

The ambiguous status of unaccompanied minors between 15–18 years old seeking asylum in Norway

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In the last few years a substantial group of unaccompanied minors have applied for asylum in the Scandinavian countries. It is well recognized that the minors represent a particularly vulnerable group of migrants, and international conventions as well as Norwegian legislation have provisions that apply specifically to them. The article discusses how the care arrangements for the applicants between the ages of 15-18 provided by Norwegian authorities are colored by their status primarily as children or primarily as asylum seekers.

We conclude that the new restrictive measures of 2009 show the relative subordinated position of the CRC to immigration control, which means that the older minors are treated more as adults, restricting that the special needs of this group are met. However we find also the trend of granting unaccompanied minors rights as children: Their application assessment is given priority and that they are given equal civil rights in main welfare institutions and are included into the ordinary welfare system instead of given separate treatment.

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Are they primarily children or primarily asylum seekers?

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Scandinavian countries. How do state authorities deal with these minors applying for asylum? Are their conditions mainly defined by their status as unaccompanied children or as asylum seekers? In this article we will discuss how the care arrangements for the applicants between the ages of 15-18 provided by Norwegian authorities are colored by this ambiguity.

The Norwegian political discourse, while one of relatively strict immigration regulation in Europe, has been embedded in the language of humanitarianism, justice, solidarity, equality and decency (Hagelund 2003). Particularly this has been the case when it comes to asylum seeking children (see Vitus and Lidén 2010). In Norwegian immigration politics, the Convention on the Rights of the Child (CRC) has been a significant part of the political negotiations between a restrictive and a liberal asylum policy. The new Immigration Act coming into force in 2010, strengthens the child rights perspective by among other things adding child-specific forms of persecution to the list of conditions for asylum. This new legislation also emphasizes that the best interest of the child is a fundamental consideration in any assessment for residence permits for humanitarian reasons, and the threshold for consenting to residence for children should be lower than that for adults. The child applicants should not be treated differently from any other child, when it comes to rights to education, health care and other welfare services.

Coinciding with the introduction of the new immigration law, thirteen new control measures were enshrined in Immigration regulations in 2009, designed to reduce an increasing level of applications for asylum. Some of these measures specifically addressed the unaccompanied minor as applicant. The main changes were:

- a) to grant temporary residence for those between 16–18 who are not granted asylum, meaning that they will have to return to their home country when turning 18,
- b) to include the unaccompanied minors into the Dublin II regulations, which means that minors can be returned to the first European country they have been registered in or applied for asylum in¹,
- c) more restricted practices of how assessments of the best interests of the child should be interpreted and weighted in proportion to immigration control,
- d) new restrictions in granting family reunion and
- e) new restrictions in granting asylum for humanitarian reasons.

These control measures have led to additional ambiguities in both discourses and practices in regards to whether asylum seeking children are defined primarily as children or primarily as asylum seekers. The ambiguities of their status as either children or asylum seekers is revealed in several areas, from being enshrined in laws and regulations to the practices of care in reception centers. The divided care arrangements for minors under and over 15, the new regulation for temporary stay for those between 16-18 and including the unaccompanied minors into the Dublin II regulations are examples of ambiguity expressed in formal legislation and regulation. Expectations of self-governing in financial and provisions issues, while at the same time having no real influence on important matters relating to their own future, is an example of the ambivalence in everyday lives of minors in reception centers. The ambivalence also seem to influence the relation between the minor and public welfare services, where both educators, health personnel and child protection services can be uncertain about what rights should be granted and what exceptions should be made due to the fact that these minors also are asylum seekers.

