

## STACY TOPOUZOVA, *De Jure* Representation Without Access to Substantive Provisions: Unaccompanied Minors in the Bulgarian Asylum Regime

*Analysis of recent amendments to the domestic asylum regime in Bulgaria illustrate that unaccompanied minors seeking asylum in the country are not afforded adequate legal representation and access to educational and healthcare services. This paper examines The Law on the Asylum and Refugees (LAR) and specifically, the competencies, functions, and responsibilities of legal representatives for unaccompanied minors. The paper argues that the legal representatives who are appointed for unaccompanied minors are administrative actors with no prior involvement with unaccompanied minors, and who, in the absence of both a formal legal obligation and a consultation mechanism, do not communicate with the unaccompanied minors they represent. Paradoxically, the de jure appointment of a legal representative, in this form, for an unaccompanied minor renders the minor more vulnerable.*

### Introduction

Unaccompanied minors seeking asylum in the European Union (EU) require a representative in order to be able to access legal protection in the form of refugee or humanitarian status. Every EU Member State, in keeping with its international legal obligations<sup>11</sup> is obliged to ensure legal representation for unaccompanied minors seeking asylum. However, the particular institution through which Member States ensure legal representation varies. Broadly speaking, there are two approaches according to which states appoint legal representatives: the appointment of a single specially-designated legal representative for an unaccompanied minor or the designation of an individual organization, or a single entity, to represent the cases of multiple unaccompanied minors (EU Report 2014:19).<sup>12</sup> At the outset, EU Member States are afforded discretion to determine by which approach, and through which institutions, to afford unaccompanied minors this legal representation. This paper examines the newly enacted model for legal representation for unaccompanied minors in Bulgaria, which stands at the ‘gateway’ of the EU and has registered a substantial number of unaccompanied minors between 2014 and 2016.<sup>13</sup>

### Overview of Domestic Asylum Regime

According to the centerpiece of the domestic asylum regime in Bulgaria (the LAR), the State Agency for Refugees at the Council of Ministers (SAR) is the primary organ responsible for examining protection claims (Article 46) and coordinating status determination proceedings.<sup>14</sup>

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<sup>11</sup> Namely, in keeping with its obligations under the *United Nations Convention on the Rights of the Child* (UNCRC) and the *United Nations Convention Relating to the Status of Refugees* (UN Refugee Convention). Furthermore, Article 25 of *The Recast Asylum Procedures Directive*, which entrenches a set of guarantees (1-6d) for unaccompanied minors. The full document is available online at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=en>.

<sup>12</sup> For example, individual legal representatives are not specially appointed for asylum procedures for unaccompanied minors in Belgium, Greece, Latvia, the Netherlands, and Slovakia. Rather, in these countries, only one organisation or institution ensures the representation for all unaccompanied minors.

<sup>13</sup> According to the latest statistics on unaccompanied minors in the European Union, 1815 unaccompanied minors were registered in Bulgaria in 2015, while the figures for 2016, thus far, exceed over twice that amount. The latest statistics are available online at: <http://ec.europa.eu/eurostat/documents/2995521/7244677/3-02052016-AP-EN.pdf/>.

<sup>14</sup> While in other countries, the UNHCR assumes a primary role in the process of status determination; in Bulgaria the UNHCR holds a subsidiary, advisory role. The Government of Bulgaria has formally signed a bilateral agreement with UNHCR establishing a working partnership with UNHCR without granting the organisation any

The SAR is also broadly mandated to provide basic services to asylum seekers, including employment assistance (Article 29.4), health assistance (Article 29.1.4), and financial assistance for six months after receiving refugee status (Article 32.3). In order to fulfil its mandate, SAR operates three main territorial units: transit centres (Article 47.2.1), registration-receiving centres (Article 47.2.2), and integration centres (Article 47.2.3). These are situated across the country, but are concentrated near the Bulgarian-Turkish border.

