is most often appointed only after the decision is made by the guardianship authority about the accommodation of the child. Also, if there is a change of accommodation while the child has a guardian, the guardian is also changed. It is questionable whether, in the current practice, the actual guardianship authority has the possibility to have influence on the decisions on accommodation of children in asylum centres. Accommodation of a child also significantly determines the quality of the work of the guardians, who confirm that guardians are far more self-confident when the child is in a social welfare institution. In this respect, accommodation of children in social welfare institutions seems to be by far more adequate solution, in terms of the safety of children, than the asylum centres³⁰. Children also confirm that the support by guardians in asylum centres is by far lower than the one they have in social welfare institutions: „*My guardian is very old. She may have been here two months ago; I am not sure. For example, in 4 months, she*

²⁹ <http://rs.n1info.com/Vesti/a350044/Pojedini-migranti-tvrde-da-se-osecaju-bezbednije-na-ulici.html>

³⁰ Consultations with guardians and professional workers, in November 2018.

came twice or three times. When I was in Vaasa³¹, my guardian used to come every Monday to talk to me checking whether I had had a problem, asking if I eat. My present guardian does not speak English, but it is O.K., I speak Serbian.³²

On the other hand, limited accommodation capacities of institutions specialized in emergency care of unaccompanied children have resulted in the established practice whereby unaccompanied children are accommodated in asylum centres. The decisions on to which of the available centres to refer unaccompanied children to have been changed on several occasions. According to the latest instructions of the Commissariat, unaccompanied children are no longer to be accommodated in the Asylum Centre in Krnjača, but instead they are all referred to Šjenica, which means that to all the children, who have been relocated, the guardian will be changed again. Also, it is questionable in what way such a large number of children can be adequately covered by the plan of support and protection if the local centre for social work has insufficient capacities to respond to the needs of several hundreds of unaccompanied children.

Asylum centres are institutions of collective accommodation that are not sufficiently adapted to children, do not have adequate expert staff trained in the work with children, and do not meet minimum standards of social welfare. Although the number of unaccompanied children is now already steadily high and does not indicate the trend of reduction, little is being done to improve the conditions of accommodation and the manner of organization of asylum centres, or to improve accommodation capacities in social welfare institutions, and to review alternative services in the community (such as foster care, small institutional communities, etc.). Although there is no simple solution in the examination of systemic solutions, one should bear in mind that this trend of accommodation of children in asylum centres has been proven to be disadvantageous, and on top of that a potentially discriminatory practice (case of Belgium), which has been abandoned by many countries (Byrne, 2015: 24). By accommodation of children in asylum centres they are limited in access to social welfare services, as compared to the children from Serbia. Consequently, children in asylum centres less frequently have an appointed guardian, and even when they have a guardian, their work is significantly aggravated.

THE BEST INTERESTS OF THE CHILD

In broader terms, the biggest deficiencies of the normative framework that regulates the guardianship are related to the vague wording of the obligations and duties of guardians in ensuring of and representing the best interests of the child and his/her participation in the decisions that concern him/her. The Law, Art. 6 thereof, defines the principled provision

³¹ “Vasa Stajić“ – the Institute for Education of Children and Adolescents, Belgrade, for accommodation of foreign minors found in the territory of the Republic of Serbia unaccompanied by parents or guardians.

³² The statement of the unaccompanied boy, accommodated in the Asylum Centre, in answer to the question whom he would address for assistance if he had a problem. From consultations with children in Reception Centres for migrants and refugees in the Republic of Serbia, made during 2017, organized by Save the Children partners (unpublished document).

that “Everybody is to be guided by the best interests of the child in all activities that concern the child,”³³ but fails to elaborate the role and obligations of the guardian in this respect.

Starting from the definition of the guardian, *ensuring of the best interests of the child* and his/her well-being is the primary task of the guardian. In the absence of a better solution, it is expected that guardians directly apply the Convention, and its leading principles. By the development of the above mentioned SOPs for the protection of children migrants, additional guidelines have been provided with the intent to ensure coordinated action, timely identification of particularly vulnerable children refugees/migrants, and quality procedures of assessment of and decision making on the best interest of the child. This extensive and comprehensive document clarified in detail the procedures for the protection of children particularly focusing on their vulnerability, and the recognition and identification of the most vulnerable groups of children; it defines the procedure and offers instruments that can be used in the initial assessment of the best interest of the child; the detailed assessment of the best interest of the child; and decision making on the best interest of the child.

Although it has never been officially adopted by the Government of the Republic of Serbia, this document has been recommended as the binding one for all the stakeholders involved in the system of support to children from the migrant population. Since this document is mainly intended for the field workers, who first get into contact with children, the assessment of the best interest of the child has mainly been made in the initial phase, for the assessment of the most urgent needs, most often related to the decisions on accommodation, and/or in case of children identified as victims of trafficking, violence, etc. However, this instrument is seldom used for other aspects of a child’s needs, including for durable solutions. This is also indicated by the Committee in its Report, suggesting that “unaccompanied children and separated children are returned, in compliance with the readmission procedure, without assessment of their best interests, or informing them about the right to seek asylum in the language they can understand”³⁴.

DISSEMINATION OF INFORMATION TO THE CHILD AND PARTICIPATION IN THE DECISIONS THAT CONCERN HIM/HER

The framework for *participation of children in the decisions* that concern them is declaratively stipulated, but the real space is particularly small. Art. 12 of the UN Convention on the Rights of the Child as well as the General Comment 12³⁵ presume the obligation of the state to recognize not only individual opinions (the right of the child to freely express his/her opinion about all the issues that concern the child, as well as to pay due attention to the opinion of the child in line with the age and maturity of the child), but also the collective opinions of children. The reports indicate that children not only had never been asked or

³³ Family Law of the Republic of Serbia, the *Official Gazette of the RoS*, 18/05, 72/11 – another Law and 6/15s

³⁴ Page 16, *Concluding observations on the combined second and third periodic reports of Serbia*, the Committee for the Rights of the Child, 2017, the CRC/C/SRB/CO/2-3

³⁵ The UN Committee for the Rights of the Child, General comment No. 12 (2009), the CRC/C/GC/12

involved in the process of decision making, but that they are insufficiently informed about the processes that concern them. Thus children from different institutions say that they do not have a regular contact with temporary guardians; that they have seen them once or repeatedly if they had had a problem at school, as well as that guardians are often changed³⁶.

This right is particularly affected concerning unaccompanied children due to the challenges that the language barrier poses (Save the Children and the International Rescue Committee, 2017: 7), which additionally aggravates the provision of information to the children on the options they have, so that they could meaningfully participate in the decisions that concern them. Although there are challenges in terms of language and cultural barriers, such problems can be overcome with small efforts, for example, by a package of the key information in their language. This is exactly why it is important to ensure regular consultations with children, and to develop programmes and services recognizing their views. There are numerous instruments and tools³⁷ that can help to overcome the obstacles in consultations with children on the move when there is a language or cultural barrier. The NIDOS organization³⁸ has developed the instrument, which is aimed to support professionals in ensuring the right of an unaccompanied child to participate, with the special focus on the tools that can be used in the process of inclusion of children, and collecting of their opinions.

INTERNATIONAL TRENDS AND GOOD PRACTICES - WHERE IS SERBIA?

INTERNATIONAL TRENDS AND KEY STANDARDS

The institute of guardianship has been recognized as one of the most important aspects in the context of the protection of unaccompanied children, both in the European Union and globally, particularly in the regions impacted by cross-border migrations. At the same time, the comparative analysis of different practices indicates huge inconsistencies with respect to the institutional framework that defines the guardianship, the role and the mandate of guardians, and their relations with other stakeholders involved in the protection of children. The European Union, as of 2010, and the *Action plan for improvement of the protection of unaccompanied children* promote the importance of guardians for the purpose of securing and preservation of the best interests of the child. Since then up to the present day, significant breakthroughs have been made in the development and exchange of good practices across the world, and in efforts in the field of standardization of policies and procedures. An important address in these terms is the above mentioned European

³⁶ Consultations with children in the Reception Centres for migrants and refugees in the Republic of Serbia, made during 2017, organized by the Save the Children partners (unpublished document). It is indicative that certain number of unaccompanied minors could not participate in the consultations because they did not have an assigned guardian.