In the following we will illustrate these ambiguities with findings from a research project commissioned by the Norwegian Immigration Authorities (UDI), which assesses the living conditions in reception centers for those who are under their respon-

sibility, or more specifically unaccompanied minors between 15 and 18 years old. Living conditions are assessed in the areas of health, diet, care, accommodations, access to social networks and activity offerings. The research includes a survey of all the twelve reception centres in operation in the spring 2012 and field visits to six of the reception centres including interviews with 30 minors, the staff and contact persons in the school, the local health service and local child protection services. Legal guardians have also answered an open set of questions through mail. The study thus takes on a broad perspective on the lives of these young people, asking how many different actors, including themselves, shape and influence how both their care needs and civil rights are defined in the context of the reception centers (Lidén et al. 2012). Based on findings from this study we will argue that unaccompanied minors between 15–18 years old are treated mainly as asylum seekers and that the best interest of the child has turned into a principle to be negotiated.

Divided care arrangements

In the last decades the CRC has played a central role in Norwegian political rhetoric, asylum policies and legislations. Norway has been considered a country that demonstrates its commitment to the CRC through increased extensive legislation (Høstmælingen, Kjørholt and Sandberg 2008). In Norway, protecting and privileging children and childhood is reflected in political practice on a generally high level of political engagement in supporting bodies such as the CRC. The implementation of the CRC in the 1999 Norwegian human rights Act meant that national legislation affecting children had to be reconstructed in order to be in line with the framework and different articles in CRC, which has led to reformulation of national legal acts concerning children. The incorporation intensified the debate on three main principles of the CRC, namely the best interests of the child, participation rights, and the principle of non-discrimination.

In 2005 the CRC Committee report to Norway criticized the living conditions of unaccompanied minors in reception centers (ref.). The same year the new centre left coalition Stoltenberg I govern-

¹From 2011, Greece is omitted from this Dublin II practice.

mental declaration stated the intention to transfer care responsibility for unaccompanied minor asylum seekers from the immigration authorities (UDI) to the child protection services, to guarantee same rights and care practices for all children who are under the protection of Norwegian authorities. In 2007 the child care services took over the responsibility for the minors under 15, with the intention to follow up for those over 15 in the next few years. This intention was postponed in 2009, due to the increasing numbers of applications in 2008–2010. A change in the public and political support for a more restricted immigration regulation may also have been an important reason. Not including this group in high cost institutions with higher standards of living that in reception centers could be interpreted as a preventive measure, making Norway a less attractive country for young asylum seekers.

Today, the immigration authorities are still responsible for the care arrangements for the eldest group of child applicants. This means that the minors stay in separate reception centres for unaccompanied minors, provided by business operators, either private operators or operated by municipalities. Everyday life in reception centers is regulated by a number of UDI defined directives and circulars. However, no formal norms for staffing, staff skills and competences, housing standards and environmental or community resources are defined. In all these aspects the standards are below the norms that are applied by institutions run by child protection services. Even if directives and circulars express many ideals, resource scarcity constrains the center staffs' opportunities to fulfill the expectations expressed in the regulations. In our study, we find wide variation in how well the different centers ensure living conditions, related to material conditions, the ideals guiding operations, the expertise and competences of the personnel, and in regards to resources available in the local community. Quality is also contingent on the continuity of operations and thus expertise developed over time, by reception staff, in the local educational facilities and by health services.

Reception centers are meant to be a temporary residential unit with intended moderate living standards. For the last few years about 60 per-

cent of the unaccompanied minor applicants are granted a residence permit. Since 2011, according to fewer applicants and by giving the unaccompanied minors priority in the application assessment process in UDI, the average waiting period for the case decision is now about two months compared to 10–12 months two years ago. The waiting period to be settled in a local community for those with a residence permit has also been shortened. This means that the majority of the minors stay only temporary for a period up to four months in the reception centres.

However, there is another group of long term residents living alongside the majority group of short term residents. The long term residents are those with a temporary permit until they turn 18, or they have their case assessed by the appeal institute UNE, or they have got a final rejection on their application. Some are included in the Dublin-agreement waiting to be returned to another European country. For those who stay long term, for periods up to two years in reception centers, the intended moderate living conditions of the reception centers are precarious. Their need for support and care differs from those who stay at the centres for a short period. The rate of staffing, staff skills and competences, housing standards and environmental and community resources become significant for upholding their civil rights and rights as children under a legislation that has implemented the CRC. Moderate to low standards does not suffice for long term residents, and we therefore state that the most important condition influencing their living conditions are the immigration regulations. We will argue that the new control measures do not take the minors' vulnerable condition, their need for support and care at this point of their life course sufficiently into consideration.

