

Unaccompanied Children in the Danish Asylum Process

- Experiences from Legal Counselling of
and Assistance to Children



Danish Refugee Council



EU-Commission

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The Danish Refugee Council is a co-operative organisation comprising:

ADRA Denmark - Amnesty International - CARE Denmark - Caritas Denmark - Council of Danish Artists – DanChurchAid - Danish Association for International Cooperation - The Danish Association of Youth Clubs - The Danish Confederation of Trade Unions - Danish Employers' Confederation - Danish Musician Union - Danish People's Relief Organisation - Danish Save the Children - Danish United Nations Association - Danish Writers Association - Danish Youth Council - General Workers' Union in Denmark – Ibis - IND-sam, The Ethnic Minority Federation in Denmark - The Jewish Community - Labour Movement's International Forum - The Association New Danes - The National Council of Women in Denmark - The National Danish Organisation for Gays and Lesbians - The Union of Commercial and Clerical Employees in Denmark - UNICEF, Denmark

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1. Introduction

Since March 1999 the Danish Refugee Council has implemented a project supporting unaccompanied minors seeking asylum. As neither a guardian nor a legal representative is appointed for the children upon arrival in Denmark, there is a specific need for support for this vulnerable group of asylum seekers. The project, "Establishment of Legal Counselling and Assistance to Unaccompanied Minor Asylum Seekers", has been funded for a year by the EU-Commission under the Budget Line B5-803 – "Reception and Repatriation Projects for Asylum Seekers, Displaced Persons and Refugees".

This report sums up observations made during the visits to the Red Cross centres for minors. It is based on experiences from the counselling of and legal assistance to children, interviews with the pedagogical staff at the centres, interviews with representatives ("bisidder") of the Red Cross and psychologists at the Danish Red Cross and the Rehabilitation Centre for Torture Victims respectively. Furthermore, information is drawn from relevant literature from immigration authorities, organisations and academic research.

Lessons learnt from countries which Denmark normally compares itself to, are included in the report. The counsellors have conducted three visits to Sweden, Norway and the Netherlands respectively, visiting immigration authorities and NGOs that are working on the reception of unaccompanied minors.

The *first* section of the report is a description of the psychosocial condition of the unaccompanied minor asylum seekers and the motivating factors of the Danish Refugee Council to set up specific support for this group of asylum seekers. The *second* section compiles our experiences on the legal and social condition of the children during the asylum procedure. This will be illustrated by individual cases.

The Immigration Service has suggested future changes to the policy of receiving unaccompanied minor asylum seekers. An internal working-group conducted research on the reception of unaccompanied minors and a report from July 1998 draws up a list of possible changes to the procedure. The Immigration Service arranged a seminar on unaccompanied minors in the asylum procedure in March 1999 and in a recent Newsletter, a change in the policy such as the appointment of a guardian and training of interviewers is proposed.

With reference to the results of the counselling project, the Danish Refugee Council would like to encourage changes in the policy and emphasise the need for thorough inter-disciplinary research on how to adopt a procedure which serves the best interests of the children.

2. Statistics and Countries of Origin

Denmark has in recent years received around 200-300 hundred unaccompanied minor asylum seekers a year. It is generally difficult to get accurate statistical information on the number of asylum applications lodged by unaccompanied minors. According to the statistics of the Red Cross, Denmark has received 196 and 319 unaccompanied minors in 1998 and 1999 respectively.¹

¹ Sweden and Norway receive asylum-applications from unaccompanied minors on a similar scale, though last year Norway experienced an increase in applications from children. Sweden has received 152, 295, and 236 applications in 1997, 1998 and 1999 respectively. Norway received 561 applications from children in 1999. The Netherlands has

Unaccompanied minors normally come from countries torn apart by civil war or countries where grave human rights violations are continually taking place. The majority of children arriving in Denmark come from Somalia, Iraq and Sri Lanka. This corresponds generally to the countries of origin of unaccompanied minors arriving in Sweden and Norway. The Netherlands, however, receives high numbers of asylum seeking children from for example China, Congo, Nigeria and Sierra Leone.

3. Psycho-social Condition of the Minors

Asylum seeking children who come to Denmark on their own, are undoubtedly the most vulnerable group of asylum seekers. They are strangers in a foreign culture and language context without parents or child-carers at a time when they are going through an important transitional phase to adulthood. The abrupt separation from family and home can leave the children and young people confused about their identity and lacking in self-esteem. As explained below, the experience of separation and traumas can have profound consequences for the psychological development and cognitive competence of a child.

Separation

The children have lost their familiar surroundings - parents, family, friends, school etc. These are losses which go far beyond the losses of separation which are normal during puberty.

The losses have been described as so-called “unclear losses”, which means that they may not be irrevocable. They are not concrete and absolute and are therefore difficult to deal with. Life in exile is marked by many unclear losses. Usually, all that the child has lost exists somewhere and the reunion is therefore not impossible. The hope of this can be very valuable, although it may complicate the necessary mourning process. (Mertz and Starka 1991 p. 18 and Hannemann 1997 p. 32)

Experience of Traumas

In the context of refugee children, it is necessary to define psychological trauma as the reaction of a person that has been subjected to a distressing experience, which he or she is powerless against, and where strategies of adjustment up till now have proved to be inadequate. This definition is significant because it does not only involve individual events but also a circumstance of living such as growing up in a refugee camp or having parents who have been traumatised by imprisonment or torture or living through long periods of war. (Schaarup 2000 p. 5 and Montgomery 1996 p. 235)

As many unaccompanied minors come from war-torn or authoritarian societies it can be assumed that many of them have been exposed to traumatic experiences – fighting, killing of soldiers or civilians, grenade attack, shelling and bombing, displacement, living in refugee camps under harsh conditions etc. The Danish Red Cross has conducted retrospective research on the need for support and treatment of a group of unaccompanied refugee children. The research is based on therapeutic interviews with 35 children. From a broad group of unaccompanied minors a large percentage had been subject to various kinds of potentially traumatic experiences;

generally experienced an increase in the number of asylum applications from unaccompanied minors over the last years: 1995(1939), 1996(1641), 1997(2845), 1998(3504) and 1999 (5500) (estimated figure).