³⁷ Save the Children: *When we are asked, not questioned – the manual for consultations with children on the move*.

³⁸ *The Right to Be Heard and Participation of Unaccompanied Children a Tool to Support the Collection of Children's Views on Protection*, the NIDOS, 2014

Network of Guardianship Institutions (the ENGI), which serves as the platform for development, identification, and exchange of good practices. In cooperation with the ENGI, the Defence for Children organization, in 2012, developed the *Key standards for guardianship over children separated from parents in Europe*³⁹, defining the obligations and responsibilities of guardians based on a comprehensive analysis conducted in nine EU countries.

The key standards for guardianship are classified into three subgroups: I group (standards 1–6) is concerning the role and responsibilities of guardians; II group (standards 7–9) is related to the relationship with the child; III group (standard 10) is related to the professional knowledge and competencies of guardians. These guidelines (attached as Annex 1), were also recognized by the Council of Europe in 2014, which has adopted the recommendation to use these standards for monitoring of the progress (Byrne, 2015: 25). In addition, in the same year, the European Union Agency for Fundamental Rights also presented the manual under the title: *Guardianship for children without parental care: The handbook for strengthening guardians to take care of specific needs of children victims of human trafficking*, the most comprehensive document with the instructions how to establish the national guardianship system. The Handbook emphasizes that the guardianship service must be an integral part of the national child protection system, defining the key principles, as well as the standards that need to be met. Such an approach should generate the guardian who can develop the relationship of trust, openness and confidentiality, who knows the child, does not judge him/her, who is sincere and keeps promises, etc.⁴⁰ (the FRA, 2014: 71).

KEY POSTULATES OF THE INSTITUTE OF THE GUARDIAN

Taking the proposed ideal of the guardian as the framework we aspire to, this segment of the analysis is dedicated to the analysis of the existing system, through the prism of the recommended key principles and quality standards that need to be ensured. This overview offers the assessment of compliance, identifies the deficiencies as well as possible solutions for some of the challenges.

For this purpose, we will use **six fundamental principles**, presented in the handbook *Guardianship for children without parental care* (the FRA, 2017), which were generated from the comprehensive comparative analysis of the experiences and practices of nine countries. Mutually conditioned, those principles constitute the basis on which we can develop an empowered and proper quality guardian. They do not depend on the manner in which the guardianship is regulated in a specific country, but suggest the principles that should be satisfied, regardless of the type and model of organization of guardianship.

³⁹ Defence for Children, 2012, available on: <http://www.corestandardsforguardians.eu>

⁴⁰ Free translation of the author

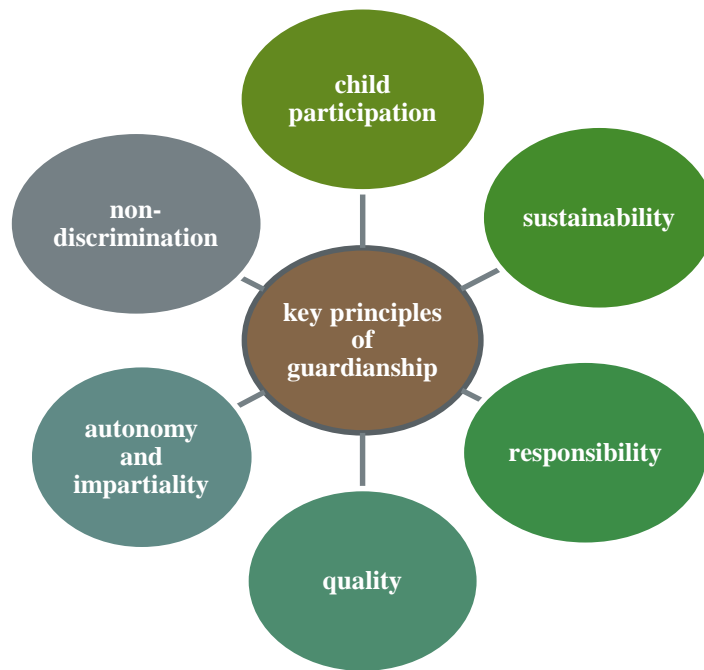


Figure 1. Source: the FRA, 2014

PRINCIPLE OF NON-DISCRIMINATION

The principle of non-discrimination says that all the children, regardless of their age, legal status, nationality or gender must have the same rights and must not be discriminated. Serbia is the example of a positive normative framework, which treats unaccompanied children in the same way as domicile children. However, in practice, there are certain difficulties in the harmonization of quality standards for children who are accommodated in different institutions or communities and, consequently, have different opportunities to satisfy their needs. This also has impact on the right of the child to be assigned the guardian. In this respect, we still have a great number of children who remain unidentified during the transit through Serbia, or, even when they are identified, they do not get a guardian, or he/she is appointed with a delay, thus remaining invisible to the social welfare system. Such practice results from the fact that the guardian is appointed when there is a need to comply with a formal procedure related to the child, and children who enter such procedures, have greater chances to exercise the right to the appointment of a guardian.

Hoping that discriminatory practices of the regional governments to selectively let pass certain ethnic groups or only women and children are past, it is important to highlight the sometimes subtle and invisible discrimination that unaccompanied children are subjected to, particularly if they are not identified as children. Anecdotal reports on the identification of younger minors as of age, and frequent treatment of elder unaccompanied minors as adults, to a large extent limit the access to services, including their deprioritization in appointing of guardians. At the same time, a significant set of the problems, related to the work of

guardians, is to do with the adults who have been identified as minors⁴¹ and, therefore, enjoy all the rights and services as minors, additionally aggravating the work of the already overburdened guardians and threatening the safety of the children with whom they are accommodated.

PRINCIPLE OF INDEPENDENCE AND IMPARTIALITY

In the previous Chapter we have already touched upon some of the challenges related to the principle of independence and impartiality, and noncompliance of the current legislative framework with this principle. In this respect Serbia has the single model of organization, in which the guardianship authority employs, educates, and appoints the guardian, and also exercises the supervision over his/her work, and is in charge of revocation of guardianship. In addition to being unsustainable, such a form of organization constitutes an obvious conflict of interest, whereby the guardian is put into the situation to perform tasks taking into consideration the interest of the employer (the centre for social work, which is also the guardianship authority) as well as of the child, whose interests he/she should also represent in relation to the guardianship authority. This problem was recognized by decision makers, and in these terms there is the intent to try to address this issue as well by the current re-revision of the Family Law⁴². It is important to ensure that the amendments related to guardianship satisfy this principle. This would also significantly improve all the other aspects of the work of guardians. There are numerous examples of good practices that relocate the institute of the guardian to the arrangement which is independent from the bodies that make decisions on the child. Some of examples are specified as possible solutions that Serbia can review:

In Slovenia, as of 2003, guardians have been coming from a non-governmental organization that is the service provider, although the centre for social work appoints guardians, in compliance with local laws. A similar initiative was for the first time piloted in the Republic of Serbia in the course of 2018, initially with 5, and now already with 10 **professional guardians**, who provide support to around 800 unaccompanied children. This project is implemented by the IDEAS organization, with the financial support of the UNHCR, and in cooperation with the competent Ministry and it soon yielded results with respect to a better support to unaccompanied children. For the requirements of preparation and training of guardians, the IDEAS organization edited the *Handbook for the work of guardians with unaccompanied children refugees and migrants* (Milanovic, M. 2017), which, in addition to the legislative framework that regulates the guardianship, also offers the overview of regulations in the area of migrations and asylum, additionally empowering guardians for the work with this group of children. The effort to clarify the competences defined by the law and to almost fully harmonize them with the Guidelines⁴³ of the European Union Agency for

⁴¹ More about the challenges of assessment of age in the following Chapter.

