



Department of Political Science

Chair in Comparative Public Law

UNACCOMPANIED MINOR MIGRANTS IN EUROPE:
THE ITALIAN CASE IN COMPARATIVE PERSPECTIVE

SUPERVISOR

Prof.ssa Cristina Fasone

SARA PIACENTINI

N.627652

CO-SUPERVISOR

Prof. Francesco Cherubini

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Introduction

The present research has been conceived to shed a light on the current scenario of unaccompanied minor migrants in Italy and in the European Union.

By following the steps of the latest mainstream of children rights and of migration policies, of Italian legislation and of European Union's legislative activities, the present research can be classified at the exact intersection of these areas of interest. The result is an attempt to critically assess the current regulatory framework in Europe and in Italy, in particular, on such a delicate and worrisome issue.

The reader will find out that, unlike other matters, the case of unaccompanied minor migrants has been regulated thanks to the collaboration of both institutional and non-institutional actors. Similarly, a wider scope of analysis can be reached only with a synergy between national and supranational law.

According to Italian legislation, unaccompanied foreign minors are “citizens of non-EU States and stateless persons, whose age is inferior to 18 years old, who are in the national territory, for whatever reason, without assistance and legal representation”¹.

The definition is restated in the law n.47 of 7th April 2017, on unaccompanied foreign minors (*Legge Zampa sui minori migranti non accompagnati*). This law amends previous legislation on the matters, specifically law n.286 of 25th July 1998² and others concerning unaccompanied minor migrants. The text was presented in Parliament on 4th October 2013 and finally approved on 29th March 2017³. The *iter* of the law was successful, thanks to the work of the political decision makers and the commitment of NGOs, such as Save the Children and many others. The latest Italian legislation on unaccompanied migrants is a successful step in the path of the protection of children, as acknowledged by UNICEF⁴. Nonetheless, there is still a long way ahead until a comprehensive reception and a fully regulated welcoming system is rightly implemented.

¹ Decreto legislativo 18 agosto 2015, n.142, *Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale*, art.2, comma 1, lettera e), G.U. n 214, 15/09/2015

² Decreto legislativo 25 luglio 1998, n. 286, *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*, GU n.191, 18/8/1998 - Suppl. Ordinario n. 139

³ Camera dei Deputati, Assemblea, *Resoconto stenografico, Seguito della discussione della proposta di legge: Zampa ed altri: Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati*, XVII LEGISLATURA, Seduta n. 769, 29/03/2017

⁴ UNICEF, *UNICEF hails new Italian law to protect unaccompanied refugee and migrant children as model for Europe*, News Note, Roma, Geneva, 29 March 2017 https://www.unicef.org/media/media_95485.html

In the first chapter, the thesis provides the reader with an outlook on the situation of unaccompanied minor migrants arriving on the Italian shores. Secondly, the Italian law on unaccompanied minor migrants will be analysed in detail, with its highlights and pitfalls. The third chapter will analyse every piece of European Union legislation and jurisdiction that has been pivotal or has contributed to the creation of a legislative framework on the issues of migration and the protection of children. In the fourth and last chapter, the Swedish and French reception systems for unaccompanied minors will be assessed, by analysing similarities and asymmetries, in order to provide the reader with two different cases of EU Member States' legislation on unaccompanied minor migrants.

To conclude, the comparative analysis will be useful to assess whether the Italian law on unaccompanied minor migrants can be a suitable model in other EU countries.

Prior to the analysis of the regulatory framework, it is essential to offer an overview on the up-to-date real situation of unaccompanied minor migrants in Italy. The concept which lies beneath every legislative effort in favour of the mainstreaming of children's rights is that of the supreme interest of the child⁵, as stated by Art.3 of the United Nations Convention on the Rights of the Child⁶. Behind those numbers, figures and statistics, hundreds of thousands of individual human histories are bond together. Respect for human lives and understanding of different cultures are essential in order to build a strong and effective immigration policy. Such values are even more important when we consider minors as subjects of those policies. Further care and attention shall be given to these children, who are likely to have already suffered many perils at the moment of arrival on European shores.

If it is true that the majority of minors present in the reception system are boys and girls aged between 16 and 17, there can be found a significant number of pre-adolescent boys and girls as well, aged even less than 14 years. Therefore, because of their younger age, they find themselves in a condition of even greater vulnerability.

⁵ Pobjoy, J. M., *A child rights framework for assessing the status of refugee children – Contemporary issues in refugee law*, pp. 91 – 143, 2013

⁶ United Nations, *Convention on the Rights of the Child*, New York 20 November 1989
https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf

The number of unaccompanied minor migrants does not change over the years in percentage terms, constantly representing about 9% of the children accepted, but it grows year by year in absolute values. If in 2012 there were 698 unaccompanied minors in Italy, two years later they were almost double (1.380). By 31st December 2016 there are 2.050, while one year later, by 31st December 2017, they were more than 18.000.⁷ Children and girls, very young and even more alone, who need a special attention that allows them to find that childhood, which has been inevitably lost after the escape from their country.⁸

⁷ Ministero del Lavoro e delle Politiche Sociali, *Report di monitoraggio sui MSNA in Italia. Dati al 31 dicembre 2017, 2018*

⁸ Save the Children, *Atlante minori stranieri non accompagnati Italia 2018, 2018*

Chapter I

1. An overview on datas, statistics and country of origin of unaccompanied minor migrants in Italy

1.1 A glance at the situation

Worldwide underage boys and girls have left their home country to pursue the dream of a life free from violence and hardship.⁹ They seek better living conditions in other countries, where they hope to build their future. These boys and girls wish to live in a state where protection is granted, where they can access to basic goods and medical care, where they can find decent work. However, there a no legal ways to have access to such a possibility. For this reason, they are willing to rely on traffickers, who often threaten them both physically and verbally, they treat them as commodities and they oblige their families to get into debt in order to pay the trip to one of their sons.

As a matter of fact, for many of these youngsters there is no option rather than leaving in order to save their lives. Indeed, it is the only way to avoid certain death: they escape from war-torn countries, from persecutions based on ethnicity or religion, from perpetrated violations of human rights by authoritarian regimes. Girls and boys dream to have a job, a home, a family. These are normal wishes, but they turn into a distant mirage when living day after day in a field of shacks and tents, with no possibility to escape the vicious circle of poverty and violence.¹⁰

According to the UNHCR global statistics, in 2015 the 51% of the 21,3 millions refugees worldwide were minors¹¹. About 90% of them are displaced in the neighboring area¹².

In the last few years, the outburst of conflicts had dramatic consequences in terms of displaced people. In ten years, between 2005 and 2015, the number of children and teenager refugees under the protection of UNHCR has doubled, from 4 to 8 millions, and in the last 5 years the number of minor refugees has increased by 77%.¹³

⁹ International Organization for Migration, *World Migration Report 2018*, 2018

¹⁰ Save the Children, *Atlante minori stranieri non accompagnati Italia 2018*, 2018

¹¹ United Nations High Commissioner for Refugees, *Global Trends 2015*, June 2016, pag. 52, www.unhcr.org/576408cd7.pdf

¹² Ibid.

¹³ United Nations International Children's Emergency Fund, *Unrooted, the growing crisis for refugee and migrant children*, 2016

Most of the refugee children, about 50% of the total, have fled from Syria and Afghanistan. Of the remaining half, 75% of them come from only 10 countries: Somalia, South Sudan, Sudan, Democratic Republic of Congo, Central African Republic, Myanmar, Eritrea. The continuation and deterioration of conflicts and violence in these countries place an even greater burden on children's lives and their future. For whatever reason they are forced to flee the country, they shall be given protection, not only because they are refugees, but also because of their minor age, and thus for their vulnerability. Protection shall be guaranteed throughout the migration process and their condition of vulnerability shall be given strengthened legal guardianship.

The top ten countries hosting the largest number of refugees are in Asia and in Africa. Among those countries, the main one is by far Turkey, which is hosting 2, 5 million refugees (for which there are no clear data on the percentage of minors, which shall be around 50%). Turkey is followed by Pakistan, Lebanon and Iran. It is obvious that these countries are the closest to the two major areas of crisis and, therefore, of defense of refugees, which are Syria and Afghanistan. Lebanon, in particular, is welcoming the largest number of refugees in proportion to its population: one million and one hundred thousand UNHCR refugees under mandate, of which 53% are minors. Totally they make up 20% of the Lebanese population.

To complete the first ten places of this special ranking we find Ethiopia, Jordan, Kenya, Uganda, Democratic Republic of the Congo and Chad¹⁴. The first European country is Germany, twelfth in the ranking and with about 300.000 refugees, of which 21% are minors. In Europe there were a total of 389.000 children who applied for asylum in 2015, more than double the previous year¹⁵. The 70% of requests are from minors coming from Syria (38%), followed by those from Afghanistan (18%) and Iraq (14%).

Furthermore, according to the International Organization for Migration (IOM), 363.401 migrants arrived by sea in Europe in 2016¹⁶, of which 181.436 in Italy and 176.906 in Greece.

5.098 people lost their lives in the sea during that year: more than 1.300 more victims than in 2015. This is the highest number of deaths recorded so far¹⁷.

By 31st December 2017, there were 18.303 minors present in the reception facilities in Italy.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ International Organization for Migration, *Mixed Migration Flows in the Mediterranean and Beyond*, 2017, pag. 1. http://migration.iom.int/docs/2016_Flows_to_Europe_Overview.pdf

¹⁷ Ibid.

Almost all of the 18.303 minors (90.8%) are welcomed in reception facilities, while only 3.1% of them are placed in private homes (i.e. entrusted to families). In particular, 5.605 are located in first reception facilities (30.6%), while 11.022 are hosted in second reception facilities (60.2%)¹⁸.

As for the territorial distribution among Italian regions, Sicily still appears to be the territory that receives the largest number of minors, specifically 7.988 minors through its own structures and communities. As for the rest of Italy, minors have been distributed among the different regions in percentage terms which are proportional to their size and population. Sicily, indeed, is followed by Calabria (7.9%), Lombardy (6.6%), Lazio (5.7%), Emilia Romagna (5.6%), Puglia (5%) and then all the others.

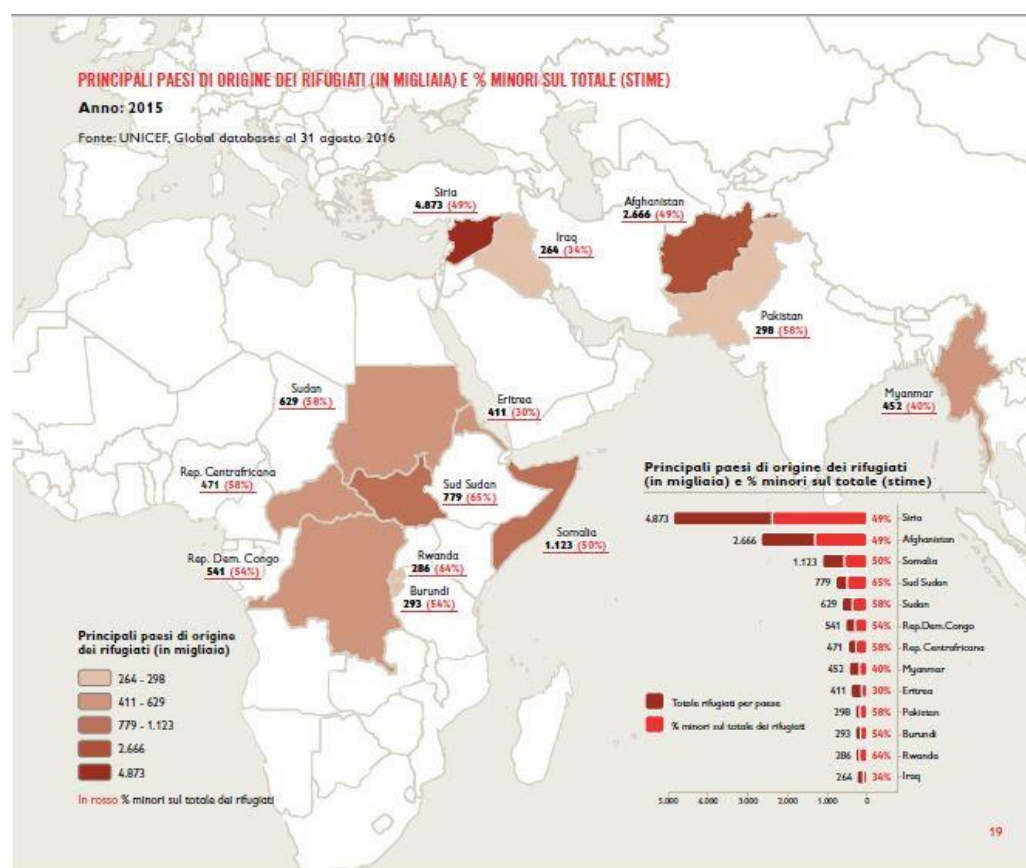


Fig. 1 Source: *Atlante minori stranieri non accompagnati in Italia*, Save The Children, 2017

¹⁸ Ministero del Lavoro e delle Politiche Sociali, *I minori stranieri non accompagnati in Italia. Dati al 31 dicembre 2017*, 2018

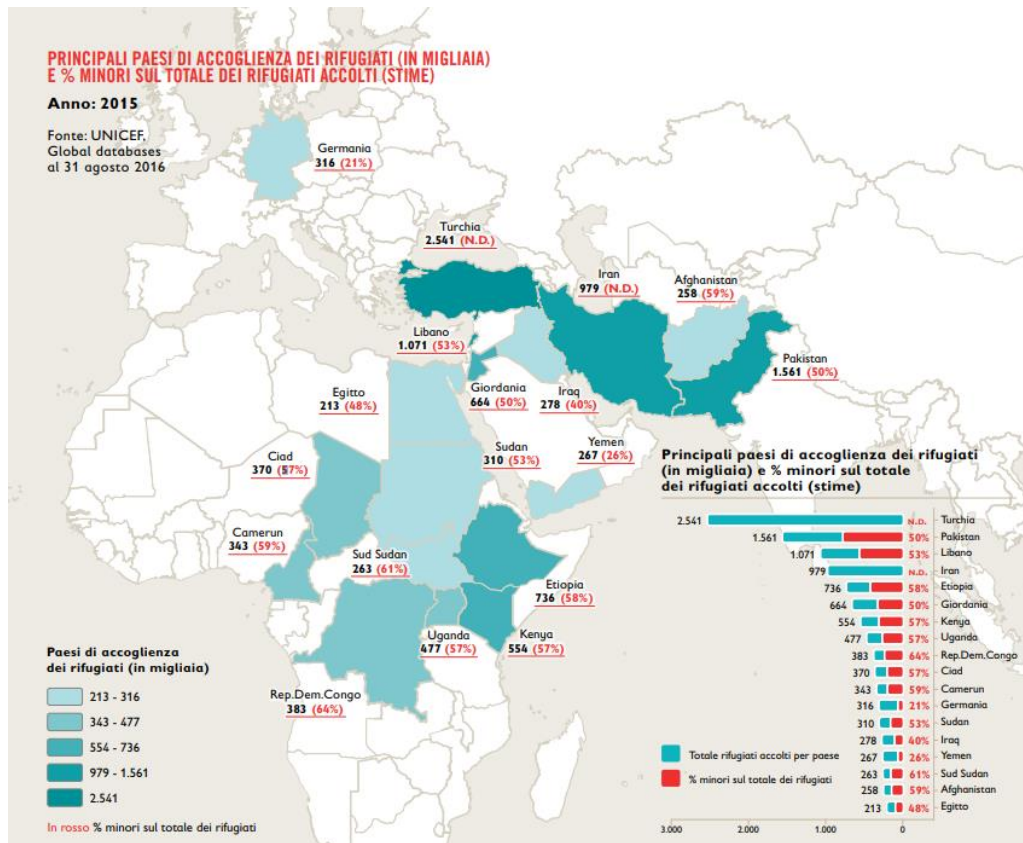


Fig. 2 1 Source: *Atlante minori stranieri non accompagnati in Italia*, Save The Children, 2017

1.2 Data on arrivals

It is difficult to assess the exact number of unaccompanied minors who arrive in Italy every year, since not all of those who manage to cross the borders are intercepted by local authorities. Furthermore, many of them purposely do not want to leave a trace of their presence in order to continue their journey to their final destination. During their stay on the Italian territory, some boys and girls remain in a gray area, on the margins of the institutional reception system and thus escape official statistics. In recent years, however, the margins of uncertainty have been greatly reduced thanks to the improvement of some limits of the reception system and to an increased attention to the issue of borders control and a greater sensitivity towards the need to gather information to better understand the phenomenon.¹⁹

¹⁹ Save the Children, *Atlante minori stranieri non accompagnati Italia 2018*, 2018

The data, which are provided by the Ministry of the Interior, record mainly those who arrive by sea and land on the southern coast of our country, leaving from the coasts of North Africa, from Egypt and Libya. This data is fundamental because it is by far the numerically most important route, but it does not take into account the minors who are intercepted in the rest of the territory or those who travel hidden in ships that dock in Italian ports on the Adriatic coast or who cross the eastern border by trucks or other vehicles, having no alternatives than relying on traffickers.²⁰

The data collected by the Ministry of Labor and Social Policies are a second source of information on unaccompanied minors in our territory. The information collected on unaccompanied minors is very significant and important to know about their country of origin, their age and gender. However, even this information is not exhaustive since not all the competent authorities promptly report the presence of foreign minors or their sudden disappearance from reception facilities.²¹

If these uncomplete data are jointly analyzed, they are partially overlapping and they can help in sharpening the contours of a phenomenon that has acquired more and more significant dimensions in recent years. Minors face journeys and risks much bigger than them, despite their young age.

Since 2011, the year of the Arab springs, the balance has been upset in many societies of the countries in North Africa, from Tunisia to Egypt, from Libya to Syria. Since that moment, it has begun a growing flow of people towards Europe. In that year the Italian Government spoke about "the North-African Emergency", after the arrival of about 62.000 people. If we look at the data on the total number of men, women and children who have landed in Italy we can see that the trend has not always been linear, but it has been determined by the circumstances of what happened in the countries of the regions of origin (the Arab spring in 2011, the enlargement of the conflict in Syria in 2014, but also the deterioration of the conditions of many West African countries in the last few years).

In 6 years, from 1 January 2011 to 31 December 2016, 85.937 minors have arrived in Italy, 62.672 of whom (72.9% of the total) are unaccompanied minors.²² A given percentage that would be even higher, taking into account that in 2014 there was an exceptional arrival of entire Syrian families who were fleeing the war (in that year there were 10.020 Syrian minors accompanied by their families arriving in Italy).

²⁰ International Organization for Migration, *Mixed Migration Flows in the Mediterranean and Beyond*, 2017, pag. 1. http://migration.iom.int/docs/2016_Flows_to_Europe_Overview.pdf

²¹ Save the Children, *Atlante minori stranieri non accompagnati Italia 2018*, 2018

²² Ibid.

This means that almost 3 out of 4 children, who have arrived in Italy in the last 6 years, were alone while facing the long journey the final crossing. Unaccompanied minors facing such journey is a structural and long-term phenomenon, which is present throughout the world, but which is particularly relevant and significant for those who try to reach Italy and Europe from Africa through the central Mediterranean.

As it can be inferred by the data, the number of unaccompanied minors between 2011 and 2015 has almost tripled in absolute terms (from 4.209 to 12.360). However, such an exponential growth has reflected the increase in the overall migratory flow. In percentage terms, in fact, the arrival of unaccompanied minors remained constant during 2014 and 2015, around 7.8% of total arrivals. This is another reason why the noticeable increase in arrivals of unaccompanied minors is even more striking during 2016. With an overall increase in arrivals of 18% compared to the previous year, in 2016 there were 25.846 unaccompanied minors who arrived in Italy. More than double compared to 2015 and almost 6 times more than in 2011. In percentage terms, unaccompanied minors represent 14.2% of all the people disembarked in Italy. But above all they represent 91.5% of all minors arrived on the Italian coast, more than 9 out of 10. They are very young, sometimes still children under 14 years of age, who face a long journey and the risk of crossing the sea in precarious rafts and boats to reach Europe.²³

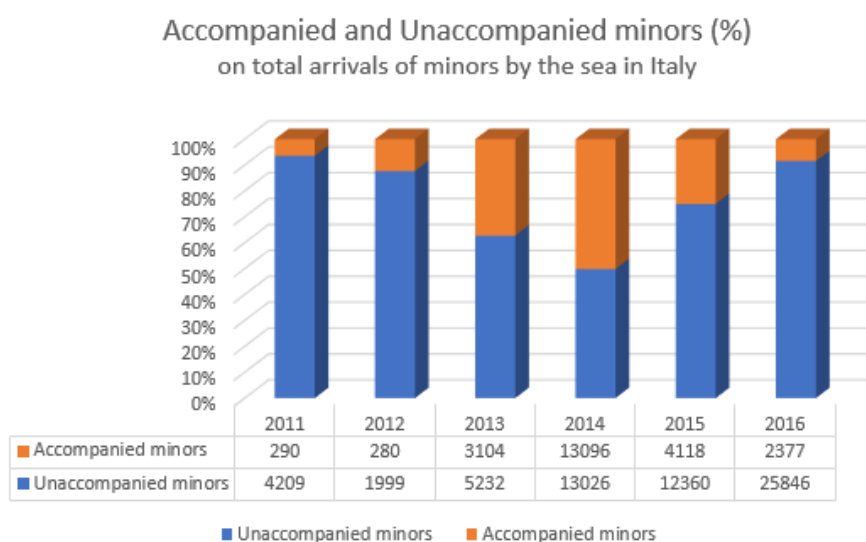


Fig. 3 Data from *Save The Children*

²³ Ibid.

1.3 The Italy – Libya deal

However, 2017 has seen a reverse of the flow of arrivals. From January to mid-July, the number of people who have been rescued in the sea and accompanied in Italian harbors, has reflected the trend of the previous year, even marking a slight increase compared to the same period of 2016. However, in the following months there has been a drastic reduction in the flow of arrivals.

According to the data released by the Ministry of the Interior, the arrivals registered until 30 June 2017 were 83.752 (i.e. once again increasing by + 19.2% compared to the same period of the previous year). Among the migrants who arrived in Italy by sea in the first part of 2017, there were 12.239 minors in total and more than 9 out of 10 (93.2% of them) were traveling alone.

During the following six months of the year, on the other hand, there has been a drastic drop in the number of arrivals. Only 35.617 people, among which 5.098 minors, have landed on the Italian shores after crossing the Mediterranean. It is a relatively limited number when compared to the corresponding semester of 2016 (-69.3%), and to the first part of 2017 (-57.4%).

The overall data show the evolution of the migratory phenomenon: in total 119.369 people arrived in Italy by crossing the sea in 2017. They were 34% less than in 2016 and there were 17.337 minors among them²⁴.

The reason that largely explains this "two-speed" trend in sea arrivals in our country lies in the agreements that the Italian government has signed with the Libyan authorities in 2017 and in the complementary measures implemented by the European Union. The deal has been successful in terms of reducing the inflow of migrants, but it is high questionable in terms of compliance with human rights standards.²⁵

The declared aim²⁶ of the actions by the Italian government and by the European institutions is to close the southern border of Libya in order to prevent the entry of migrants who try to reach Europe from West Africa, to intensify the fight against the traffickers of human beings and to promote the economic development of local communities in migrants' transit areas. At the same time, the Italian government intends to promote the repatriation of migrants who are detained in Libya in their countries of origin with resettlement plans and, for a very limited number of refugees and asylum seekers, to establish a humanitarian corridor that will allow them to reach Europe safely.