Once an unaccompanied minor arrives at a refugee reception centre in Bulgaria, the first priority for SAR authorities is to place him or her with a family member, namely a parent or a sibling, who is ‘legally present’ in the country, or in another EU Member State.<sup>15</sup> If a family member cannot be identified, the authorities seek to find an extended relative, namely an adult or extended family member who, again, is ‘legally present’ either in Bulgaria, or in another EU Member State. Where relatives are identified the authorities then conduct a series of security checks, which if completed successfully, trigger the process of family reunification (FRA 2015:170).

In the case where a living family member or extended relative, who could act as a legal guardian, cannot be identified for the unaccompanied minor, Bulgarian state officials are, in theory, mandated to offer the unaccompanied minor the right to decide which Member State to apply for asylum within.<sup>16</sup> If the unaccompanied minor should decide to remain in Bulgaria, the SAR authorities are required to initiate the process of registration, but do not begin the formal process of status determination until the unaccompanied minor has been appointed a legal representative in the country.<sup>17</sup>

The process of appointing a legal representative for an unaccompanied minor in Bulgaria begins with SAR officials. The Bulgarian domestic asylum regime does not provide an individual representative for each unaccompanied minor, but rather, confers upon a municipal representative the authority to act as the legal representative of all unaccompanied minors registered in his or her jurisdiction. More specifically, according to Article 25 (1) of the LAR, any unaccompanied minor under the age of 18, who is seeking protection and is residing within the territory of Bulgaria, will be given a representative from a municipal administration, namely the mayor of the municipality – or an official empowered as such – to act as their legal representative. According to Article 25(3), the representative is conferred the following competencies:

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particular authority during the status determination process, see:  
[http://www.oref.government.bg/docs/agreement\\_unhcr\\_government\\_bg\\_en.pdf](http://www.oref.government.bg/docs/agreement_unhcr_government_bg_en.pdf).

<sup>15</sup> *The Revised Dublin Regulation* (604/2013), specifically Article 6, contains obligations to trace the families of unaccompanied minors. It also includes provisions on the qualifications of the representatives for unaccompanied minors.

<sup>16</sup> The CJEU has confirmed (in the case of MA) that this applies even after the child has already applied in one Member State: <http://www.asylumlawdatabase.eu/en/content/cjeu-judgment-case-c-64811-ma-bt-and-da-v-secretary-state-home-department-6-june-2013>. Case C-648/11, CJEU 2013.

<sup>17</sup> Inevitably, there is a distinction between preliminary registration procedures and status determination procedures. Bulgarian authorities are mandated to initiate registration, irrespective of how and when the status determination procedure takes place. In this sense, Bulgarian procedures are distinct from other EU Member States.

1. Safeguard his/her legal interests in the procedures for granting international protection till the completion thereof with a final decision;
2. Represent him/her before any administrative bodies, including social, healthcare, educational, and other institutions in the Republic of Bulgaria with a view to safeguard the child's best interest;
3. Perform the role of a procedural representative in all the procedures before the administrative bodies;
4. Take actions for ensuring legal aid.

In effect, these provisions confer upon the legal representative distinct types of authority: to represent the unaccompanied minor in status determination proceedings; to request legal aid assistance; and to discern the minor's 'best interests', particularly in schooling and healthcare.<sup>18</sup> Taken together, the functions of the legal representative are not strictly legal or procedural, but rather more broadly encompass the 'well-being' of the unaccompanied minor.

### **Selection of Legal Representatives**

Although the LAR confers wide-ranging functions upon legal representatives, there are no particular specifications regarding who may qualify to act as a legal representative. There are also no formal selection procedures for legal representatives; rather, SAR officials approach an administrative authority after an unaccompanied minor has been identified, and at that point, the mayor of the local municipality becomes the minor's representative. In practice, such a mayor is conferred the authority to represent multiple unaccompanied minors seeking asylum without having any prior knowledge of Bulgarian domestic asylum legislation, or any experience in working with unaccompanied minors. From the outset then, the domestic asylum regime confers upon administrative actors, without any previous engagement with unaccompanied minors, the role of legal representative.