⁴² The interview with the representatives of the ministries, in November 2018.

⁴³ The European Union Agency for Fundamental Rights, *Guardianship for children without parental care: the handbook for reinforcement of guardians to cater for the specific needs of children victims of human trafficking*, 2014: 69-71)

Fundamental Rights should be particularly praised. Namely, the existing national framework in this Handbook is expanded to include additional responsibilities (with the exception of the standard related to the timely initiation of the identification of durable solutions), and thus defined they now include the following obligations:

- Direct ensuring of the respect of the best interests of the child (standard 1);
- Building of the relationship of trust with the child (standards from 7 to 9);
- Ensuring that the child participates in making of decisions that are important to the child (standard 2);
- Provision of legal support and representation (standard 4);
- Ensuring the child's safety (standard 3);
- Provision of an adequate standard of living, including housing and material support to the child, access to healthcare services and education (standard 5);
- Linking the child with providers of different services from which the child can have benefits and monitoring of their work (standard 5).

This is a unique and significant breakthrough that should be supported and additionally developed. Although currently focused on unaccompanied children from the migrant population, the possibility should be explored to also extend this form of service to other persons under guardianship protection. If it is recognized as good practice, if it provides the process of standardization and licensing, this service may significantly disburden the overburdened professional workers of the centres for social work and, consequently, visibly improve the quality of protection of unaccompanied children. In the continuation of the project it is important to ensure that guardians become independent, as well as to allocate budget funds, standardize and licence the providers of such services, to review the replication of this model in those municipalities that are struck by migrations in a similar way.

The European Union Agency for Fundamental Rights recommends the formation of a completely **independent guardianship authority** (the UNHCR, the UNICEF, and the International Rescue Committee, 2017: 12), which would supervise the provision of guardianship services, provide training, and ensure quality standards. In this respect, good practices have been identified in Scotland and the Netherlands, where the analysis has confirmed that the independent guardianship authority makes far better quality decisions and is a more effective, more efficient and more cost-effective organization model. This institution must first of all be separated and independent from the bodies that make decisions on a child, be them courts, social services or migrant agencies. The remuneration system for such foster parents is organized in a similar way in which the foster care is regulated with us, whereby the remuneration is received per child, which additionally contributes to the efficiency and flexibility of the model.

The third example that offers the solution to this problem originates from Italy, which is introducing, facing a chronically great number of unaccompanied children, disparity among regions both in quality, and in human capacities, the **model of voluntary guardianship**.

There are several interesting facts related to this model. Namely, guardians-volunteers fall within the competence of the Protector of Citizens in charge of children, as an independent institution, which deals with the process of recruitment and training of volunteers. The guardians of individual children are still appointed by the court, as it has been the case in Italy up to now. Within just a few weeks of recruitment, they received over 4,000 applications from the entire Italy and selected 1,200 candidates, who underwent training, passed the assessment process and are now on the roster of available guardians across Italy. Since this format is voluntary, each guardian may have maximum four children to take care of, but for the four children he/she has the same responsibilities and obligations as professional guardians. Those volunteers most often come as activists, interested in the issues of migrations or the protection of children and, therefore, they make far greater efforts in the representation of the best interests of the child than the paid professionals. In that process, the support of the Protector of Citizens, as the independent institution, is certainly very useful in the procedures for exercising of the rights. This approach has been recognized as promising innovative practice in the EU, and its replication has been planned in additional four EU countries. This approach is also recommended by the European Union Agency for Fundamental Rights because it „ensures a flexible guardianship system that can respond to variable needs; it is significantly cheaper than the system of professional guardians; and what is most important, it involves the community in the support to unaccompanied children“⁴⁴. Although this revolutionary approach is worth being examined, it is necessary to cautiously handle the transfer from the professional to the voluntary system, particularly bearing in mind the challenges in following and monitoring of such a large number of volunteers, although the number children in need for guardians is far from being as high as in the case in Italy.

Many countries are testing the ***mixed model of professional-voluntary guardianship*** (the example of Germany), particularly in the countries facing a sudden great inflow of migrants and difficulties to meet the standards within a short period of time. Such a model most often means retaining the professional guardians, but also creation of the database of trained volunteers, from different communities, who can be activated within a short time period. Thus professionals and volunteers work together and complement the work of each other, optimizing the support that a child gets. When we talk about the qualifications and the process of recruitment, they are the same as for professional guardians. Additionally, such a model opens the possibility to balance gender and cultural aspects, so that guardianship could be adapted to the children on the move with whom they work.

PRINCIPLE OF QUALITY

The following principle is concerning the understanding of the way in which the quality of the work of guardians should be ensured. In this respect, it presumes exclusively professional guardians, having qualifications in the area of the protection of children,

⁴⁴ *Guardianship for unaccompanied children in Italy*, Update after the adoption of Law No. 47 of 7 April 2017 and Legislative Decree No. 220 of 22 December 2017

including good knowledge about the mandates and the work of relevant institutions. It is strongly recommended that the states retain professional guardians, and to consider voluntary arrangements as an additional measure of support to guardians, in no way as the only form of the service⁴⁵. The voluntary engagement of guardians must ensure the same system of checks, qualifications and monitoring as with professionals. During the process of consultations, the majority of professionals agreed with this recommendation. Therefore, the recommendation is some form of a mixed model, in which we remain consistent in the strengthening of the system of professional guardians, with the option to develop additional support to guardians in the form of volunteers or “assistants to guardians“. In terms of quality, it is important to make use of the pilot project of the IDEAS and the UNHCR, and to document the lessons learnt and the requirements for additional improvement, particularly from the aspect of the specific knowledge needed for an adequate assistance to this group of children, from psychosocial support to legal counselling related to the asylum procedure, etc. Also, it is important to acknowledge the recommendations related to the best interest of the child and to work on empowerment of guardians to properly represent the best interests of the child in the aspects that concern the child.

An important aspect of quality standards is concerning the *timeliness* of appointment of guardians. The practice across the world has confirmed that this is an important aspect of ensuring of all further measures and steps, and that immediate appointment of the guardian and his/her involvement in the procedure of identification must be the standard we aspire to. A guardian should be appointed at the very arrival/the first contact with the child, without delay or introduction of additional requirements (submission of the application for asylum, registration with the police, etc.). At the initial moment, the role of the guardian first of all serves to calm down the child and to develop the initial relationship of trust. Such an approach, in addition to the resources, also calls for the improvement of coordination and cooperation, as well as education of employees of other authorities/bodies, in order for them to change the existing practice. Early identification of vulnerability or risks ensures that the needs of the most vulnerable ones are timely recognized and addressed with special attention.

Talking about the quality, it is important to emphasize the need to ensure *accessibility of the guardian*, as the precondition for the building of the quality relationship of trust with the child. Although it seems that a lot has been done in ensuring 24/7 access by the guardian to the child, lack of human resources and high burden of guardians, as well as frequent changes of guardians, considerably limit the time the guardian has with the child. This is particularly important for the initial phase, when the child is transferred from one to another location, seldom informed about or involved in the decision on transfer. Although the majority of such children are in transit, those who have continued their journey according to the testimonies of the workers from the field, often stay in contact with their guardians even after they leave, regularly informing them about their lives. This is sufficient proof how

⁴⁵ Almost all the stakeholders in Serbia agreed about this conclusion, during the consultations during the drafting of this paper.

important it is to ensure that the guardian is accessible, as well as to continue being in contact with the child even when the child leaves the country, or comes of age. The Italian model explicitly recommends “A guardian volunteer performs his/her functions until the child reaches full age. However, bearing in mind that this arrangement starts from the message of social solidarity, which is focused on the care of the personality, it is desirable that the relationship between the guardian volunteer and the protégé continues even after the full age.”⁴⁶

PRINCIPLE OF RESPONSIBILITY

As already mentioned, the legislation in Serbia stipulates the concept of guardianship in which the obligations and responsibilities of guardians and the guardianship authority are clearly defined. In this respect the principle of responsibility is satisfied in principle, with the note that many aspects should be additionally elaborated, and harmonized with the recommendations on the guardianship; first of all, in the areas of the mandate and competences of guardians and ensuring of his/her independence in the work. If, for example, the principle of independence is not satisfied, the procedure of monitoring, and the potential re-examination of responsibility cannot guarantee impartiality, and thereby calls into question the principle of responsibility as well.