Imprisonment	37%
Torture	29%
Participation in military activities	31%

Source: Stæhr, Lindskov and Carey 1997 p. 1

The following symptoms were diagnosed:

Psychosomatic symptoms	37%
Difficulties in sleeping	46%
Anxiety	17%
Depression and aggression	14%

Source: Stæhr, Lindskov and Carey 1997 p. 2-4

The research of the Danish Red Cross shows that the unaccompanied minors often have a relatively high level of anxiety, depression and bad health. The Danish Red Cross concluded that approx. 30% of the unaccompanied minors had a need for specific care in the form of increased contact with pedagogical staff, psychologists and nurses and for support measures or treatment. (Stæhr, Lindskov and Carey 1997 p. 3)

The research of Montgomery at the Rehabilitation Centre for Torture Victims on 311 refugee children from the Middle East who had arrived in Denmark as asylum seekers accompanied by their parents or other child-carers, shows that a large number of the children had experienced violent-related events;

Lived in a refugee camp outside the home country	92%
Lived under conditions of war	89%
Fled with parents	89%
At least one of the parents had been subject to torture	51%
Lost a parent	20%
Separation from one parent for more than one month	60%

Source: Montgomery 1996 p. 142

Montgomery found a high level of anxiety among the children - 67% of the children were assessed as being clinically anxious. (Montgomery 1996 p. 143)

Developmental Consequences

Experiences of war and other organised violence have a profound influence on children. Originally, such experiences were not believed to have long lasting effects on otherwise healthy individuals. However, several recent studies have suggested that these experiences can have profound developmental consequences. Traumatic experiences can influence the child's emotional, cognitive and moral development. (Montgomery 1998 p. 189)

Research within cognitive psychology has shown that the ability to acquire knowledge and solve problems is reduced during conditions of anxiety and depression. (Schaarup 2000 p. 7) The experience of traumas can thus affect the cognitive competence of the child and the ability of the child to pass on information during interviews in the asylum process. This should be taken into account when considering whether the individual child is sufficiently mature to take part in the asylum process and how to conduct the interviews.

An account of a Tamil boy

A 15-year old Tamil boy arrived in Denmark from Colombo and explained to the Red Cross staff and during the asylum interview with the Immigration Service that he had been displaced several times with his family because of the war. His parents were killed and he had been living with some relatives. He explained that he had seen some persons carrying dead people. The contact-person at the Red Cross centre found the boy very distressed and fragile. A few weeks later the boy explained to the contact-person that he had dug holes for dead bodies and after some months he explained that he had actually carried dead soldiers himself. He was only able to talk about these activities after approx. five months.

The Dialectic of Trauma

According to Montgomery the above mentioned boy's reaction is a possible example of the psychological coping with traumatic experiences and the so-called dialectic of trauma. (Interview with Montgomery in March 2000)

After a traumatic experience the traumatised person is rendered in an acute state of arousal characterised by anxiety and fear. Fragmented pictures or other sensations attached to the experience, penetrate the mind without warning. Even little children who have been exposed to traumatic experiences so early that they have no verbal memory of it, (before about 30 months) can re-experience part of the event and express it in play in a compulsive way. The traumatised person will also try to avoid memories and repress them from consciousness. These two opposite reactions, re-experience and restriction, make up the dialectic of trauma. (Montgomery 1998 p. 190)

Psychosomatic Symptoms

The typical reactions to separation and traumatic experiences of unaccompanied children are depression, changes of mood, reservation, increased level of aggression and psychosomatic symptoms. Psychosomatic symptoms of unaccompanied refugee-children are head-aches, stomach-aches, nightmares, sleeplessness, enuresis (bed-wetting), motoric unrest, increased irritability, difficulties with concentration, learning difficulties, friendship difficulties and fear of deep emotional contact.

However, it is also important to see these psychological and psychosomatic reactions as healthy and normal reactions to an extreme situation. The children are vulnerable, but they are also children with many resources who have developed a unique strength to survive. (Hannemann 1997 p. 34)

Feigned Identity

Two psychologists from the Danish Red Cross have written an article on "Young Refugees with a Feigned Identity – Teenagers in a Social Vacuum". The article is based on 27 cases from 1993-1997 where the person had admitted having a feigned identity. The children were 14-18 years of age. They had come to Denmark alone and had taken on – or were told to take on – an identity where important personal characteristics had been changed. These were typically change of name, age, family – or nationality. The change of identity was often motivated by the goal of receiving permission to stay. It was the impression of the authors that the young unaccompanied persons were strongly attached to unknown persons and that the child through the possibilities in a new asylum country should secure the survival of their family.

The article deals with the possible consequences of the psychological development of a young person who lives with a feigned identity in the teenage-years. They are living in a social vacuum with no possibility of revealing the truth neither to the adults in the majority-culture, nor adults from their own culture, and nor to persons of their own age. Disintegration of the personality is necessary in order for the young person to distinguish between the “asylum-story” and reality. The authors are worried about young people who have to live for several years with a feigned identity. On a psychological level they have to use defence-mechanisms, which in a long term perspective will hinder the development of a well-integrated personality. (Lindskov and Sørensen 1999 p. 135-39)

There is no clear documentation on the scale of children who are “keeping secrets” because they were told to do so by parents or other relatives arranging their flight. However, it is clear that these children are extremely vulnerable because their “secrets” can affect the development of a well-integrated identity.

Part of a Legal Process

As asylum seekers the children are part in an administrative process and they are dependent on structures unknown to them. This requires personal responsibility and initiative, which is unusual to demand of a minor. In the Danish asylum process, the asylum seeker is ultimately responsible for providing relevant and adequate information in order for the authorities to consider the case. This principle follows directly from article 40 of the Danish Aliens Act. During interviews in an asylum case the children are expected to explain their background, the motive for applying for asylum, political activities of the child or family-members etc. The interviews are almost always dealing with themes that are emotionally disturbing to the child, such as physical assaults on the child or family-members, violence and war, detention, torture, death and fear.

When the children are interviewed, they are subjected to two kinds of stress. One stress-factor is the unusual situation of being interviewed in itself. To be able to understand the questions and the reasons why the interview is taking place. The second stress-factor is linked to being a victim of or witness to violent or traumatic events. If children seem hesitant to pass on information, it can be explained by the stress they are experiencing during the interview. (Schaarup 2000 p. 8)

Preconditions for a Successful Identity-process

As mentioned above the experience of separation and traumas can have a profound impact on the child’s emotional, cognitive and moral development. The table on the following page compares the preconditions for a successful identity-process for teenagers with the psychosocial reality of unaccompanied children. Mirroring the two concepts clearly shows that the refugee children are especially vulnerable. This fact must be reflected at all levels in a policy on their reception and processing in the asylum procedure.