### **Absence of a Communication Mechanism**

Even when a representative is appointed, the LAR does not establish a formal communication channel by which the appointed representative can communicate with the unaccompanied minor. This means that when an administrative official is appointed as the legal representative, he or she does not establish any form of contact with the unaccompanied minor(s) in the particular reception centre, but rather, simply fulfills the administrative requirement of appointment. This practice results in the appointment of legal representatives who fail to communicate with the unaccompanied minor(s) they represent.<sup>19</sup>

New legislative provisions, adopted in 2016, permit authorities from the SAR to place asylum seekers in closed-access reception centres, with internal curfews and restrictions on movement.

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<sup>18</sup> As one of the core concepts in the UNCRC, a substantial body of literature (Alston 1994; Bhabha 2004; Bhabha, J. and Schmidt, S. (2006); Carr 2009; Eekelar 1994; UNHCR 2008) is devoted to examining the concept and definition of the 'best interests' of the child.

<sup>19</sup> This was affirmed through an interview I conducted with officials from the Bulgarian Red Cross, on April 22<sup>nd</sup> 2016, in Sofia, Bulgaria. Inevitably, this is a hugely problematic aspect in the legal representative appointment, which contradicts the basic principle of communication with an unaccompanied minor to ascertain his or her 'best interests'. Multiple studies (UNHCR 1996; UNHCR 1994; Williamson and Moser 1988) emphasise the importance of preliminary contact and consultations between the legal representatives and unaccompanied minors so as to ascertain the particular needs and aspirations of the unaccompanied minor.

Freedom of movement of asylum seekers is also constrained by the establishment of ‘zones of movement’: administrative areas, designated by the Chair of the SAR, which constrain asylum seekers from leaving, without the explicit permission of SAR. These new provisions further obstruct the channel of communication between legal representatives and unaccompanied minors.<sup>20</sup>

### **Absence of an Overriding Obligation**

The new amendments also fail to establish an obligation for the legal representative to actively engage with the unaccompanied minor. Relevant provisions stipulate that the legal representative ‘shall’ be responsible for the unaccompanied minor, but do not outline any more substantive obligations or responsibilities for the legal representatives. In practice then, State authorities are not bound by any strict obligation to communicate with the unaccompanied minor. As Red Cross social workers in the main refugee reception centres in Sofia observe, not a single legal representative has thus far communicated with the unaccompanied minor to which he or she has been appointed, thus rendering unaccompanied minors unable to register for schooling, access specialized healthcare treatments, or access any other social services outside of the reception centres.<sup>21</sup>

### **Conclusion**

The newly outlined provisions in the LAR concerning the appointment of legal representatives for unaccompanied minors do not establish a communication mechanism between the legal representatives and the unaccompanied minors; and they do not constitute an obligation for the legal representatives to establish contact with the unaccompanied minor(s) they represent. In practice, paradoxically, even when unaccompanied minors are appointed a legal representative they do not access schooling, specialised healthcare, or other social support services, but remain stranded in refugee reception centres.

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<sup>20</sup> Although these recent amendments have not yet been enacted, there is already a practice within the SAR to restrict the movement of asylum seekers in reception centres.

<sup>21</sup> Red Cross Interview, April 2016.

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### ***Legislation***

*The Law on the Asylum and the Refugees (LAR)*

*The Recast Asylum Procedures Directive (2013/32/EU)*

*The Recast Qualifications Directive*

*The Revised Dublin Regulation (604/2013)*

*The Convention on the Rights of the Child (UNCRC)*

*The Convention Relating to the Status of Refugees (UN Refugee Convention)*

### ***Case Law***

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### ***Interview***

Interview conducted with Social Worker of Bulgarian Red Cross, April 22, 2016, Sofia, Bulgaria.