Although this is not directly related, it is also important, guided exactly by this principle, to take a look at the responsibility for looking for *durable solutions for a child*. Most of the children, upon their inclusion in the social welfare system, remain with the *status quo*. Initiation of the procedure for making of the decision on durable solution practically does not take place, with the exception of voluntary return or procedures related to asylum. A guardian must make a way out of the complying with the formal procedures and subsistence needs of children and initiate this process, where possible. Although, in these terms, the work of the guardian is to a large extent determined by the procedures of other stakeholders, it is important not to forget that it is the *primary responsibility* of all the stakeholders in the support to unaccompanied children and that the importance of the role of guardians must be recognized.

PRINCIPLE OF SUSTAINABILITY

The principle of sustainability can be examined in two ways. As regards the regulations, the guardianship system is an integral part of the child protection system and, as such, it is recognized in the law. However, the other side of the coin concerns the financial outlays, and limitations as regards the employment. These chronic difficulties prevent meeting of even the minimum standards prescribed by the law with respect to the number of professional workers per number of beneficiaries. In addition, the absence of investment in the strengthening of the institute of social welfare, particularly in the number of professional workers, in the long run prevents resolving of the pressing problems in social welfare. It is

⁴⁶ Page 5, *Guardianship for unaccompanied children in Italy*, Update after the adoption of Law No. 47 of 7 April 2017 and Legislative Decree No. 220 of 22 December 2017

also important to allocate additional funds that would be focused on the existing and development of new services in the community, such as cultural mediators, hostelry modelled after Miksališta (the Mixing House), field social workers, and the model of “professional guardians”, which has been discussed. Local self-governments, particularly small municipalities impacted by a great inflow of migrants can never increase their capacities to provide systemic support to such a number of people and, therefore, alternative services in the community, as a flexible model of support, are potentially the only response to the challenges they are facing.

PRINCIPLE OF CHILDREN’S PARTICIPATION

The principle of children’s participation assumes the respect of the right of the child to participate and present his/her opinion, as well as to get the opportunity to have the opinion of his/her be heard and acknowledged when making decisions. The precondition for a meaningful participation of children is *access to information*, which in case of such children also means the information that is adapted to their development phase and available in the language they understand. It is of the key importance that every child gets clear information on who the guardian is, what his/her competences are, how he/she can appeal, etc. The information must also include clear messages about the protection of children, unpermitted acts and behaviours, ways in which they can report the situations in which they do not feel comfortable, etc. The consulted guardians are aware of the limits they have because of the language barrier, cultural differences, and even the time period that the child spends in the country; however, they say that it is possible to find a way to additionally improve this segment. Exactly because of this reason the role of the guardian is becoming even more important because it is the critical, often the only instance through which the child can have access to information, get an opportunity to have his/her voice heard and to exercise the rights that are guaranteed to him/her. Cultural mediators, who are not just translators, but facilitators between children and the community in which they are located, play the important role in this segment of the exercising of this right.

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This overview has covered the key principles that ensure a good guardianship system, analyzing the existing system and pointing to the examples of good practices and possible solutions that are worth examining. It has to a large extent also covered the recommendations developed in the beginning of 2015, just before the crisis, in the study of Olga Byrne *Identification of verified models of support to children on the move with recommendations for adaptation and implementation in Serbia*⁴⁷, confirming their topicality even today. In this respect, it seems that most of the challenges, with respect to unaccompanied

⁴⁷ Byrne, Olga. *Identification of verified models of support to children on the move with recommendations for adaptation and implementation in Serbia*. Sarajevo: Save the Children, 2015.

children and the problems that need to be resolved, do not result from the migrant crisis, but had been identified even before the crisis.

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INSTITUTE OF GUARDIAN WITHIN A WIDER FRAMEWORK OF THE PROTECTION OF CHILDREN

The guardian also has an important role in different processes related to the child that are managed by other authorities/bodies and, therefore, the work of other stakeholders, engaged in procedures related to the child also has a significant impact on the quality and efficiency in the work of the guardian. This is first of all reflected in the work of *the guardianship authority*.

The current system to a large extent relies on the already overburdened professional workers of the centres for social work, who, in addition to their regular workload, must frequently be guardians to as many as several dozens of children. In addition to the direct work with beneficiaries, professional workers of the centre also have their obligations related to their narrow specializations (legal affairs, psychological assessment, case management, etc.), as well as huge paperwork and procedural workload they must do as official persons. The strengthened guardianship system, independent from professional workers of the centre⁴⁸ would significantly contribute to disburdening of social workers and, consequently, improve their work on basic duties (case management, assessment and decision making on the best interest of the child, establishing and monitoring of special measures for vulnerable persons, etc.). A guardian in his/her work certainly cannot act independently; instead he/she is to a large extent referred to daily close cooperation with professional workers of the centre. In addition to being legally focused on the guardianship authority in the activities they carry out with a child, professional workers of the CSW are also the first point of professional and fellow-worker support⁴⁹ to the guardians in the field.

A guardian also has an important role in other processes that concern a child, and which the authorities/bodies deal with outside the centre for social work. The biggest workload, as guardians testify, is concerning the assistances related to access to healthcare and education. Although not much has been said about those activities of guardians, they emphasize that this segment takes most of their time, as well as that they are often invited even when there is no need for that. In this respect, particularly “professional guardians“ engaged through the project, which is implemented by the IDEAS, talked about the lack of understanding of the institute of the guardian by other authorities/bodies, which often expect the guardian to take care of the child 24/7, “as it is done by a parent“. In addition to the evident need for additional education, it seems important that the role of the guardian in different

⁴⁸ In the current constellation, in addition to the specified obligations, duties of professional workers of the centre are also to supervise and control the work of guardians.

⁴⁹ Consultations with guardians, in November 2018.

procedures is additionally clarified and regulated by special instructions or a protocol on operation.

In addition to dealing with education and healthcare, a guardian is most often engaged in the *procedures of asylum seeking*. The Law on Asylum⁵⁰ recognizes an unaccompanied minor who is in a „specific situation of the person with special needs“ and, as such, it stipulates the obligation to appoint a guardian, prior to the submittal of the application for asylum. Basically, as concluded by Jelačić, the procedure of admission differs as compared to the full age persons “exclusively and only with respect to the obligation to appoint a guardian to unaccompanied minors” (Jelačić, 2013: 19). This is most often a formal process, in which the guardian is appointed *ad hoc*, and seldom has the opportunity to establish a contact with the child, to familiarize himself/herself with the child’s case, and to ensure his/her meaningful and informed participation.

In addition to the procedures of asylum seeking, an important segment of the work of the police administration bodies is also concerning the procedure of *age assessment*, which is practically nonexistent. In the absence of documents, for assessment of age, the statement of the person as to whether he/she is a minor or a major is used. This procedure is followed without qualified workers who, by interview techniques, could help in the process of establishing the age. The consequences of such dealing are reflected in a great number of adults who declare themselves as minors, additionally burdening the guardians and posing numerous risks, both for the children who are accommodated with adult persons, and in the situations of healthcare interventions, in which the age of a person may result in a wrong diagnosis or medicine dosage. Since the assessment of age is not a simple and cheap procedure, the EU countries do this also only for the persons in asylum procedure. The competent authorities in Serbia also expressed a similar position, explaining that such an investment does not have an effect, bearing in mind that such persons are in transit through Serbia. Although they will not resolve all the problems, involvement of guardians can to a certain extent reduce such abuses, as well as ensure that minor persons have a representative of their interests in such procedures that are important to them. At this moment, identification of unaccompanied minors is done by the police, which upon establishing the age, under emergency procedure, informs the competent centre for social work. Such practice differs from one centre to another and mainly depends on the capacities and, consequently, it happens that the centre responds and appoints the guardian even with a few days of delay.

