

Training of Lawyers on the European Law relating to Unaccompanied Migrant Minors (TRAUMA)

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Irish Refugee Council Independent Law Centre



The project is co-financed with the support of the European Union's Justice programme

- Independent and impartial non-governmental organisation
- Works to promote and enhance the lives of people seeking protection in Ireland
- Confidential Support Services:
 - Drop In Service: Monday, Tuesday, Thursday
Open from 10 – 1pm; 2pm – 4pm: no appointment necessary
 - Housing & Transition
 - Education & Employment
 - Legal support
 - Youth Services
- Rights-based advocacy & policy input



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- In 2018, 840 out of 3673 asylum applications in Ireland were made on behalf of children
- In 2017, 175 unaccompanied minors – 52 girls and 123 boys – were referred to the care of Tusla, the Child and Family Agency.
- 55% (111) of those referred to the service in 2017 were placed in care
- Over 50 per cent of unaccompanied minors referred are aged between 16 and 17.
- 22 unaccompanied minors arrived under the EU Relocation Scheme and 41 as part of the Calais Special Project.
- Afghanistan, Eritrea, Iraq, Syria and Ethiopia

Relevant Law

- International Protection Act (2015)
- Reception Conditions Regulations (2018)

International Protection Act (2015)

- Introduced Single Protection Procedure
 - Refugee Status
 - Subsidiary Protection
 - Permission to Remain



Relevant Bodies



■ International Protection Office (IPO)

- Responsible for processing initial application, carrying out initial interview and making initial (first instance) recommendation regarding grant of refugee status, subsidiary protection and permission to remain

■ International Protection Appeals Tribunal (IPAT)

- Considers appeals on grants of refugee status and subsidiary protection – these are both considered via one single hearing

■ Irish Naturalisation & Immigration Service (INIS)

- Repatriation Division – deals with final consideration of permission to remain grants
- Ministerial Decision Unit – responsible for issuing Minister's Letter
- Family Reunification Unit – considers family reunification applications

■ Garda National Immigration Bureau (GNIB)

- Responsible for registration – issues Irish Residence Permits

■ Reception and Integration Agency

- Responsible for direct provision accommodation allocations, transfers and associated matters
- Tusla – Child and Family Agency

International Protection Act (2015)



- Recognises children as ‘vulnerable group’
- ‘Best interests of child’ is not overarching requirement, but a ‘primary consideration’ in specific provisions:
 - Age determination
 - Permission to reside
 - Travel Document
 - Family Reunification
 - Conduct of personal interviews

- Considered for prioritisation of applications



14. (1) Where it **appears to an immigration officer** that a person seeking to make an application for international protection, or who is the subject of a preliminary interview, **has not attained the age of 18 years** and is **not accompanied by an adult who is taking responsibility for the care and protection of the person**, the officer shall, as soon as practicable, notify the Child and Family Agency of that fact.

(2) After the notification referred to in subsection (1), it shall be **presumed that the person concerned is a child** and the Child Care Acts 1991 to 2013, the Child and Family Agency Act 2013 and other enactments relating to the care and welfare of persons who have not attained the age of 18 years shall apply accordingly.

Child Received into care



Allocated a social worker who is responsible for the development and implementation of an individualised statutory care plan for the child.

Not allocated a Guardian



- Application for international protection
- 15. Where it **appears** to the Child and Family Agency, on the basis of **information**, including **legal advice**, available to it, that an application for international protection should be made on behalf of a person who has not attained the age of 18 years (in this subsection referred to as a “child”) in respect of whom the Agency is providing care and protection, it shall arrange for the appointment of an employee of the Agency or such other person as it may determine **to make such an application on behalf of the child and to represent and assist the child** with respect to the examination of the application.



No legislative or policy guidance setting out how Tusla (Child and Family Agency) should make a decision on whether or not an unaccompanied minor should make an international protection application.

The sole decision on whether or not an unaccompanied child may make an application for international protection is entirely at the discretion of the Child and Family Agency, which raises concerns in relation to the child's individual right to seek asylum under Article 18 of the Charter of Fundamental Rights

- Department of Children and Youth Affairs:
- Same standard of care provision as any other child in care
- No differentiation of care provision, care practices, care priorities, standards or protocols until the young person reaches 18 years old
- All children are seen by a social worker on the day of referral and an initial assessment takes place. The social work assessment is multidisciplinary in nature and involves a medical examination, an educational assessment and a child protection risk assessment.
- Each separated child is allocated a child protection social worker, who is responsible for the development and implementation of an individualised statutory care plan for the child.