Precondition for a Successful Identity-process	The Psycho-social Reality of Unaccompanied Children
<ul style="list-style-type: none"> • presence of role-models • possibility of a level of integration between the individual identity and the identity of the group • integration between the past, the present and the future • the necessary time for independence <p>(Erikson, E. 1968)</p>	<ul style="list-style-type: none"> • loss of emotionally close relations • individual identity is damaged • lack of group-identity • the past: separation from culture • uncertain future • the present: coping with traumatic experiences • huge responsibility (in the asylum procedure, with feigned identity and responsibility for the family) <p>(Lindskov and Sørensen 1999 p. 138)</p>

4. Danish Refugee Council Counselling Project in Short

4.1 Motivating Factors for the Project

Research on the reception of unaccompanied children in Denmark has shown that the children generally have a feeling of not receiving adequate information during the asylum process, and that this has raised the level of anxiety. (Mertz and Starka 1991 p. 41) As mentioned above, neither a guardian nor a legal representative is appointed upon arrival of the child under the current Danish policy on unaccompanied minor asylum seekers.

However, assisting unaccompanied children adequately, requires resources. Counselling of children in the asylum-procedures takes time, as each session has to match the pace of the group of children, and the counselling sometimes has to be repeated a few weeks later. The counselling must relate to the concrete situation of the children, which constantly changes. Furthermore, methods of counselling children need to be developed which motivated the establishment of a specific project. Another factor is the need for a clear picture of the legal and social condition of the children in order to recommend changes of policy in a qualified manner.

4.2 Counselling-activities

The Danish Refugee Council has offered group counselling and individual legal assistance for children at the Red Cross Centres Fasan and Stenlille, which accommodate the majority of children arriving in Denmark. Each counselling-session has been initiated on the request of the pedagogical staff at the centres.

Counselling during Pre-asylum Phase

The offer of counselling is limited to the pre-asylum phase due to the mandate of the asylum-department of the Danish Refugee Council. During this phase the children have specific needs for assistance as they take part in administrative procedures, (see above “Part of a legal process”). Furthermore, the pre-asylum phase in Denmark can be seen as an extension of the insecurity during the flight because of the unknown waiting time. (Mertz and Starka 1991 p. 40)

Moreover, research has shown that the experiences of asylum seekers during the pre-asylum phase have a strong effect on the future development and well being of a person. The country of asylum thus has a great responsibility as the pre-asylum phase plays a much larger role than is generally assumed. These results are clearly opposed to the former assumption that the problems of refugees are linked with experiences before and during the flight. (Van der Veer, G. 1995 p. 42)

Experience-based Counselling and Psycho-social Dimension

In the beginning of a group-counselling session, the counsellors explain what the children can expect from counselling. It is important to stress that the counsellor does not have any influence on the individual asylum case, although they will, for example, be able to assist in contact with the authorities. The children are explicitly informed on the role of the Danish Refugee Council in the asylum procedure via the manifestly unfounded-procedure, in which some of the children may be processed. The children are informed that the two counsellors assigned to the counselling project are not conducting interviews in the manifestly unfounded procedure, as this would jeopardise the counselling-activities.

The counselling has been conducted in a participatory and empirical manner, with questions to the children on their own experiences during form-filling, interviews etc. The language used is simple with the use of concrete examples instead of abstract concepts.

The counselling and individual assistance has involved psychosocial dimensions including the showing of empathy and “active listening”. Showing empathy is often a form of non-verbal communication and is sensed through a feeling of good contact. Through “active listening”, the counsellor can show the child in a non-verbal way that she really listens and tries to understand. (Schaarup 1999 p. 13)

Interpreters

It has been common practice to use an interpreter who is normally not used by the centres as it is important to distinguish between the daily contact with the Red Cross staff and the counselling done by the Refugee Council. In some cases this has not been possible because of time pressure. Furthermore, in cases of small children it was often decided to use an interpreter known to the child. The interpreters are generally chosen due to their interest and experience in working with children.

5. The Legal and Social Condition of Unaccompanied Children in the Asylum Process

This section of the report tries to illustrate the legal and social conditions of unaccompanied children and young people during the asylum process. It is based on experiences from the counselling of and legal assistance to the children, interviews with the pedagogical staff at the centres, interviews with representatives (“bisidder”) of the Red Cross and psychologists at the Danish Red Cross and the Rehabilitation Centre for Torture Victims respectively. Furthermore, information is drawn from relevant literature from authorities, organisations and academic work.

5.1. Access to the Asylum Procedure

Return to Another Country

When an asylum seeker lodges an application in Denmark, the Immigration Service will initially consider whether the applicant can be rejected to a “safe third country” or a so-called “Dublin-country”² pursuant to the regulation in the Aliens Law article 48(a). According to these regulations other (European) countries may be responsible for considering an asylum case because of the applicants prior stay there or certain connections to the country, e.g. because the country in question has issued a visa to the person.

This means in practice that an asylum seeker that has travelled through another European country (exclusive a transit-stay in an airport) can be returned to the country in question and will have his or her asylum claim considered there.

There are no specific regulations on the treatment of unaccompanied minors seeking asylum in respect of access to the asylum procedure. However, due to the practice of the Immigration Service, children below the age of 15 arriving at Kastrup Airport are not refused access to Denmark. Applications from children between the age of 15-18 (and children arriving at the land-borders) are assessed on an individual basis. If there is no doubt about the asylum seeker being under-aged, and the child has close relatives in Denmark, the child is generally granted access to the Danish procedure. According to article 48 (c) of the Aliens Law, Denmark can always decide to grant an asylum application “for humanitarian reasons”, even though another “Dublin-country” is obliged to examine the case.

Experiences from Counselling and General Comments on Access

Only a few children have contacted the Refugee Council where the Immigration Service was considering to reject the child to another European country. In these cases the Immigration Service has refrained from returning the child if close relatives were living in Denmark.