There is a need to establish an *efficient mechanism of cooperation between different stakeholders*, from social welfare, the police, the healthcare system, educational institutions, and even international and local organizations having the mandate to support unaccompanied children (first of all the Red Cross, the UNHCR, and the IOM). The absence of intersectoral cooperation is maybe actually the biggest hurdle in the implementation of the relatively positive legislative framework. Non-coordination results in having the existing

⁵⁰ Articles 2, 15 and 16, the Law on Asylum.

legal loopholes and understatements as the permanent problem, which significantly aggravates the access to rights and results in drop out of children from the social welfare system. Bearing in mind the scale of the problem, and the expected continuation of inflow of unaccompanied children, it is important to harmonize actions of different stakeholders, and to draw up a single protocol on operation in case of unaccompanied children, which will clarify the conflicting mandates of different institutions and define the understatements of the existing framework. At this moment, the leading ministries/departments have adopted individual protocols⁵¹ on operation in case of unaccompanied minors. Although these efforts are highly commendable and certainly facilitate the work of the employees in those ministries/departments, it is necessary to agree upon a joint act that will ensure an integrated approach to the protection of unaccompanied children and clarify the mandates of different stakeholders, their roles and responsibilities. In this way the role of guardians would be clear to all the engaged parties, which would contribute to the empowerment of the guardian to react according to his/her mandate. This can be the staging area for the systemic approach to the resolution of the problem of unaccompanied children, which, bearing in mind the number of unaccompanied children who pass through Serbia on annual basis, should certainly be examined. A good example of such an approach is Italy, which adopted the law which regulates the composition and coordination in dealing with unaccompanied children, as well as numerous memorandums of cooperation between different stakeholders, additionally clarifying the procedures.

At this moment, the institute of the guardian in the majority of processes serves to satisfy formalities and does not have the essential weight in the decision making and measures related to a child. However, the range of processes in which the guardian should and must have a greater role, including significantly better coordination with other stakeholders, is not small. Special role of the guardian is also concerning the representation of interests of the child in the *procedures of durable solutions*: return to the country of origin, the process of family reunification, the process of asylum seeking, etc. Although it seems that currently the *temporary solutions* developed into regular rule of the work, it is the time to examine the things in a different way, and to thoroughly re-examine the approach to unaccompanied children and the role of the guardian in those processes.

Finally, although the responsibility of the state of Serbia for the protection of unaccompanied children is unquestionable, the reality indicates that there are certain limitations of the social welfare system, if by nothing else, by the territorial mandate it has. The complete absence of cross-border cooperation and transnational coordinated actions do not permit to ensure safe continuation of the journey to the children we identify. Transnational or cross-border cooperation of guardians related to individual cases of children has not been recorded at the level of the entire Europe. Social welfare bodies do not have the powers to initiate direct cooperation with their colleagues from other

⁵¹ The following institutions have their respective protocols on operation: The Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of the Interior, the Commissariat for Refugees and Migration.

countries, related to individual cases. Such an initiative must go through the competent ministries (the ministry of foreign affairs or the ministry of the interior), but it is in most cases limited to the cooperation related to victims of human trafficking and cases of international abduction of children, etc. However, there is no obstacle to the technical cooperation and networking with organizations and associations for the purpose of improvement of guardianship programmes, standardization of the way of work, and exchange good practices.

RECOMMENDATIONS

This Chapter presents a series of recommendations for strengthening of the institute of the guardian of unaccompanied children in the Republic of Serbia. Each recommendation is trying to answer to the following questions:

What?

Why?

How?

The recommendations also contain proposed solutions, grouping of different ideas and good practices collected through the making of the analysis and the process of consultations. The recommendations do not offer one-sided solutions, but different alternatives, where possible, as the framework for discussion about the most important issues in this area.

The recommendations are not dealing with the concept of guardianship in Serbia in general, or with all the problems which unaccompanied children are facing. The recommendations are concentrated specifically on guardianship for unaccompanied children, the current situation and potentials for improvement.

! The guardian must be empowered to act independently and impartially.

Why?

The principles of independence and impartiality are not adhered to in the current way of organizing of guardianship in the Republic of Serbia. In such an organization the guardian is in a potential conflict of interest while carrying out the tasks in the interest of his/her employer, as well as in the interest of the child he/she represents. Guardians must be in the position to make independent and impartial decisions that are in the best interest of the child and to promote his/her well-being. This problem is concerning the entire concept of guardianship and calls for amendments of the Family Law.

How?

There are numerous ways to organize guardianship and to satisfy the principle of independence. The offered solutions that have been recognized as examples of good practice are presented in detail in the actual analysis.

- The Slovenian example envisages **non-governmental organizations as providers of guardianship services**, which is actually the model that the IDEAS organization piloted last year, as the service of professional guardians in the Republic of Serbia. The organization as the service provider engaged professional guardians, who underwent the assessment and were appointed by the centre for social work. If it proves to be good practice, it will be necessary to standardize and licence this service as well as to allocate budget funds for further implementation. This service directly improves the quality of the protection of unaccompanied children, and significantly disburdens the centres for social work.
- Scotland and the Netherlands practice an independent **national guardianship authority**, which is separated from other authorities/bodies involved in making decisions on the protection of unaccompanied children. This model yields by far better quality decisions that are made on the child and, in addition, it has proven to be more efficient and more cost-effective.
- The Italian model is promoted as the revolutionary solution among the EU member states, and offers the proposed **voluntary guardianship**. The interesting thing of this model is that volunteers guardians functionally fall under the competence of the institution of the Protector of Citizens. The Protectors of Citizens carry out the recruitment, provide training, and manage the database of 1,200 volunteers. In this way, volunteers, in their work, are completely independent from the authorities/bodies that make decisions on the child.

2 To increase the number of qualified professional workers and guardians for unaccompanied children.

Why?

The number of unaccompanied children is chronically higher than the number of qualified guardians and professional workers needed to ensure minimum standards in the protection of unaccompanied children. This has impact on the quality of the entire support to unaccompanied children, and the role of guardians boils down to the satisfaction of the form. It is necessary to increase the number of qualified guardians and professional workers at the locations where there is an increased need for guardianship protection. In addition to the need to increase the coverage of children; this would also have impact on the quality of the work with and support to unaccompanied children. The current situation in which, in the best case, guardians have twice as many protégés than the minimum standards is unsustainable in the long run.

How?

The proposed solutions suggest the models that rely on alternative forms of financing or envisage flexible reallocations of the existing resources. Since it is not realistic to expect higher budgetary allocations within a reasonable time period, and bearing in mind the urgency of the problem, these proposals offer temporary solutions that in no way may be the substitute for the obligations of the state with respect to social welfare.

- The first proposal is the model mentioned in the *Recommendation 1*, which is implemented by the IDEAS organization – **services of professional guardians**. This project engaged additional 10 guardians who, in one year, supported around 800 unaccompanied children. This approach is envisaged in the existing law and, therefore, the process of standardization and licensing should be strongly supported, and budgetary allocations⁵² should be secured so that this service becomes accessible to all the local self-governments where there is a need for it. Slovenia has been implementing this model since 2003 and it is regarded as the example of good practice.
- The second option is the **model of voluntary guardianship**, which has been implemented in Italy as of recently. A volunteer/guardian differs from a professional guardian only by the fact that he/she may take care of maximum four children, bearing in mind that they do not receive remuneration for this engagement. As regards the responsibilities and obligations, obligations of a volunteer guardian are the same as of a professional guardian. This model may be interesting for Serbia due to its flexibility to respond to variable needs; it is not expensive; and what is most important, it involves the community in the support to unaccompanied children⁵³.
- The third, medium solution, is a **mixed model of professional-voluntary guardianship** (like in Germany), in which the institute of the professional guardian is retained, but trained volunteers are also included who, if need be, can be activated within a short period of time.
- In addition to the number of professional workers and guardians, it is necessary to provide **continuous programmes of development of competencies**, orientation and specialized trainings on specific topics relevant for the work with this group of children (identification and recognition of children at risk, the first psychosocial aid, asylum procedures, etc.)
- In order to provide quality and efficient support to the children in the field, guardians need additional support in terms of resources: transportation means, telephones, tablets, and the assistance of qualified translators

⁵² If this service is recognized as good practice, it is important to ensure allocation of budget funds in order to ensure sustainability of the service even after completion of its financing.