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Equity of Care

Area	Total number of children in care	Number of children in foster care	% of children in care, who are in foster care
	February 2019	February 2019	February 2019
Dublin South Central	359	328	91%
Dublin South East / Wicklow	272	245	90%
Dublin South West / Kildare / West Wicklow	403	360	89%
The Midlands	384	363	95%
Dublin City North	503	465	92%
Dublin North	328	294	90%
Louth / Meath	410	388	95%
Cavan / Monaghan	158	157	99%
Cork	773	729	94%
Kerry	165	150	91%
Carlow / Kilkenny / South Tipperary	337	317	94%
Waterford / Wexford	434	390	90%
The Midwest	581	533	92%
Galway / Roscommon	393	381	97%
Mayo	123	120	98%
Donegal	211	201	95%
Sligo / Leitrim / West Cavan	108	103	95%
Separated Children Seeking Asylum	55	9	16%
National Total	5,997	5,533	92%



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Transferred to Direct Provision on turning 18, if they are

Age Assessment

Section 24

Carried out where there are reasons to have doubts in relation to the age of the applicant concerned

- Age assessment examinations shall be
 - (a) performed with full respect for the applicant's dignity,
 - (b) the least invasive examination possible,
- and (c) carried out by a registered medical practitioner / suitably qualified medical professional.

Requires consent of— (a) the applicant concerned, or (b) one of the following: (i) an adult who is taking responsibility for the care and protection of the applicant; or (ii) an employee or other person appointed by the Child and Family Agency



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- Applicant must be informed, in a language which the applicant may reasonably be supposed to understand, of—
 - (a) the possibility that the age of the applicant may be determined by examination
 - (b) the method or methods to be used in the examination,
 - (c) the possible consequences of the result of the examination under subsection (1) for the examination by the international protection officer of the application, and
 - (d) the consequences of refusal on the part of the applicant to undergo the examination.

- (5) The consequences referred to in subsection (4)(d) are that the Minister or international protection officer may proceed to determine, for the purposes of this Act and in the absence of an examination under subsection (1), whether the applicant has not attained the age of 18 years.

- (6) The best interests of the child shall be a primary consideration in the application of this section.



Age Assessment

- No appeal mechanism

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35. Personal Interview



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- Where a child is accompanied by an adult other than his or her parent, the interviewer, where he or she considers it appropriate to do so, shall require the adult to satisfy him or her that the adult is taking responsibility for the care and protection of the applicant concerned.
- Where the interviewer is not satisfied either that the adult is taking responsibility for the applicant or that the adult is authorised to do so, he or she shall so inform the Child and Family Agency,
- and (i) it shall be presumed that the applicant is a child in need of care and protection,
- and (ii) the Child Care Acts 1991 to 2013, the Child and Family Agency Act 2013 and other enactments relating to the care and welfare of persons who have not attained the age of 18 years shall apply.

36. Personal Interview



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- Social worker allowed to be present and to ask questions or make comments

- (b) the personal interview is conducted—
- by a person who has the necessary knowledge of, and competence to take into account, the special needs of persons who have not attained the age of 18 years,

- and (ii) in a manner that enables the applicant to ask questions and make comments.

Family Reunification

56.

- Sponsor: **Under 18 years** of age at date of the application for family reunification
- Parents and their children who, on the date of the application for family reunification, are under the age of 18 years and are not married.

- Must apply within 12 months of positive decision.

- Difficulties: Delays in issuing of Ministerial Decisions Unit letters.

- No right to State provided legal aid for family reunification
- Minister should take into account vulnerability of family members, but Minister argues that these provisions affect operational matters regarding the processing of applications only.
- Current High Court challenges: 12-month rule and the interpretation of section 58 vulnerability provisions
- No follow-up family support



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- Detention for unaccompanied children is prohibited but detention may occur under Section 20(7)(a) IPA if two officials – Gardaí/immigration officers – believe the applicant is over 18 years pending an age examination.
- Neither the IPO nor Tusla collect statistics on age assessments conducted in Ireland

- Assessment of facts and circumstances



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In the assessment of an application, an international protection officer shall, in the case of an applicant who was a child at the time of a relevant occurrence or at any time during which a relevant circumstance existed, take account of the applicant's age at that time and the level of understanding that could reasonably be expected of a child of that age.

- Reception Conditions Regulations (2018)
 - Statutory Instrument No. 218
 - Adopted by government in June 2018
 - Resulting from Supreme Court (NHV case) regarding right to work for asylum seekers
 - Irish Government's way of implementing the European Union Reception Conditions Directive
- Provides minimum standards for accommodation and rights while in the asylum process and covers a range of issues including:
 - Labour Market Access/Right to Work for protection applicants
 - Changes to entitlements regarding education access and training for people holding a work permit
 - Appeals process regarding direct provision accommodation decisions



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- ‘Vulnerable person’ includes unaccompanied minor
 - (2) The Child and Family Agency shall be the representative of an unaccompanied minor in respect of whom it is providing care and protection, and shall represent and assist the unaccompanied minor so as to enable him or her to benefit from his or her entitlements, and to comply with his or her obligations, under these Regulations.
 - (3) The Child Care Act 1991 as amended, the Child and Family Agency Act 2013, the Children First Act 2015 and other enactments relating to the care and welfare of persons who have not attained the age of 18 years shall apply to unaccompanied minors.