However, the action of the Italian government and the agreements reached with the Libyan authorities have raised concerns and criticism from the Council of Europe and the United Nations, as well as from many

²⁴ Ministero dell'Interno, Dipartimento della Pubblica Sicurezza, *Riepilogo sbarcati per nazionalità*, 2017

²⁵ Hermanin C., *Immigration Policy in Italy: Problems and Perspectives*, IAI Working Papers, 17 - 35, December 2017

²⁶ Ministero dell'Interno, *La nostra sfida da vincere in Africa*, La Repubblica, 12 July 2017, <http://www.interno.gov.it/it/sala-stampa/interventi-e-interviste/nostra-sfida-vincereafrica>

international NGOs and observers. In particular, the Commissioner for Human Rights of the Council of Europe, has expressed concern that "in the light of recent reports on the current situation of migrants in Libya, surrendering individuals to Libyan authorities or other groups in Libya would expose them to a real risk of torture, inhuman or degrading treatment or punishment"²⁷. For many years, in fact, the stories of migrants arriving in Italy testify to the inhumane conditions of detention centers in Libya and the violence they must endure during their stay in Libya, waiting to face the journey to Europe. The answer of the Italian Minister of the Interior pointed at the role of Italy in rescuing migrants in the sea and called for more actions from the international community, including the United Nations²⁸.

1.4 Countries of origin

From 2011 to 2016, about 60.000 unaccompanied minors have reached Italy. Their countries of origin are Egypt, Mali, Eritrea, Gambia, Nigeria, Somalia and Syria. Unsurprisingly, the flow from these seven countries has been constant over the years, despite some significant changes in the numbers of arrivals per year (e.g. when the conflict in Syria has peaked or when other conflicts have arisen in the African countries). During these five years, unaccompanied minors, who have arrived in Italy by crossing the sea, were mainly coming from four macro regions of origins and were following four different long travel routes. These regions were: the Horn of Africa (especially Eritrea and Somalia), West Africa (mostly from Nigeria and Gambia, but increasingly from Guinea, Mali, Ivory Coast and Senegal), Egypt and Syria (and other Middle East countries).²⁹

In 2017 there were significant changes not only in the number of arrivals but in the data on the country of origins. About 15.000 unaccompanied minor migrants arrived on Italian shores in 2017 and the top 5 countries, which cover almost 50% of the total number of arrivals, do not include Eritrea and Egypt, while Nigeria and Gambia have recorded a sharp decline in absolute terms. In particular, it is striking the elimination of the flow of unaccompanied minors from Egypt, which has always been in the last six years among the first countries of origin. This year, only 72 boys have arrived, (97% less than in 2016). But also countries like Eritrea (-68%), Nigeria (-60%) and Gambia (-56%) recorded decreases higher than the overall average (-39%).

²⁷ Council of Europe, Commissioner for Human Rights, Strasbourg 28 September 2017 <https://rm.coe.int/letter-to-the-minister-of-interior-of-italy-regarding-government-s-res/168075baea> (Nils Muiznieks's letter to Marco Minniti)

²⁸ Rappresentanza permanente dell'Italia presso il Consiglio d'Europa, Strasbourg 12 October 2017 https://www.asgi.it/wp-content/uploads/2017/11/2017_10_11_lettera_Minniti_COE.pdf (Marco Minniti's reply letter to Nils Muiznieks)

²⁹ Save the Children, *Atlante minori stranieri non accompagnati in Italia 2017*, 2017

The first three countries for the children's origins in 2017 are therefore three countries of West Africa: Guinea, Ivory Coast and Gambia. Such data are confirming a trend in recent years that has seen a steady growth in the number of boys and girls coming from this region of the continent.³⁰

In spite of the general decrease in the overall flow, it is important to highlight the increase in minors in absolute terms coming from some other countries: Sudan (+ 16%), Bangladesh (+ 24%), Syria (+ 158%) and above all Tunisia (+ 967%). If the arrival of minors from Egypt has considerably decreased, suddenly the arrival of Tunisian youngsters has resumed: after 2011, the year of the so-called "Jasmine Revolution" (which kicked off the Arab springs) during which more than a thousand youngsters arrived in Italy, the flow in the following years had stopped, thanks to the peaceful stabilization of the country. The recent strikes, degenerated into riots to protest the rise in prices decided by the Government and the difficult general economic situation, have pushed again a growing number of Tunisians, and among them more than 500 minors, to emigrate to Italy. Moreover, in 2017 the flow of Syrian refugees has been strengthened again. After the blockade in Turkey and the impossibility unable to reach Europe from Greece, Syrian refugees are choosing the longest crossing to Italy to make their journey in search of a safer place.

³⁰ Save the Children, *Atlante minori stranieri non accompagnati Italia 2018*, 2018

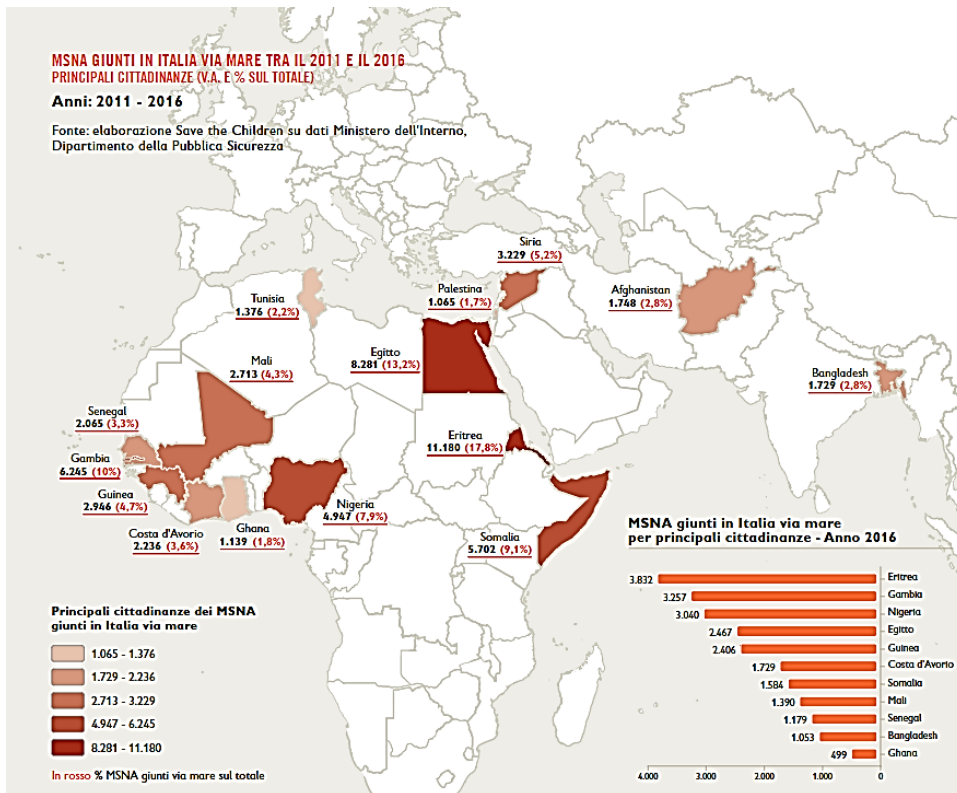


Fig. 5 Source: *Atlante minori stranieri non accompagnati in Italia*, Save The Children, 2017

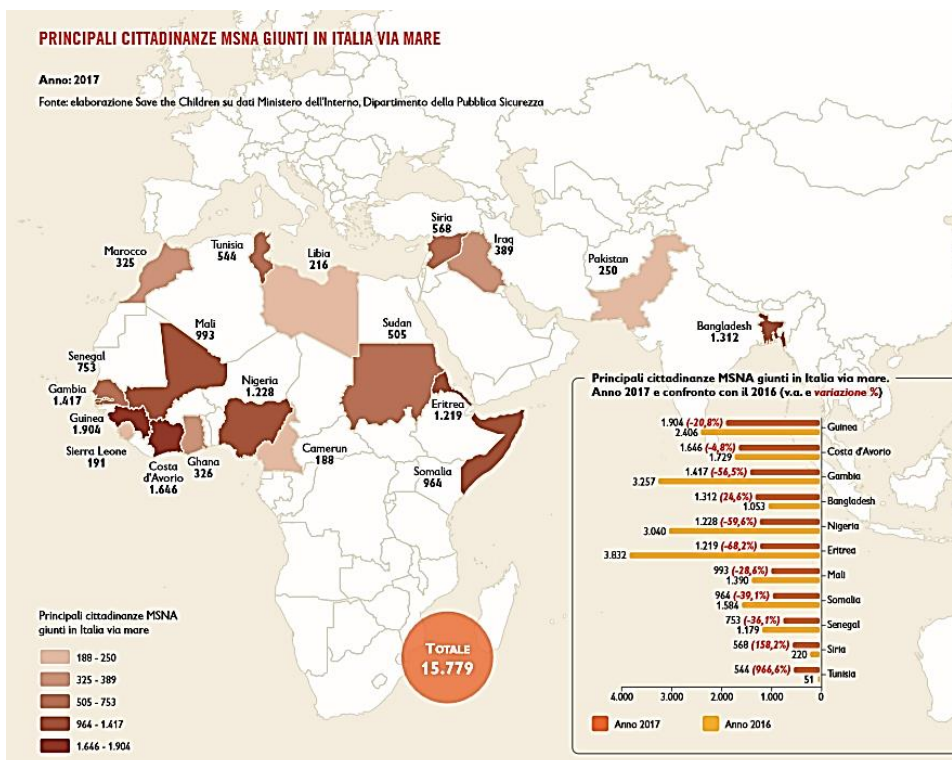


Fig. 6 Source: *Atlante minori stranieri non accompagnati in Italia*, Save The Children, 2018

2. Risks to whom children are exposed to

2.1 *Vulnerability of girls*

Girls who have embarked on their long journey alone are certainly more vulnerable and are at greater risk than their peers. Numerous testimonies confirm that violence against women and girls often takes the form of rape. In some cases they are the same traffickers who, well aware of the risks that the trip offers, advise or force the girls to take contraceptive pills that "protect" them for many months from future pregnancies due to violence that can not only be possible, but unfortunately likely.

Despite the aforementioned variations in the number of arrivals of unaccompanied minors, the percentage of girls present in the reception facilities has remained constant over the last few years, on average being around 6.7%. In 2017 such trend was confirmed, with a presence of 1.247 girls, representing 6.8% of the total.

What is striking and important to stress is the very young age of many of them: in fact there are 191 girls between the ages of 0 and 14 present in the reception facilities (of which 33 are under 7) and they represent the 15% on the total number of girls accepted. Differently, the percentage of boys aged 0-14 is less than half that of girls, specifically 6.7%.

The data show an increasing number of girls who arrive alone in Italy and some of them are very young, if not even little girls. They have often lost one or both parents during the trip or they have traveled alone with slightly older brothers, or entrusted by the family to acquaintances who could take care of them until they would arrive in Italy and have instead abandoned them. Other times, these girls are at risk of trafficking, perhaps they have already been victims of exploitation in their country of origin, coming from degraded and violent family environments.

In 2017, the majority of girls who arrived in Italy came from only two countries: Nigeria (501 girls, accounting for 40.2% of the total) and Eritrea (233 girls, equal to 18.7% of the total). The presences of the Somali and Ivorian girls follows at a distance (99 and 98 respectively, equal to 7.9% of the total in both cases).³¹

2.2 *Nigerian girls, victims of trafficking*

The number of minors and young Nigerian women who arrive in Italy has increased exponentially in the last three years. If in 2014 there were 1.454 adult women who arrived by sea in Italy coming from Nigeria, their number tripled in 2015, and then further doubled in 2016, when it reached the number of 11.009. The same dynamic can be found when looking at the data on the arrivals of unaccompanied minors from Nigeria. There were 461 in 2014, more than double the following year and about 3.040 in 2016. The available data do not

³¹ Ibid.

provide the gender distinction, but it can be estimated that about 40% of the 3.040 unaccompanied Nigerian minors arrived in Italy in 2016 were underage girls, that is about 1.200 girls and teenagers. Almost all the girls of Nigerian origin who enter Italy by sea claim to come from Benin City and neighboring areas. They are almost always girls who live in suburban and rural contexts, with large or broken families, often without one or both parents. Many of them tell of having lived in the house of uncles or other relatives, where they have suffered violence and abuse from an early age by acquaintances, living in a state of inferiority compared to other family members.

According to witnesses directly collected by Save the Children³², it is precisely the acquaintances or neighbors, but also schoolmates or older sisters who have already arrived in Europe, who try to lure and to involve these young girls in what is a real trafficking in human beings. Once they have been recruited, the girls take an oath by which they commit themselves to repay the exploiters their debt, which is between 20.000 and 50.000 euro. Such a practice is a way of binding the girl, turning her into a victim that can hardly ever manage to free herself. Before and during the trip, such oath is translated into abuse and violence by the traffickers. Sometimes these girls are induced to prostitution already in Niger or Libya, where they are locked up in places of segregation, waiting to continue the journey. Some contract the HIV virus or have lesions and infections of the genital apparatus. Others arrive in Italy pregnant, which makes their condition even more vulnerable: they are unaccompanied, minor, migrants and mothers.³³ In cases where they are allowed to carry out the pregnancy, the child becomes a further instrument of coercion and psychological pressure on the mother by traffickers and exploiters. At the time of landing on Italian territory and the meeting with the reception staff, the Nigerian girls are already under the direct and visual control of the traffickers or their accomplices (often they are other older Nigerian girls, or engaged couples). In the stories of the girls to Save the Children operators, all the typical trafficking indicators are detected: often the girls deny being minors, even when the minor age is clear and visible, because they have been instructed by their exploiters to avoid the system of protection and assistance provided for minors. In many cases they say they do not know how they arrived in Italy or the name of the countries crossed, or even say they have not paid anything for the trip³⁴. There are few children who say they are victims of trafficking and in those cases they are placed in protected places or in women's communities. In many cases, Nigerian girls are already in prostitution in areas near the reception and identification centers, or are transferred by traffickers in Campania to be sorted and finally sent to other Italian

³² Ibid.

³³ Vervelt M. et al., *That I Live, that's Because of Her': Intersectionality as Framework for Unaccompanied Refugee Mothers*, *British Journal of Social Work* 44, 2023-2041, 2014

³⁴ Save the Children, *Atlante minori stranieri non accompagnati Italia 2018*, 2018

cities. Depending on the organizational capacity of the criminal network, girls can also be directed in other European countries such as France, Spain, Austria or Germany.³⁵

Once they arrive in Italy, the victims of trafficking must pay their debt. The sum of the debt can increase further through entirely arbitrary sanctioning mechanisms, every time the girls violate the "rules" imposed by their exploiters. In some cases, girls have to pay a periodic rent for the sidewalk space where they prostitute themselves, which can range from 100 to 250 euros each month. All these extra expenses result in confusion and uncertainty about the exact amount to be repaid in order to redeem the debt. To avoid violence and extortion, even to the detriment of their family members in Nigeria, the girls work in conditions of slavery, for periods ranging generally from 3 to 7 years. They are forced to prostitute themselves in any physical condition, in suburban streets of the cities and at very low prices starting at 10 euros. In order to earn more, not infrequently, they are forced to accept the risk of unprotected sex. In addition to the obvious physical stress, often due to lack of sleep, the girls on the street are subject to violence and even group assaults by the same Italian customers. The "turnover" of girls on the national territory is very frequent and mainly implemented towards the younger ones, who are moved from one city to another to avoid police control or to establish close ties with customers or social workers. There is also an increasing use of psychotropic drugs by victims, often associated with alcohol, on the induction of their traffickers. Because of the continuous violence, they report physical signs and psychological traumas often irreversible. Frequently they use voluntary interruption of pregnancy, even illegal, or take medicines with abortive effects that are given to them by the *mamam* or other subjects.

These are drugs, if taken in overdose, can cause very strong contractions which determine the abortion. In some cases, the intake of these substances can cause convulsions, abdominal pain, palpitations, up to potentially lethal bleeding.

2.3 "Invisible" children

Another category particularly at risk is represented by boys and girls for whom it has been signaled by the competent authorities a departure from the structures that housed them. The so-called "untraceable", whose removal is recorded in the SIM³⁶ (Minors Information System) until the completion of their age or a possible tracing.

³⁵ European Commission, *Report on the progress made in the fight against trafficking in human beings*, 2016 https://ec.europa.eu/antitrafficking/sites/antitrafficking/files/report_on_the_progress_made_in_the_fight_against_trafficking_in_human_beings_2016.pdf

³⁶ The SIM is a census information system, aimed at registering the minor's entry into the national territory and monitoring the subsequent reception route. The Decree of the President of the Council of Ministers n. 535/1999 (Article 2, paragraph 2, letter i,

The “invisible” are therefore those children on whose fate it is not possible to have detailed information: some leave the reception facility in which they are within a few days or weeks, in order to complete their migration trajectory and reach another European country. Others, after weeks or months of waiting, go away in search of a job that allows them to start repaying the debt incurred for the trip, suffering in some cases a strong psychological pressure on the part of the family members left in the country of origin. Finally, others are victims of trafficking, "recruited" directly in the reception centers and exploited in Italy, in construction sites or in the fields or, worse, in the prostitution market.

For all of them a new period of insecurity and dangers begins, without the protection offered by the national reception system. Those who continue the journey return to rely on the help of traffickers, contracting new debts and risking their lives in sometimes deadly steps. The boys and girls who make themselves "invisible" and remain in Italy to work, often find themselves in a situation of irregularities that makes them fragile and subject to the abuses of adults with whom they come into contact.³⁷

These are thousands of minors alone. For the first time, thanks to the establishment of the new data collection system (SIM), it is possible to know how many minors have become unavailable during the course of 2017. Specifically in 2017, 2.440 minors became “invisible”, a large number especially if compared with the more than 15 thousand minors alone arrived by sea during the same period: almost one in six decided to leave the structures that welcomed them. They are mostly Guinean citizens (14.3%), Ivorian (9.7%) and Somali (9, 3%). Furthermore, among them about 10.4% of the total are girls, a high number and a percentage that is more significant than the number of female minors that are arriving by sea in Italy (which we remember in recent years represent the 6-7% of the total): a possible element that may suggest that some of them were "recruited" to be included in the prostitution market.

Minors who arrive alone in Italy have had to rely on people who have facilitated the various steps from one country to another behind the payment of very large sums of money. Over time, all transnational organizations that manage human trafficking have developed along all the main migratory routes.

As we have seen, traffickers have often turned into violent and ruthless torturers, who kidnap and abuse migrants to get even more money from them or their families.

Among the victims of this trafficking, unaccompanied minors are among the most vulnerable and among the most invisible. Although in most cases the decision to leave home to escape poverty, conflict or humanitarian

and article 5) and Legislative Decree no. 142/2015 (article 19, paragraph 5) assign to the Directorate General of Immigration and integration policies of the Ministry of Labor and Social Policies tasks of censoring and monitoring the presence of unaccompanied foreign minors (MSNA) on the whole territory national.

Law 47/2017, Article 9, paragraph 1, containing "Provisions on measures to protect unaccompanied foreign minors", has set up, at the Ministry of Labor and Social Policies, the national information system for unaccompanied minors (SIM).

³⁷ Save the Children, *Atlante minori stranieri non accompagnati Italia 2018*, 2018

crises is a voluntary choice, often the debt incurred during the trip with the traffickers forces the boys and girls to carry out jobs that, for their forced and irregular nature, makes them victims of exploitation to the point of reducing them in some cases into a state of slavery.

For the vast majority of these minors, therefore, the spiral of exploitation is looming from the beginning of the journey and it often becomes more acute and crystallized right from the first phase of entry into Italy. Once they arrive in our country, minors are trapped and exploited in illegal markets by criminal organization in order to settle the debt contracted for the trip. But the distinction between the traffickers of human beings, who manage travel, and the organizations that manage trafficking and exploitation of migrants is not clear: the two phenomena are often linked, often merging into a single process that gradually entangles its victims both in labor exploitation and in sexual exploitation.

Unfortunately, quantifying victims of trafficking and severe exploitation is extremely complex both due to the submerged nature of the phenomenon and the persistent difficulties in identifying victims. It is assumed that more than half of the victims are forced to prostitution, predominantly women and girls of Nigerian and Romanian origin. The rest of them have suffered labor exploitation especially in the agricultural, manufacturing, construction, domestic and catering sectors.³⁸

2.4 Migratory routes and risks

Most of those who have left their homes and who have taken refuge in another region or in a refugee camp in another country are minors. Especially for them, boys and girls who choose to leave and leave behind their loved ones, families and friends, travel takes place in dangerous conditions. They leave their village or refugee camp that from "home" has over time turned into a "prison" from which to flee. By any means they reach the cities in which they know they can find who will help them to reach the coasts of the Mediterranean. From there they face the crossing of the desert, crammed on board of trucks or pick-ups, with very little water and food, with the ever present risk of being abandoned along the way.

A stream made of thousands of streams coming from the villages of the various countries most affected by the phenomenon of migration and that changes direction when it finds an obstacle on its path, such as a new control at a border or a conflict that makes a passage insecure. The major controls at the borders of Libya, particularly at the southern ones, and the greater difficulties around Tripoli, are causing diversification of the departure points from the North African coasts. In 2017³⁹ there was a total decrease of around 50% of the people who crossed the Mediterranean Sea. This decrease involved not only the number of migrant departures from Libya to Italy (-34%), but also from Turkey to Greece (-83%).

³⁸ Ibid.

³⁹ Save the Children, *I flussi migratori verso l'Italia*, December 2017 https://www.savethechildren.it/sites/default/files/files/Analisi%20Sbarchi%20Gen-Dic_2017.pdf

At the same time, other migratory routes have restarted to gain importance: first of all, the route from West Africa to Spain through Morocco, which has once again become an alternative especially for migrants coming from West African countries, as well as for Moroccan and Algerian citizens.

As for Italy specifically, the reduction of arrivals from Libya is confirmed by the opening of a new route from Algeria to the coasts of Sardinia. In total, 2.310 Algerians arrived on Italian shores in 2017, of which 46 are unaccompanied minors. If the departures from Algeria were to continue, the journey through the Algerian desert could turn out to be an alternative for other sub-Saharan migrants who could decide to avoid the dangerous Libya.

In the case of migrant arrivals from Tunisia, one can not speak of a real "new route", but rather of the resumption of the flow of migrants from this country. In fact young Tunisians, many of whom are minors, try again to emigrate to Italy and Europe, as it had happened in the first months of the Arab Spring, because of the worsening economic conditions of their country. In 2017, 6.151 Tunisian migrants have arrived in Italy from Tunisia, of whom 544 are unaccompanied minors. The trip are made on dangerous small boats in order to escape the controls and to reach autonomously the Italian coasts. The migrants hope to escape identification and consequent repatriation, and to continue the journey to Ventimiglia, at the border with France.