Expectations of self-governing

The ambiguous status of unaccompanied minors as children or adults also becomes apparent in the expectations of self-governing in financial and provisions issues while living in reception centers. The study has revealed two areas in particular, where the responsibilities of the residents surpass the

expectations and responsibilities we normally subscribe to children.

First of all, the full responsibility for their food and nutrition is formally given to the residents themselves, while the reception centers and their staff have a defined responsibility for training and guidance in cooking and nutrition issues. While we find that the training and teaching is inadequate, we recognize that many centers and its staff acknowledge the challenge of nutrition and find ways to fund provision of breakfast and one or two hot meals a week. Secondly, the residents are also responsible for their own finances. They receive a base amount, which represents the same as a single adult asylum seeker receives, which in addition to food should cover all necessary expenses a person has to clothes, personal hygiene items, health care, including medication, if needed glasses or pre-paid mobile cards as well as ordinary leisure expenditure.

Some community nurses express a concern for the consequences of poor economy to their health. In general they worry about the nutrition status, as they find that many of the residents are malnourished and need supplements. In addition they experience that young people do not buy medicine or follow up consultations with a doctor, even for serious diseases, because they lack the money to do so.

Our study shows that although some residents are able to prioritize their expenses and even manage to save up money for larger purchases, even the smallest extra expense may collapse their meager budget. When the minors themselves choose to talk about their economy and their priorities, we get stories like this one from a young boy:

“We get 700 crones every week. Every Monday I buy food for 3–4 days. It will be 3–400 crones. We buy fruit and drinks later on. We buy all the food, some clothing and stuff. I am saving, bought a PC. I have to save, – do not get any extra to buy clothing. I had to pay for the doctor as well. I’m sick, so I operated my eyes. Got a letter yesterday, saying I have to pay nearly 2000 crones. I got three warnings. I should have called them to tell them I live in a reception center (laughs a little). Got a last warning. I’ll call them, you know, and say that I’m staying at the reception center, how do I pay?”

How do manage to save up for clothes?

“I have some money on my card. We save. Sometimes we don’t eat that much, so we save money. Must pay for doctors and... our finances are really bad.”

Their budget requires both planning and moderation. Their expenses are mainly for food and some clothing. They also wish to save to acquire a mobile phone and a computer. A major medical expense will however quickly tilt the balance of the budget to a loss. Although young people have a right to free health care from the public health care scheme, just as other children under 18, before they reach the regular limit for receiving an “expenses free card”, medical expenses and medications make a serious cut to a meager budget. For some, this means postponing doctor visits that are not considered extremely necessary. For others, who have chronic diseases or have been injured before or during flight, medical expenses and medications must be calculated as a regular cost in an otherwise tight household budget.

We have come to the conclusion that the minors here are given greater responsibilities than commonly given to other youth. In theorizations of childhood, economic independence and financial governance is something which is learnt by gradually being introduced to being responsible for your own spending and saving, however with your parents’ support and as main providers. These minors are here thrown into an adult role, learning independence in a period where they are also finding their way in a new society, have limited knowledge and information available that can help to navigate this situation as well as minimal control over the conditions of their future. Again, this has particular implications for the long term residents, and especially for those with poor mental and physical health.

Resilience and coping strategies when parental care is absent

Resilience is often conceptualized as protection factors that help youth to overcome difficulties by navigating towards and negotiate recourses as well as their social and cultural contexts. The quality of relations, the feeling of support and the possibility

to manage your own life, experiencing moments of happiness, have a certain feeling of self-confidence and to believe in a future, is some of the sources of resilience.