- (5) The Child and Family Agency shall, subject to paragraph (6), and with assistance from other relevant agencies, endeavour to trace the unaccompanied minor's family.
- (6) In cases where there may be a threat to life or the integrity of the unaccompanied minor or his or her close relatives, particularly if they have remained in the country of origin, the Agency, in complying with paragraph (5), shall take care to ensure the collection, processing and circulation of information concerning the minor or his or her close family is undertaken on a confidential basis so as not to jeopardise his or her, or their, safety.
- (7) Notwithstanding Regulation 4, the entitlement under these Regulations of an applicant to the material reception conditions shall, in the case of an unaccompanied minor in respect of whom the Child and Family Agency is providing care and protection, be deemed to have been met..



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- Within 30 days of making protection application, authorities must assess whether an applicant has ‘special reception needs’

- Can include special needs based on sexual orientation or gender identity

- Issues:
 - Special reception needs or ‘vulnerability’ assessment currently not being implemented
 - Many people need to be retrospectively assessed
 - RIA are not currently in a position to facilitate transfers due to full/lack of capacity



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Noemí Alarcón, Lawyer



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Législation espagnole

- **Loi relative à la protection de l'enfance:** Ley de Protección Jurídica del Menor. L.O 1/1996, de 15 de enero.
- **Loi sur l'immigration:** Ley de Extranjería L.O 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, Reglamento (Real Decreto 557/2011 de 20 de abril).
- **Loi sur le droit d'asile:** Ley de Asilo y la Protección Subsidiaria Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria. (sans disposition réglementaire qui développe la loi; on applique certaines dispositions du Decret 203/1995, de 10 de febrero, por el que se aprueba el Reglamento de Aplicación de la Ley 5/1984, de 26 de marzo).
- **Protocole d'action relatif aux enfants migrants non accompagnés:** Protocolo Marco sobre determinadas actuaciones en relación con los Menores Extranjeros No Acompañados, Resolución de 13 de octubre de 2014



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Contexte

Les enfants migrants qui arrivent en Espagne sont originaires principalement du Maroc, Algérie et de l'Afrique subsaharienne: Côte d'Ivoire, Guinée et Mali. Arrivées maritimes principalement.

Chiffres: (UNICEF)

2018: 13.012 enfants dans le système de protection, 103% + année précédente

2017: 6.414 enfants enregistrés (60% +)

2016: 3.997

→ **La majorité arrivent sans documents**, donc ne sont pas identifiés comme mineurs, d'autres ne veulent pas se déclarer mineurs donc sont enregistrés dès le départ comme adultes. Une grande partie veut simplement arriver dans un autre pays de l'UE, donc passer inaperçus en Espagne. Problèmes pour leur garantir les protections dont ils ont droit.



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PROCÉDURE DE DÉTERMINATION DE L'ÂGE ET ÉVALUATION DE L'INTÉRÊT SUPÉRIEUR DU MINEUR

Les lois sur l'immigration et l'asile (Article 35.3 et Article 48.2) déterminent que quand la minorité ne peut être déterminée par des moyens sûres , les autorités doivent mettre immédiatement l'enfant sous placement de l'office du procureur général pour qu'il décrète l'âge de l'enfant.

Quand est-il dans la pratique?

Quelles sont les garanties procédurales?



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Autres

Tracer les liens familiaux en Espagne ou autres pays de l'UE quand cela fait partie de l'ISE.

Pas de coordination avec d'autres pays et non plus avec les pays d'origines pour faire l'évaluation de l'ISE et pour faire la réunification familiale dans le pays d'origine dans le seul but d'accomplir l'ISE.

Pour les enfants qui demandent l'asile et sont accompagnés, même si les Directives UE et les Directrices du HCR recommandent de faire des demandes et interviews séparées des parents, cela ne se fait pas dans la pratique.

Pour les MNA, les responsables légaux ne le font pas car ils pensent dans le mauvais sens que l'enfant est déjà sous protection, donc nous avons seulement pour l'année 2018, 10 demandes d'asile faites par des enfants pour l'ensemble du territoire.



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Instances internationales

CDE (UNCRC):

CC c. Espagne

BNF c. Espagne

CEDH:

TOTOPA c .Espagne



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CONCLUSIONS:

- **Absences de protocoles** pour garantir de manière fiable et adéquate une approche inter-institutionnelle qui permette de promouvoir une protection intégrale de l'enfant.
- **Lacunes légales**, on part d'un équivoque juridique, la majorité des dispositions juridiques se trouvent dans la loi sur l'immigration et non sur la protection de l'enfance. Il faut atteindre une approche intégrale et holistique. Pour la détermination de l'âge il faudrait changer les méthodes de détermination et prioriser l'ISP et en faveur du mineur en cas de doute.



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