The problem is, however, that the child is not provided with any legal assistance in this process. The decision of the Immigration Service to ask another “Dublin-country” whether the asylum seeker has previously been there (via finger-print records), can be appealed against at the Ministry of Interior. The unaccompanied minor then has to make a complaint and submit relevant information on his own.

² The Dublin Convention, which came into force in September 1997, sets up a procedure according to which one EU-state is responsible for dealing with an asylum application, which is lodged in one of the acceding states.

Case of an Iraqi Kurdish boy with an older brother staying as an asylum seeker in Denmark

Two brothers left their hometown in northern Iraq as the Iraqi police arrested their father and some friends of his. The older brother possessed a false passport and could therefore leave via Turkey directly to Denmark. The younger brother at the age of 16 did not have any identification documents and had to cross the border illegally to Iran. The family paid an agent to take him from Iran to Denmark, though the younger brother was left by the agent in Germany. In Germany he was detained as an undocumented asylum seeker and had his fingerprints taken. After some days he was released and he crossed the border to Denmark to find his brother.

The younger brother told the Danish police of his stay in Germany. The Immigration Service decided to ask the German immigration authorities whether the boy's fingerprints were registered in Germany with the intent of returning him there.

The Refugee Council made a complaint to the Ministry of Interior on behalf of the minor referring to the presence of his older brother in Denmark. Receiving this information the Immigration Service decided not to return the minor to Germany, even though Germany had agreed to admit him.

International Recommendations and Obligations

According to the **UNHCR's Guidelines on Refugee Children** article 4, due to their vulnerability, unaccompanied children seeking asylum should not be refused access to a territory.

5.2 Age Assessment

The police, the Immigration Service and the Refugee Board can at any stage of the asylum process decide to initiate an age assessment if there is doubt about the asylum seeker being under-aged. The minor signs a letter of consent and is told that the result can be used in the asylum determination. If the minor does not sign the letter of consent, it may impute procedural damage.

The age assessment takes place at the Medico-legal Institute of the National Hospital of Denmark and at the Dental College and involves an X-ray examination of the jaws and left hand as well as a medical examination of the body. The asylum seeker has to be partly naked during the examination, and it is not always possible for practical reasons that the examining doctor is of the same sex as the asylum seeker. (The Immigration Service 1998 p. 12)

Experiences from the Netherlands on Age Assessment

In the Netherlands, age assessments have been suspended for some time because of doubt as to their reliability. In March 1999 they were resumed, as a new age assessment was developed which should make it possible to come to a reliable estimate of the asylum seeker's age. The new test involves an X-ray examination to determine whether the collar-bone has fully grown to join the breastbone. If this is the case, the asylum seeker is 20 years or older. An X-ray is also made of the hand and wrist. An independent expert carries out the test. (Morelli and Hoogveld 2000 p.13).

The Dutch Refugee Council has asked for a second opinion on the new age assessment from an independent medical expert. He generally considers the new test as reliable because it takes ethnic origin and other relevant aspects into account, e.g. whether the tested person has lived under conditions of hunger. (Interview with Wilma Losofski in March 2000)

General Comments on Age Assessment

The age assessment in Denmark has been criticised for not being reliable because it does not take into account the diversity of bone-structure in relation to the ethnic origin of the tested person. It will be valuable to learn from the new age assessments in the Netherlands.

On the other hand, age assessment is unfortunately necessary. It is the experience of the staff at the Red Cross Centre, Stenlille, which accommodates the older minors, that a number of them are in fact over-aged. It disturbs the general pedagogical work with the children at the centre.

Furthermore, it is often stressful for a young person to live for an extended period under a feigned identity (see the chapter on “Feigned Identity”). (Interview with Thomas Andersen, Centre Stenlille) Save the Children in Denmark is of the opinion that age assessments should be initiated, when the asylum seeker undoubtedly is over-aged. (Jensen, Save the Children 2000 p. 6)

Rejections from Sweden

The Refugee Council has experienced a couple of cases where young persons have been rejected from Sweden to Denmark, even though they had close relatives in Sweden. In some cases the Swedish authorities had – with justification – questioned the given age of the asylum seeker. It was the impression of the Red Cross and the counsellors at the Refugee Council that some of the “minors” were in the twenties. However, a single case stands out:

The case of a minor with two brothers in Sweden

An Iraqi Kurdish boy passed through Denmark on his flight to Sweden, where his two older brothers had lived for several years as refugees. After a single day in Sweden he was returned to Denmark because the Swedish Immigration Service determined that he was over 18 years of age. In Denmark an assessment of boy’s age concluded that he was between 16-19 years old. The boy himself said he was 16 years and 8 months old. The pedagogical staff at the Red Cross Centre, who have 5-6 years experience of working with young boys from the Middle East, were, on the basis of the boys behaviour, convinced that he was a minor. On the request of the Refugee Council, the Danish Immigration Service twice asked the Swedish Immigration Service to reconsider the case with reference to the age assessment, a pedagogical statement from the staff at the centre and a psychological evaluation. The Swedish Immigration Service, however, stuck to the decision that the boy was over 18.

In not giving the boy the benefit of the doubt, the Swedish Immigration Service held to an extremely strict decision in the case of a minor.

International Recommendations and Obligations

According to the **UNHCR’s Guidelines on Refugee Children** article 5.11 a margin of error should be allowed when scientific procedures are used in order to determine the age of a child. The child should be given the benefit of the doubt if the exact age is uncertain.

5.3 Asylum Determination Procedure

5.3.1 Decision on Maturity

When an unaccompanied minor has been admitted to Denmark, the authorities will initially decide whether the child is sufficiently mature to explain his or her asylum-motive in the ordinary asylum determination procedure. Children *above the age of 15* are generally considered to be mature and are automatically called in for an interview with the Immigration Service.

On the other hand children *below the age of 12* are generally considered as immature, and they are then automatically granted a temporary permission to stay according to the Aliens Act Article 9 (2), (4). The permission to stay is temporary for three years and then becomes permanent.

In cases of children belonging to the age group *between 12 and 15 years* the police officer, who conducted the first interview and registration of the child, contacts the Immigration Service and comments on the maturity of the child. The caseworker at the Immigration Service will then decide whether the child is sufficiently mature.