⁵³ *Guardianship for unaccompanied children in Italy*, Update after the adoption of Law No. 47 of 7 April 2017 and Legislative Decree No. 220 of 22 December 2017

3 It is necessary to enhance the quality of work of guardians.

Why?

Qualifications of the guardian are not adequately defined nor the procedures of recruitment, checking, monitoring, supervision, and enhancement of the quality of the work of the guardian. In addition, the existing framework does not clarify the procedures of appeal, whether and in what way children are informed to who they may report, how the confidentiality of the report is ensured, who is responsible for the procedure of efficient action further to the report, etc. The mechanism of appeal must be clearly defined, child friendly, and include timely reaction.

How?

Improvement of this aspect requires minimum intervention and has a range of ready-made solutions at disposal that can be easily applied:

Competencies

- It is necessary to consider the development of competencies or adoption of recommendations of the SafeGuard initiative which define **four key competencies** as critical qualifications that the guardian should possess:
 - Knowing of procedures and legislative framework;
 - Ability to build the relationship of trust with the child;
 - Ability to recognize psychosocial problems with the child and the risks that child has been exposed to
 - Skills of cultural mediation and effective linking of the child with institutions in the community.

Monitoring of the work of the guardian

- One of solutions for the current institutional framework can be introduction of an **evaluation sheet** which the child fills out occasionally, or upon termination of guardianship. This form is child friendly, and is attached as *Annex 2* hereto. It certainly needs to be adapted for the use in this context, and to the group of children with whom guardians work, but it can easily be introduced as a simple way to monitor and control the quality of the work of guardians.
- Another solution, which is recommended as the golden standard in Europe, is introduction of the **supervisor**, who would exclusively deal with this task. The recommendation is that there should be no more than 30 guardians per supervisor. This solution calls for additional resources and certain reorganization of the manner of work of the centre for social work.
- Guardians must have **access to further education and development of competencies**, including access to resources, information, and additional support from experts from different areas, regular and additional instructions and trainings. In addition, it is necessary to ensure access to resources in terms of transportation,

telephone set, tablet, translator, etc., so that they can be operational in the field and spend their working hours more effectively.

- Guardians should have regular **professional supervision**, independent from immediate superiors.

Procedures of lodging of appeals against the work of guardians

- It is necessary to develop the **mechanism for lodging of appeals** against the work of guardians, as well as the procedure of urgent reaction further to reporting, which has regulated processes of the protection of data and confidentiality of the procedure further to reporting.
- It is necessary to prepare a **package of initial information for the children**, which the child must get on the occasion of the first contact with the guardian. The information should be adapted to children and contain basic information on what the role of guardians, obligations and responsibilities are, what they can expect from them, and to whom they can appeal if there is a reason for an appeal. The mechanism of appeal must be clearly defined, adapted and accessible to children and the context in which they are, and ensure the principle of confidentiality of information and the procedure response.

Networking

- To support formal or informal forms of **networking of guardians**, which networks would serve as the platforms for support and space for development and acquiring of competencies, peer learning, exchange of knowledge and lessons learnt.

4 To define the quality standards of guardianship and the mechanism for their monitoring

Why?

The existing legislative and institutional framework broadly defines obligations and responsibilities of guardians and does not remain understated with respect to the competencies, role, and powers that the guardian has. This area needs to be systemically regulated, firstly by the clear definition of the key obligations that the guardian is to meet, and which the law does not specify, such as, for example, the best interest of the child, participation of the child, etc. The current practice and the manner of organization significantly diminish the quality of the work of guardians, and it often boils down to the meeting of formal requirements, while children remain deprived of the quality support. Although meeting the functional standards, circumstances under which he/she works often prevent the guardian from properly meeting any of the obligations defined by the mandate.

How?

- The existing regulations should be harmonized with the recommended quality standards in this area. **Competences of guardians should be additionally explained**, and additionally clarified for the purpose of harmonization with the recommended Core Standards. Special attention should be focused on the clarification of the responsibilities for the representation of the best interest of the child and ensuring his/her participation.
- It is necessary to define what kind of **relationship the guardian should built with the child**, and in what way he/she can develop the relationship of trust. This includes the recommended and desirable behaviours, as well as impermissible behaviours, for the purpose of the prevention of abuse of the position of power in which the guardian is in relation to the child.
- For the guardian to be efficient, and to represent unaccompanied children in the most important decisions that concern them, he/she first of all must be **timely appointed**, and should also have sufficient time to get to know the child, develop the relationship of trust, consult the child about his/her opinion, and only then he/she can adequately represent the child.
- It is necessary to consider amendments of the *Instructions* for operation in order to **reduce the rate of changing of guardians** in the processes related to the same child and to ensure timely exchange of information on the child, if the guardian is changed. Although this calls for a systemic solution, acting according to the *Recommendation 2*, this would not be difficult to achieve. For the context in which we are, a flexible model is needed that overcomes the limitations of the territorial competences of the centres for social work.
- To re-examine the well-established practice of the use of 'temporary' solutions for unaccompanied children (the model of temporary guardian, temporary accommodation, etc.) and to **proactively look for modalities that provide to the child certain prospects for the future**. In this respect, drawing up of individual plans should be adapted, with regular reviews, and include short-term and medium-term and, where possible, long-term plans. It is particularly important to ensure quality and timely information exchange, and that, in situation when guardians are changing, the process of transition is adjusted to the child.
- Attention should be paid to the children who come of age and leave the system. It is necessary to timely provide the **transition plans for children who come of age** or are for some other reason leaving the social welfare system, through the programmes of support for becoming independent.
- It is important to make efforts in order to **minimize discriminatory practices**. To ensure that the rights of children, and the services that are at their disposal, do not depend on their legal status. All the children must have the guardian who acts in the same way in individual procedures, regardless of their legal status. It is particularly

important to identify all the unaccompanied children in need for guardianship protection, and to ensure that they timely get the guardianship protection.

- It is important to **retain the concept of professional guardianship** and to strengthen the guardians' competencies in the area of the protection of this group of children, as well as the mandates and procedures of other authorities/bodies engaged in procedures that concern unaccompanied children. In the examination of voluntary arrangements, it is important to ensure the same system of checks and competencies, same as in case of a professional guardian.

5 To strengthen the role of the guardian in the representation of the best interest of the child

Why?

The role of the guardian in ensuring the best interest of the child is defined by the Law by principled provision "Everybody is to be guided by the best interests of the child in all activities that concern the child", without clarifying the specific role and obligations of the guardian in this respect. Since this is the primary task of the guardian, the guardian, same as other stakeholders involved in the assessment of and decision making on the best interests of the child, must understand the importance of the guardian in this procedure. The best interest of the child must be assessed from different aspects of his/her life, not only in emergency situations or questions of survival. The Committee on the Rights of the Child warned Serbia that cases of the return of children under the readmission procedure have been recorded, without the assessment of their best interests and invites the state to provide this procedure in the decision making on durable solutions.

How?

- It is necessary to promote and disseminate the developed **SOPs for the protection of children migrants** among professionals, and to advocate the adoption of the protocol by the Government of the Republic of Serbia.
- The assessment of the best interest of the child should be made related to **all the important decisions that concern the child** and cover different aspects of his/her personality. Here the role of the guardian is particularly important, because he/she is the 'owner' of this process, and must regularly re-examine whether the procedures related to the child are followed in line with his/her best interests.
- The children, who are staying longer in Serbia, have the right to the initiation of the **procedure of finding of a durable solution**. If the guardianship authority or other institution does not raise this issue on any grounds, the guardian should initiate the discussion on the initiation of the procedure before the guardianship authority.