To complete the overview on the Mediterranean routes, in 2017 about 1.078 migrants arrived in the island of Cyprus.⁴⁰

The island has been identified as a gateway to Europe as an alternative to Greece, especially by the Syrians who were trapped on the Turkish coast after the agreement between the EU and Turkey.

Finally, a new stream of refugees arrives directly from Turkey and heads towards Italy: these are mainly people of Afghan, Iraqi and Iranian origin (but also of Kurdish ethnicity), or people coming from Pakistan or Sri Lanka. Save the Children recorded the arrival of 1.778 people through 30 autonomous landings, with an average of 60 people per boat (only in three cases there were more than 100 people on board).

2.5 Deaths in the Mediterranean

Whatever the motivation, the country of origin or the hope behind the migratory journey of everyone lost in the sea, it cannot be forgotten or underestimated the value of the individual lives of those who found death while seeking a new life in another continent.

Stories of men, women and children who will forever remain unknown. In this case, the analysis of numbers does not serve to understand a phenomenon, but rather to recall that each of the people who lost their lives had an individual story, an identity, a family.

⁴⁰ International Organization for Migration, *Migration flows to Europe. 2017 overview*, 2017, http://migration.iom.int/docs/2017_Overview_Arrivals_to_Europe.pdf

In recent years, great efforts have been made to try to save the lives of those who have faced the sea aboard insecure boats, often abandoned to themselves by traffickers who only bothered to overcome the first few miles, regardless of the success of the trip.

During the last years, many Italian and European ships, together with NGOs' ones, have crossed the Mediterranean to rescue the survivors. Moreover, starting from August 2017, as a consequence of the agreements between Italy and Libya, the Coast Guard of the latter has become more operational, with equipments and training provided by Italy with EU funding.

However, the stretch of sea that divides Libya from Italy is confirmed in 2017 too as the most dangerous migratory route in the world. About 2.560 people⁴¹ have lost their lives or are lost along the Mediterranean sea in 2017. A huge number, also made up of children or boys and girls. In 2018, about 1.549 people have drown in the attempt of crossing the sea.⁴² It does not console the fact that this figure represents the lowest number in the last 4 years, as it is in line with the similar decrease registered in arrivals.⁴³

These are the data of an unacceptable tragedy, to which the consciences of European citizens and rulers can not and shall not be resigned to and which would reach even more intolerable proportions if it were not for the work and courage of those men and women operating on ships, helping to save precious lives.

2.6 Search and rescuing operations

Following the sinking of Lampedusa on 3rd October 2013, in which 366 people died, the Italian government decided to strengthen the national device for the patrolling of the Sicilian Channel by authorizing the Operation *Mare Nostrum*, a military and humanitarian mission of the Italian Navy whose aims were to protect the lives of migrants at sea and to combat illegal trafficking. It was active from 18th October 2013 to 31st October 2014.

In order to support Italy, the EU launched the joint operation Triton conducted by Frontex, the European border control agency, which became operational on 1 November 2014. It was called Operation Triton (originally Frontex Plus). Unlike the *Mare Nostrum*, Triton's main purpose is border control and not the search and rescue of migrants, even if in fact the mission ships, coordinated by Italy, have also played this role.

Since February 1st, 2018, Operation Themis replaces Triton, expanding its mandate and the area of competence. In fact, it foresees the control of the borders on two new migratory routes as well as that of the central Mediterranean from Libya. The two new migratory routes are the one on the east from Turkey and

⁴¹ As for the estimates on previous years, the same source indicates in 3.165 people dead or missing in 2014, 2.877 in 2015, 4.581 in 2016.

<http://missingmigrants.iom.int/region/mediterranean>

⁴² <http://missingmigrants.iom.int/region/mediterranean> Update to 30th August 2018

⁴³ United Nations High Commissioner for Refugees, *Europe, Dead and missing at the Sea. Number of dead and missing by route – January 2015 – November 2017*, 2017, <https://data2.unhcr.org/en/documents/download/61290>

Albania, and that to the west from Tunisia and Algeria. The objectives of the new operation are, in addition to the increase in marine patrolling for the purpose of rescuing migrants, the development of police and intelligence activities and various other measures aimed at identifying any "foreign fighters" or other terrorist threats at the external borders.

The EUNAVFOR MED (European Union Naval Force Mediterranean), also known as Operation Sophia, is a European Union military operation launched on 22nd June 2015 whose main mandate is to undertake systematic actions to identify, capture and eliminate ships and other assets used or suspected of being used by migrant smugglers, in order to contribute to the EU's efforts to break the business model of trafficking networks in the central Mediterranean and prevent further loss of life at sea. From 20th June 2016, the operation also has the task of providing technical assistance and training for the Libyan Navy and the Coast Guard and contributing to the implementation of the UN arms embargo. On 25th July 2017, the European Council extended the duration of the operation until 31 December 2018 by extending its mandate to control the illegal trafficking of oil exported from Libya.⁴⁴

3. Reception

3.1 Hotspots

The hotspots, which have been activated in Italy⁴⁵ at the end of 2015, were introduced with the European Agenda on Migration⁴⁶, and they represent the will of the Member States of the European Union to standardize the management of mixed migration flows, i.e. of the compound flow of economic migrants and asylum seekers. Between October 2015 and February 2016, four hotspots were activated: one in Lampedusa, with a capacity of 500 seats, of which 60 are reserved for women and children; one in Trapani with 400 places and a reserved area for vulnerable people, including minors; one in Taranto, with 400 seats available and an area exclusively for minors; one in Pozzallo, where there are 300 seats and no adhoc space for minors, or more generally for vulnerable categories.

The hotspot represents a method of team work, within which the Italian authorities, the health staff and the international and non-governmental organizations can work together and cooperate with European teams, such as staff from the Frontex Agency, Europol and EASO. The aim of the hotspot is that of ensuring a standardized and efficient management of the activities.

⁴⁴ Council of the European Union, *EUNAVFOR MED operazione SOPHIA: mandato prorogato fino al 31 dicembre 2018*, 25/07/2017 <https://www.consilium.europa.eu/it/press/press-releases/2017/07/25/eunavformed-sophia-mandate-extended/>

⁴⁵ Ministero dell'Interno, *Procedure Operative Standard (SOP) applicabili agli hotspots italiani*, www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots_sops_-_versione_italiana.pdf

⁴⁶ European Commission, Communication from the Commission to the European parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A European Agenda on Migration, COM (2015) 240 final, Brussels, 13/05/2015

In centers that use the so-called "hotspot approach" minors are subject to medical checks, and they are monitored and pre-identified.

They are informed about their current condition and about the possibilities of requesting international protection, they are photo-reported and their fingerprints are taken. Then they receive information on the international protection procedure, on the "relocation program" and on the possibility of using the assisted voluntary repatriation program. Therefore, in case they have requested international protection, they are initiated to the procedures for the attribution of this status, including those of relocation for those entitled who have requested it.

But the boys and girls would need first of all a place where they feel welcomed, reassured, where they can finally recover from the burdens of the journey.

Hotspots, instead, are primarily designed for the identification and registration of adults and not for providing minimum standards of welcome for minors. In addition, the minors should remain in the hotspots only for strictly necessary time, while according to the information collected by the operators of Save the Children⁴⁷, it appears that the time spent by unaccompanied minors in the hotspot areas can vary considerably: from 48/72 hours in Taranto to 7/15 days in Trapani and Pozzallo and there were cases of prolonged detention (more than one month) of unaccompanied minors in situations of promiscuity with adults as well, in particular at the Pozzallo hotspot. During a recent visit to Italy in October 2016, Tomas Bocek, Special Representative of the Secretary General of the Council of Europe for Migration and Refugees, complained about the length of stay in the hotspots of the unaccompanied minors. In his report he reported having met 13 Nigerian girls who had been in the hotspot of Lampedusa for almost two months and that in Pozzallo during his visit almost all the guests were minors and that some had been there for many weeks. Also, there is no separate accommodation for minors in either of the two hotspots.

Finally, although he recognizes the possibility for some NGOs to carry out activities in the hotspots, Bocek regrets restrictions for a large part of civil society, in particular in Lampedusa, and he therefore hopes for a change in the sense of greater openness and accessibility. Finally, he notes the lack of a clear legal basis for hotspots, which may lead to considering detention in these centers as an illegitimate detention of people.⁴⁸

3.2 *The first reception*

Unaccompanied minors show fragility and needs that must be faced from the first moment in which they come into contact with the operators, who have rescued them, and with the staff of the centers for which they are intended. The numbers confirm that 9 out of 10 children are welcomed in reception facilities, and, as previously

⁴⁷ Save the Children, *Atlante minori stranieri non accompagnati Italia 2018*, 2018

⁴⁸ Council of Europe, *Report of the fact-finding mission to Italy by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 16-21 October 2016*, Information Documents SG/Inf(2017)8, 2 March 2017 https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806f9d70

stated, only a residual part (3.1%) is hosted in private households. The Italian law provides that after their arrival, "for the needs of rescue and immediate protection, unaccompanied minors are welcomed in government facilities of first reception for the strictly necessary time, in any case no longer than 30 days, to the identification and any assessment of age, as well as receiving, in a manner appropriate to their age, all information on the rights recognized to the child and on how to exercise these rights, including that of seeking international protection"⁴⁹. Moreover, according to norm "in the presence of substantial and close arrivals of unaccompanied minors, if the reception can not be ensured by the Municipalities, the prefect will set up temporary accommodation facilities exclusively dedicated to unaccompanied minors, with a capacity maximum of fifty seats for each structure. Reception in temporary accommodation facilities can not be arranged for children under the age of fourteen years and it is limited to the time strictly necessary for relocation to the facilities"⁵⁰.

Such a regulatory provision, if on the one hand it has succeeded, in recent years, to guarantee the reception of all the minors only on our coasts, on the other has generated a very diversified system, with many different types of welcoming structures.

First of all, the first reception centers are set up within the first reception facilities, established by decree of the Minister of the Interior and financed with resources from the Migration and Integration Asylum Fund (FAMI, a fund created with European resources). As of December 31, 2017, a total of 19 "government" projects were active. There were about 60 structures distributed in 9 regions and dedicated to the reception of unaccompanied foreign minors with a total capacity of about 950 seats. At the beginning of 2018, three more projects were added to the existing ones⁵¹, all of them located in Sicily, with 150 more places.

As regard to the time spent inside the centers, which theoretically should not exceed 30 days by law, during the period from August 23rd 2016 to December 31st 2017, 3.007 minors are welcomed into this type of facility. On the basis of the reports received from the DG for Immigration and Integration Policies, however, it appears that, in the same period, almost one in four among those accepted has left the structures, thus becoming untraceable. A large number, which raises some questions on the effectiveness and quality of the reception in these centers and on their ability to protect the hosted children.

Furthermore, there are other types of first reception structures such as the centers or housing communities for minors which depend on the Municipalities and which are accredited and authorized by the Municipalities

⁴⁹Decreto legislativo 18 agosto 2015, n.142, *Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale*, art.19 , G.U. n 214, 15/09/2015 (subsequently amended by Legge 7 aprile 2017, *Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati*, G.U. n.93, 21/04/2017)

⁵⁰ Ibid.

⁵¹ Ministero dell'Interno, *Graduatoria dei progetti per l'accoglienza dei minori stranieri non accompagnati*, <http://www.interno.gov.it/it/notizie/graduatoria-dei-progetti-accoglienza-dei-minoristranieri-non-accompagnati>

themselves or by the competent Regions. The Prefects can in fact activate temporary accommodation facilities, called for simplicity "CAS minor" (Extraordinary Reception Centers)⁵².

3.3 The second reception: the SPRAR system

The first reception, however, is only the first moment during which the minors find assistance and care. This phase should supposedly last for the time needed to allow identification and possible assessment of age, and to provide the first information that allows to initiate or not the procedures for requesting humanitarian protection or asylum. The first reception structures, indeed, are thought of as a transit place before the transfer to other reception facilities, which provide, instead, paths of growth, integration and progressive autonomy of the youngsters who must be able to take care of themselves by the moment of turning eighteen years old.

Since the approval of the National Welcoming Plan⁵³, it has been expanded the aim of a single reception system for unaccompanied minor migrants, regardless of their status (i.e. asylum seekers etc...)

Yet, the single reception system has, in fact, struggled to realize itself due to the scarcity of the initially available places for unaccompanied minors in the projects of the Municipalities belonging to the SPRAR system: 216 places were created at the end of 2014; another 73 projects have been approved, creating an additional 1.010 places active from December 2015; in 2016, the network doubled its reception capacity, which could count on 95 more projects and 2.007 places dedicated to unaccompanied foreign minors. Still too few, considering the arrival of over 50.000 minors alone during the three years. On the other hand, the same legislation provides for access to the SPRAR system "within the limits of available posts and resources", effectively creating an obstacle to the transfer of minors who often remain for longer than what was foreseen in the reception facilities, and therefore without being able to access immediately to those educational, training and growth paths that will help them to build a new life.⁵⁴

At the time of leaving the first reception facilities, the boys and girls who do not find a place in the SPRAR communities are instead welcomed into second level reception facilities, run by associations and cooperatives, which are in turn accredited at regional level, or in secondary

⁵² Decreto legislativo 18 agosto 2015, n.142, *Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale*, art. 19, comma 3 bis, G.U. n 214, 15/09/2015

⁵³ Ministero dell'Interno, *Piano accoglienza 2016*, 2016, http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/sub-allegato_n_7_piano_accoglienza_2016.pdf

⁵⁴ Camera dei Deputati, Commissione parlamentare d'inchiesta sul sistema di accoglienza, di identificazione ed espulsione, nonché sulle condizioni di trattenimento dei migranti e sulle risorse pubbliche impegnate, *Dossier dati statistici al 23 febbraio 2018*, pag. 79-81, 2018

"governmental" reception, that is financed with FAMI European funds. On 31st January 2018, 134 projects were active with a capacity of 3.218 places, involving 127 Local Authorities.⁵⁵

3.4 Relocation

On 26th September 2017, the so-called European Relocation⁵⁶ Program was completed, a solidarity mechanism that provided for a breakdown of reception of refugees among the Member States of the Union, proposed by the European Commission and endorsed by the European Council in September 2015. The program was created firstly and foremost with the purpose of supporting Greece and Italy, subjected at the time to a strong migratory pressure, and in order to share the burdens of the reception of refugees among all the Member States of the European Union.

If fully implemented, it could have represented an instrument that would meet the needs of many refugees, who have considered their arrival on the Greek and Italian coasts only as a stage of a journey that would have led them to their destination in other European countries.

Even among unaccompanied minors, many are those who have decided to move away from the reception facilities with the intention to cross the border between Italy and the rest of Europe, Ventimiglia, Chiasso or Brennero. The risks they took, the dangers to which they were exposed, could have been avoided if, among other things, the relocation procedure had been a valid and practical alternative for them.

According to the commitments made, in fact, within two years 160.000 people (then reduced to 106.000) should have been relocated from Italy and Greece to the other European States. For Italy it would have been possible to transfer 40.000 people (then reduced to about 35.000), relieving the burden on the reception facilities and allowing those who wished to leave our country to take advantage of a legal and safe way, without having to take the risks of a new journey to the North border with France, Switzerland or Austria.

The overall budget on the application of the relocation procedure was not satisfactory: as of March 7, 2018, 5 months after the closure of the program - which remains active only for those who arrived on Italian territory before September 26, allowing the authorities to complete the procedures already started - only 11.999

⁵⁵ Cfr. Ministero dell'Interno, Dipartimento per le Libertà civili e l'Immigrazione, *Decreto di approvazione della graduatoria dei progetti presentati a valere sull'avviso "Potenziamento della capacità ricettiva del sistema di seconda accoglienza dei minori stranieri non accompagnati"*, February 2017

⁵⁶ European Migration Network, *Glossary*, V5

"Relocation: The transfer of persons having a status defined by the Geneva Convention of 1951 or subsidiary protection within the meaning of Directive 2011/95/EU from the EU Member State which granted them international protection to another EU Member State where they will be granted similar protection, and of persons having applied for international protection from the EU Member State which is responsible for examining their application to another EU Member State where their applications for international protection will be examined. In the context of the EU emergency response system, relocation means the transfer of an applicant in clear need of international protection from the territory of the Member State initially indicated as responsible for examining their application for international protection to the territory of the Member State of relocation. Following transfer, the latter will become the Member State responsible for examining the application for international protection (see Art. 2(e) of Council Decision (EU) 2015/1523 and Art. 2(e) of Council Decision (EU) 2015/1601)"

refugees were relocated from Italy, 34.3% of the total of 34.953 expected. Overall, according to data released by the European Commission, from Italy and Greece 33.846 people were actually transferred out of 98.255 (34.4%)⁵⁷.

There are many pitfalls to the success of the scheme. First of all, the system provides for the displacement of refugees arrived in Greece or Italy and in clear need for international protection, belonging to nationalities whose protection recognition rate is equal to or higher than 75% on the basis of Eurostat data: people coming in particular from Syria, Eritrea and Iraq that after applying for asylum in the State of arrival, can be transferred to another European country for the examination of the application for international protection.

As for Italy, this constraint has prevented the overwhelming majority of refugees arriving on Italian shores to be able to access the program. However, even considering the only nationalities eligible for relocation, this did not work for everyone: between 2016 and 2017, more than 27.000 people came from Eritrea alone, but only 11.324 were transferred. A similar reflection applies to Greece, from which about 22.000 people were relocated, 33% of the total expected of 63.203 and this despite many Syrians and Iraqis present on the Hellenic territory who could have been admitted to the program. So also others are the causes of the non-functioning, in particular the initial difficulties on the part of Italy and Greece to put in place the procedures required to identify the relocation candidates, on the one hand, and the lack of cooperation of some of the Member States that have refused to fulfill the duties of the European Council decision, by making the quotas available with delay. As a result, the European Commission, on 6 December 2017, appealed to the European Court of Justice against Hungary, Poland and the Czech Republic for failing to fulfill its obligations in the European Council. Even more disappointing is the budget if we consider the figure relating only to foreign minors not accompanied, for which the relocation mechanism should have granted access, since they represent a vulnerable category and they are in obvious need of international protection.

By 7th march 2018⁵⁸, only 222 children were relocated from Italy, of which 174 already transferred to other European countries and another 48 awaiting transfer. Others 106 have completed the admissions procedure and await the response of a European state. But even if we want to consider the happy conclusion of the procedure for everyone, the 328 minors who have reached another country legally and safely represent a drop

⁵⁷ European Commission, *Annex 4 to the Communication from the Commission to the European Parliament, the European Council and the Council - Progress report on the Implementation of the European Agenda on Migration*, COM (2018) 250 final, Brussels 14/03/2018 https://ec.europa.eu/homeaffairs/Sites/homeaffairs/files/what-we-do/policies/european-agendamigration/20180314_annex-4-progress-report-europeanagenda-migration_en.pdf

⁵⁸ Ministero dell'Interno, Dipartimento delle Libertà Civili e Immigrazione, *Cruscotto statistico giornaliero - al 7 marzo 2018*, http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto_statistico_giornaliero_07-03-2018.pdf

in the sea of more than 40.000 young minors who have arrived in Italy in the last two years. Faced with these difficulties, as we have seen, many of them have decided to try to cross the borders with their own means: many boys and girls who, after months of stopping at reception centers and waiting to be transferred or receive an answer to their request for international protection, lost hope and confidence in those who promised a forthcoming transfer, they evaded controls and moved away making themselves untraceable. They went back on their journey, returning to risk and relying on other traffickers, to reach the passes of Ventimiglia, Chiasso or Brennero.⁵⁹

⁵⁹ Intersos, *Unaccompanied and Separated children along Italy's northern borders*, 2017

Chapter II

1. The Regulatory Framework on Unaccompanied Minors

1.1 Rights of the minors

The rights of unaccompanied minor migrants in Europe are placed at the intersect of multiple systems of rules⁶⁰. Firstly there are international norms which protect the rights of minors and teenagers, secondly European Union norms and thirdly national and even local (i.e. regional) legislation.

International, European and domestic rules set a standard for legal protection of children and teenagers without family care and away from their country of origin, aiming at protecting them firstly as children. Along with such protection, they fall within the scope of the legislation concerning citizens of countries outside the European Union and therefore of migrants, asylum seekers, refugees or victims of trafficking. It is of fundamental importance to understand that those minors shall be treated firstly as children and only secondly as migrants, even if the legislation concerning migrants aims at the protection of the subjects. In other words, unaccompanied minor migrant shall be firstly considered as children and therefore protected as such, while their status of migrant shall be taken into consideration only in a secondary moment, after such primary protections is granted.

1.2 UN Convention on the Rights of the Child

At the international level, the United Nations Convention on the Rights of the Child ⁶¹, adopted in New York on 20th November 1989 and entered into force on 2nd September 1990, is the main text for the protection of the rights of the child on a global level. The Convention is the most ratified international treaty worldwide with 196 States parties to the Convention. In particular, Italy has ratified the Convention by law n.176 of 27th May 1991.⁶²

In the first article of the Convention, the definition of minor is given as such: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable

⁶⁰ Smyth C., *European Asylum Law and the Rights of the Child*, Routledge Research in Asylum, Migration and Refugee Law, 2014

⁶¹ United Nations, *Convention on the Rights of the Child*, New York 20 November 1989

https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf

⁶² Legge 27 maggio 1991, n. 176, *Ratifica ed esecuzione della convenzione sui diritti del fanciullo, fatta a New York il 20 novembre 1989*, G.U. n.135 11/06/1991 - Suppl. Ordinario n. 35

to the child, majority is attained earlier”⁶³. As we shall see later, such definition is substantially restated in other legislative acts concerning minors.

According to Article 2 of the Convention, “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”⁶⁴

Thus, the status of migrant (or refugee, or asylum seeker etc..) shall not prevent the authorities to provide protection and assistance to unaccompanied minors. Regardless of their status, the children shall be protected when they enter the State’s territory and jurisdiction.

Article 3 enshrines the core principle of the Convention, and of all subsequent legislation concerning minors, which is that of the supreme interest of the child. “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.”⁶⁵

The concept within this article is fundamental in children’s rights mainstreaming⁶⁶. Essentially, policies in every field, from economic to judicial, and thus migratory ones too, shall be designed bearing in mind that the supreme interest of the child is prior to any other result or objective. This is even more essential when the policy (or normative act etc...) is directly referring to minors as subjects of the policy itself. Such rule shall be the guiding principle of any decision by public administration, the judicial system, the legislative bodies and private institutions concerning those under the age of 18, in view of their special status with respect to adult dependency, maturity, legal status and difficulty to make one's voice be heard independently.⁶⁷

According to article 4, “State Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”⁶⁸ Taking into account the present analysis, it can be said that the efforts made by the States and the resources allocated to the rescue, welcoming, protection and further development of unaccompanied minors are not sufficient. Moreover, while

⁶³ United Nations, *Convention on the Rights of the Child*, New York 20 November 1989, art.1
https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf

⁶⁴ Ibidem, art.2

⁶⁵ Ibidem, art. 3

⁶⁶ Oberleitner G., *A decade of mainstreaming human rights in the UN: achievements, failures, challenges*, Netherlands Quarterly of Human Rights, Vol. 26/3, 359–390, 2008

⁶⁷ United Nations, Committee on the Rights of the Child, *General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, CRC/C/GC/14, 29 May 2013

⁶⁸ United Nations, *Convention on the Rights of the Child*, New York 20 November 1989, art.4
https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf

the southern States, especially Italy, have deployed special programs and resources for the welcoming of migrants, including children, many other Member States have not, and unfortunately they do not envisage a change in their migration and rescuing policies.

In article 6, it is stated that “1. States parties recognize that every child has the inherent right to life” and “2. States Parties shall ensure to the maximum extent possible the survival and the development of the child.”⁶⁹ Such a statement shall per se have a binding effect of States’ immigration, rescuing and welcoming policies, with a special regard for minors. Unfortunately instead, despite many successful rescuing operations, the life of many minors has been threatened by anti-immigration policies made by States and their representatives worldwide. In particular, populist leaders have caused the death of many innocent children because of their political actions.

The Convention further lists the rights of the child, among which right to identity (art. 8), right to be heard in judicial proceedings (art. 12), right to expression (art. 13) and religion (art. 14).⁷⁰

Article 20 on adoption, affirms that “1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interest cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.” While such general quote may refer to general cases of conflictual family environment and thus to the protection provided by the State to children of those families, it may as well stand for children deprived of their family of origin and who are similarly needing protection and care.⁷¹

For the aim of the present research, article 22 is of fundamental importance as it states that “States parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.”⁷² Therefore the right of unaccompanied minors to protection and humanitarian assistance is explicitly set forth in the Convention and States Parties shall abide to it.⁷³ Article 22 of the CRC is the most pertinent norm on unaccompanied minors at the international level.⁷⁴

⁶⁹ Ibidem, art. 6

⁷⁰ Ibidem, art. 8, 12, 13, 14

⁷¹ Ibidem art. 20

⁷² Ibidem art. 22

⁷³ Shamseldin L., *Implementation of the United Nations Convention on the Rights of the Child 1989 in the Care and Protection of Unaccompanied Asylum Seeking Children: Findings from Empirical Research in England, Ireland and Sweden*, International Journal of Children’s Rights 20 (2012) 90-121, 2012

⁷⁴ Lenzerini F. La protezione dei minori stranieri non accompagnati nel diritto internazionale, published in *Diritti umani degli immigrati. Tutela della famiglia e dei minori*, edited by R. Pisillo Mazzeschi, Editoriale Scientifica, pp 271-295, 2010

Other articles concern the right to health (art. 24), to development and education (art. 27-28), to religion (art.30) and to protection from exploitation and sexual abuse (art.34).⁷⁵

Moreover, due to their difficult background, unaccompanied minors shall also be entitled to, according to article 39, "... appropriate measures to promote physical and psychological recovery and social reintegration" since those children are very probably victims of "neglect, exploitation or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts".⁷⁶

In order to guarantee such rights to unaccompanied minors, States shall consider their particularly vulnerable condition, due to the fact that they are at greater risk of being exploited and subjected to abuse, of not being recognized an appropriate identification and determination of age, and of not being able to access to legal representation, food, housing and other rights.⁷⁷

1.3 European norms

The UN approach to the protection of minors is analogous to the one of European regulation, both within the context of the Council of Europe and in the European Union itself.

In the context of the Council of Europe, minors are entitled to the rights set forth in the European Convention on Human Rights⁷⁸. In addition, they are recognized the right to information, listening, participation and legal representation during administrative and judicial proceedings, as it stated in the European Convention on the exercise of children's rights (art. 3 to 5).⁷⁹

The Charter of Fundamental Rights of the European Union takes up the fundamental principle of the best interests of the child and explicitly calls for the right to protection, care and opinion.⁸⁰ In the Treaty on European Union, article 3.5 states as follows: "In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the

⁷⁵ United Nations, *Convention on the Rights of the Child*, New York 20 November 1989, art.24, art.27, art.28., art.30, art.34 https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf

⁷⁶ Ibidem, art. 39

⁷⁷ United Nations, Committee on the Rights of the Child, *General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, CRC/C/GC/2005/6, 1 September 2005

⁷⁸ Council of Europe, *European Convention on Human Rights*, Rome 4 November 1950

⁷⁹ Council of Europe, *European Convention on the exercise of children's rights*, European Treaty Series n.160, Strasbourg 25/01/1996

⁸⁰ European Union, *Charter of Fundamental Rights of the European Union*, (2000/C 364/01), art.24

United Nations Charter.”⁸¹ Thus the mainstreaming of children's rights is among the principles that ought to characterize the external relations of the European Union.⁸² A deeper analysis of the European Union legislation on the topics of our interest will be carried out in Chapter IV.

1.4 *The Italian scheme on minors*

This international and regional protection system combines with the national one. In Italy there are internal rules concerning custody and adoption⁸³, and legal representation of minors as well.⁸⁴

These sectors of Italian legislation, which fall within the scope of the law of persons and of the family, have the objective of guaranteeing care and representation to those who are less than 18 years old without appropriate parental care. Such rules are applicable without distinction to Italian or foreign minors, whatever their legal status because, indeed, the centrality of being children and adolescents prevails over any other consideration.

The child protection system described so far, made up of international, regional and internal standards, intersects with the rules related to immigration and international protection, which concern unaccompanied minors as migrants, applicants for international protection, refugees, or victims of trafficking.⁸⁵

1.5 *International, regional and national legal framework on migration*

At the international level, the main point of reference is the Geneva Convention on the Status of Refugees of 1951⁸⁶, which contains the definition of refugee (Article 1) and the imperative prohibition to repatriate anyone to a country in which the persecution is likely (art 33).

Within the European Union the peculiar condition of the minor during migration, including forced migration, and in particular the principle of his superior interest, are taken into account in all the main norms that make up the Common European Asylum System⁸⁷, including for example:

⁸¹ European Union, *Treaty on the European Union*, (2016/C 202/01), OJ C 326, 26.10.2012, p. 13–390, art.3.5 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT>

⁸² Smyth C., *European Asylum Law and the Rights of the Child*, Routledge Research in Asylum, Migration and Refugee Law, 2014

⁸³ Legge 4 maggio 1983, n. 184, *Diritto del minore ad una famiglia*, G.U. n.133, 17/5/1983 - Suppl. Ordinario

⁸⁴ Regio Decreto 16 marzo 1942, n. 262, *Approvazione del testo del Codice civile*, 042U0262, GU n.79, 4/4/1942, Art. 343 and the following

⁸⁵ Smyth C., *European Asylum Law and the Rights of the Child*, Routledge Research in Asylum, Migration and Refugee Law, 2014

⁸⁶ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html>

⁸⁷ Smyth C., *European Asylum Law and the Rights of the Child*, Routledge Research in Asylum, Migration and Refugee Law, 2014

- the Qualification Directive⁸⁸, which establishes common bases for the recognition of international protection to those fleeing persecution or serious harm, requiring particular attention to the forms of persecution that specifically concern minors;
- the Procedure Directive⁸⁹, which establishes the minimum common standards of the asylum procedure and contains specific references to the applications submitted by minors;
- the Dublin Regulation⁹⁰, for the identification of the State responsible for assessing the application for international protection, containing certain guarantees for minors;
- The Directive against trafficking in human beings⁹¹ also establishes specific safeguards for children involved in criminal proceedings and requires Member States to take the necessary measures to ensure lasting solutions to unaccompanied minors.

The national dimension of international protection legislation is largely set by the transposition of European standards and at the same time it takes into account national rules on the protection of minors. This leads to some important internal rules, including those on the prohibition of expulsion of unaccompanied minors⁹², on their protection and legal representation in the asylum procedure⁹³, on their reception. This part of the legislation is still affected by voids and uncertainties, for example with respect to clear rules on age assessment

⁸⁸ European Parliament, Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted*, OJ L 337, 20.12.2011, p. 9–26 <http://data.europa.eu/eli/dir/2011/95/oj>

⁸⁹ European Parliament, Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection*, OJ L 180, 29.6.2013, p. 60–95, <http://data.europa.eu/eli/dir/2013/32/oj>

⁹⁰ European Parliament, Council of the European Union, *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person*, OJ L 180, 29.6.2013, p. 31–59, <http://data.europa.eu/eli/reg/2013/604/oj>

⁹¹ European Parliament, Council of the European Union, *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*, OJ L 101, 15.4.2011, p. 1–11, <http://data.europa.eu/eli/dir/2011/36/oj>

⁹² Decreto Legislativo 25 luglio 1998, n. 286, *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*, GU n.191, 18/8/1998 - Suppl. Ordinario n. 139, art. 19 comma 2 lettera a)

⁹³ Decreto Legislativo 28 gennaio 2008, n. 25, *Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato*, GU n.40 16/02/2008
Decreto Legislativo 18 agosto 2015, n. 142, *Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale*, GU n.214, 15/9/2015

and residence permits. Such pitfalls shall be finally rectified by law n.47 of 07th April 2017, which contains indeed the current provisions applicable to unaccompanied foreign minors in a single text.

2. Law 47 of 7th April 2017

2.1 The existing legislation on unaccompanied minors in Italy

Prior to the approval of law 47/17, Article 19, paragraph 2, letter a) of the Legislative Decree no. 286/1998⁹⁴ (*Testo Unico sull'Immigrazione*, hereafter TU Imm.) provides that expulsion is not allowed, except in the cases provided for in article 13, paragraph 1, against foreigners under eighteen years, with the exception of the right to follow the expelled parent or carer. With the aim of fully implementing Article 19 of the T.U. Imm. and in consideration of the principles established by the New York Convention on the Rights of the Child, through law 47/2017, the Italian legislation has provided for a system of protection and safeguard relative to unaccompanied minors, which has been laid out on the articulation of competences between central and peripheral administrations.

The D.P.C.M. 535/1999⁹⁵, in Article 2, paragraph 2, has previously assigned to the Committee for Foreign Minors, an inter-ministerial collegial body, specific tasks concerning unaccompanied foreign minors, with the priority aim of protecting their rights. These tasks concern, in particular, the census of the presence of unaccompanied minors on the national territory and the carrying out of family surveys in the country of origin or in other countries in order to understand the family and local context of origin of the minor. The competence inherent to voluntary repatriations, originally granted to the Committee for foreign minors, has been transferred to the Juvenile Court pursuant to art. 8, Law 47/2017.⁹⁶

Furthermore, the Committee for foreign minors has the task of issuing the opinion on the integration process carried out by the minor for the purpose of converting the residence permit to the age of majority (article 32, paragraph 1-bis, T.U. Imm.). As a result of the D.L. 95/2012⁹⁷, converted with amendments from the Law 7

⁹⁴ Decreto Legislativo 25 luglio 1998, n. 286, *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*, GU n.191, 18/8/1998 - Suppl. Ordinario n. 139, art. 19 comma 2 lettera a)

⁹⁵ Decreto del Presidente del Consiglio dei Ministri 9 December 1999, n. 535, *Regolamento concernente i compiti del Comitato per i minori stranieri, a norma dell'articolo 33, commi 2 e 2-bis, del decreto legislativo 25 luglio 1998, n. 286*, GU n.19, 25/1/2000

⁹⁶ Legge 7 aprile 2017, *Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati*, G.U. n.93, 21/04/2017

⁹⁷ Decreto Legge 6 Luglio 2012, n. 95, *Disposizioni urgenti per la revisione della spesa pubblica con invarianza dei servizi ai cittadini ((nonche' misure di rafforzamento patrimoniale delle imprese del settore bancario))*, GU n.156, 6/7/2012 - Suppl. Ordinario n. 141

August 2012, n. 135, the Committee ceased its activities, with the consequent transfer of tasks to the Directorate General of Immigration and to the integration policies of the Ministry of Labor and Social Policies. The legislative Decree no.142/2015⁹⁸ has introduced specific provisions on the reception of unaccompanied minors, with the aim of strengthening the overall protection instruments guaranteed by the law.

In particular, Article 19 of Legislative Decree no. 142/2015, incorporating the Agreement reached in the Unified Conference on 10th July 2014⁹⁹, gave shape to a single reception system for all unaccompanied minors, setting up the establishment of governmental first reception structures, set up by the Ministry of the Interior, in order to guarantee the immediate rescue and protection of minors, as well as their subsequent transfer to second-home residential services in Italian local authorities belonging to the Protection System for asylum seekers and refugees (SPRAR). Furthermore, Article 19, paragraph 5¹⁰⁰, provides that the Public Security Authority immediately notifies the presence of an unaccompanied minor to the Ministry of Labor and Social Policies, with appropriate means to guarantee confidentiality, in order to ensure the census and monitoring of the presence of unaccompanied minors.

2.2 Features of the new norm

As anticipated, the most relevant amendments to the legislation concerning unaccompanied minors were introduced by Law 47/2017, containing "Provisions concerning measures to protect unaccompanied foreign minors"¹⁰¹, with the aim of strengthening the protection instruments offered by ordering and, at the same time, outlining a unitary and organic discipline of the matter, applicable in a homogeneous manner throughout the national territory. The main changes concern:

- the definition of scope, which is stated as follows: “1. Unaccompanied foreign minors are holders of rights in on the protection of minors at the same level of treatment with minors of Italian citizenship or of the European Union. 2. The provisions of this law apply to the unaccompanied foreign minors, due to their condition of greater vulnerability.” (art.1)¹⁰²

⁹⁸ Decreto legislativo 18 agosto 2015, n.142, *Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale*, G.U. n 214, 15/09/2015

⁹⁹ Presidenza del Consiglio dei Ministri, *Intesa tra il Governo, le Regioni e gli Enti locali sul piano nazionale per fronteggiare il flusso straordinario di cittadini extracomunitari, adulti, famiglie e minori stranieri non accompagnati*, n.77/CU, 10 July 2014 http://www.statoregioni.it/Documenti/DOC_044430_77%20CU%20PUNTO%202%20ODG.pdf

¹⁰⁰ Decreto legislativo 18 agosto 2015, n.142, *Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale*, art.19, par.5, G.U. n 214, 15/09/2015

¹⁰¹ Cfr. Original Italian title "*Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati*", Zampa et al.

¹⁰² Legge 7 aprile 2017, *Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati*, G.U. n.93, 21/04/2017

- the definition of unaccompanied migrant minor: “for foreign minor not accompanied present in the territory of the State means the minors who do not have Italian citizenship or European Union citizenship is for any reason in the territory of the State or that it is otherwise subjected to Italian jurisdiction, without any assistance and representation by parents or others adults legally responsible for him according to the laws in force in the Italian legal system.” (art.2)¹⁰³
- the introduction of the ban on rejection at the border of unaccompanied foreign minors (article 3), which is flanked by the ban on expulsion already referred to in Article 19, paragraph 2, letter a) of the TU. Imm.. Moreover, it modifies the rules concerning the prohibition of expulsion of foreign minors who, according to current legislation, can be waived exclusively for reasons of public order and state security, further establishing that, in any case, the expulsion order can be adopted on the condition that it does not involve "a risk of serious harm to the child". It is also specified that the decision of the juvenile court, which has the competence in the matter, must be taken promptly and in any case within the 30-day time limit.¹⁰⁴
- the provision of a specific procedure for the identification and for the healthy assessment of age, to be carried out with a multidisciplinary approach (Article 5);¹⁰⁵
- the enhancement of the effectiveness of the protections against unaccompanied minors, by making the activation of family surveys of the child more rapid and introduces a criterion of preference for reliance on the family with respect to placement in the host community (Article 6)¹⁰⁶
- the task for local authorities to train trustees to accommodate minors, so as to favor family custody in place of admission into a reception facility (Article 7);¹⁰⁷
- the transfer to the court for minors of the competence inherent in the provision of voluntary returns (Article 8);¹⁰⁸

¹⁰³ Ibidem, art.2

¹⁰⁴ Ibidem, art.3

¹⁰⁵ Ibidem, art.5

¹⁰⁶ Ibidem, art.6

¹⁰⁷ Ibidem, art.7

¹⁰⁸ Ibidem, art.8

- the establishment at the Ministry of Labor and Social Policies of the national information system of unaccompanied foreign minors (SIM), for the purpose of the census and monitoring of the presence of unaccompanied foreign minors in the national territory (article 9);¹⁰⁹
- the simplification of the types of permit of stay that can be released, represented by the permit for minor age and the permit for family reasons (article 10);¹¹⁰
- the establishment of a list of voluntary guardians in each court for minors, represented by private citizens selected and adequately trained (article 11). In order to monitor the implementation, the regional guarantors constantly collaborate with the national Guarantor Authority for the Childhood and Adolescence to which they present, on a bi-monthly basis, a report on the activities carried out.¹¹¹
- the modalities of reception of unaccompanied foreign minors within the first reception facilities (article 4) and of the SPRAR (article 12);¹¹²
- the operation of the silence-assent mechanism pursuant to Article 20, Law 241/1990 ¹¹³ in the event of failure to issue, by the Directorate General for Immigration and integration policies of the Ministry of Labor and Social Policies, of the opinion ex Article 32, paragraph 1-bis of TU Imm. And the possibility of issuing a residence permit for the continuation of administrative protection after the age of majority (Article 13);¹¹⁴
- strengthening the right to health care and education (Article 14);¹¹⁵

¹⁰⁹ Ibidem, art.9

¹¹⁰ Ibidem, art.10

¹¹¹ Ibidem, art.11

¹¹² Ibidem, art.12

¹¹³ Legge 7 Agosto 1990, n. 241, *Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi*, GU n.192, 18/8/1990

¹¹⁴ Legge 7 aprile 2017, *Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati*, art. 13, G.U. n.93, 21/04/2017

¹¹⁵ Ibidem, art.14

- the procedural and procedural guarantees for the protection of the foreign minor are implemented, through the guarantee of emotional and psychological assistance of unaccompanied foreign minors in each state and degree of the procedure (Article 15) and the recognition of the child's right to be informed of the opportunity to appoint a lawyer of trust, also through the appointed guardian or legal representatives of the host communities, and to avail himself of the legal aid at the expense of the State in every state and degree of the procedure (Article 16);¹¹⁶
- the protection of child victims of trafficking (Article 17).¹¹⁷

As previously mentioned, law 47/2017 provides for the adaptation of the D.P.C.M. 535/1999, concerning the tasks of the Directorate General for Immigration, and the integration policies of the Ministry of Labor and Social Policies regarding unaccompanied minors, and of the D.P.R. 394/1999 ¹¹⁸ as well, i.e. the regulation for the implementation of the T.U. Imm.

For the purpose of the homogeneous application of Law 47/2017, the Circular of 28th August 2017 ¹¹⁹ of the Ministry of the Interior assumes importance, by which indications on the procedures have been addressed to the territorial offices.

Finally, with specific regard to the subject of the right to health, the D.P.C.M. of 12th January 2017 ¹²⁰, on "Definition and updating of the essential levels of assistance, referred to in Article 1, paragraph 7, of Legislative Decree 30 December 1992, No. 502", establishes a fundamental principle in terms of access to health services: Article. 63, paragraph 4, provides that "foreign minors present on the national territory, not in compliance with the rules on entry and stay are enrolled in the National Health Service and benefit from health care on equal terms with Italian citizens".

The regulatory framework for unaccompanied minors was further amended with the entry into force of Legislative Decree 220/2017 ¹²¹. In particular, on the matter of unaccompanied foreign minors, the decree

¹¹⁶ Ibidem, art.15 and 16

¹¹⁷ Ibidem, art.17

¹¹⁸ Decreto del Presidente della Repubblica 31 Agosto 1999, n. 394, *Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, a norma dell'articolo 1, comma 6, del decreto legislativo 25 luglio 1998, n. 286.*, GU n.258, 3/11/1999 - Suppl. Ordinario n. 190

¹¹⁹ Ministry of the Interior, Public security Department, *Oggetto: Legge 7 aprile 2017, n. 47 recante "Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati"*, in force since 6 May 2017

<http://www.piemonteimmigrazione.it/mediato/images/circolare-interno-28-08-2017-minori-Legge-47-2017-scansionata.pdf>

¹²⁰ Decreto del Presidente del Consiglio dei Ministri 12 Gennaio 2017, *Definizione e aggiornamento dei livelli essenziali di assistenza, di cui all'articolo 1, comma 7, del decreto legislativo 30 dicembre 1992, n. 502.*, GU Serie Generale n.65 del 18/03/2017 - Suppl. Ordinario n. 15

¹²¹ Decreto Legislativo 22 Dicembre 2017, n. 220, *Disposizioni integrative e correttive del decreto legislativo 18 agosto 2015, n. 142, di attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale nonche' della direttiva 2013/32/UE recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale.*, GU n.12, 16/1/2018

provides for the assignment of all court proceedings to the same judge, from the court of minors. Moreover, it dictates the provisions directly relevant to the SIM, providing that, for the purposes of ascertaining the age declared by the child, the public security authorities shall consult it and that the provision for the attribution of the age be communicated, among others, to the Ministry of Labor and Social Policies for the purpose of entering data into the system.

The law 47/2017 thus provides a legal basis in the Italian system for the recognition of the greater vulnerability of unaccompanied minors. As previously mentioned, this is a fundamental concept and it has been widely acknowledged by the international literature. That of unaccompanied minors is a “condition of extraordinary double weakness”¹²² for being not only minors and migrants, but also not accompanied by adults. Hence they may be subject to possible abuses because of their inherent vulnerability.¹²³

2.3 *Iter* and approval of Law n. 47 of 7th April 2017

In the context of reception and integration policies for immigrants, the Parliament has taken into account the issues related to the protection of unaccompanied foreign minors. During the XVII legislature this comprehensive law was passed on foreign minors present in Italian territory, which modified the relevant legislation with the aim of strengthening protection for minors and ensuring a uniform application of the rules for the reception on the whole national territory. In order to support the activities of reception of such a large flow of minors by municipalities, the resources allocated to this scheme have been increased and it has been recognized that all unaccompanied minors have access to the services financed by the National Fund for asylum policies and services.

The main points contained in Law n. 47/2017 concern the strengthening of rights and protections in favor of unaccompanied minors, starting from the reception and welcoming phases.

During the parliamentary process, the Chamber carried out a wide legislative investigation, which included a fact-finding survey with the hearings of organizations and institutions operating in the sector, as well as experts in the field. During the preliminary investigation it was necessary to adapt the text of the original legislative proposal (AC 1658, as amended by the Commission, to the changes occurred during the legislative period, following the entry into force of the Legislative Decree 18 August 2015, No. 142 (so-called *welcoming decree*).¹²⁴

¹²² Patroni Griffi A., *Lineamenti della tutela costituzionale dei minori stranieri*, published in *Diritti umani degli immigrati. Tutela della famiglia e dei minori*, edited by R. Pisillo Mazzeschi, Editoriale Scientifica, 2010, pp 255-270

¹²³ Ibid.

¹²⁴ Camera dei Deputati, *Misure di protezione di minori stranieri non accompagnati*, A.C. 1658-A, XVII Legislatura, 21/10/2016 <http://documenti.camera.it/leg17/dossier/pdf/AC0296a.pdf>

The text was firstly presented in the Chamber of Deputies on 4th October 2013 and it was assigned to the Commission on Constitutional Affairs (in *sede referente*) on 23rd December 2013, with the opinions (*pareri*) of seven more parliamentary Commissions (Justice, External Affairs, Budget, Culture, Work, Social Affairs, European Union policies, Regional affairs). The exam in Commission started on 3rd June 2014 and was finally concluded on 20th October 2016. The text so amended by the Commissions¹²⁵ and by the assembly¹²⁶, was discussed in the assembly on 24th October and approved on 26th October 2016.

The amended text was transmitted to the Senate on 28th October 2016.¹²⁷ It was assigned to the Commission on Constitutional Affairs on 31st October 2014, with the opinions of the Commissions Justice, External affairs, Budget, Education, Work, Health, European Union and Regional affairs. It was announced on 2nd November 2016.

The text as amended by the Commissions, was discussed in the assembly on 23rd February 2017 and the examination and approval were concluded on 1st March 2017.

After being transmitted on the same day to the Chamber of Deputies, the text¹²⁸ was examined by the Commissions between 8th and 16th March 2017. On 20th March it was firstly discussed in the assembly and definitively approved on 29th March 2017. As early mentioned, the text became law n. 47/17 of 7th April 2017, and published on the Official Journal (*Gazzetta Ufficiale*) n. 93 of 21st April 2017.

3. Pitfalls and highlights about implementation

3.1 Age assessment

One of the main critics on the new law is about the assessment of the age. The journey that the boys and girls face to get in Europe represents for some, even symbolically, an abrupt transition from childhood to adulthood.¹²⁹ Yet, they are children and teenagers, and as such they should be able to study, to play and to develop, rather than dealing with worrisome issues. They need to be protected and their rights shall be granted, may they derive from the international, European or national level. In order to enjoy their rights as minors, first of all it their status of underage must be officially assessed.

¹²⁵ <http://documenti.camera.it/apps/emendamenti/getProposteEmendativeSeduta.aspx?contenitorePortante=leg.17.eme.ac.1658-B&tipoSeduta=1&sedeEsame=referente&urnTestoRiferimento=urn:leg:17:1658:null:B:com:01:referente&dataSeduta=20170314&tipoListaEmendamenti=1>

¹²⁶ <http://documenti.camera.it/apps/emendamenti/getProposteEmendativeSeduta.aspx?contenitorePortante=leg.17.eme.ac.1658-B&tipoSeduta=0&sedeEsame=null&urnTestoRiferimento=urn:leg:17:1658:null:B:ass:null:null&dataSeduta=20170329&tipoListaEmendamenti=1>

¹²⁷ Senato della Repubblica, *Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati*, A.S. 2583, XVII Legislatura, 22/02/2017

(absorbing A.S. 1295, presented on 4th February 2014 on the same topic by senator Francesca Puglisi)

¹²⁸ A.C. 1658 – B, as approved by the Chamber of Deputies and amended by the Senate

¹²⁹ Save the Children, *Atlante minori stranieri non accompagnati Italia 2018*, 2018

During their journey these people have little or nothing with them: a photo of the family, a passport or identity card, or some other personal data, and a mobile phone.

Being identified as a minor constitutes the essential assumption and the starting point of the welcoming and reception process. Only after being recognized as such, a foreign minor can benefit from the protection measures provided by the Italian legislation. Incorrect procedures on identification and assessment of age, or verification of parental relationships, can lead to non-compliance or to the violation of some fundamental rights of which unaccompanied foreign minors are holders. Failure to be identified as minors will preclude them adoption, for example, or can lead them to highly detrimental measures against the children themselves, like detention in centers for adult and irregular migrants, expulsion or lack of protection from violence, trafficking and exploitation.¹³⁰

The Italian legal system provides that the identity of the minor is ascertained by the public security authority, where necessary with the cooperation of diplomatic and consular representatives of the country of origin. In some cases, contacting the embassies not only can be difficult and extremely long, due to the lack of registry systems, but it can also be dangerous for the safety of the minor in case he or she is an asylum seeker and has fled his or her home country in order to escape the local authorities.

The first step should be just taking into consideration, whether possible, the documents of the minors. The minor may be subjected to photodactyloscopic surveys and signals, "if there is any reason to doubt the identity foreigner's staff".

Identification should be carried out within the reception centers, activated by the Ministry of the Interior, in environmental conditions such as to allow a serene dialogue with the support of cultural and linguistic mediators. Such conditions are often difficult to create within hours of landing and in temporary facilities. Furthermore, when a minor is accompanied by an adult at the moment of arrival, the nature of the relationship between the adult and the minor shall be carefully checked, in order to verify whether the person is suitable for taking over responsibility for protection and care, or if he or she is tied to the minor by a bond of exploitation.

Together with the identification of identity, the assessment age may represent the sliding door for a foreign minor in order to get access or exclusion to protective measures, which are provided for them in the Italian law. In some cases, the age assessment procedure is initiated because of the suspicion by the authorities that the subject declares an age inferior to the real one.

Sometimes it happens that when they arrive, minors declare they are adults so that they are not separated from others compatriots and to attempt to continue their journey to Europe.¹³¹

¹³⁰ Ibid.

¹³¹ Intersos, *Unaccompanied and Separated children along Italy's northern borders*, 2017

Subsequently, after a more in-depth legal information, the same minors may declare their minor age. Such behavior is easily understood: immediately after the arrival, they are faced with a new ‘world’ and many procedures and bureaucratic rules, which are unknown to them. Yet, they find themselves having to do statements that can have a definitive impact on their future in Italy and in Europe.

Currently in every Italian region the most used tool to ascertain the age of the person is a medical report, based on the radiological examination of the left wrist, generally made by medical staff only, not integrated by others professional components like a psychologist or a pediatrician. Often the margin of error is not reported on the file, which is not translated and not delivered to the presumptive minor. Moreover, a copy of the identity document or certificate of birth without photo is not accepted in every police station, even when it may help with the assessment of age.

Sometimes multiple investigations on the age of a person are carried out in different places and arranged by different authorities, even with discordant results, and without taking account of previous investigations. For the minors, the practice of resorting to disproportionate medical examinations is very stressful. On the other hand, it is risky to assess the age on the result of a single medical examination, especially when the margin of error is not indicated nor reported.

Although the issue of age assessment has assumed greater importance in recent years, and there have been numerous abuses, there are no homogeneous procedures in Italy for the verification of the age of the foreign minors yet. Such desirable and standardized procedures shall ensure respect for children's rights during and after the assessment itself. The situation is made critical by the lack of an operational protocol¹³² and from the limits of currently known scientific methods for age assessment through medical examinations, which may make the alleged age statement only with large margins of uncertainty.

Nearly in every location, the procedures for age assessment are initiated, conducted and terminated without the necessary involvement of the juvenile judiciary: it is one shortage to be filled as soon as possible, to ensure the overall strength of the system on the level of the control of guarantees for unaccompanied minors.

3.2 Responsibility chain and voluntary guardians

Nearly one and a half year after the implementation, there are pros and cons on the changes applied by of law n.47 of 2017. The positive aspect of the new norm is that of defining a comprehensive scheme on the rights and guarantees for unaccompanied minor migrants.¹³³ Moreover, it assigned specific duties to multiple bodies, both institutional and civilian ones. First of all the Government and the competent Ministries, i.e. the Ministry

¹³² Autorità Garante per l'Infanzia e l'Adolescenza, *Stato di attuazione delle disposizioni sul sistema di prima e seconda accoglienza previste dalla Legge n. 47 del 2017 – richiesta informazioni*, Protocollo N.0001127/2018, 04/05/2018

¹³³ UNICEF, *UNICEF hails new Italian law to protect unaccompanied refugee and migrant children as model for Europe*, News Note, Roma, Geneva, 29 March 2017 https://www.unicef.org/media/media_95485.html

of the Interior and the Ministry of Social Policies, the Guarantor Authority for Childhood and Adolescence, the Juvenile Tribunals, City Halls, but also police force, schools, social assistance services, organizations and local communities. Once this “chain” of agents will effectively cooperate, the expected result is that of a complete protection of minors, which will lead them to complete their journey by being included in the society. Since its implementation, the definition of the system proceeded in a non-homogeneous but constant manner. A change can be recorded in the system, which moves towards a greater protection of the children involved. The area that has registered the greatest impulse by the implementing bodies - national Guarantor Authority for Children and Adolescents and all Regional Guarantor Authorities - is that of voluntary guardians. Thousands of applications were presented in response to the calls and this clearly shows the existence of a segment of the population that not only is open towards foreigners, but is also willing to engage for free for the welfare and protection of the youngest among migrants.

The commitment of the Guarantors and the enthusiasm of the response of the population have led to more than a thousand people already registered in the lists and waiting to be matched with a minor. It will be the Juvenile Courts’ task to proceed to the appointment of guardians in favor of unaccompanied minors, hopefully taking into account both the profile of the aspiring tutor (age, spoken languages, family situation, etc.), and that of the minor, in order to favor a fruitful relationship.

Chapter III

1. European Union law on unaccompanied minor migrants, from binding tools to guidelines

During recent years, the European Union has witnessed an increase of the flow of migrants, many of whom are children. In 2017, almost one third of asylum applicants were minors¹³⁴ and 13% of them were unaccompanied minors.¹³⁵

As previously stated, it is important to bear in mind that beyond aggregated data and statistics, there are individual stories of children, whose lives have been changed by the experience of migration. Minors have been threatened and abused by smugglers and criminals throughout the route, and often they have not received an adequate support and care at the moment of arrival. Unaccompanied minors are recognized to be at a greater risk of vulnerability¹³⁶, due not only to their age, but to distance from home and relatives too. Given such circumstances, they should be granted special and adequate protection, as rightly expressed by the European Commission.¹³⁷

After all the risks related to the migratory route, to whom both boys and girls are exposed to, such as violence, trafficking, physical and psychological abuse, unaccompanied minor migrants are not safe yet even after their arrival at the European borders. They often risk to go missing and to be exploited by criminal organizations or radicalised groups. When they are staying in reception centres, they often have to share the space with adults.¹³⁸

¹³⁴ Eurostat, statistics explained, *Distribution by age of (non-EU) first time asylum applicants in the EU and EFTA Member States, 2017 (%) YB18.png*, [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Distribution_by_age_of_\(non-EU\)_first_time_asylum_applicants_in_the_EU_and_EFTA_Member_States,_2017_\(%25\)_YB18.png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Distribution_by_age_of_(non-EU)_first_time_asylum_applicants_in_the_EU_and_EFTA_Member_States,_2017_(%25)_YB18.png)

¹³⁵ Eurostat, statistics explained, *Distribution by status of (non-EU) asylum applicants from minors in the EU and EFTA Member States, 2017 (%) YB18.png*, [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Distribution_by_status_of_\(non-EU\)_asylum_applicants_from_minors_in_the_EU_and_EFTA_Member_States,_2017_\(%25\)_YB18.png#file](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Distribution_by_status_of_(non-EU)_asylum_applicants_from_minors_in_the_EU_and_EFTA_Member_States,_2017_(%25)_YB18.png#file)

¹³⁶ United Nations, Committee on the Rights of the Child, *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, CRC/C/GC/2005/6, 1 September 2005

¹³⁷ European Commission, *Communication from the Commission to the European Parliament and the Council, The protection of children in migration*, COM(2017) 211 final, Brussels, 12/4/2017 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_communication_on_the_protection_of_children_in_migration_en.pdf

¹³⁸ Save the children, "Atlante minori stranieri non accompagnati", 2018

The protection of children is central to the broader mission of the European Union to protect human rights and to promote solidarity.¹³⁹ To protect vulnerable children, especially during migration and regardless of their status, shall be a priority for the European Union and its Member States. It is a duty for Member States to respect the United Nations Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union.

In addition to that, the European Union has been active in regulating the protection of the rights of the child in migration, by providing a legislative framework and by promoting ad hoc initiatives. In both legislative and non-legislative actions, the best interest of the child is the principle which shall be taken as primary consideration. The present chapter analyses the European Union directives which have an explicit focus on unaccompanied minor migrants, one example of case law of the European Court of Justice on matters concerning unaccompanied minors¹⁴⁰ and other non-binding actions which yet have influenced the path of the European Union towards a more comprehensive system of protection of unaccompanied minor migrants.

1.1 Directive on temporary protection (2001)

The need to deal with unexpected and exceptional fluxes of migrant people in the EU Member States' territory has become evident during the '90s, when the conflict in former Yugoslavia caused the displacement of thousands of people. In response to such need, the Council issued Directive 2001/55/EC of 20 July 2001 "on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof".¹⁴¹ Such measures, which rest on solidarity between Member States, have not been triggered so far for political reasons. Yet, the Directive has special relevance for the thesis as it sets out the definition of unaccompanied minor migrants "A non-EU national or stateless person below the age of eighteen who arrives on the territory of the EU States unaccompanied by an adult responsible for him/her whether by law or custom, and for as long as s/he is not effectively taken into the care of such a person, or a minor who has left unaccompanied after s/he has entered the territory of the EU States." (art. 2, (f))¹⁴²

¹³⁹ European Commission, *Communication from the Commission to European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An EU Agenda for the Rights of the Child*, COM(2011) 60 final, Brussels 15/02/2011 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52011DC0060>

¹⁴⁰ For the purpose of the thesis, it has been chosen as example the case C-550/16, *A and S v. Staatssecretaris van Veiligheid en Justitie* (A and S) because it was fundamental in clarifying the scope of the Family Reunification Directive and in providing guidelines for the protection of unaccompanied minor migrants.

See Nicolosi S., *Shedding Light on the Protective Regime for Unaccompanied Minors Under the Family Reunification Directive: The Case of A and S*, European papers, 05/11/2018 <http://www.europeanpapers.eu/it/europeanforum/shedding-light-on-protective-regime-for-unaccompanied-minors>

¹⁴¹ Council of the European Union, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member States in receiving such persons and bearing the consequences thereof*, OJ L 212/12 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>

¹⁴² Ibid.

The aim of the directive is that of setting a scheme to be used in case of mass arrivals in the territory of the EU. People may arrive at the European borders for multiple reasons, in particular war, perpetration of violence or human rights violations. Such people are hence in danger and cannot return to their home country. According to the directive, once the scheme is activated it shall help to balance the efforts of the Member States in receiving migrants under temporary protection. Nonetheless, it does not require a compulsory redistribution.

The key point of the directive is the implementation of temporary protection. Temporary protection is to be considered as an exceptional provision to support displaced persons from third countries who are not able to return to their home country of origin. The temporary protection scheme shall be taken into account when the standard procedure for asylum is struggling to cope with an exceptional number of requests of asylum. In other words, the scheme shall be triggered when the migration flow is exceptionally high and has potentially a negative impact on the processing of claims, while a large number of people are needing primary assistance and protection.

The temporary protection can be implemented in every Member States after a Council's decision which confirms the existence of a massive flow of displaced people at the European borders and provides a description of the specific group of persons in need of protection (e.g. country of arrivals, composition of the group etc...). the duration of the scheme can vary from 1 up to 2 years, but it may as well end before the scheduled dates in case the Council deems it safe for people to return to their home country, "with due respect for human rights and fundamental freedoms and Member States' obligations regarding non-refoulement".¹⁴³

The directive establishes special grounds on which temporary protection does not apply. These conditions concern the field of collective security. In particular, people may be excluded from the temporary protection if they are convicted or suspected of war crimes, crimes against humanity and peace, serious non-political crimes (art. 28, 1, a) or if they represent a threat to the security of the EU (art. 28, 1, b).

Once the scheme is triggered, EU Member States can issue a residence permit to those people for whom temporary protection has been recognized. The residence permit is valid for the whole duration of the scheme and it gives right to employment, education and/or vocational training, housing, social welfare and medical care. Moreover, people granted temporary protection can ask for family reunification with family members who are in other EU Member States or even not within the EU borders yet. It is possible for people under temporary protection to lodge an asylum application, but the same can be postponed by the receiving country on the ground that the person has already been granted temporary protection and in order to diminish the load of asylum applications in time of migration crisis.

¹⁴³ Ibid. Art. 6, 2

When the period of temporary protection is expired, EU member States shall enable the voluntary return of protected people and, even when enforced return is necessary, they shall assert there are no threats of human rights violation.

The measures of the present directive can benefit from the Asylum, Migration and Integration Fund. When the number of people under protection is larger than the reception capacity of the Member State, the Council shall take initiative to recommend additional support for the welcoming country.

It is notable that the directive explicitly mentions the right to education of minors enjoying temporary protection¹⁴⁴, by stating that children under the age of eighteen shall benefit from the educational system of the receiving country similarly as their peers. Moreover, Article 16 directly concerns unaccompanied minor migrants. According to the present directive:

“1. The Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors enjoying temporary protection by legal guardianship, or, where necessary, representation by an organization which is responsible for the care and well-being of minors, or by any other appropriate representation.

2. During the period of temporary protection Member States shall provide for unaccompanied minors to be placed:(a) with adult relatives;(b) with a foster-family;(c) in reception centers with special provisions for minors, or in other accommodation suitable for minors;(d) with the person who looked after the child when fleeing.

The Member States shall take the necessary steps to enable the placement. Agreement by the adult person or persons concerned shall be established by the Member States. The views of the child shall be taken into account in accordance with the age and maturity of the child.”¹⁴⁵

It is notable that the Directive on temporary protection makes direct reference to legal guardianship of unaccompanied minor migrants and to the right of the child to be heard and to be represented, as well as to the need of a suitable accommodation.

1.2 Directive on the right to family reunification (2003)

In 2003 the Council adopted Directive 2003/86/EC on the right to family reunification¹⁴⁶ with the aim of setting common legislative standards for the procedures of family reunification. In other words, lawful non-EU nationals residing in any EU Member State can ask for their family to join them in the host country where they are residing. The scope is to facilitate the integration of non-EU nationals and to protect family unit.

¹⁴⁴ Ibid. Art. 14,1

¹⁴⁵ Ibid. Art. 16, 1-2

¹⁴⁶ Council of the European Union, *Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification*, OJ L 251, 3.10.2003, p. 12–18 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0086>

The condition upon which the application for family reunification can be executed is that the non-EU national is holding a residence permit, which must be valid for at least one year, and he or she has the legal option for long-term residence. The Directive leaves a large margin of appreciation to Member States when assessing whether there is a reasonable possibility of obtaining the right of permanent residence.

People applying for refugee status or temporary protection, or family members of EU citizens, fall outside the target of the Directive. Relatives who are eligible for family reunification are the sponsor's spouse or unmarried partner, the minor children of the couple, including adopted children and children of only one member of the couple, father and mother of the non-EU national. Since polygamy is forbidden, only one spouse can benefit from the right to family reunification and, similarly, children of the ineligible spouse are excluded from family reunification (unless it is in the best interest of the child, in accordance with the UN Convention of the Rights of the Child of 1989).

Once the right to family reunification has been recognized by an EU Member State, the family members of the sponsor are entitled to receive a residence permit which has the same characteristics of that of the person they have rejoined (i.e. duration and terms). Similarly, they are entitled to access education and employment. The conditions for autonomous residence permit are set autonomously by Member States.

The permit for family reunification may be refused, for example on the ground of internal security or fraud (marriage of convenience, falsified documents etc...). People whose permit has been refused, have the right to mount a legal challenge.

The Directive restates in art.2 (f) the definition of "unaccompanied minor". Moreover, Article 10.3 affirms that:

"3.If the refugee is an unaccompanied minor, the Member States:

(a) shall authorize the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);

(b) may authorize the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced."¹⁴⁷

Given the large amount of cases of family reunification and the issues deriving from the different national legislation on the matter, asserting that the Directive has proved poor in reaching its objective of harmonization of legislation, in 2014 the European Commission has published the guidelines for the application of the directive.¹⁴⁸ The guidelines reflect the Commission's view and do not prejudice further case law of the Court of Justice. The Directive recognizes the right to family reunification and it imposes positive obligation on

¹⁴⁷ Ibid. art.10.3

¹⁴⁸ European Commission, *Communication from the Commission to the European parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, COM/2014/0210 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52014DC0210>

Member States.¹⁴⁹ There is a margin of appreciation available to member States in order to take case by case decisions, but such margins shall not be used in a way that would affect the effectiveness of the Directive, which is to fulfil the objective of family reunification.¹⁵⁰

1.3 The Treaty of Lisbon and the Charter of Fundamental rights (2009)

The protection of children's rights was acknowledged as on the EU's objectives with the adoption of the Lisbon Treaty (2009), both at internal and international level.¹⁵¹ According to Article 3 of the TEU, the European Union shall "promote the protection of the rights of the child".¹⁵² Article 2 TEU expressly states as a core value the respect for fundamental human rights.¹⁵³ Furthermore, according to article 21, EU's actions in the international scenario shall be guided by the fundamental principle of respect for human rights.¹⁵⁴ Another way by which the Treaty of Lisbon contributes to consolidate EU's mandate in the protection of children is by legally recognizing the Charter of Fundamental Rights of the European Union.¹⁵⁵ With the inclusion of the Charter as part of EU legal framework, the commitment of the EU to the protection of children is made more explicit and, with the abolishment of the pillars' structure, the EU holds wider legal capacity to promote children's rights due to the shared competence in the policy fields of freedom, security and justice.¹⁵⁶ The Charter of Fundamental Rights of the European Union enshrines the rights of the child in article 24¹⁵⁷ and it states that whether an EU policy affects children, it shall be designed, implemented and carried out by considering the best interest of the child as primary concern. This is of the outermost importance when dealing with categories of more vulnerable children, due to conditions of violence, exploitation and danger. Thanks to the Lisbon Treaty, the promotion of the rights of the child has become a primary concern for EU agenda.¹⁵⁸

¹⁴⁹ European Court of Justice, Judgment of the Court (Grand Chamber) of 27 June 2006, *European Parliament v Council of the European Union*, Case C-540/03, EU:C:2006:429

¹⁵⁰ European Court of Justice, *Judgment of the Court (Second Chamber) of 4 March 2010, Rhimou Chakroun v Minister van Buitenlandse Zaken*, Case C-578/08, EU:C:2010:117

¹⁵¹ European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' rights and Constitutional Affairs, Civil liberties, Justice and Home Affairs, *European framework of law for children's rights*, PE462.445, April 2012

¹⁵² Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 2007/C 306/01, OJ C 306, 17/12/2007, p. 1–271, Art.3 <http://data.europa.eu/eli/treaty/lis/sign>

¹⁵³ Ibid. Art.2

¹⁵⁴ Ibid. Art.21

¹⁵⁵ Charter of Fundamental Rights of the European Union, 2012/C 326/02, OJ C 326, 26.10.2012, p. 391–407, http://data.europa.eu/eli/treaty/char_2012/oj

¹⁵⁶ European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' rights and Constitutional Affairs, Civil liberties, Justice and Home Affairs, *European framework of law for children's rights*, PE462.445, April 2012

¹⁵⁷ Charter of Fundamental Rights of the European Union, 2012/C 326/02, OJ C 326, 26.10.2012, p. 391–407, Art. 24 http://data.europa.eu/eli/treaty/char_2012/oj

¹⁵⁸ European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' rights and Constitutional Affairs, Civil liberties, Justice and Home Affairs, *European framework of law for children's rights*, PE462.445, April 2012

The EU does not hold an exclusive competence on the area, yet the new legal framework creates an obligation for the EU to consider the best interest of the child when regulating on decisions targeting children.¹⁵⁹

1.4 Directive on qualification (2011)

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on “standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted”¹⁶⁰, hereinafter “Qualification Directive”, sets common standards for the qualification and international protection of refugees and stateless persons.

The aim of the directive is to harmonize the procedures for identification of non-EU citizens who are in need of international protection and come to any EU Member State as refugees. The purpose is to assure that in every Member State there is a standard level of enjoyable rights and benefits for refugees. Moreover, by coordinating Member States procedures, the directive secondarily aims at reducing the movement of refugees from one Member State to another on the ground of different legislation or treatment.

According to the UNHCR study on the implementation of the Qualification Directive¹⁶¹, however, such objectives have not been achieved, due to the possibility for Member States to adopt different legislation and procedures for the identification and reception of refugees. Such scenario not only undermines the objective of harmonization of standards but threatens the rights of people fleeing from war, persecution and violence.¹⁶² Essentially, the Qualification Directive gives a definition of “refugees” and “persons eligible for subsidiary protection”¹⁶³ and bridges the gap between different accounts of people needing international protection, in order to minimize the possibility for EU Member States to limit the access to enjoyable rights and benefits to a narrow category of refugees.

The Qualification Directive defines a “refugee” as “a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail

¹⁵⁹ Save the Children, *Governance Fit for Children, To what extent have the general measures of implementation of the UNCRC been realised in the EU Institutions?*, 2011

http://europe.savethechildren.se/Global/scs/EUROPE/Our%20focus/Gov_for_children/EU_webb_final.pdf

¹⁶⁰ European Parliament, Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted*, OJ L 337, 20.12.2011, p. 9–26 <http://data.europa.eu/eli/dir/2011/95/oj>

¹⁶¹ United Nations High Commissioner for Refugees (UNHCR), *Asylum in the European Union. A Study of the Implementation of the Qualification Directive*, November 2007

¹⁶² Ibid.

¹⁶³ European Parliament, Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted*, OJ L 337, 20.12.2011, p. 9–26, Art. 2, d, f <http://data.europa.eu/eli/dir/2011/95/oj>

himself or herself of the protection of that country [...]”¹⁶⁴. Similarly, a “person eligible for subsidiary protection” is to be considered as a “a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, [...] would face a real risk of suffering serious harm[...] and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country”.¹⁶⁵

EU Member States shall cooperate with the applicants when assessing the circumstances which caused the person to flee his or her home country. Once the credibility of the application has been assessed, or in case there is a lack of evidence and documents supporting the application, the asylum seekers shall be given the benefit of the doubt. The applicant shall have access to effective and non-temporary protection, offered by States or organizations. When assessing the application procedures, EU Member States shall rely on up to date information provided by the European Asylum Support Office and the United Nations High Commissioner for Refugees.

There may be circumstances in which applicants are excluded from benefiting of the refugee status or from subsidiary protection, such as if the applicants have committed a war crime or a crime against humanity or if suspected of threatening the security of the host EU Member States.

Once international protection is granted by the host EU member State, the person enjoys the right to protection from refoulement, to information in an understandable language, residence permit and travel documents, access to employment and education (equal treatment for minors as regard to their peers living in the same country), freedom of movement and, if requested, assisted repatriation.

It is relevant that the Qualification Directive includes specific provisions on unaccompanied minors. Indeed, Article 31 states as follows:

“1. [...] Member States shall take the necessary measures to ensure the representation of unaccompanied minors by a legal guardian [...]

6. Those working with unaccompanied minors shall have had and continue to receive appropriate training concerning their needs.”¹⁶⁶

¹⁶⁴ European Parliament, Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted*, OJ L 337, 20.12.2011, p. 9–26, Art. 2, d <http://data.europa.eu/eli/dir/2011/95/oj>

¹⁶⁵ European Parliament, Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted*, OJ L 337, 20.12.2011, p. 9–26, Art. 2, f <http://data.europa.eu/eli/dir/2011/95/oj>

¹⁶⁶ European Parliament, Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted*, OJ L 337, 20.12.2011, p. 9–26, Art. 31 <http://data.europa.eu/eli/dir/2011/95/oj>

It is notable that the Qualification Directive recognizes the need for legal guardianship and representation for unaccompanied minor migrants¹⁶⁷ as well as for a suitable housing solution. Moreover, it advocates for the unity of the nuclear family by taking into account the best interest of the child in not being separated from siblings and of being reunited, when possible, with his or her close relatives. Ultimately, it assesses the need for legal guardians or tutors to be trained and aware of the needs of unaccompanied minors.¹⁶⁸

1.5 Directive on reception (2013)

Directive 2013/33/EU on standards for the reception of applicants for international protection¹⁶⁹ repeals Directive 2003/9/EC¹⁷⁰ and it applies since 19 July 2013. The Directive is coherent in the path of building a Common European Asylum System (CEAS) and it is part of a series of legislative measures which helped shaping it from 2013 onwards.

The focus of the directive is on international protection, which may be granted both to refugees and to people with subsidiary protection status. In particular, it aims to harmonize living standards for those people who have made their application for international protection and are waiting for such application to be carried out. Such standards shall be respectful of human rights and shall prevent people from moving from one EU Member State to another on the reason of difference in treatments of asylum seekers.

The target of the directive includes applicants for international protection and their families. Some of the conditions which shall be met are access to food, clothing, housing, financial aid and health care. Moreover, host EU countries must enable applicants to have access to employment and education for minors.

The Reception Directive gives appropriate relevance to vulnerable people. In particular, an assessment shall be made in order to establish the needs of vulnerable categories, i.e. children, single parents with minors, unaccompanied minors, elderly people and victims of abuse. Ultimately, the Reception Directive prohibits detention of applicant for international protection on the ground that they are awaiting the examination of their application. It gives precise conditions to be respected in case of detention as well.

About unaccompanied minors, the Reception Directive reaffirms the need for legal guardianship and representation, while stressing the importance of the best interest of the child as the guiding concept when taking decisions about the minors and his or her relatives. It substantially restates art. 31 of Directive 2011/95/EU with the addition of a special concern on the relationship between the unaccompanied minor and

¹⁶⁷ Parusel B., *Unaccompanied minors in the European Union – definitions, trends and policy overview*, Social Work and Society International Online Journal [Vol 15, No 1 \(2017\)](#), 2017

¹⁶⁸ Ibid.

¹⁶⁹ European Parliament, Council of the European Union, *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection*, OJ L 180, 29.6.2013, p. 96–116, <http://data.europa.eu/eli/dir/2013/33/oj>

¹⁷⁰ Council of the European Union, *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*, OJ L 31, 6.2.2003, p. 18–25 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003L0009>

his or her representative, which shall be bond on trust and aimed at the social development and guidance of the minor.

2. European Court of Justice Case Law on unaccompanied minor migrants: *A, S v Staatssecretaris van Veiligheid en Justitie* (2017)¹⁷¹

For the time being, one of the cases in which the European Court of justice has been requested a preliminary ruling on a case concerning unaccompanied minor migrants was in 2017 with “A, S v Staatssecretaris van Veiligheid en Justitie”.¹⁷²

The case concerned a young Eritrean girl below the age of 18 who arrived to the Netherlands alone; she was indeed an unaccompanied minor. On 26 February 2014, she lodged an application for asylum in the Netherlands. While the examination of her application was carried out, without any final response yet been given, she has attained the age of majority. On 21 October 2014, she was finally granted with a residence permit by the competent Dutch authorities. The permit was valid for five years and it had retroactive effect to the date on which her application was lodged. Once she has obtained the right to lawfully reside in the host country, she lodged an application for temporary residence for her parents and her three minor brothers on the ground of family reunification. However, on 27 May 2015 the State Secretary for Security and Justice (Staatssecretaris van Veiligheid en Justitie) dismissed the application on the ground that the applicant was an adult and therefore could not claim the status of unaccompanied minor to enjoy the right to family reunification. On 3 September 2015, the parents of the girl, A and S, brought an appeal against such decision before the referring court, i.e. the District Court The Hague, sitting in Amsterdam (Rechtbank Den Haag, zittingplaats Amsterdam). They claimed that, according to Article 2(f) of Directive 2003/86/EC, the date on which the person enters the host EU Member State is relevant to determine whether such person is to be considered an unaccompanied minor. On the other hand, the State Secretary for Security and Justice considers the relevant date to be that on which the application for family reunification has been lodged by the applicant.

¹⁷¹ The European Court of Justice has ruled over another case concerning unaccompanied minors. In “MA, BT, DA v UK”, three unaccompanied minors would be denied the residence permit in the UK because they had previously lodged an asylum application in another Member State, namely Italy and the Netherlands. The ECJ ruled in favour of a non-restrictive interpretation of the directive with the aim of promoting the best interest of the child.

European Court of Justice, Judgment of the Court (Fourth Chamber) of 6 June 2013, *MA, BT, DA v Secretary of State for the Home Department*, Case C-648/11, OJ C 225, 3.8.2013, p. 18–18

<http://curia.europa.eu/juris/celex.jsf?celex=62016CC0550&lang1=en&type=TXT&ancre=>

¹⁷² European Court of Justice, Opinion of Advocate General Bot delivered on 26 October 2017, *A and S v Staatssecretaris van Veiligheid en Justitie*, Case C-550/16, EU:C:2017:824

<http://curia.europa.eu/juris/celex.jsf?celex=62016CC0550&lang1=en&type=TXT&ancre=>

Given such circumstances, the District Court of The Hague, sitting in Amsterdam decided to refer the question to the ECJ for a preliminary ruling. In particular, the question was articulated as it follows:

“In matters relating to family reunification for refugees, must the term “unaccompanied minor”, within the meaning of Article 2(f) of Directive 2003/86 on the right to family reunification, also cover a third-country national or stateless person below the age of 18 who arrives on the territory of a Member State unaccompanied by an adult responsible by law or custom and who: applied for asylum, during the asylum procedure attains the age of 18 in the territory of the Member State, is granted asylum with retroactive effect to the date of the application, and subsequently applies for family reunification?”¹⁷³.

In other words, the European Court of Justice has been requested to answer what is the relevant date to assess the status of unaccompanied minor and the rights deriving from such recognition. Therefore, the case has given the ECJ the opportunity to rule on the rights of people arriving as minors in the European Union, attaining the age of majority whilst their application for asylum procedure is yet to be executed and, subsequently, after obtaining the residence permit, applying for family reunification. It is essential to take into account the administrative delays which can persist during the examination of an asylum procedure and “the inexorable passage of time in the life of a person who becomes an adult during [the] examination”.¹⁷⁴

It is relevant to the case that the applicant has been awaiting her permanent residence permit to be recognized before lodging the application for family reunification. By asking for family reunification while her application for the recognition of refugee status was still undergoing examination by the competent Dutch authorities, indeed, would have been contrary to Article 3(2)(a) and Article 9(1) of the Directive¹⁷⁵ and would have hindered the outcome of the application. Therefore, the relevant date to assess the status of unaccompanied minor of the applicant, shall be the date in which the competent authority receives the application for the residence permit. In other words, the applicant has showed a respectful attitude towards the procedures and the lengthy of whom shall not be considered to her detriment.

It is fundamental that Directive 2003/86/EC on the right to family reunification seeks to preserve and to protect family life. Therefore, according to the ECJ the text of the Directive shall be interpreted in a non-restrictive manner in order to promote family reunification. Moreover, the Directive is to be interpreted in accordance with Article 7 of the Charter of Fundamental Rights of the European Union¹⁷⁶ and Article 8 of the European Convention on Human Rights¹⁷⁷ on the respect for private and family life. The Directive set standards for third country nationals who, lawfully residing in a Member State, exercise the right to family reunification. It also

¹⁷³ Ibid. par. III .23

¹⁷⁴ Ibid. par. I .3

¹⁷⁵ Council of the European Union, *Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification*, OJ L 251, 3.10.2003, p. 12–18, <http://data.europa.eu/eli/dir/2003/86/oj>

¹⁷⁶ Charter of Fundamental Rights of the European Union, 2012/C 326/02, OJ C 326, 26.10.2012, p. 391–407, Art.7 http://data.europa.eu/eli/treaty/char_2012/oj

¹⁷⁷ Council of Europe, *European Convention on Human Rights*, Rome 4 November 1950, Art.8

seeks to protect the vulnerability of such group of people. In the present case, it would be contrary to the by the Directive to deny the vulnerability of the applicant girl who, arrived as minor in the Netherlands, has been able to exercise her right to family reunification only after the examination of her application has been completed.

Since the act which guarantees the refugee status has retroactive effect, the relevant date to assess whether the applicant is to be considered as an unaccompanied minor, shall be the date of the submission of the residence application. Thus, the Court ruled that the applicant shall be considered an unaccompanied minor and shall benefit of the right to family reunification.¹⁷⁸

3. Other EU initiatives for the protection of children in migration

In 2010, the European Commission published “The Action Plan on Unaccompanied Minors (2010 – 2014)”¹⁷⁹, which has been pivotal in increasing awareness about the vulnerability of unaccompanied minor migrants and their need for protection. The Action Plan is a Communication of the European Commission, and as such it has no binding effect but it aims to provide the European Commission’s perspective on the matter. The Action Plan acknowledges the extraordinary arrival of growing number of unaccompanied minors in the European Union and affirms the need to take the best interest of the child as primary concern when addressing such challenges. The Communication is a starting point in setting out a long-term strategy but its implementation depends on the collaboration between EU institutions, Member States, third countries and ultimately civil society.

In 2013, it was issued the Recommendation “Investing in children: breaking the cycle of disadvantage”¹⁸⁰ by the European Commission. With this legal but non binding tool, the European Commission aimed at providing the Member States with guidance on how to improve children’s wellbeing and to tackle poverty by adopting child-friendly social investments and policies. Though the Recommendation addresses children in poverty, it is true that part of this category is made of first generation migrant children and abandoned minors as well.

In 2015, the European Commission elaborated the “European Agenda on Migration”¹⁸¹, followed by other Communications on the state of play of its implementation, the latest one being the ”Managing migration in

¹⁷⁸ European Court of Justice, Opinion of Advocate General Bot delivered on 26 October 2017, *A and S v Staatssecretaris van Veiligheid en Justitie*, Case C-550/16, EU:C:2017:824

<http://curia.europa.eu/juris/celex.jsf?celex=62016CC0550&lang1=en&type=TXT&ancre=>

¹⁷⁹ European Commission, *Communication from the Commission to the European Parliament and the Council, Action Plan on Unaccompanied Minors (2010 – 2014)*, COM(2010)213 final, Brussels, 6/5/2010, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF>

¹⁸⁰ European Commission, *Investing in children: breaking the cycle of disadvantage*, Commission Recommendation of 20 February 2013, (2013/112/EU), OJ L 59, 2.3.2013, p. 5–16, <http://data.europa.eu/eli/reco/2013/112/oj>

¹⁸¹ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A European Agenda on Migration*, COM (2015) 240 final, Brussels, 13/05/2015

all its aspects: Progress under the European Agenda on Migration”¹⁸², which was published on 4th December 2018. The European Agenda on Migration aims to create a common migration policy, on the ground that migration is a phenomenon that no State can address alone. The Agenda recalls the principles of solidarity and shared responsibility of the European Union. If Member States and EU institutions were to work together by combining different instruments, policies and legislative tools, the common issues could be tackled more effectively. Being a comprehensive strategy on migration, it does not address unaccompanied minor migrants specifically, yet they fall within the scope of the Communications.

There have been events on the topic of migrant children, hence including unaccompanied minors, such as the “10th Annual Forum on the rights of the child: the protection of children in migration”¹⁸³ in November 2016, organized by the European Commission, and ”Lost in migration”¹⁸⁴, in January 2017, organized by a network of European NGOs. Both these international events have highlighted the need for better actions to protect children in migration.

The latest European Union Communication on the matter is “The protection of children in migration”¹⁸⁵, which builds on the previous initiatives and proposes a set of actions which shall be taken or, where already in place, better implemented by the Member States. The Communication asserts the importance of EU agencies, such as the European Border and Coast Guard Agency, the European Asylum and Support Office (EASO) and the European Union Agency for Fundamental Rights (FRA). In particular, it aims at closing the gaps between the different stages that children are faced with once they have arrived at the European borders: identification, reception, implementation of guardianship’s procedures and establishment of durable accommodation solutions.

4. Conclusion

¹⁸² European Commission, *Communication from the Commission to the European Parliament, the European Council and the Council, Managing migration in all its aspects: progress under the European Agenda on Migration*, COM(2018) 798 final, Brussels, 4/12/2018 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20181204_com-2018-798-communication_en.pdf

¹⁸³ European Commission, *Directorate General for Justice and Consumers, 10th European Forum on the rights of the child: the protection of children in migration*, Brussels 28-30 November 2016, https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34456

¹⁸⁴ Missing Children Europe, *Lost in migration: Working together in protecting children from disappearance*, Malta 26-27 January 2017, <http://missingchildreneurope.eu/News&press/Post/1063/Lost-in-migration-Working-together-in-protecting-children-from-disappearance>

¹⁸⁵ European Commission, *Communication from the Commission to the European parliament and the Council, The protection of children in migration*, COM(2017) 211 final, Brussels 12/04/2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_communication_on_the_protection_of_children_in_migration_en.pdf

The framework provided by the European Union on the matter of unaccompanied minor migrants is made up of both legislative and non-legislative tools. The Treaties and the Charter provide general standards for the respect of human rights and dignity, the Directives are specific on relevant matters and, together with the Treaties, provide legal sources for subsequent case law and for the implementation of national norms. The Communications and the international meetings provide guidance and a chance of dialogue on future strategies. The European Commission direction regarding children and, specifically, unaccompanied minor migrants, is that of protection, hospitality and inclusion. Nonetheless, a case by case analysis outlines the situation of unaccompanied minor migrants in Europe as extremely risky, uneven across Member States and not often tackled with the right measures. There are multiple reasons to explain such scenario. First of all, the flow of migrants and the arrival of unaccompanied minors is still considered as an “emergency” situation than a regular one, and thus not yet well-regulated and tackled by Member States with the right measures. Secondly, the situation is different across Member States: since Italy and Greece have been facing the vast majority of arrivals, especially by sea, the numbers of migrants is disproportionately higher in such Member States than in the others. The failure of the resettlement and relocation scheme and the political unwillingness of Member States to modify the Dublin system have negatively influenced the situation of distress of migrants and of first and second reception institutions. Thirdly, the category of unaccompanied minor migrants fall under several policy fields, such as migration, family law, social investments, which are still competences of the Member States.

Yet, the presence of an European Union legislative framework on unaccompanied minor migrants and the initiatives taken by the European Union institutions and civil society in favor of the protection of children in migration are positive signals on the direction of a more comprehensive and harmonized common policy on the welcoming and protection of unaccompanied minor migrants.

Chapter IV

Case studies on other EU Member States' national legislation on unaccompanied minor migrants : Sweden and France

1. Sweden

Sweden is an important case study on the topic of unaccompanied minor migrants¹⁸⁶. Until 2015, Sweden has been the largest receiver of asylum applications from unaccompanied minor migrants.¹⁸⁷ In fact, even if the largest share of unaccompanied minors in Europe has reached Italy, many of them went missing or were undocumented or either unable or unwilling to lodge an asylum application in Italy¹⁸⁸. Unaccompanied minors have been arriving in Sweden as asylum seekers rather than having different statuses and the municipalities have collected data which make possible to outline a comprehensive analysis of the phenomenon. Due to the increasing flow of migrants and especially of unaccompanied minors in recent years, the Swedish Government and media have paid special attention to this vulnerable group. Furthermore, Sweden has traditionally adopted a child-focused approach on implementing social and welfare policies.¹⁸⁹

1.1 Definition and overview of unaccompanied minors in Sweden

In Sweden, the definition of unaccompanied minor migrants is that given by the United Nations High Commissioner for Refugees¹⁹⁰ and similarly restated by the EU Directive on temporary protection (2001)¹⁹¹,

¹⁸⁶ Çelikaksoy, A. & Wadensjö, E., *Policies, Practices and Prospects: The Unaccompanied Minors in Sweden*, Social Work and Society International Online Journal, vol.15 n.1 (2017), 2017 <https://www.socwork.net/sws/article/view/499/1003>

¹⁸⁷ Eurostat, *Asylum applicants considered to be unaccompanied minors by citizenship, age and sex Annual data (rounded)*, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyunaa&lang=en

¹⁸⁸ Save the Children, *Atlante minori stranieri non accompagnati Italia 2018*, 2018

¹⁸⁹ Shamseldin L., *Implementation of the United Nations Convention on the Rights of the Child 1989 in the Care and Protection of Unaccompanied Asylum Seeking Children: Findings from Empirical Research in England, Ireland and Sweden*, International Journal of Children's Rights 20 (2012) 90-121, 2012

¹⁹⁰ United Nations High Commissioner for Refugees, *Guidelines on Policies and procedures in dealing with Unaccompanied Children Seeking Asylum*, Geneva, February 1997, <https://www.unhcr.org/publications/legal/3d4f91cf4/guidelines-policies-procedures-dealing-unaccompanied-children-seeking-asylum.html>

¹⁹¹ Council of the European Union, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member*

that is a child under the age of 18 outside of his/her country of origin who comes to Sweden without any parent nor a legal representative. The Swedish policies and regulations on unaccompanied minor migrants are largely focused on the initial stage, that is to reception and identification. According to Çelikaksoy and Wadensjö¹⁹², the implementation of the policies often varies across the country, from one municipality to another, and even within the same municipality.

The Swedish Government's mission with regard to migration is to "ensure a sustainable migration policy"¹⁹³, to facilitate movements across borders and to promote international and European cooperation.¹⁹⁴ The main legal text regulating migration is the Aliens Act (2005), as enacted by the Parliament (Riksdag). Special provisions are devoted to children according to the Aliens Act (2005)¹⁹⁵. The drafting of the Aliens Act has been influenced to some extent by the United Nations Convention on the Right of the Child.¹⁹⁶ Other legal texts of reference are the Administrative Judicial Procedure Act¹⁹⁷, which regulates over appeals, and the Administrative Procedure Act¹⁹⁸, with provisions for administrative agencies.¹⁹⁹ The implementation of these Acts varies across municipalities and there is not a national unified evaluation system to monitor how the policies are applied in practice.²⁰⁰

As rightly claimed by Çelikaksoy and Wadensjö, the introductory stage is of primary importance for children as it has long-lasting consequences on their well-being and on their future.²⁰¹ Most of the unaccompanied minors who arrive in Sweden are 16 or 17 years old, similarly to what happen in other European countries. Thus, in a time span of 1 to 2 years, these minors are no longer considered to be in need of protection, yet their life conditions do not change. New policies which take into account this group of youth with special needs

States in receiving such persons and bearing the consequences thereof, OJ L 212/12 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001L0055>

¹⁹² Çelikaksoy, A. & Wadensjö, E., *Policies, Practices and Prospects: The Unaccompanied Minors in Sweden*, Social Work and Society International Online Journal, vol.15 n.1 (2017), 2017 <https://www.socwork.net/sws/article/view/499/1003>

¹⁹³ Swedish Government, *Budget Bill for 2009*, 2008/09:1, p. 11

¹⁹⁴ Swedish Government, *Communication Skr*, 2006/07:58, p. 7

Swedish Government, *Communication Skr*, 2008/09:33, p. 4.

¹⁹⁵ Swedish Government, *Aliens Act*, 2005:716, 29 September 2005, with amendments up to and including *Swedish Code of Statutes* 2009:16. In force since 31 March 2006

https://www.government.se/49cf71/contentassets/784b3d7be3a54a0185f284bbb2683055/aliens-act-2005_716.pdf

¹⁹⁶ Andersson H.E., *International Convention and the regulation of Migration: the Convention on the Right of the Child and Sweden*, International Journal of Children's Rights 20 (2012), pp. 122-140

¹⁹⁷ Swedish Government, *The Administrative Judicial Procedure Act*, 1971:291

¹⁹⁸ Swedish Government, *The Administrative Procedure Act*, 1986:223

¹⁹⁹ European Migration Network - EMN, *Policies on reception, return and integration arrangements for, and numbers of, unaccompanied minors, an EU comparative study*, National Report for Sweden- Study 2008 (II), 4 June 2009

https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/26_sweden_national_report_on_unaccompanied_minors_version_16june09_en.pdf

²⁰⁰ Çelikaksoy, A. & Wadensjö, E., *Policies, Practices and Prospects: The Unaccompanied Minors in Sweden*, Social Work and Society International Online Journal, vol.15 n.1 (2017), 2017 <https://www.socwork.net/sws/article/view/499/1003>

²⁰¹ Çelikaksoy, A. & Wadensjö, E., *Unaccompanied Minors and Separated Refugee Children in Sweden: An Outlook on Demography, Education and Employment*, IZA Discussion Paper No. 8963., 2015

shall be enacted, with the aim of including these young adults in the education and employment systems of the host country.²⁰²

Similarly to other countries, unaccompanied minor migrants are recognized as a particular vulnerable category in need of protection in Sweden.²⁰³ As anticipated, from 2010 onwards, Sweden has received the most applications for asylum from unaccompanied minors in Europe²⁰⁴. In 2013, there were 3.852 asylum applications, which doubled in 2014 (about 7.050) and reached a peak in 2015, when 35.250 asylum applications were presented by unaccompanied minors. There was a sharp decline in 2016, with "only" 2.190 asylum applications. The decline is due to the restrictions imposed by the end of 2015, such as stricter border control in Sweden, and more generally in terms of entering the EU. Due to such decline, Germany became the largest receiver country of asylum applications from unaccompanied minors. As noted earlier, Italy is only third in such list²⁰⁵, even though it is the European Union country with most arrivals of unaccompanied minors per year, due to the fact that many minors become untraceable or wish to continue their journey to another Member State and apply for asylum in the country of their final destination.

In Sweden during recent years, about 65% to 75% of the asylum applications were successful²⁰⁶, with an average length of time for the procedure of 15 months²⁰⁷. Once the permit is granted, each person receives a personal identification number and it is registered in the Population Registry, managed by the Swedish Tax Agency.²⁰⁸ The main countries of origin of unaccompanied minors in Sweden are Afghanistan, Syria, Somalia, Eritrea and Iraq. The groups coming from Afghanistan and Iraq are largely males, while the ones coming from African countries are quite balanced.

The choice to apply for asylum in Sweden is largely due to the perception that the country offers good opportunities in terms of education and employment, it has an efficient asylum application process and a solid history of respect and protection of fundamental human rights. Additionally, Sweden is known to have pursued "a liberal refugee policy" during past years.²⁰⁹ Unaccompanied minors often have little control over their

²⁰² Çelikaksoy, A. & Wadensjö, E., *Policies, Practices and Prospects: The Unaccompanied Minors in Sweden*, Social Work and Society International Online Journal, vol.15 n.1 (2017), 2017 <https://www.socwork.net/sws/article/view/499/1003>

²⁰³ Stretmo, L., *Governing the Unaccompanied Child – Media, Policy and Practice*, Doctoral Dissertation at the Department of Sociology and Work Science, University of Gothenburg, ISBN: 978-91-981195-9-6, 2014

²⁰⁴ Eurostat, *Asylum applicants considered to be unaccompanied minors by citizenship, age and sex Annual data (rounded)*, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyunaa&lang=en

²⁰⁵ European Migration Network - EMN, *EMN Flash 1/2018, What happens to unaccompanied children on arrival in Europe following the status determination?*, 2018 http://emn.ie/media/00_eu_uam_flash_en1.pdf

²⁰⁶ Migrationsverket 2017

²⁰⁷ Asylum Information Database – AIDA, *Regular Procedure Sweden*, <http://www.asylumineurope.org/reports/country/sweden/asylum-procedure/procedures/regular-procedure>

²⁰⁸ Çelikaksoy, A. & Wadensjö, E., *Policies, Practices and Prospects: The Unaccompanied Minors in Sweden*, Social Work and Society International Online Journal, vol.15 n.1 (2017), 2017 <https://www.socwork.net/sws/article/view/499/1003>

²⁰⁹ Andersson H.E., *International Convention and the regulation of Migration: the Convention on the Right of the Child and Sweden*, International Journal of Children's Rights 20 (2012), pp. 122-140

journey to reach Europe, as many travels are arranged by smugglers who exploit them. Sometimes they do not wish to reside in a Member State, which they consider to be only a transit country before reaching their final destination. Thus, often the decision made by a Member State to accept or refuse unaccompanied minors' asylum application, to allow them to enter the country or to return them to their country of origin or to another Member State, is crucial to determine their faith.²¹⁰

1.2 Reception and asylum process

The initial stage for unaccompanied minors in Sweden can be divided in two parts: reception and asylum process. The reception consists of placement in an accommodation, appointment of a guardian and access to health and education. On the other hand, the asylum process consists of age assessment and identification, investigation on the child's family and circumstances, in order to assess whether the minor has substantial cause to be granted an asylum permit, and the application for a daily allowance²¹¹. The activities of reception and asylum are carried out by two different bodies and take place simultaneously.

On 1st July 2006, the Reception of Asylum Seekers and Others Act²¹² was amended in order to divide the responsibility between the Government and municipalities over unaccompanied minors. The reason behind the amendment is that children in an emergency and risky situation shall be cared by skilled and experienced workers, who are able to support them and to deal with them, and those workers are more likely to be found in municipal social services.²¹³ Thus, reception is mainly managed by local authorities, i.e. municipalities. The initial screening and identification of the child shall be carried out taking into account his needs and following the principle of the best interest of the child. These activities are carried out by the Migrationsverket (i.e. the Swedish Migration Agency). Delays in the identification process or inappropriate accommodation facilities result in further traumatization of the minor who has already been suffering after a long journey. In theory, every minor is supposed to meet a social worker within two weeks from his arrival and to enjoy psychological support when needed. However, in practice these needs are not met.²¹⁴

The body responsible for granting the asylum at national level is the Migration Agency. The Migration Agency is in charge of examining the child's situation and of appointing a lawyer for every asylum seeking

²¹⁰ European Migration Network – EMN, *Policies, practices and data on unaccompanied minors in the EU Member States and Norway*, European Migration Network Synthesis Report for the EMN Focussed Study 2014., 2015

²¹¹ European Migration Network – EMN, *EMN Policy Report Sweden 2015*, 2015

http://www.emnsweden.se/download/18.2d998ffc151ac38715917abb/1484748703258/Policy%20Report%20Sweden_2015.pdf

²¹² Swedish Government, *Reception of Asylum Seekers and Others Act*, 1994:137

²¹³ European Migration Network - EMN, *Policies on reception, return and integration arrangements for, and numbers of, unaccompanied minors, an EU comparative study*, National Report for Sweden- Study 2008 (II), 4 June 2009

https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/26_sweden_national_report_on_unaccompanied_minors_version_16june09_en.pdf

²¹⁴ Human Rights Watch, *Seeking Refuge: Unaccompanied Children in Sweden*, Human Rights Watch Report, June 2016.

child. The minor has to prove his or her identity with documents, such as a passport. When these documents are missing and it is not possible to state the age, the benefit of the doubt is accorded to the asylum seeker. Further investigation and medical age assessment are possible options. If the asylum seeker is deemed to be 18 years old by the Migration Authority, he or she is transferred to the adults procedure for asylum. The medical assessment of age operations are criticized by experts.²¹⁵ These methods, indeed, are invasive and expose children to stress. Thus, they become an additional factor for stress for children that have already suffered many perils on their way to Europe. Nonetheless, there are no other methods currently applied. Delays and uncertainty about the outcome of the procedure have negative impacts on minors, who may experience anxiety and insecurity feelings.

In case of a negative response, there is the possibility to turn to the Migration Court and as last resort to the Migration Court of Appeal²¹⁶. For the ones who have their application rejected, there is a period of great uncertainty, as they often cannot be deported back to their home country nor lawfully reside in Sweden.

1.3 Legal guardianship

In Sweden unaccompanied minors are not detained, in line with international standards. The municipality which receives the minor is responsible for appointing a guardian, for making decisions about care and accommodation. The guardian shall act on the child's best interest, be trustworthy in every stage of the asylum application process and provide guidance to the child.²¹⁷ Especially during last years, with the exceptional increase in the number of unaccompanied minors, there have been delays in the appointment of guardians, which have led to negative consequences on the minor's access to information, care and support. Moreover, the appointment of the guardian ceases when the minor turns 18 year old. Thus, the young adult loses a very important support and can solely rely on the solidarity of fellow countrymen and local NGOs.

1.4 Accommodation

Unaccompanied minors usually reside in network placements, if they have relatives or acquaintances living in Sweden; in public accommodations, which are provided by the Migration Agency, or in foster home. The placement is a crucial moment for making social networks, understanding Swedish society and learning the language.²¹⁸ It is to bear in mind that unaccompanied minors are likely to spend most of their time in such

²¹⁵ Hjern, A., Brenndler-Lindqvist, M. & Norredam, M., "Age assessment of young asylum seekers", *Acta Paediatrica*, 101(1), 4–7., 2012

²¹⁶ Çelikaksoy, A. & Wadensjö, E., *Unaccompanied Minors and Separated Refugee Children in Sweden: An Outlook on Demography, Education and Employment*, IZA Discussion Paper No. 8963., 2015

²¹⁷ Ombudsman for Children in Sweden, *Safety and Fundamental Rights at Stake for Children on the Move*, ENOC Report of Taskforce Children on the Move, 2016

²¹⁸ Çelikaksoy, A. & Wadensjö, E., *Policies, Practices and Prospects: The Unaccompanied Minors in Sweden*, *Social Work and Society International Online Journal*, vol.15 n.1 (2017), 2017 <https://www.socwork.net/sws/article/view/499/1003>

accommodation, especially if they do not have access to an educational space. The persons living in the same housing unit are relevant in guiding and supporting them. Problems such as inappropriate accommodations and other issues (e.g. lone girls in group of boys, multiple relocations, lack of trained working staff) negatively affect some children.²¹⁹ In addition, as pointed out by Çelikaksoy and Wadensjö, "there is a lack of a clear vision of building human capital during this stage"²²⁰.

There are guidelines for a successful integration and reception made by the Migration Agency. The goal of integration shall be the guarantee of equal rights and equal access to opportunities, without distinction of ethnic background²²¹. Integration shall be considered as a process of inclusion and development.²²² Nonetheless, budget cuts to municipalities for the support of unaccompanied minors migrants and a lack of strategy for building human capital, will hardly result in a successful integration process.²²³ As pointed out earlier, unaccompanied minors are particularly vulnerable due to the lack of familial ties. Without the support and the protection given by the family, these children have to cope by themselves with the issue of feeling integrated in an entirely new society. The system of reception represents for them a substitute to the more natural and ideal situation of having a family helping with integration and development.²²⁴ If the functioning of the system is hindered by delays, lack of cooperation among the actors (i.e. municipality officers, social workers, care givers, school teachers etc...), cut to budgets and absence of a long-term strategy for building human and social capital, the well-being of unaccompanied minors is at stake²²⁵ and their process of integration will likely be more problematic.

1.5 Education

After being placed in an accommodation and granted an asylum permit, the unaccompanied minors are likely to attend an educational institution. In Sweden the right to education is granted to any child, regardless of ethnicity or background. The difference is that school is not compulsory for unaccompanied minors. Most of unaccompanied minors, as previously stated, arrive in Sweden when they are 16 or 17 years old. But they cannot be placed into the regular school system²²⁶. There are other forms of educational institutions where

²¹⁹ Human Rights Watch, *Seeking Refuge: Unaccompanied Children in Sweden*, Human Rights Watch Report, June 2016.

²²⁰ Çelikaksoy, A. & Wadensjö, E., *Policies, Practices and Prospects: The Unaccompanied Minors in Sweden*, Social Work and Society International Online Journal, vol.15 n.1 (2017), 2017 <https://www.socwork.net/sws/article/view/499/1003>

²²¹ The Swedish Migration Agency, "Aktuellt om ensamkommande barn & ungdomar", October 2016

²²² Ager, A. & Strang, A., "Understanding Integration: A Conceptual Framework", *Journal of Refugee Studies*, 21(2), 166-191., 2008

²²³ Çelikaksoy, A. & Wadensjö, E., *Mapping Experiences and Research about Unaccompanied Refugee Minors in Sweden and Other Countries*, IZA Discussion Paper No. 10143., 2016

²²⁴ Wimelius, M.E., Eriksson, M., Isaksson, J. et al., *Swedish Reception of Unaccompanied Refugee Children—Promoting Integration?*, *Int. Migration & Integration* 18: 143., February 2017 <https://doi.org/10.1007/s12134-016-0472-2>

²²⁵ Carswell, K., Blackburn, P. & Barker, C., *The relationship between trauma, post-migration problems and psychological well-being of refugees and asylum seekers*, *International Journal of Social Psychiatry*, 2009

²²⁶ Çelikaksoy, A. & Wadensjö, E., *Unaccompanied Minors and Separated Refugee Children in Sweden: An Outlook on Demography, Education and Employment*, IZA Discussion Paper No. 8963., 2015

the minors can be placed before being ready to enter the common upper-secondary school. Young adults of 21 or 22 years old are likely to follow adult classes. From this scenario it is evident that unaccompanied minors follow a different path of education when compared to their native born peers. Again, there is an urgency to identify unaccompanied minors' needs in respect to education in order to facilitate their integration process. Education is key to their further development and is a substantial part of the integration process, given that they lack a family or other meaningful social ties which could facilitate personal growth and the integration process. Learning the local language is also fundamental in order get started in the integration process.

1.6 Employment

The entry in the labour market is the following step after education, or sometimes it replaces the educational path, depending on the age. Once again, differences can be found among unaccompanied and accompanied minor migrants, and between migrants and their native born peers.²²⁷ Factors which influence the employment rate are age at arrival, family reunification, length of period of stay, education and place of accommodation. Overall unaccompanied minors show willingness to work and ability, yet unluckily gender differences are largely present and “females are less likely to be employed and to belong to the NEET (Not in Education, Employment or Training) group”.²²⁸ As unaccompanied minors loose nearly all the support once they turn 18, they have a compelling need to find a job. The fact that they have interrupted their studies in order to work and that they often lack specific training, may cause them to be stuck in entry positions without equal opportunities to develop their career. Moreover, if in the introductory stage there is no discrimination between girls and boys, the difference between the two groups becomes evident as regard to employment. Thus, as claimed by authors Çelikaksoy and Wadensjö, there is a need for gender specific policies with regard to transition to the labour market.²²⁹

1.7 Concluding remarks

As previously reported, Sweden has signed the United Nations Convention on the Rights on the Child. Furthermore, a proposal to incorporate the Convention into Swedish law is underway²³⁰, in order to strengthen the protection of the right of the child in the country and to act on the child's best interest. To sum up, Sweden is an example of receiving country where specific national policies for the reception of unaccompanied minors are in place along with international standards and European Union norms. Despite the regulation setting up the introductory stage, i.e. the reception and the asylum process, it is rightly claimed by scholars that there is

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Swedish Government, *Convention on the Rights of the Child about to become Swedish law*, 10th October 2017, <https://www.government.se/articles/2015/02/convention-on-the-rights-of-the-child-about-to-become-swedish-law/>

a lack in ad hoc policies for the transition into adulthood and for their successful integration in the society. When they turn 18 years old, these young adults are no longer recognized as vulnerable nor in need of support, even if nothing is changed in their life overnight. With a set of policies which bridges the transition from childhood into adulthood, their path towards integration could be more successful. the introductory stage is widely recognized to be crucial for the well-being of minors and for their future lives²³¹.

Sweden is an example of a receiving country with an efficient asylum process system and a relative well developed system for unaccompanied minor migrants ²³² in comparison to other European Union countries. Challenges reside in imbalance across municipalities and a lack of a national monitoring body, limited cooperation among different actors who are responsible for minors and need for a follow up strategy after the transition into adulthood.

2. France

In France the presence of unaccompanied minors is a long-term phenomenon²³³, dating from the end of the '90s onwards. Notwithstanding the urgency for a coherent response, there is a lack of adequate reception policies for unaccompanied minors. The legal situation of unaccompanied minors is deemed to be delicate and difficult, as it is in between the legislation on foreigners and the international legislation on the protection of children. During recent years, the number of unaccompanied minors has risen and the topic has become a disputed issue at national level. Some of the key points of the discussion have been the saturation of the reception facilities and the lack of appropriate measures for such vulnerable group.²³⁴ The law of 14th March 2016 on the protection of childhood²³⁵ provided a legal basis for solidarity policies in the best interest of the child. However, despite the allocation of government funding for local authorities for managing unaccompanied minors, the system of reception can be improved.²³⁶

2.1 Definition and overview of unaccompanied minors in France

²³¹ Stretmo, L., *Governing the Unaccompanied Child – Media, Policy and Practice*, Doctoral Dissertation at the Department of Sociology and Work Science, University of Gothenburg, ISBN: 978-91-981195-9-6, 2014

²³² Çelikaksoy, A. & Wadensjö, E., *Policies, Practices and Prospects: The Unaccompanied Minors in Sweden*, Social Work and Society International Online Journal, vol.15 n.1 (2017), 2017 <https://www.socwork.net/sws/article/view/499/1003>

²³³ European Migration Network - EMN, *Policies relating to the reception, integration and return of unaccompanied minors*, France National Report on unaccompanied minors, 2009

https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/09a_france_national_report_on_unaccompanied_minors_version_10june09_en.pdf

²³⁴ French Contact Point for the European Migration Network, *Annual Report on Migration and Asylum*, 2017 part II, 2017 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/10a_france_arm2017_part2_en.pdf

²³⁵ Loi n° 2016-297 du 14 mars 2016 relative à la protection de l'enfant (1), JORF n°0063 du 15 mars 2016, texte n° 1 <https://www.legifrance.gouv.fr/eli/loi/2016/3/14/FDFX1507648L/jo/texte>

²³⁶ French Contact Point for the European Migration Network, *Annual Report on Migration and Asylum*, 2017 part II, 2017 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/10a_france_arm2017_part2_en.pdf

In the French legislation there is no article defining the vulnerable category of unaccompanied minors. They are mentioned in articles L.221-1 and L.221-5 of the Code on Entry and Residence of Foreigners and on Asylum²³⁷ in relation to the conditions for holding in waiting zones and the appointment of a legal guardian. Therefore they fall within the scope of French legislation on the protection of minors, which applies regardless of the status (e.g. asylum seeker etc...) or the nationality.²³⁸ It is difficult to have an overview of the exact number and conditions of unaccompanied minors in France.²³⁹ Unaccompanied minors arriving at French borders come mainly from Afghanistan (27.6%), Democratic Republic of Congo (10%), Sudan (6.4%) and Syria (5.5%). Less than a third of them are girls.²⁴⁰

Local authorities (départements) are in charge of protecting children at risk in France, while the Ministry of Justice has the duty of coordination at national level. In practice, its role is purely to distribute children among departments, according to yearly statistics on the number of children at risk in relation to the population of the region and other factors.²⁴¹

There are no specific policies in place for the identification, reception and welcoming of unaccompanied minors. As reported by social workers and NGOs²⁴² who are active in helping migrants at local level, often unaccompanied minors get caught in a vicious circle in which it is impossible for them to start the asylum procedure. If a legal guardian is not appointed by the Prosecutor, or it is appointed with delay, unaccompanied minors cannot lodge an asylum application. The Prefecture, indeed, does not accept asylum claims from unaccompanied minors if a legal guardian is not present and therefore cannot sign the application *in lieu* of the child. As previously mentioned, most of unaccompanied minors arrive to Europe aged 16-17 and therefore there is a little span of time in which they can profit from the rights derived from the condition of being minors. If the legal guardian is appointed with considerable delay or the appointment does not take place at all, boys and girls turn 18 while they are awaiting for their asylum application to start and therefore they shall apply for asylum as adults, with less chances of their claim to be successful.²⁴³

²³⁷ hereinafter: Cesada.

Code de l'entrée et du séjour des étrangers et du droit d'asile, Version consolidée au 1 janvier 2019, art. L.221-1/5 <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158>

²³⁸ Loi n° 2016-297 du 14 mars 2016 relative à la protection de l'enfant (1), JORF n°0063 du 15 mars 2016, texte n° 1 <https://www.legifrance.gouv.fr/eli/loi/2016/3/14/FDFX1507648L/jo/texte>

²³⁹ Asylum Information Database - AIDA, *Country Report: France*, Update 2017 <http://www.asylumineurope.org/reports/country/france>

²⁴⁰ Office français de protection des réfugiés et apatrides - OFPRA, *2016 Activity Report*, 2016

²⁴¹ Décret n° 2016-840 du 24 juin 2016 pris en application de l'article L. 221-2-2 du code de l'action sociale et des familles et relatif à l'accueil et aux conditions d'évaluation de la situation des mineurs privés temporairement ou définitivement de la protection de leur famille, JORF n°0148 du 26 juin 2016, texte n° 18

²⁴² La Cimade, *Des enfants mal protégés car étrangers – Mieux comprendre la situation en France des jeunes en danger*, 13 November 2018

Human Rights Watch – HRW, *France: Unaccompanied Children Detained at Borders*, 8 April 2014

Office français de protection des réfugiés et apatrides – OFPRA, *France terre d'asile*, Newsletter n°62, December 2013

²⁴³ Human Rights Watch – HRW, *France: Unaccompanied Children Detained at Borders*, 8 April 2014

2.2 Vulnerability assessment

According to French legislation, as stated above, unaccompanied minors do not represent a special category. Nonetheless, their vulnerability may be assessed during the asylum procedure. In other words, according to art. L.744-6 of *Ceseda*,²⁴⁴ it is an explicit duty of the Office Français de l'Immigration et de l'Intégration (OFII) to identify vulnerabilities and needs of asylum seekers. Among the vulnerable categories are minors, unaccompanied minors, elderly people, disabled persons, pregnant women and single parents, victims of traffic and exploitation and other form of abuse (FGM, psychological, physical and sexual violence etc...). The assessment of vulnerability²⁴⁵ is carried out by OFII staff. In practice, the assessment takes the form of interviews with specific questions. However, such interviews may be too brief to assess the specific needs of the asylum seekers. Another issue is the fact that interviews are often conducted without interpreters. Moreover, it has been often reported that it is difficult for asylum seekers to have access to such interviews, especially when they live in overcrowded areas such as Lyon, Marseille or Paris' surroundings or either in refugee camps or in the streets.²⁴⁶

2.3 Age assessment

Similarly, age assessment is not carried out in the reception system according to French legislation. As stated in the law relating to child protection²⁴⁷ and in the decree on modalities of evaluation of minors without family protection²⁴⁸, the resort to age assessment procedure takes place in order to assess the applicant's minority only when there is doubt about the applicant's alleged minority. The assessment can be conducted in a multidisciplinary approach. The applicant shall have the right to be informed about the potential effects of the evaluation and of the outcome of the procedure but there is no authority designed for this duty. In practice, even when the applicant has got valid documents, the practice of bone examination and other invasive medical exams are carried out. Against such practices, the Ombudsman for Children (Défenseur des enfants) has claimed that social evaluation shall be taken into account rather than bone examination, that the well-being of

Asylum Information Database - AIDA, *Country Report: France*, Update 2017

<http://www.asylumineurope.org/reports/country/france>

²⁴⁴ Code de l'entrée et du séjour des étrangers et du droit d'asile, Version consolidée au 1 janvier 2019, art. L.744-6

<https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158>

²⁴⁵ Arrêté du 17 novembre 2016 pris en application du décret n° 2016-840 du 24 juin 2016 relatif aux modalités de l'évaluation des mineurs privés temporairement ou définitivement de la protection de leur famille, JORF n°0269 du 19 novembre 2016, texte n° 25

<https://www.legifrance.gouv.fr/eli/arrete/2016/11/17/JUSF1628271A/jo/texte>

²⁴⁶ Asylum Information Database - AIDA, *Country Report: France*, Update 2017

<http://www.asylumineurope.org/reports/country/france>

²⁴⁷ Loi n° 2016-297 du 14 mars 2016 relative à la protection de l'enfant (1), JORF n°0063 du 15 mars 2016, texte n° 1

<https://www.legifrance.gouv.fr/eli/loi/2016/3/14/FDFX1507648L/jo/texte>

²⁴⁸ Arrêté du 17 novembre 2016 pris en application du décret n° 2016-840 du 24 juin 2016 relatif aux modalités de l'évaluation des mineurs privés temporairement ou définitivement de la protection de leur famille, JORF n°0269 du 19 novembre 2016, texte n° 25

<https://www.legifrance.gouv.fr/eli/arrete/2016/11/17/JUSF1628271A/jo/texte>

minors is at stake due to such invasive methods and that notwithstanding the sufferance of the practices, many children are not given care nor housing during the examination and are even denied the evaluation on racial grounds.²⁴⁹ Additionally, in a decision of the beginning of 2017, the Court of Appeal of Lyon has given an analogous opinion, stating that it is unlawful to dismiss identity documents whose legitimacy cannot be rightly denied and to proceed with bone examination.²⁵⁰ However, notwithstanding such opinions, the benefit of the doubt is often not recognized to young people asking for asylum. In France, similarly to other countries, once the migrant is determined to be 18 years old or above, he or she loses many rights, including priority in getting an adequate accommodation, the appointment of a legal guardian etc.... with long-lasting consequence on the well-being of the person and her future living conditions in the host country. The risk of expulsion is also very frequent.²⁵¹

2.4 Procedures and practices at the border

On 19th July 2016, the Ministry of the Interior transmitted an instruction to all the Prefectures stating that “in the current migration context, no asylum application should be registered as France’s responsibility without prior verification whether France is in fact the responsible country.”²⁵² Theoretically, unaccompanied children cannot be deported not denied entry to France, on the basis of the rights derived from their minor age status. However, as reported by NGOs, in practice French police has repeatedly halted minors on the borders claiming that they were following the instruction on the Dublin regulation.²⁵³ France has currently extended the temporary reintroduction of internal border control until 30th April 2019²⁵⁴, as it is allowed²⁵⁵ under EU

²⁴⁹ Défenseur des droits, *Decision MDE-2016-052*, 20 April 2016

https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=14546

Défenseur des droits, *Droits de l’enfant en 2017 – Au miroir de la Convention internationale des droits de l’enfant*, November 2017

<https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/rae-2017.pdf>

²⁵⁰ Court of Lyon, *Decisions No.16/0043, 16/00602, 16/00770*, 11 January 2017

²⁵¹ Asylum Information Database - AIDA, *Country Report: France*, Update 2017

<http://www.asylumineurope.org/reports/country/france>

²⁵² Ministry of Interior, *Instruction 19th July 2016 on the application of the Dublin III Regulation*, NOR: INTV1618837J

<https://www.lacimade.org/wp-content/uploads/2017/01/instruction-Dublin-19-juillet-2016.pdf>

²⁵³ Asylum Information Database - AIDA, *Country Report: France*, Update 2017

<http://www.asylumineurope.org/reports/country/france>

²⁵⁴ Member States’ notifications of the temporary reintroduction of border control at internal borders pursuant to Article 25 et seq. of the Schengen Borders Code, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control/docs/ms_notifications_-_reintroduction_of_border_control_en.pdf

²⁵⁵ Although the current limit for the temporary reintroduction of borders control is two years, six Schengen countries (France, Germany, Austria, Denmark, Sweden and Norway) have enacted it since 2015, making it last more than three years. The Schengen Borders Code is currently under revision by EU institutions.

European Parliament, *New rules for temporary border controls within the Schengen area*, Press Release, 29/11/2018

<http://www.europarl.europa.eu/news/en/press-room/20181120IPR19549/new-rules-for-temporary-border-controls-within-the-schengen-area>

Regulation n.399 of 2016²⁵⁶, which repeals the so called Schengen rules. From 2015 onwards, following the events of the terrorist attacks in Paris, the French authorities have intensified checks on the border with Italy, in order to halt migrants who try to cross the frontiers. This situation resulted in an overcrowding of migrants, including unaccompanied minors, in the Italian municipality of Ventimiglia in precarious hygienic and security conditions.²⁵⁷ The harshening on borders check is not an incentive for migrants, including unaccompanied minors, to renounce to their purpose. On the contrary, boys and girls try to cross the borders following alternative and very dangerous routes, either on foot, by car with smugglers or by train. The practice of rejecting minors at the border pursued by French authorities is in clear breach of international norms on the protection of children. For the first time²⁵⁸ on 22nd January 2018, the Tribunal of Nice has declared wrongful to reject unaccompanied minors and to deny them the right to lodge an asylum application.²⁵⁹ Despite the judgement of the Tribunal of Nice, cases of refoulement of unaccompanied minors at the French border are far from being ceased.²⁶⁰

Moreover, unaccompanied minors can be held in a “waiting zone” under exceptional circumstances, as stated by article L.221-2 of Ceseda²⁶¹. Such circumstances are: origin from a safe country, inadmissible asylum application, false documents and threat to public safety.²⁶² Conditions in these waiting zone are often inadequate for minors and, as stated in a decision by the Ombudsman for children in 2017, the Ministry of the Interior and the police on the borders shall establish separate spaces for children, shall guarantee them the right to be heard, always inform the Prosecutor about the presence of unaccompanied minors and assist them with trained staff.²⁶³

²⁵⁶ European Parliament, Council of the European Union, *Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)*, OJ L 77, 23.3.2016, p. 1–52, <http://data.europa.eu/eli/reg/2016/399/oj>

²⁵⁷ Intersos, *Unaccompanied and Separated children along Italy's northern borders*, 2017 <https://www.intersos.org/wp-content/uploads/2018/02/UASC-along-Italys-northern-borders.compressed.pdf>

²⁵⁸ Ministero dell'Interno, *Illegittimo il respingimento di un minore straniero al confine franco-italiano. Il Tribunale amministrativo di Nizza sanziona il comportamento delle Autorità francesi*, 31 gennaio 2018, <http://www.integrazionemigranti.gov.it/Attualita/Notizie/Pagine/illegittimo-il-respingimento-di-un-minore-al-confine-franco-italiano.aspx>

²⁵⁹ Tribunal Administratif De Nice, *M. M. H. Association Nationale d'Assistance aux Frontiers pour les Etrangers*, M. Emmanuelli - Juge des référés, Ordonnance du 22 janvier 2018 - JRTA Nice, 22-01-2018, Mr. H. Anafé, No. 1800195 http://www.anafe.org/IMG/pdf/jrta_nice_22_janvier_2018_m_h_anafe_no1800195-2.pdf

²⁶⁰ Intersos, *Unaccompanied and Separated children along Italy's northern borders*, 2017 <https://www.intersos.org/wp-content/uploads/2018/02/UASC-along-Italys-northern-borders.compressed.pdf>

²⁶¹ Code de l'entrée et du séjour des étrangers et du droit d'asile, Version consolidée au 1 janvier 2019, art. L.221-2 <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158>

²⁶² Code de l'entrée et du séjour des étrangers et du droit d'asile, Version consolidée au 1 janvier 2019, art. L.732-2 <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158>

²⁶³ Défenseur des droits, *Décision du Défenseur des droits n° 2017-144*, 26 June 2017 https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=16694

2.5 Legal guardianship

Since unaccompanied minors have no legal capacity, they must be represented by an adult throughout all the stages of the asylum application. Prefectures shall notify the Prosecutor about the presence of unaccompanied minors, so that an ad hoc administrator can be appointed.²⁶⁴ However, as previously noted, there are often delays in the appointment, making it difficult for children to have their rights guaranteed. In practice, it can take from 1 to 3 months for the appointment and in some jurisdictions the number of ad hoc administrators is insufficient to cover all the claims, therefore the Prosecutor is unable to appoint any. Consequently, children are forced to wait to turn 18 in order to be able to submit their asylum claim.²⁶⁵ Once this ad hoc administrator is appointed, he or she is the legal representative of the unaccompanied minors in all judicial and administrative procedures relating to the asylum application. However, the legal representative is not responsible for the child well-being nor to support him during the time of his examination. There is no specific training required to be appointed as an ad hoc administrator.

2.6 Accommodation

For those minors who succeed in being admitted into the French territory, after the identification of minor age, an accommodation is arranged by local authorities.

According to the law on the protection of children, unaccompanied children, who fall among the category of children at risk, are distributed among local authorities (départementales) according to a mechanism, as set out by a decree of June 2016.²⁶⁶ The criteria for distribution of children among local authorities take into account demographic and geographical factors. As anticipated, the decision is taken by the Ministry on Justice according to such criteria. Often, legal assistance for unaccompanied minors depends on the work of local NGOs rather than on the accommodation center, which is rarely specifically designed for asylum-seeking children.²⁶⁷ On a note published by the Senate in June 2017, it is highlighted that there are many pitfalls in the accommodation system for unaccompanied minor migrants.²⁶⁸ For example the available places are insufficient, the reception facilities do not have playing area nor specific areas dedicated to children and child's development. Moreover, unaccompanied minors are often hosted in facilities for vulnerable children. Thus,

²⁶⁴ Code de l'entrée et du séjour des étrangers et du droit d'asile, Version consolidée au 1 janvier 2019, art. L.741-3
<https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158>

²⁶⁵ Office français de protection des réfugiés et apatrides – OFPRA, *France terre d'asile*, Newsletter n°62, December 2013

²⁶⁶ Arrêté du 28 juin 2016 pris en application du décret n° 2016-840 du 24 juin 2016 relatif aux modalités de calcul de la clé de répartition des orientations des mineurs privés temporairement ou définitivement de la protection de leur famille, JORF n°0151 du 30 juin 2016, texte n° 33
<https://www.legifrance.gouv.fr/eli/arrete/2016/6/28/JUSF1617871A/jo/texte>

²⁶⁷ Office français de protection des réfugiés et apatrides - OFPRA, *Guide de l'asile pour les mineurs isolés étrangers en France*, 30 April 2014

²⁶⁸ Sénat, *Rapport d'information fait au nom de la commission des affaires sociales (1) sur la prise en charge sociale des mineurs non accompagnés*, Mme Élisabeth Doineau et M. Jean-Pierre Godefroy, Sénateurs, Sénat n. 598, 28 June 2017
<https://www.senat.fr/rap/r16-598/r16-5981.pdf>

they do not have any specific legal assistance for the asylum application nor psychological support for their peculiar condition.

2.7 Education and employment

Similarly to their native-born peers, unaccompanied minors in France are obliged to attend school as long as their age is between 6 and 16 years old. There are no specific provisions for asylum seekers children.²⁶⁹ On the other hand, there are many barriers to the access to education of these children. Firstly, those who do not have a good proficiency of the language shall attend initiation classes of French trainings, but such classes and trainings are limited and not evenly present across the country, depending on lack of resources. Therefore some form of education take place in emergency reception areas.²⁷⁰ Furthermore, for minors aged between 16 and 18 years old it is more complicated to have access to education as public school are not obliged to accept them. Again, support may vary from one municipality to another depending on the voluntary associations and NGOs present on the territory. For these young adults, who often arrive in the French territory without any previous education, it is very difficult to integrate into society.²⁷¹

Likewise unaccompanied minors find difficulties when trying to enter apprenticeship and vocational trainings, since entering these schemes depends on the release of a work permit, which is denied to asylum seekers during the period of their asylum application. This situation results in discouraging unaccompanied minors to apply for asylum.²⁷²

2.8 Detention

Theoretically, unaccompanied minors cannot be deported nor detained as a consequence of their status of migrant. However in practice, as reported by many NGOs²⁷³, hundreds of minors have been detained in France. In 2017, indeed, 304 minors were detained in France, some of them with their families.

²⁶⁹ Asylum Information Database - AIDA, *Country Report: France*, Update 2017
<http://www.asylumineurope.org/reports/country/france>

²⁷⁰ Ibid.

²⁷¹ Commission Nationale Consultative des Droits de l'Homme - CNCDH, *Unaccompanied and separated asylum-seeking and refugee children turning eighteen: What to celebrate?*, UNHCR/Council of Europe field research on European State practice regarding transition to adulthood of unaccompanied and separated asylum -seeking and refugee children, March 2014, Strasbourg, France

²⁷² Asylum Information Database - AIDA, *Country Report: France*, Update 2017
<http://www.asylumineurope.org/reports/country/france>

²⁷³ Assfam et al., *Centres et locaux de rétention administrative*, Report 2017, 2017

http://www.asylumineurope.org/sites/default/files/resources/2018_rapport_retention_2017_interassociatif.pdf

After a judgement of the European Court of Human Rights against France for the unlawful detention of a migrant family with children²⁷⁴, and a circular²⁷⁵ of the Ministry of the Interior following this ruling, Prefectures are more willing to place families with children in alternative accommodations. Yet, the number of detained children remains quite high.²⁷⁶ Once again, on 12th July 2016, the European Court of Justice condemned France for detaining children²⁷⁷, stressing that detention shall only be considered as a last resort measure.

Notwithstanding the court rulings and the reports of humanitarian organizations, illegal police actions against migrants and unaccompanied minors are still widespread, especially in the borders' area.²⁷⁸

2.9 Concluding remarks

Ultimately, at the end of a long and controversial political debate, a new asylum law was passed. Law of 10th September 2018²⁷⁹ on migration, asylum and integration introduces new procedures and rules on asylum process, family reunification, detention and deportation. According to pro-migrants NGOs²⁸⁰, the new asylum law imposes more stringent measures on migrants, by hardening the asylum request procedure, doubling the time of detention and adding new grounds for deportation and refusal of international protection. Even accompanied minors, whose family members are detained, are subject to detention, with potentially harming effects for their long-term well-being. Given such a scenario, the conditions of unaccompanied minors in France seem to be far from secure.

3. Conclusion

²⁷⁴ The case concerns the detention of a family with two very young children for two weeks in an administrative detention center in France while their procedure for return was pending. Subsequently their refugee status has been granted. France (i.e. the competent authorities) have been found of violation of article 3, article 5.1 and 5.4, in respect to detention of children, and article 8, in respect of detention of the whole family.

ECtHR - Popov v France, Application Nos. 39472/07 and 39474/07

http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/POPOV%20v%20FRANCE_French.pdf

²⁷⁵ Ministry of the Interior, *Circulaire of 6 July 2012 sur la mise en oeuvre de l'assignation à résidence prévue à l'article en alternative au placement des familles en rétention administrative*, NOR INTK1207283C

<https://www.gisti.org/IMG/pdf/norintk1207283.pdf>

²⁷⁶ La Cimade, *Mettre fin à l'enfermement des enfants en rétention*, 11 July 2017

<https://www.lacimade.org/mettre-fin-a-lenfermement-enfants-retention/>

²⁷⁷ ECtHR, *A.B. v. France*, Application No 11593/12, *R.M. and M.M. v. France*, Application No 33201/11, *A.M. v. France*, Application No 24587/12, *R.K. v. France*, Application No 68264/14 and *R.C. v. France*, Application No 76491/14, Judgments of 12 July 2016.

²⁷⁸ Asylum Information Database - AIDA, *Country Report: France*, Update 2017

<http://www.asylumineurope.org/reports/country/france>

²⁷⁹ Loi n° 2018-778 du 10 septembre 2018 pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie (1), JORF n°0209 du 11 septembre 2018, texte n° 1, <https://www.legifrance.gouv.fr/eli/loi/2018/9/10/INTX1801788L/jo/texte>

²⁸⁰ Human Rights Watch - HRW, *France Approves Flawed Asylum and Immigration Law, New provisions risk undermining asylum seekers' rights while not solving ongoing issues*, 04/08/2018

<https://www.hrw.org/news/2018/08/04/france-approves-flawed-asylum-and-immigration-law>

InfoMigrants, *France's new asylum law: What you need to know*, 08/08/2018

<http://www.infomigrants.net/en/post/11112/france-s-new-asylum-law-what-you-need-to-know>

The comparison of the two countries in respect to policies and practices relating to unaccompanied minor migrants highlights the differences and similarities among the two systems. For example, it is praiseworthy that in Sweden some importance is given to the further enhancement of gender - based employment policies for young adults entering the labour market. On a totally different spectrum, in France most of the ongoing debate is on the denial of the right of entry in France territory. Not to mention the lack of any scheme for supporting unaccompanied minors to enter the employment market at a later stage. Furthermore, the practice of detention is absent in Sweden while it is highly widespread in France, where they can be detained either accompanied or unaccompanied by their families. These and more elements result from the analysis of the two countries' systems on the reception of unaccompanied minor migrants. Sweden thus offers a relatively better system of reception and welcoming conditions for unaccompanied minors, while France has repeatedly violated international and regional norms on the protection of children.

Conclusion

As it has been shown throughout the research, there is an ongoing issue with the reception and welcoming of unaccompanied minor migrants in Italy and in the European Union. Current data provide us with an overview on the numbers and histories behind the migration flow. The comparative legislative analysis on the norms and policies on unaccompanied minor migrants demonstrate that there is a wide divergence between the systems of reception and welcoming among Member States and that the implementation of international standards into national practice is not always straightforward.

Without the tireless and passionate commitment of NGOs operating on the field, many more lives would have been lost in the Mediterranean. Indeed, social workers often fill the gap between the daily life struggle of migrants and the activity of the institutions. There are outstanding examples of solidarity and humanity towards newcomers, but there is not an unitary vision behind the policies of welcoming and reception. Therefore, institutions often lack the resources and the operational mechanisms to cope with the needs of migrants and, in particular, of unaccompanied minors. The consequences of such situation are harmful for the minors, who have already suffered many perils on their way to Europe, and they can account to violations of international law on human rights.

With the analysis of the existing legislation, we can see how policy makers attempt to cope with the situation and the needs of such vulnerable category. I claim that the Italian law n.47/2017 is a step forward in the protection of the rights of unaccompanied minors and it is commendable that Italy is the first country to pass this kind of law among the European Union Member States. The law has filled legislative gaps, in particular those falling in between the fields of immigration law and protection of minors. Despite many pitfalls in the implementation and the absence of a compulsory and well- distributed nation-wide accommodation system, I believe that the law n.47/2017 is an experiment on the path to a more comprehensive and solid protection of children's and migrants' rights worldwide. It is even more outstanding when considering that other EU Member States do not have any similar legislation yet.

The European Union legislative framework provide for specific norms on unaccompanied minors but not in an unitary text. Such provisions are spread in a series of legal acts that differ between them both in nature and in scope. Thus, we can find explicit references to unaccompanied minors in the Directives on Temporary Protection, Family Reunification, Qualification and Reception. During the most recent years, the European

Court of Justice has ruled over cases concerning unaccompanied minors, such as “A,S v Staatssecretaris van Veiligheid en Justitie” and others, providing guidance for Member States on how to deal with exceptional circumstances concerning unaccompanied minors. The judgement of the ECJ has insofar been in favor of a non-restrictive application of the articles of the Directives concerning unaccompanied minors in order to serve the ultimate scope beneath the legislative acts, that is that of the supreme interest of the child, in line with international law. The Treaty of Lisbon and the legal recognition of the European Charter of Fundamental Rights have contributed to consolidate the protection of children’s rights in the EU. Moreover, they have made the EU’s mandate in mainstreaming children’s rights more explicit. Other non-binding actions, such as, among others, the European Commission’s Communications “The Action Plan on unaccompanied Minors 2010-2014”(2010) and “The Protection of Children in Migration” (2017) have contributed to shape the EU’s institutions directions on possible scenarios for further developments of policies on unaccompanied minor migrants.

Ultimately, I believe that the comparison between two other Member States’ reception systems on unaccompanied minors is useful for the research, in order to provide the reader with an outlook on two divergent examples of reception and welcoming policies and practices. The choice has fallen upon Sweden and France. Sweden is exemplar in providing a set of policies which attempt to cover every step of the path of the unaccompanied minor in the country, from the initial identification and registration activities to the accommodation, and the access to education and later employment. Moreover, Sweden has been the largest receiving country of asylum applications from unaccompanied minors in 2015. On the other hand, France has reportedly violated Art.3 and others of the European Convention on Human Rights and it has been condemned several times by the European Court of Justice for detention of unaccompanied minor migrants. Notwithstanding the judgements of the ECtHR and even of national tribunal, such as the sentence of the Tribunal of Nice of January 2018 on the unlawful denial to an unaccompanied minor to entry the country and to lodge asylum application, there are no improvements of the conditions of unaccompanied minors in France. Rather in practice children’s rights have been reportedly violated, especially at the border’s zone.

The depicted scenario clearly shows the current issues in Europe with unaccompanied minors. Despite the international and EU law on the protection of children, the ongoing debates on deportation, detention and inadequate treatment of unaccompanied minor migrants show the core problem beneath the situation: the difficulty to enforce international standards in the daily practice with non-citizen children in migration.²⁸¹ Scholars have recognized the unbalance between universal rights of the minors and the implementation of

²⁸¹ Josefsson, J., *‘We beg you, let them stay!’: Right claims of asylum-seeking children as a socio-political practice*. *Childhood*, 24(3), 316-332, 2017

migration and security policies.²⁸² It is reported that human rights of forced migrants have been frequently violated and that one of the main issues with the protection of human rights is translating the international law into national policies.²⁸³

I claim that the current framework needs to be changed since it is unable to craft effective solutions for the long-term well-being of unaccompanied minor migrants. In the European Union, asylum policy is subject to “the need to serve two masters”²⁸⁴: on one side, the EU itself and, on the other side, the Member States. In particular, it is found that in European Union Council’s negotiations, the national thinking prevails over the European one, by the fact creating a situation in which national delegations attempt to defend the national status quo.²⁸⁵

By analyzing the existing legislation and practice, it seems that the path of EU towards harmonization of asylum law and human rights protection will continue to be jeopardized by the national concerns on security, economic performances and cultural identity.²⁸⁶ I would like to stress, indeed, that there is a common misbelief on the so called “migration crisis” in the EU. It is not a “crisis of numbers but rather of cultural values”²⁸⁷. To make an example, in Italy there are about 5 migrants per 1000 inhabitants²⁸⁸, and the proportion is similar or slightly higher in most of EU Member States. