

**Guardianship for unaccompanied minors**  
**Presentation at the European Parliament October 20 2011**  
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**Speaking notes**

Thank you very much for the invitation to be here to discuss the situation of unaccompanied minors in Europe. As a representative of a professional guardianship institution with more than 30 years experience with unaccompanied minors I would like to explain to you the need for an independent guardian that focusses on the protection of these vulnerable children.

As partner of ENGI, a network of guardianship organisations in Europe, we conclude that the systems of guardianship or other representation vary in the different European countries in terms of structure, practice, main responsible government actor and maturity. If you get a guardian or not depends on different things, such as the appliance for asylum, the permit to stay and coincidence (depending on the way you entered the country). Where no guardianship exists, there is mostly another representation system in place that fulfills international obligations. These systems are often developed top-down, reflecting international agreements but not creating true responsibility for the well-being of the unaccompanied minor. In this kind of system vulnerable children are in danger of not being properly taken care of. This needs to be improved.

Responsibility and accountability should be well arranged. In each member state there should be an organization that has the clear-cut responsibility for a separated child and is accountable for this responsibility.

Of course there should be enough resources and a clear mandate for this organization..

I will illustrate the necessity of this statement by giving you two examples of agonizing situations where Nidos as a guardian had and still has a central role to make sure that all action being taken is in the best interest of the child.

One situation is about the reunification of a baby staying in the Netherlands with its grandparents staying in another EU country and the other situation is about a girl that has a Dublin claim and had to return to another Dublin country where there wasn't any guardianship or other representation and no reception for her.

We and our ENGI partners have to conclude that the fact that there is no guardianship available for unaccompanied minors in most European countries makes it difficult and sometimes even impossible to act in the best interest of the child.

The case of Deka

*Background of Deka*

The now 17 year old Eritrean Deka arrived in 2008, when she was 14 therefore, for the first time in Europe by wooden boat from Libya. The boat was seized by a ship that took the passengers ashore. From there, Deka was transferred to a refugee camp in a city where she remained 8 months. She was there with a group of compatriots who supported

her in the difficult situation she was in. After the refugee camp was closed, she landed in the street with others, where she provided for herself by begging. This lasted for a month. An Eritrean family helped her to travel to the Netherlands.

#### *Involvement of Nidos*

In June 2009 Dekka arrived in the Netherlands and requested asylum. In July 2009, 15 years old, she was placed under the guardianship of Nidos. Her asylum request was rejected because of an earlier stay in another Dublin country. As a result, she received a so-called Dublin claim and in September 2010 she was detained for the purpose of deportation despite Nidos' opposition to this, who did not consider return to that other Dublin country and the detention justified in view of her vulnerability. Despite all Nidos' objections, she was deported in September 2010. ( ...)

Subsequently, Nidos tried to make arrangements with the aid organization that would take care of her in that other country. Nidos was promised by the IND, the Dutch Immigration Office, that Dekka would be collected at the airport where she would land. However, afterwards everything turned out to go differently.

#### *Continued*

In October 2010 Dekka returned to the Netherlands and reported herself to the Dutch authorities. Now Nidos was able to continue the counselling. During a conversation about her experiences in the Dublin country where she had stayed, she told that upon arrival she was taken to a prison where that same evening she received a letter stating that she had to leave the country, after which she was put in the street. The following weeks were terrible: she lived in the streets, slept under bridges and had to beg to stay alive. She was raped and beaten several times. She was afraid to ask for help from the police and in the end she decided to return to the Netherlands.

Because Nidos was convinced of the authenticity of her story, it decided to bring her story to the attention of the responsible minister. This is not a customary procedure and is only used by Nidos in exceptional and very agonizing cases. The final result was that Dekka received asylum.

At the moment she does not feel psychologically well, she can only think of her terrible experiences in the Dublin country, which makes her crazy. She told Nidos that all her life she has been wandering around, experiencing misery. Nidos is monitoring now intensively if further psycho-social help is required. At this moment, she is not yet prepared to receive this help.