An unaccompanied child, who is considered sufficiently mature, is processed in the ordinary asylum determination procedure for adult asylum seekers. The only exception is the presence of a representative (“bisidder”) from the Red Cross at each interview. The representative ensures that the interview is conducted correctly but he cannot intervene or take any specific action in each case. This follows the principle of neutrality of the Danish Red Cross. Furthermore, the representatives alternate, though as a group they try to follow each individual child during the process. The system of representatives cannot replace the appointment of a guardian or a lawyer. (Jensen, Save the Children 2000 p. 5)

General Comments on the Maturity-decision

The Danish Refugee Council has experienced a change of practice over the last few years, as younger children (in the 12-15 age-group) are more often processed in the asylum procedure and not granted an automatic right to stay as a minor. Firstly, it is relevant to assess whether the youngest children need protection as refugees according to the “1951 Convention Relating to the Status of Refugees”. This is even recommended by the UNHCR’s Guidelines on Refugee Children.

However, no formal criteria on the maturity decision exist at present. It is the opinion of the Refugee Council that an assessment of the maturity of the child must reflect what the child will be confronted with in the asylum process. At present the child is to be processed in the ordinary asylum procedure for adults with no specific supportive measures such as the appointment of a guardian or legal representative.

The maturity-decision must be regarded as a decision under administrative law. However, no written notes are made on the assessment of the maturity of the child, and a caseworker from the Immigration Service takes the initial decision without meeting the child. The Danish Ombudsman Institution is presently investigating whether this complies with the demand for written explanations of negative decisions under administrative law.

Finally, there is no practice of obtaining independent experts opinion on the maturity of the child. (Jensen, Save the Children 2000, p. 13)

5.3.2 Form-filling and Interviews

After the first interview and registration with the police, the child must fill in a form. The questions in the form are aimed at adults with the use of abstract wording and technical expressions.

An example of one of the questions which children must answer

“Describe your possible political, religious, labour- or other organisational engagements, which have resulted in your flight from your home-country. Your knowledge of the following must appear in the answer:

a) The name, structure, goal and size of the organisation as well as names of leaders...”

“I have not given any answer to the question, as I did not understand it”

- The answer of a 17-year old Chinese girl.

Conduct of Interviews

The Immigration Service is the first stage in the asylum procedure. After the form-filling, the children are called in for an interview at the Asylum Department of the Immigration Service. The children are interviewed by caseworkers with a legal background and normally the child is only interviewed once. The Immigration Service has indicated that they intend to train staff interviewing unaccompanied minors. (Newsletter from March 2000)

The Danish Refugee Council conducts interviews with children in a manifestly unfounded procedure. The interviewers have a legal educational background. The Danish Refugee Council is arranging a course on interviewing children in July 2000.

Evidence from Children

Some children are “keeping secrets” either because they have been told to do so or because they cannot bring themselves to talk about them. They may be afraid of being overwhelmed by the revelation of certain information. Children who are trying to block out painful details often find it difficult to take in information and this can add to their confusion and apprehension. (Ayotte, Save the Children U.K. p. 13)

An Asian Girl “keeping secrets”

An Asian girl of 16 said during the interviews with the Immigration Service and the Danish Refugee Council (manifestly unfounded procedure) that she had never known her father, and her mother had suddenly disappeared some years ago to Russia. The girl had been living with her aunt and her family. She mentioned during the interviews that she had worked hard for the family and was not being treated equally to her cousins. The girl was refused permission to stay as an unaccompanied minor since she could reunite with her relatives.

When she heard the decision, she told the contact-person at the centre that she had been living under slave-like conditions and that her uncle had sexually harassed her. She had not revealed this during the interviews out of embarrassment. The psychologist at the centre made a statement which was submitted with the complaint to the Ministry of Interior. The Ministry upheld the decision of the Immigration Service because such late information was not considered credible.

As mentioned in the first section of the report the experience of traumas can affect the cognitive competence of the child and the ability of the child to pass on information during interviews in the asylum process. This should be taken into account when considering how to conduct the interviews.

Experiences from Sweden, Norway and the Netherlands

Following the regulations of the **Swedish** Immigration Service, caseworkers interviewing children must have specific skills, have shown interest in working with the children and aim to match the interview to the age, maturity and psychological condition of the child. At present, the four regional Child- and Youth-Units under the Immigration Service have seven child-caseworkers. (Frodlund, Save the Children Sweden p. 29)

In 1996 the Child and Youth-Unit in Stockholm revised the methods of interviewing unaccompanied children. At present, three caseworkers are dealing with the children's cases, and they are qualified as a pedagogue, a journalist and a lawyer. Since the 1996 revision, children at the age of 5-6 years have been interviewed. The children have between one and six interviews with the caseworker. The interviews are conducted in a more child-friendly way and decisions are discussed within the team of child-caseworkers. All caseworkers interviewing asylum-seekers receive monthly counselling by a psychologist. (Interview with Ann-Sofie Holm, The Swedish Immigration Service, in October 1999)

In the **Netherlands** former policemen or teachers interview the children, and the decision in an asylum case is taken by a legal caseworker of the Immigration and Naturalisation Department of the Ministry of Justice. Because of a large increase in the number of unaccompanied minors applying for asylum, the IND has had to employ new interviewers at short notice. They have been recruited among former teachers and pedagogues, and the IND has initiated a program of training new staff in interviewing children, cultural issues etc.

In **Norway** the asylum process is under revision and the interviews of asylum seekers will be transferred from the police to legal caseworkers at the Ministry of Justice. Interviews with unaccompanied minors will be handled by caseworkers who have received specific training.

General Comments on the Asylum Interviews

The above-mentioned case of the Asian girl “keeping secrets” illustrates how difficult it is to interview a child and to assess the credibility of children’s testimony. Was this a last attempt to avoid deportation or a girl avoiding telling painful and shameful information? The psychologist came to the last conclusion. It is the opinion of the Refugee Council that experts on psychology and children should be involved in these complicated judgements to a greater extent.

Caseworkers interviewing the children must receive appropriate training, and several interviews should be conducted with each child if necessary.

International Recommendations and Obligations

According to the **UNHCRs Guidelines of Refugee Children** article 5.12 and 5.13 it is desirable that all interviews with unaccompanied children are carried out by professionally qualified persons and persons specially trained in refugee and children’s issues. As far as possible, interpreters should also be specially trained persons.

The claims of unaccompanied children should be examined in a manner which is both fair and age-appropriate. (Article 4.2)

According to the **Convention on the Rights of the Child** article 12 a child shall be heard in decisions in their relating.