- **The guardian must be involved** in the procedure of assessment and decision making on the best interest of the child and be empowered to represent and advocate the interests of the child in the right way.

6 **To strengthen the role of the guardian in ensuring the participation of the child**

Why?

The reports indicate that the children not only are not asked, or involved in the process of decision making, but most often do not have access to the information on the rights they are entitled to, and processes that concern them. Also, children often do not recognize the guardian as the person of confidence, although they know that they exist, because they do not have a regular contact with them. In the context of unaccompanied children, who are situated in a foreign state, the language of which they do not speak, the guardian must be the guarantor that the child will be regularly informed, and thereafter also involved in the process of decision making in an informed and appreciative manner. In addition to being the legal obligation, meaningful participation of this group of children is of fundamental importance for the development their personalities, and the support to the process of their becoming independent. Regular and ethical inclusion of children in the process of drawing up of programmes, measures and policies, yields a new quality, because it ensures their confidence in the process, and the decisions that have been taken.

How?

- The precondition for a meaningful participation of children is **access to information**, which in case of unaccompanied children means timely information adapted to their development phase and available in the language they understand. Every child must get clear information on the institute of the guardian according to the *Recommendation 3*, as well as on unpermitted acts and behaviours, and the way in which they can report on situations in which they do not feel comfortable, etc.
- A guardian is a critical, often **the only instance through which a child can have access to information and give opinion** on the decisions that concern him/her. For this reason, guardians must make more efforts to ensure participation of children, as well as to have their voice heard.
- The professional public must work on the **development of programme of training in the manner of involvement of children**, in order to improve the provision of information to them and their participation in the processes that concern them. There are numerous instruments and tools adapted to children on the move, which can help to overcome the obstacles in consultations with children on the move, when there is a language or cultural barrier. Use should be made of the existing resources among the local organizations that have developed techniques and tools,

which require minimum resources, and which can significantly improve the participation of children.

- Alternatively, the NIDOS organization⁵⁴ has developed an instrument that is aimed to support professionals in ensuring of the right of unaccompanied child to participation, with the special focus on the tools that can be used in the **process of inclusion of children**, and collection of their opinions.
- It is necessary that all the stakeholders ensure the process of regular **consultations with unaccompanied children** related to important issues that concern them. The organizations that implement programmes for unaccompanied children must have a regular process of meaningful and ethical involvement of children. This process must ensure that children are involved in a meaningful and ethical way, and that children get feedback information on the outcomes of their participation in consultations.

7 Accommodation for unaccompanied children must be safe and adapted to unaccompanied children

Why?

Guardians and professional workers from the field state that the biggest challenge in their work is accommodation of unaccompanied children, for which they find that it is inadequate and unsafe. Although the guardian has the obligation to ensure that the child is safe and thereby that he/she participates in the making of decisions on accommodation of the child, this does not happen in practice. The guardian is in the majority of cases appointed only after the decision on accommodation of the child has been made. And he/she is changed each time when the child changes accommodation. Accommodation capacities of social welfare institutions for emergency care of unaccompanied children are small and, therefore, children are mainly referred to asylum centres. The Commissariat is the one that makes the decision on to which of the available centres the child should be referred. This is important for the work of guardians because the accommodation of the child to a large extent determines the quality of his/her work. It significantly differs if the child is in a social welfare institution or in an asylum centre or reception centre. Asylum centres do not have professional staff trained in the work with children, or satisfy minimum standards of social welfare for emergency care of children. In this respect, any systemic solution must take this type of accommodation into consideration as the last and temporary option, and only when it is in the best interest of the child.

How?

- Accommodation of a child **must not be conditioned or determined by the legal status of the child**, but primarily by the assessment of his/her best interests.

⁵⁴ *The Right to Be Heard and Participation of Unaccompanied Children a Tool to Support the Collection of Children's Views on Protection*, NIDOS, 2014

- The child and the guardian must be ***involved in making of decision on accommodation of the child***, and that is why it is necessary that the guardian is appointed within the shortest possible time, whenever possible, and before the decision on a more durable accommodation is made;
- It is necessary to ***increase accommodation capacities of specialized units*** for accommodation of unaccompanied children, including special reception units for girls. The refurbished and newly constructed units should be most urgently made functional and the professional staff required for their operation should be provided;
- If unaccompanied children are accommodated within asylum centres, or reception centres, they must have ***special smaller units, with qualified professional workers*** who would take care of children 24/7. Accommodation of children in asylum centres must not in any way limit their access to other rights or services or bring them in an unsafe situation.
- It is important to continue the development and engagement of ***specialized foster care***, as well as of other forms of alternative accommodation, whenever it is possible and in the best interest of the child.

8 To strengthen the coordination between stakeholders and ensure multisectoral approach.

Why?

The guardian is the starting and the key element of the broader child protection system, and his/her main function is to facilitate the access to the rights of and services for unaccompanied children. In this respect there is a need for a clear and formalized cooperation of the guardian with different stakeholders, in which the roles, responsibilities, and procedures, with respect to the protection of and support to the unaccompanied child, are clearly defined, with regard to the roles and responsibilities. Strengthening of **multisectoral** cooperation brings along significant relief to all the other services outside the social welfare system, which are involved in different measures and processes that are initiated related to the child. This can also contribute to the resolution of some of the pressing problems, which do not originate from the area of social welfare, but have a direct impact on the work of guardians. This is at the same time also one of biggest criticisms addressed to the Republic of Serbia, in the 2017 report of the Committee on the Rights of the Child.

How?

There are a number of different measures that can be undertaken for the purpose of improvement of the coordination and enhancement of the necessary **multisectoral** cooperation. Some of the proposed measures may include the following activities:

- Compiling of individual protocols on operation in a single ***umbrella document*** that would define the Guidelines/Instructions for operation of all the stakeholders

involved in the process of support to unaccompanied children. The basis for this can be the existing „General Protocol for the Protection of Children from Abuse and Neglect“, or it is possible to start drawing up of the intersectoral Action Plan for unaccompanied children who are found in the territory of the Republic of Serbia.

- Compilation of a **single database** of unaccompanied children that would improve the quality of information and contribute to better planning, monitoring of children, and networked actions in risk prevention. Alternatively, to ensure that all the government bodies, which are authorized to work with unaccompanied children, keep updated databases and ensure **exchange of the existing information**, and statistical data that is of importance for understanding of the problem, definition of policies and measures of different institutions.
- To consider setting up of a temporary **intersectoral working group**, which would have the task to offer solutions for the current understatements and conflicting mandates in the assistance to unaccompanied children⁵⁵.
- The guardianship authority should act proactively in terms of **involvement of relevant stakeholders** in the support of the child and processes that concern him/her: drawing up of the plan of care, case conference, as well as activities of assessment of the best interest of the child.
- To enhance the **understanding of the institute of the guardian among other stakeholders**, engaged in the support to unaccompanied children. It is necessary to organize orientations of the persons engaged to act in cases of unaccompanied children from different ministries/departments, concerning the institute of the guardian, competences and obligations to involve guardians in the procedures that concern children.
- Sensitive procedures of identification, establishing of the age, relations with other members of the group, assessment of vulnerability and risks, etc., must be followed with **mandatory inclusion of guardians**, and relevant professional workers, social workers, pedagogues, psychologists, etc.
- Ensure coordination of the donors' policies in the field of guardianship with the policies and strategic plans of the Ministry of Labour, Employment, Veteran and Social Policy of the Republic of Serbia.

⁵⁵ Although the Working Group for Unaccompanied Children was formed at some time past (as the subgroup of the Child Protection Working Group), this initiative has not survived. The existing Child Protection Working Group may be the framework for launching of the initiative, but the recommendation is to have the formal working group initiated and managed by the competent ministry.