In this study, we have made special efforts to bring the minor's own views on their life situation to the fore, and have used PhotoVoice as a method when interviewing the 30 young participants of the study. Their pictures and stories describe coping strategies under conditions of an uncertain future, while at the same time adapting socially and culturally to a new society. They also describe a reality where they themselves seek out people, situations or objects that can give them the support they need in this fragile situation. These supportive relations do not always correspond to the structurally provided support relations or systems that are provided for them in the reception centers.

The CRC article 20 addresses the responsibility of the state authority to provide alternate care in the absence of a child's family care. We have assessed the care given by the staff in reception centers, and find that the staff gives adequate support and practical advises, instructions, information about the society and ensure the minors have access to school and health treatment. They may also develop a friendly relationship. However, conditions for developing the kind of relationship that provide individual support and comfort for the many worries and concerns that the minors have are limited. We also find that the minors establish more close relations and care arrangement with peers in the reception centers, than to the staff.

Miriam is one of the many young women from Africa coming to Norway by plane, a travel organized by some middle men. She has received a temporary permit because she has no valid ID, and finds this very hard to handle and she feels very alone. Miriam says:

Every time you are alone, you realize there is no one else. Everything is difficult. And you know that no one is telling you what to do, no one is helping you with your mistake. No one is telling what is the next step to go. That is scary. Even if you are in a crowd you are the only person there, most of the time it is scary, but you manage, and it is good to see that you manage. You must have confidence in life.

Miriam is one of those expressing her capacity to create adaptive courses for herself, in spite of adversity. Miriam is living in a reception center in the far north of Norway and has come to find relief for her worries in nature. Interviewed in early February, we ask her how she manages the very dark months of the years.

I am really in love with the geographical approach – the sun rise and mountains. When the polar light is moving on the sky – it is really different. The sky, the mountain, the water. They used to say that this mountain is my house, because I used to go down and sit near the sea, in the summer, I used to go there to see the sun and the sunset. When they did not find me, they said “she must be down there, it is just like her house.

As for many of our informants, Miriam's main coping strategy is education. She says:

I love the school, the school is the nicest thing. Here is my teacher. She is good for me! She is a good teacher; she gives attention to all the students. I like to write. I write some short poems. I read, I like to read. I read English, in Norwegian I will try, but I do not understand it. I do not know how to write or read my family language, Amharic.

Regardless of their formal status, schooling and leisure activities are important for their coping strategies. For most reception centers the minors attend school classes organized for adults, and the standard of teaching and education vary. However some local communities have developed good models for combining introduction programs with primary school education courses. This is what Miriam experiences.

Today the rights to primary school education include only minors up to 16 years of age. One of our recommendations to the Norwegian government is to ensure the right to primary education to all asylum minors, to give them optimal conditions to get an education during their time in reception centers. Rights to attend education should not be dependent on their asylum status, but granted to them as children. This is even so for the minors attending the classes organized specially for them. If the minor gets a final rejection on their application he or she has lost his or her right to participate in these classes. We will argue that being in school gives knowledge and hope, no matter what the fu-

ture may bring. It is in the best interest of the child to have an equal right to education irrespectively of their asylum status. This will also strengthen their rights to participation.

Variations in the right to health care and child protection

Predominantly we find that the health service is doing a good job. The health assessment to identify minors with special needs is well organized. The quality, on the other hand, depends on the continuity of expertise and priorities of resources set aside for asylum seekers by the local government. This means that access to proper health care varies between reception centers.

The asylum minors have equal rights to health care as minors with a residence permit. However, with a temporary stay permit, the need for specialist treatment is not always met, mainly due to an uncertainty among the health personnel on their rights and on the conditions for treating this group. This implicates that access to adequate health care also vary between short term and long term residents. We find that the health situation of the long term residents is especially critical. In addition, the low level of economic support implicates an inadequate nutritious diet and that medical treatment and medication is not prioritized. This is another example of how their role as asylum seekers gets precedence over their status and rights as children when their application for asylum is denied, or they get a temporary permit.