5.3.3 The Durable Solution

Permission to Stay as an Unaccompanied Minor

If a child is turned down in the asylum determination procedure, the Immigration Service will *ex officio* consider whether the child should be granted a temporary right to stay according to the Aliens Act article 9 (2) section 4.

The practice of the Immigration Service is based on the Report of the Legal Rights Committee of 16. March 1993³. According to the practice, children are granted permission to stay if their parents are deceased; if the parents cannot be found or the minor is unable to get in contact with the parents, e.g. because of their detention. Furthermore, a residence permit is granted to children who have no family- or social network in the home country or the country of former residence.

It is taken into consideration whether or not the child has lost contact with the parents for a longer period of time and has been under public care, which could be re-established upon return.

If war or similar unrest takes place in the home-country or the country of former residence, the child will be granted permission to stay if the child would be placed in a situation of real distress upon return. In this case, it must be established that the situation for the minor differs considerably from the situation of children the same age in his home country. (The Immigration Service 1998 p. 20)

³ Retsudvalgets Beretning af 16. Marts 1993 over Forslag til lov om ændring af udlændingeloven og lov om social bistand.

Procedure

The decision is based on the asylum-interview with the child. During this interview the caseworker will ask about the presence of relatives in the home country or the country of former residence. It is possible to call in relatives living in Denmark for an interview or to initiate a hearing at the Ministry of Foreign Affairs on relevant background information. (The Immigration Service 1998 p. 21) It is, however, the impression of the Refugee Council that this rarely occurs.

If the Immigration Service turns down the child's case, it can be appealed against at the Ministry of Interior.

Experiences from Counselling

As mentioned above the Refugee Council has noticed a change of practice as children in the 12-15 age group are processed in the asylum determination procedure. This has amounted to an increasing number of asylum-seekers in this age group that are refused a right to stay as unaccompanied minors pursuant to article 9 (2) section 4. The refusal is reasoned by the presence of family- or other social network in the home country. In particular, children from Sri Lanka belong to this group.

The Case of a Tamil Boy with parents in Jaffna

A 14-year old Tamil boy came to Denmark from Sri Lanka. He told the Danish authorities that he had been living with his aunt before the departure from Colombo. The boy initiated a tracing-request for his parents and they were traced to the Jaffna- peninsula. The boy was denied asylum and the right to stay as an unaccompanied minor due to the family network in Sri Lanka. However, at present there is no civil trafficking from Colombo to Jaffna because of the war and the area is subject to intense fighting with many internally displaced persons in the area.

The case of a Tamil boy staying with a friend of his deceased father

A 14-year old Tamil boy came to Denmark from Sri Lanka. He told the Danish authorities that his father was shot in 1994 by the Sri Lankan army. He assumed that the father was killed because he had repaired vehicles for the LTTE in his garage. The boy's mother died in 1995 of a contagious illness. After the death of the mother the boy moved to the place of a friend of his father who had taken over the garage. Two older sisters of the boy had joined the LTTE, and he had had no contact with them since the death of the mother.

The friend of his father could no longer support the boy so he decided to arrange for the travel of the boy to Denmark where a cousin was living. The friend of the father sold the garage in order to pay for the ticket to Denmark.

The Immigration Service rejected the asylum claim and the right to stay as an unaccompanied minor due to the fact that the boy had been living with the friend of this father for some years. He therefore had a social network in Sri Lanka.

The boy has appealed against the decision of the Immigration Service to the Ministry of Interior.

The case of a Tamil girl with parents in India

A 14-year old Tamil girl came from Colombo to Denmark, where her older sister had been living for many years. Up until the departure she lived with her parents in Vanni in the north of Sri Lanka. Her father accompanied her to Colombo. After some months in Denmark she lost contact with the parents. The Immigration Service denied the girl asylum and the right to stay as an unaccompanied minor since she could reunite with the family upon return. The Ministry of Interior up-held the decision. The girl was very upset at the prospect of return as she and her sister in Denmark had lost contact with their relatives. A tracing-request through the Red Cross was initiated and after several months the parents were traced to Tamil Nadu in the South of India, where they have lived in a refugee camp for five months.

The Refugee Council informed the Danish authorities on the tracing of the parents to India. The Ministry of Interior up-held the denial of the right to stay referring to the family network in India.

After some time the girl was contacted by the Danish police who were arranging the return of the girl to *Sri Lanka*. When the Refugee Council informed the Ministry of Interior of the plans of the police to send the girl to Sri Lanka, the Ministry of Interior stated that the girl should be sent instead to India.

It is, however, uncertain whether the Indian authorities will issue a visa to the girl. The girl has lived in Denmark for two and a half years during her teen-age years. Initially she was not very content, though she has now settled in quite well and has close contact to her sister and her family. She now expresses a wish to stay in Denmark.

General Comments on Durable Solutions

Experiences from counselling leaves a general impression that the children are left on their own in this process. Legal safeguards are absent such as the assistance of a lawyer during an appeal to the Ministry of Interior against a decision of the Immigration Service. This can make the right of appeal an illusion.

Furthermore the separation of power between the immigration authorities and the police in decision making on the one hand and the following deportation of the asylum seeker on the other, poses a risk that a child's case "falls between two chairs". The risk is even greater when the children are not provided with legal representation, e.g. the above-mentioned case of a Tamil girl with parents in India (p. 18).

The above-mentioned separation of power also leads to a division of responsibility, where the Immigration authorities do not take into account whether it is actually possible to deport the child with the prospect of reunion with a social network in the country of origin. In the case of a Tamil boy with parents in Jaffna (p. 17), the boy was rejected the right to stay as an unaccompanied minor with reference to the family network, and it was left to the police to decide whether it was possible to deport him. Not making a decision where all aspects are taken into account leaves the child for a long time in a vacuum of insecurity.

Furthermore, the best interests of the child may change over time. The case of the “Tamil girl with parents in India” (p.18) illustrates the complexity in assessing the best interests of the child. It is the opinion of the Refugee Council that it is an important goal to unite unaccompanied minors with their parents. Therefore, a tracing request was initiated when the girl lost contact with the parents. Two years after her arrival in Denmark the parents were traced to India. The girl has now lived for more than two years in Denmark during her teenage years. She has adapted very well and expresses a wish to stay in Denmark. She goes to school and lives with her sister and her family.

