

Instruction on the appointment of a legal representative for unaccompanied minors

I. Introduction

In view of the need to observe the principle of best interests of the child in accordance with generally accepted standards of international law, international treaties to which the Republic of Moldova is a party, based on the principle that children in Moldova benefit from protection without discrimination, regardless of their race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, status obtained by birth, financial situation, degree and type of disability, specific aspects of child growth and education, their parents or other legal representatives thereof and their whereabouts, based on the Article 50 of the Moldovan Constitution, Articles 66, 67, 69 and 70 of the Law No. 270 of 18.12.2008 on Asylum in the Republic of Moldova, Articles 6, 7, 8, 11 and 12 of the Law No. 140 of 14.06.2013 on special protection of children at risk and children separated from their parents and Article 22 of the Law No. 338 of 15.12.1994 on the rights of the child, Bureau of Migration and Asylum of the Ministry of Internal Affairs approves this instruction,

II. Purposes:

The purposes of this instruction are:

- a) To set-up a uniform set of rules to regulate activities for the appointment of legal representatives to unaccompanied minors seeking asylum.
- b) To define the responsibilities for monitoring and recording these vulnerable categories of asylum seekers within the Asylum and Integration Directorate.

III. Scope:

The procedure shall be applied by the staff of the Asylum and Integration Directorate of the BMA, in cooperation with the Municipal Department for Child Protection.

IV. Legal references

- a) Constitution of the Republic of Moldova
- b) Civil Code No. 1107 of 06.06.2012
- c) Family Code No. 1316 of 26.10.2000
- d) Law No. 270 of 18.12.2008 on Asylum in the Republic of Moldova
- e) Law No. 140 of 14.06.2013 on special protection of children at risk and children separated from parents
- f) Law No. 338 of 15.12.1994 on the rights of the child

V. Responsibilities

Within the BMA, Asylum and Integration Directorate, the decision-makers / responsible officers and staff involved in enforcing legal standards on the conduct of the asylum procedure for unaccompanied minors are:

- Head of Asylum and Integration Directorate
- Head of International Protection and Asylum Procedures Unit
- Eligibility officer appointed to examine the application for asylum of an unaccompanied minor.

In the case of an asylum application filed by an unaccompanied minor, the Head of Asylum and Integration Directorate will assign the pending case to an eligibility officer, preferably a female, with experience in the field. While appointing an eligibility officer to review the application for asylum of an unaccompanied minor, the Head of the AID and the Head of IPAP Unit will take into account the peculiarities of each case.

The Head of Asylum and Integration Directorate and the Head of International Protection and Asylum Procedures Unit shall check at regular intervals if all unaccompanied minors seeking asylum have been appointed legal representatives, soon after the filing of asylum applications.

VI. Registration of the asylum application in the case of unaccompanied minors

An asylum seeker shall be granted the status of asylum seeker when he/she submits an asylum application in person, as provided by the Article 51 of the Law No. 270 of 18.12.2008 on Asylum in Republic of Moldova. An unaccompanied minor seeking asylum under 14 years shall apply for asylum through his legal representative, and those who reached the age of 14 or more years may file the application in person, necessarily assisted by a legal representative.

Unaccompanied minors who expressed, in writing or verbally, their intention

to obtain a form of protection shall be registered as asylum seekers, and their asylum applications shall be filed as soon as possible after the appointment of a legal representative.

In the case of unaccompanied minors seeking asylum, the asylum procedure shall be suspended until the appointment of a legal representative. During the period of suspension, unaccompanied minors shall enjoy the rights of asylum seekers.

The appointment of a legal representative shall be initiated by the eligibility officer of the Asylum and Integration Directorate responsible for examination of the application of the unaccompanied minor, within 15 days from the date of registration of the minor, under the supervision and control of the Head of the Asylum and Integration Directorate and the Head of the International Protection and Asylum Procedures Unit.