The local child protection services are perceived as a peripheral partner by the reception centers. Child protective services commonly perceive that residents problems are mainly health related and therefore not within their responsibilities. Every year a number of residents disappear from the reception centers, and notification of concern of disappearances and human trafficking is sent to child protection services for follow up. Unfortunately, many of these cases get dismissed due to lack of evidence or because the person moves out of the district. The inability to follow up minors disappearing from the reception centers demonstrate a lack in the support system and we recommend to in-

troduce special means to cope with this problem. Even if staying in reception centers is voluntary, the minors do not cease to be minors, and under the child protection system when moving. Again, the law says one thing, yet the practice is based on uncertainties and inability to find solutions.

The legal guardians

In Norway, being a legal guardian for an unaccompanied minor is a voluntary task, organized by the municipality. Their main task is to support the minors through their asylum application process and ensure that their civil rights as minors are fulfilled. We find that the efforts and level of assistance from legal guardians varies greatly. Although most legal guardians provide important legal follow-up and support, the lack of such support may have significant consequences for the young person who does not receive it from their appointed guardian. This means that minors suffer from an arbitrariness of the system.

The legal guardians also report on limitations and constraints to their work in terms of being heard by the immigration authorities, in terms of understanding and keeping track of changes in complicated regulations and in terms of having sufficient expertise to offer support in complex asylum cases, in particular for those between 15–18. The legal guardian may gain important information for the age assessment and for evaluating the best interests of the child. However, these items of information are not necessarily included in the asylum case assessment. We will also emphasize the situation for those under Dublin II-regulation. The Norwegian immigrant authorities do not arrange an asylum interview with this group of asylum applicants, which makes the conditions of support from the legal guardians even more difficult. The minors under Dublin II-regulations do have a right to get their case assessed in Norway if they have family living here, or they have special needs for health treatment.

From 2013 a new legislation regarding the support given by legal guardians will be passed, which seems to strengthen the recruitment, the organization of the work, and introduce norms for skills

and level of support that legal guardians should offer. Hopefully this legislation can remove some of the arbitrariness of the current system, so that the civil rights of the minors can be fulfilled in a satisfactory manner. We do however need to keep a close watch on these changes, as ambiguities of rights as children and the role as asylum seekers paradoxically become more actualized the closer you get to complex legislation.

Concluding remarks

It is well recognized that the unaccompanied minor refugees represent a particularly vulnerable group of migrants. International conventions as well as Norwegian legislation have provisions that apply specifically to this group. The new restrictive measures of 2009 show the relative subordinated position of the CRC to immigration control. Although the new Alien Act from 2008 reflects how the discourse of immigration regulation vs. children's rights is negotiated, immigration regulations appear to have taken precedence over children's rights once more.

This means that the older minors between 15 and 18 are treated more as adults, restricting that the special needs of this group are met. We find the standard of material and economic resources, staffing and staff skills in reception centers are below the norms that are applied by institutions run by child protection services. For the long term residents this becomes unreasonable. Many of them are developing serious health problems, partly because they live with uncertainty and a feeling of no control over their future for a long time. This has an impact on their development, their ability to acquire sufficient skills, health and strength and secure independence needed to become a sound adult. The 2005 critique from the CRC committee on this issue for the long term residents is still not met with sufficient measures. The assessment of the best interest of the child of these minors are given secondary priority in relation to the new control measures of the immigration regulations which included minors into the Dublin-agreement, and gave them temporary residence permit until defining them as adults.

At the same time the Norwegian immigration regulation treat unaccompanied minors as a vulnerable group of children. We find that their application assessment is given priority, which for the majority means that the time period spent in the reception centers is limited. This is a very important means to improve their living conditions, as the standards are adequate only for a temporary stay. Another positive change in their condition is that they are given equal civil rights in main welfare institutions and are included into the ordinary welfare system instead of given separate treatment. These formal rights are yet not fully realized in practice, but will hopefully get there.

An exception from the trend of granting unaccompanied minors rights as children, is the lack of legal right to primary school education for those who have not attained such education before the age of 16. To give access to primary school education to those who need such education, even when they have passed 16, will be an expression to also recognize and include the eldest minors into the implementation of children's rights.

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