Finally, as mentioned above, the child may hold back information because they have been told to do so or because they cannot bring themselves to talk about certain events. Children who are trying to block out traumatic events and experiences will often find it difficult to pass on the information and only after a period of time will feel confident to do so. The above-mentioned case of the Asian girl “keeping secrets” (p. 15) illustrates how difficult it is to assess the credibility of children’s testimony. The case of the “account of a Tamil boy” (p. 6) illustrates how experience of traumatic events can affect the cognitive competence of the child, and hence the ability to pass on information during interviews. It is the opinion of the Refugee Council that experts on psychology and children should to a greater extent be involved in the process of considering the testimony of minors and identifying the best interests of the child.

Inter-disciplinary Panel

The Refugee Council proposes the establishment of an inter-disciplinary panel which is responsible for identifying durable solutions in individual cases, when the child asylum case has been rejected. Immigration authorities, relevant NGOs, police and experts on psychology and children should be represented in this structure. The panel should ensure that all relevant background-information is available in order to make a decision based on all aspects of the case.

Tracing Parents or other Family Members

At present the immigration authorities have no role in tracing parents of unaccompanied minors. The child may initiate a tracing of relatives through the Red Cross. It is recommended that the tracing of relatives is promoted as part of the identification of the durable solution. This is recommended by UNHCR and Save the Children. (Jensen, Save the Children 2000 p. 8)

International Recommendations and Obligations

According to the **UNHCR’s Guidelines on Children** article 9 the identification of a durable solution requires that all the various aspects of the case are duly considered and weighed. One way in which this objective may be ensured is by the establishment of **multi-disciplinary panels** evaluating on a case-by-case basis which solution is in the best interests of the child and making appropriate recommendations.

In recognition of the particular vulnerability of unaccompanied children, every effort should be made to ensure that the decision relating to them is taken and implemented without any undue delay.

International Recommendations and Obligations

According to **UNHCR’s Guidelines on Refugee Children** article 4.2 a child should upon arrival be provided with a legal representative.

5.4 Guardians

As mentioned above, the lives of unaccompanied children are marked by many “unclear losses”. How children cope with these losses and separation depend on many different elements. It appears that family and a sense of solidarity within a group is one of the most important sources of emotional security for children under pressure. The presence of supportive adults can have a crucial influence on how the child experiences a threatening situation. (Mertz og Starka 1991 p. 18)

There are mediating factors that can protect children and help them to master difficult circumstances and traumatic past events. These include having an appropriate child-carer who can help contain a child’s anxieties. One of the most important mediating factors is the presence of a trusted individual with whom a child can talk and reflect on their experiences at their own level of understanding. (Ayotte 1998 p.13)

As mentioned above, the present procedure does not entail the appointment of a guardian for unaccompanied minors. A representative (“bisidder”) from the Red Cross follows the child during the interviews.

Experiences from Counselling on the Need for Guardians

One year of counselling children leads to the conclusion that supportive adults are urgently needed for unaccompanied minors. As an employee at the Center Fasan accommodating the youngest children illustrated, “the child lives in two worlds – the world of the asylum centre and school, where it feels some level of security and care – and then there is another unpleasant world, where it is being interviewed and questioned on the asylum-motive. The child is not prepared for the “asylum-world”, and therefore just wants to get over with it as quickly as possible so that it can return to the safe world at the centre. The child has very little understanding of the importance of the interviews and consequences hereof.”

The importance of guardians is two-fold: to help the child deal with some of the responsibility and possible stress of the asylum process. As mentioned above, the unusual situation of being interviewed can be a stress-factor in itself. Furthermore the appointment of supportive adults who can prepare the child for what is expected of it, should ultimately raise the quality of the interviews – and thereby the decisions.

A Chinese Boy unknowingly keeps relevant information to himself

A 15-year old Chinese boy explained to the Danish authorities that he is an orphan. He had lived with his aged grandmother who could no longer support him financially. The boy was denied asylum and the right to stay as an unaccompanied minor with reference to the presence of relatives in the home country. One day he received a letter from a friend in China telling him that his grandmother had died. He did not show it to anybody and only after several months a death-certificate was sent to the Danish authorities.

Experiences from Sweden, Norway and the Netherlands of Guardians

5.4.1 “De Opbouw” in the Netherlands

Appointment

According to the Dutch civil code, the civil courts must assign a guardian to unaccompanied children who are not over 17 years and 6 months old. In practice, a representative of the private humanitarian organisation *de Opbouw* is appointed as guardian, but family members of the minor in question may be appointed if they live in the Netherlands. The appointment of the guardian takes around four weeks. During this period a so-called “pre-guardian” will look after the child’s interests. This will usually be a representative of the *Opbouw*. A new guardian is appointed when the child moves from the reception centre to a follow-up care location after about three months. (Morelli and Hoogveld 2000 p. 11).

The role of the guardian/”de Opbouw”

The role of the guardian is described as follows:

- integrating the child into Dutch society and general guidance
- contact with relevant organisations such as the school, the Immigration and Naturalisation Department (IND), lawyers, the Refugee Council and organisations responsible for the daily care of the child.
- choosing appropriate care-facilities for the child after the first three months in the reception centre
- advising on the education of the child
- giving the child financial support
- assisting the child in tracing of family members. The guardian will represent the child at the tracing department of the Dutch Red Cross. (Morelli and Hoogveld 2000 p. 11).

The guardians of the *Opbouw* have regular consultations with authorities and other organisations working with the care of the children.