#### The case of baby Feyci

##### Feyci' s background

Baby Feyci was born in Iran. His father was murdered. His Afghan mother fled to Iran with his 7 years old sister. The mother' s parents are staying in an EU country and have the nationality of that country. Because of the situation and the worries of the parents about their daughter and grandchildren, they travelled to Iran to try to return with their daughter and grandchildren to their EU country. The daughter and her children travelled on false passports. At Dubai airport Feyci' s mother and sister were arrested at the border and subsequently detained. They are still in a prison in Dubai, very probably

pending deportation to Afghanistan. The grandparents walked on with Feyci and succeeded in taking a next flight to Amsterdam. Upon arrival in the Netherlands, the passport check showed that the grandparents had the appropriate travel documents at their disposal, but that Feyci had a false passport. The grandparents admitted that Feyci's travel documents were false. After having been detained for a few days on suspicion of human trafficking, the grandparents were allowed to continue their journey to their EU country, but without their grandchild.

#### Involvement of Nidos

At the moment when the grandparents were arrested, Nidos was involved and Nidos placed Feyci with a foster family. The juvenile court appointed Nidos to be the guardian. It is in the interest of children not to be separated from their families for a too long time. The efforts of Nidos focused on reunification of Feyci with his mother. Unless our strong efforts it was impossible. So we did choose for reunification with his grandparents. The mother agreed by telephone on reunification between them and Feyci because she considered reunification with her to be too dangerous and uncertain for Feyci. Nidos approached all kinds of bodies, such as the Embassy of the United Arab Emirates, the Immigration and Naturalization Office (IND), the Return and Departure Department (DT&V) and the Foreign Ministry to contribute ideas about how to achieve an as early as possible reunification with the family. This was to no avail. The Central Authority was also approached. The Authority stated that it is very difficult, if not impossible, to achieve all this in the short term and that it will be a long process to reunite Feyci with his grandparents in the EU country. In a comparable situation it took nearly two years before a reunification could take place.

#### Departure to foreign EU country via the Dublin Procedure

Nidos started consultations with the IND to discuss which would be the fastest procedure to reunite Feyci with his grandparents. To receive clarity about this took nearly six months. It was decided to request the other authorities via a Dublin Procedure to admit Feyci. Meanwhile, the IND requested proof with legalized documents that Feyci was indeed the grandparents' grandchild. Nidos collected these documents. However, after the IND had submitted them to the authorities of the other country, this appeared to be insufficient proof for them. Subsequently, at the request of the foreign authorities, Nidos had a DNA examination done. At the same time, the foreign authorities asked supplementary questions, which were answered by Nidos. In the meantime, nearly three months have passed.

Nidos meanwhile conducted regular consultations with the juvenile court about the custody and, in addition, frequently contacted Social Services in the country of the grandparents to achieve that they would continue to provide support to Feyci and his grandparents after reunification. Social Services promised to provide this support. This contact was also established with difficulty and after several months. However, the result of all this was that the Dutch juvenile court transferred the guardianship to the grandparents and appointed Nidos as "family supervisor". In the meantime the grandparents regularly visit Feyci in the Netherlands.

#### Present state of affairs

Feyci has meanwhile been eleven months in the Netherlands and is now eighteen months old. At this moment Nidos is again answering supplementary questions of the foreign authorities.

Nidos has established that, the longer Feyci remains with the foster family, the more he will be alienated from his family, definitely as far as the language, culture and customs are concerned. This is not in his interest.

The reason why I have described to you these 2 examples of agonizing situations in which uma's may find themselves is because I hope that this makes clear that if no guardian has been appointed, commissioned to do everything that is in the interest of the child, one baby would stay in the Netherlands now who would never be reunited with his grandparents and a 14-year old girl would have no other choice but to surrender to those who have only one objective: making capital from the misery of the weak in society.

- I request you therefore to take measures in order that babies or little children like Feyci are not crushed between the bureaucrats of fortress Europe. Reverse the situation in these cases. Let the interest of the child really guide us. Arrange, for example, that if a guardian, supported by experts, determines that it is in the best interest of the child to be with a family in another EU country, the immigration authorities will have maximum 3 months to object to this stating sound arguments and that otherwise the child may be reunited with its family.

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- I also request you to arrange that, in the case of Dublin claims, uma's may only be transferred if this is from guardian to guardian. Or, in other words: from a person or organization who/that can be appointed for the welfare of the child to another responsible organization that can be appointed.

From ENGI I can tell you that we are very well able to mutually arrange such transfers properly. We would like it to be possible to find partners in all countries of the EU. That is to say: organizations that can be contacted when it concerns giving priority to the interest of the uma. It is disappointing to conclude that all countries in the EU state that they have organized guardianship or other responsibility for unaccompanied minors like written in the EU directive, but in practice we cannot find guardians in a lot of countries. That leads to the conclusion that there isn't a good definition for guardianship, and that it should be.