The eligibility officer responsible for examination of the asylum application of an unaccompanied minor shall submit an application (in writing or by electronic means) to the Municipal Department for Child Protection for the appointment of a legal representative, as soon as he/she receives the case for examination. The application shall be signed by the Head of Asylum and Integration Directorate. A copy of the application shall be attached to the individual case of the unaccompanied minor seeking asylum.

The application shall include the following information:

- 1) Data on the identity and country of origin of the unaccompanied minor.
- 2) Circumstances in which the minor reached the Republic of Moldova and the Asylum and Integration Directorate of the BMA.
- 3) The date on which the unaccompanied minor was registered as asylum seeker at the Asylum and Integration Directorate of the BMA.
- 4) Whether he/she is or not accompanied by any relative or friend in Moldova.

When appointing the legal representative, the Municipal Department for Child Protection shall consider the principle of continuity in the growth and education of the child, having regard to the ethnic, religious, cultural and linguistic identity of the minor. Thus, if the minor asylum seeker is accompanied in the Republic of Moldova by relatives or people who established close relationships, such as relatives, neighbours or friends of the family, he/she shall be placed immediately in the family of the relatives or other persons who have established close relationships and wish to accept/keep the child in order to raise and educate him/her in their family, upon their written application, in accordance with the Article 11 (2) (a) of the Law No. 140 of 14.06.2013 on special protection of children at risk and children separated from their parents, and who shall be appointed as tutors or guardians, as applicable, in accordance with Articles 32, 33 and 35 of the Civil Code of the Republic of Moldova.

If the minor is not accompanied in the Republic of Moldova by such persons, upon the notification of the Municipal Department for Child Protection, considering the best interests of the child, he/she shall be placed in state institutions for children, according to the Article 22 of the Law No. 338 of 15.12.1994 and Article 11 (2)(b)(c) and paragraph (3) of the Law No. 140 of 14.06.2013 on special protection of children at risk and children separated from their parents.

When choosing the form of protection, one shall primarily consider the best interests of the child and shall mandatorily consider the ethnic origin, affiliation to a particular culture, religion, language, health status and child development in order to create such living conditions as to ensure continuity of the minor's education.

A copy of the decision of the Municipal Department for Child Protection on the appointment of a legal representative for an unaccompanied minor shall be attached to the minor's individual case.

V. Interview of the unaccompanied minor seeking asylum

The interview of the unaccompanied minor shall be conducted by an eligibility officer, preferably a female with experience in the field, in the presence of the legal representative.

The interview shall be conducted in a special office for interviewing asylum seekers, considering the principle of confidentiality.

Before the interview, the legal representative shall make all arrangements to prepare the minor for the interview.

At the interview, the eligibility officer shall inform the minor about the purpose of the interview and its consequences in a manner accessible to and understandable for the minor. The opinion of the unaccompanied minor seeking asylum shall be taken into account, considering his/her age and degree of maturity.

The interview shall be conducted in a friendly way, allowing the minor to take breaks as often as needed.

If necessary, considering the principle of the best interests of the child, a representative of UNHCR or local NGOs involved in the protection of children's rights will be present at the interview, with which the BMA, Asylum and Integration Directorate concluded a cooperation agreement.

The interview shall be reread to those present at the interview and shall be signed by all participants indicating their current positions.

VI. Communication of the decision

Communication of the decision to the unaccompanied minor shall be made in the presence of the legal representative, who will certify that he/he was informed by signing that communication.

The legal representative shall be informed on the possibility to file an appeal against a negative decision of the BMA - Asylum and Integration Directorate, by means of a judicial review of administrative acts, excepted from the general condition to conduct a preliminary procedure.

The territorial guardianship authority shall ensure representation of interests and rights of the unaccompanied minor in the court, according to the Article 7 of the Law No. 140 of 14.06.2013 on special protection of children at risk and children separated from their parents.

The legal representative shall be informed by the eligibility officer responsible for examination of the case of unaccompanied minor about the possibility of contacting local NGO in the field, with which BMA, Asylum and Integration Directorate concluded cooperation agreements, to request legal aid in the court.