Recruitment and qualifications

The guardians are social-workers working for the organisation *Opbouw*. They have a higher education as social-workers which takes four years. In addition, those appointed as guardians receive continuous in-house training. The organisation has good experience with guardians with a refugee background, and at present the organisation has guardians who come from Iraq, China, Somalia, Ethiopia, India, the Caribbean and the former the Yugoslavia among others. (Interview with Martin Berg in March 2000)

The role of the Dutch Refugee Council

The Dutch Refugee Council has a group of volunteers that are counselling unaccompanied minor asylum seekers before the interviews. The volunteers are pensioners or students. The counselling takes place before the asylum interview and the volunteers are present at the centres in order to answer specific questions. (Interview with Wilma Losofski in March 2000)

5.4.2 The “Good Man” in Sweden

Appointment

A so-called “good man” (hereafter guardian) is appointed to all unaccompanied minors arriving in Sweden. The Regional Office of the Immigration Service contacts the public trustee’s office in the local government where the child is to live. It generally takes between two weeks and a month before a guardian is appointed. In a few cases it has taken up to four months which has been criticised by NGOs. (Frodlund, Save the Children Sweden 2000 p. 11) This prolonged period is often due to lack of guardians in the respective local government. (Interview with Ann-Sofie Holm, The Swedish Immigration Service, in October 1999)

If the child moves to another part of the country, a new guardian must be appointed in the respective local government. The guardianship will exist as long as there is a need for a guardian. Yet in the absence of clear regulations, the length of guardianships vary in different areas. (Frodlund, Save the Children Sweden 2000 p. 11)

The role of the “Good Man”

The role of the guardian is described as follows:

- ensure the rights of the child
- ensure that the best interests of the child are adhered to in all decisions made
- co-ordinate contact with adults
- ensure the housing, schooling and possible health requirements
- support during the asylum process (Frodlund, Save the Children Sweden 2000 p. 12)

During the asylum process the guardian is present at all interviews with the child. The guardian is given a chance to council the child before the interviews. The Immigration Service attempts to maintain continuous contact with the guardian and arranges for interpreters on the request of the latter. The guardian acquires a legal representative for the child and keeps in contact with him or her. (Interview with Ann-Sofie Holm, The Swedish Immigration Service, in October 1999)

The actual tasks and obligations of the guardian are, however, unclear, as there is no formal description in writing of the obligations of the guardian. The guardian thus works without clear guidelines and on his own initiative. This leads to a variety in the quality of guardians and the way they see their obligations. Furthermore, no formal cooperation between the guardian, schools and the relevant social authorities exists. Thus the guardian must develop his own contacts with the authorities. (Frodlund, Save the Children Sweden 2000 p. 12)

Recruitment and Qualifications

Some guardians have a legal background, although no specific qualifications or experience are required in order to be a guardian. The guardians do not need a particular knowledge of unaccompanied minors and they receive no training in this regard. (Frodlund, Save the Children Sweden 2000 p. 12) Guardians generally express a need for support, training and networking between guardians. (Interview with a guardian in October 1999)

To be appointed as a guardian must be considered as voluntary work since the guardians are not paid a salary, although any expenses arising from work are refunded. Save the Children and Sociale Missionen are of the opinion that it jeopardises the guardianship that the guardian does not receive a proper salary. (Interview with Christina Heilborn and Lena Rössel in October 1999) According to the assessment of Save the Children, Sweden, the guardianship works relatively well during the pre-asylum phase and less well during the phase of integration.

According to the Immigration Service it is difficult to recruit guardians that can show up for asylum-interviews during the day-time. (Interview with Ann-Sofie Holm, the Swedish Immigration Service in October 1999)

5.4.3 The Guardian in Norway

Appointment

According to the Law on Guardianship⁴ (1927), a legal guardian must be appointed by the public trustee's office of the local government. The guardian must be appointed as soon as possible and at the latest one week after the arrival of the child in Norway. However, in practice it takes longer as there is a lack of guardians. In some cases guardians are appointed for the pre-asylum phase because it is difficult to recruit guardians who can follow the child through the longer period of integration. The guardianship lasts until the child turns 18. (Kleven, Save the Children Norway 2000 p. 5)

Often the guardian and the legal representative are the same person. Because of the lack of guardians some lawyers are guardians to 25-30 children. (Interview with lawyer Tron Romstad October 1999)

The role of the guardian

The role of the guardian is described as follows:

- to ensure the rights of the child
- presence during police interrogation⁵
- responsible for the child's finances

All interviews are conducted in the presence of a guardian. According to the 1992 guidelines of the Ministry of Justice, the guardian will also have some personal responsibility for the child. However, in practice the role of the guardian does not go far beyond presence at interviews with the child. According to Save the Children, Norway, many children do not have contact with the guardians apart from at the interviews and the legal guardian merely appears as a formal representative. (Kleven, Save the Children Norway 2000 p. 5)

According to NOAS, the model provides limited support and assistance to the children. The idea of a guardianship is important but in practice it does not function satisfactorily in Norway because of

⁴ The legislation is presently under revision, as it is acknowledged that the legislation does not meet the needs of today nor is it adequate for the reception of unaccompanied minors.

⁵ The asylum process is presently being revised and the interviews are being handed over to the legal staff at the Ministry of Justice.

the lack of guardians and an insufficient specification of their obligations. (Interview with NOAS in October 1999)

Recruitment and Qualifications

Guardianship is voluntary and unpaid. Any “reliable and suitable” person can be appointed as a guardian, and no specific qualifications such as knowledge of children or understanding of cultural circumstances are required. It is generally difficult to recruit guardians, as they must be able to show up at interviews at short notice. At present, a few lawyers are appointed as guardians and also as legal representatives in many cases.

“Lessons Learnt” on Guardianship

As guardianship is considered as unpaid, voluntary work, the authorities in Norway and Sweden generally face difficulties in recruiting guardians. Moreover the obligations of the job during the day reduces the number of possible guardians. Furthermore, there is a general need of support, training and networking among guardians in both Sweden and Norway. To provide training courses could make the task more attractive.

The Netherlands has good results with guardians of a refugee background with the same language and cultural background as the children.

International Recommendations and Obligations

According to the UNHCRs Guidelines on Refugees section 5.7 a guardian or advisor should be appointed as soon as the unaccompanied child is identified. The guardian or advisor should have the necessary expertise in the field of child-caring.

6. Conclusions

One year of counselling leads to the conclusion that changes in the process are urgently needed. Some needs are obvious – the appointment of a guardian and a lawyer to the children, development of methodology in interviewing children etc. However, another main issue is the complexity of asylum applications from children. Some children have escaped from individual persecution e.g. detention because of the political profile of relatives, forced recruitment as soldiers, ethnic cleansing etc. Others leave a country torn apart by war and yet others travel on their own – or are sent by relatives – to a western country in order seek a viable future. Some of these children have often lived for many years in refugee camps or camps for internally displaced persons. What is the best interests of the child in this situation? The answers demand an inter-disciplinary approach where legal as well as psychological experts and persons with specific knowledge of children are consulted.

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