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ANNEXES

ANNEX 1 - 10 CORE STANDARDS

ANNEX 2 – GUARDIAN EVALUATION FORM

ANNEX 3 - LIST OF THOSE INTERVIEWED

ANNEX I - 10 CORE STANDARDS

Role and responsibilities of the guardian

Standard 1: The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.

The guardian is able to represent, assess and adjust the best interest of the child on a daily basis, to involve relevant stakeholders and ensure that the assessment on the best interest of the child is based on the opinions of the child and individual circumstances.

Standard 2: The guardian ensures the child's participation in every decision which affects the child.

The guardian informs the child in a sensitive way and checks whether the child understands the information and whether he/she can remember it, listens carefully to the child and guarantees that plans are based on the opinion of the child and that the child has been familiarized with the plan. He/she is open to feedback information and manages the expectations of the child.

Standard 3: The guardian protects the safety of the child.

The child's safety is the highest priority to the guardian. He/she recognizes when the child is abused and when he/she was the victim of human trafficking, reacts to indications that the child has been hurt or in danger and reports thereon, provides to the child the environment in which he/she may say anything that is related to his/her safety, deviates from the rule of confidentiality when the child is in danger, provides to the victim an adequate treatment and the guardian accepts that his/her own behaviour is monitored.

Standard 4: The guardian acts as an advocate for the rights of the child.

The guardian is reliable and committed watchdog, dedicated to defending the rights of the child. Possesses the emotional strength, opposes decisions that are not in the best interest of the child and demands fair procedures for the child.

Standard 5: The guardian is a bridge between and focal point for the child and other actors involved.

The guardian is in contact with all the relevant stakeholders, takes care to be informed about all the decisions that concern the child and is present at meetings as required. He/she assists in the establishing and development of the links with the child's community, which gives the child the sense of belonging to the family or the group.

Standard 6: The guardian ensures the timely identification and implementation of a durable solution.

The guardian ensures the identification of a durable and safe solution and encourages others to prove that their proposals for a durable solution are in the best interest of the child.

Supports reunification of the child with the primary family and supports integration of the child in the host country when it is in the best interest of the child. Insists on safety guarantees when the child returns home and prepares the child for all the predictable changes which can occur once the child turns eighteen.

The guardian and the child separated from parents

Standard 7: The guardian treats the child with respect and dignity.

The guardian behaves in an adequate manner, treats the child without prejudices, respecting the identity of the child, the right to privacy and cultural differences, supports the child in the development of relations with peers and acts in a flexible way, tailored to individual needs of the child.

Standard 8: The guardian forms a relationship with the child built on mutual trust, openness & confidentiality.

The guardian is always honest with the child, keeps secrets and all the confidential information, except when it is necessary to break the rule of confidentiality of information in order to protect the child. Pays attention to verbal and non-verbal communication, he/she is emphatic and provides moral support to the child. Fulfils promises. Makes clearly to the child that he/she is always welcome to come back if he/she disappears.

Standard 9: The guardian is accessible.

The guardian can be easily reached, lives near enough to the child to be able to quickly respond to difficulties, sees the child promptly after his/her meetings, frequently visits the child and communicates with him/her in a way which fits the age and development of the child. Uses the services of an interpreter when necessary and communicates with the child even when there is no specific need to do so.

Qualifications of guardians

Standard 10: The guardian is equipped with relevant professional knowledge and competences.

The guardian is proactive in the identification of the needs for learning and further development, manages his/her workload and available resources, he/she is responsible, works in accordance with the set methodology, knows his/her own personal and professional limits, looks for support and counselling as required and is open to supervision and monitoring.

ANNEX III: GUARDIAN EVALUATION FORM – END OF GUARDIANSHIP ⁵⁶

Description	Scale
My guardian had time for me	1 2 3 4 5
My guardian listened to me	1 2 3 4 5
My guardian was available	1 2 3 4 5
I am satisfied with the co-operation with my guardian	1 2 3 4 5
My guardian helped me with my problems	1 2 3 4 5
My guardian advised me	1 2 3 4 5
I received help when I needed it	1 2 3 4 5
My guardian fulfilled his/her promises	1 2 3 4 5
I know what guardianship means	1 2 3 4 5
I knew what I was good at	1 2 3 4 5
I knew what I still had to learn	1 2 3 4 5
My guardian helped me with what I had to learn	1 2 3 4 5
I'm satisfied with the support offered by my guardian	1 2 3 4 5
I know what I need to be able to live on my own	1 2 3 4 5
My guardian helped me with my circumstances of living	1 2 3 4 5
I've got friends around me	1 2 3 4 5
My guardian encouraged me in establishing a circle of friends	1 2 3 4 5
My guardian supported my education	1 2 3 4 5
My guardian encouraged me in going to school	1 2 3 4 5
I know what to do with my free time	1 2 3 4 5
My guardian advised me to do something in my free time	1 2 3 4 5
My procedure is clear to me	1 2 3 4 5
My guardian was available for questions about my procedure	1 2 3 4 5
My guardian informed me about my procedure	1 2 3 4 5
I know where to ask questions about my procedure	1 2 3 4 5
The support offered was useful to me	1 2 3 4 5
I know what my goals for the future are	1 2 3 4 5
I know how to approach my goals for the future	1 2 3 4 5

Open questions:

What did you appreciate about the guardianship institution?

What did you miss at the guardianship institution?

What else do you want to write down?

⁵⁶ Evaluation form, to be filled in by a child at the end of guardianship, is taken from De Ruijter de Wildt, Liedewij. The Right to Be Heard and Participation of Unaccompanied Children: A Tool to Support the Collection of Children's Views on Protection, the NIDOS, 2014

ANNEX 3 - LIST OF THOSE INTERVIEWED

	Name and surname	Position	Organization
1	Marko Šijan	Refugee and Migration Officer	Church World Service
2	Milenko Nikić	Adviser of the Minister of Labour, Employment, Veteran and Social Affairs, the Republic of Serbia	Ministry of Labour, Employment, Veteran and Social Affairs, the Republic of Serbia
3	Francesca Rivelli	The Child Protection Specialist, Child Protection Working Group Coordinator	UNICEF
4	Biljana Kosanović	Protection Community Associate	UNHCR
5	Aleksandra Mrkela	Child Protection Assistant	UNHCR
6	Dragan Vulević	Adviser of the Minister of Labour, Employment, Veteran and Social Affairs, the Republic of Serbia	Ministry of Labour, Employment, Veteran and Social Affairs, the Republic of Serbia
7	Lidija Milanović	Centre for Trafficking Victims Protection, the author of the publication Standard Operating Procedures for the protection of children refugees and migrants	Ministry of Labour, Employment, Veteran and Social Affairs, the Republic of Serbia
8	Marko Milanović	Director	Society Research and Development Centre, the IDEAS
9	Jelena Šurlan		Commissariat for Refugees of the Republic of Serbia
10	Nevenka Žegarac	Professor of the Faculty of Political Sciences	Faculty of Political Sciences, the University in Belgrade
11	Vesna Popović	Head of the Centre for Social Work Palilula	Centre for Social Work Palilula
12	Tanja Vukić	Lawyer, guardian	Centre for Social Work Palilula
13	Gordana Preradović	Lawyer, guardian	Centre for Social Work Palilula
14	Ljiljana Savić	Case Manager in the Service for the Protection of Children and Youth	Centre for Social Work Palilula
15	Dijana Kovačević	Case Manager in the Service for the Protection of Children and Youth	Centre for Social Work Palilula
16	Fosca Nomis	Head of the Advocacy and Policy Department, Italy-Europe	Save the Children
17	Giusy Dalconzo	Advocacy Coordinator	Save the Children
18	Đorđe Sjeničić	Guardian	IDEAS
19	Igor Milikić	Guardian	IDEAS
20	Slađana Marinković	Guardian	IDEAS
21	Tijana Velimirović	Guardian	IDEAS

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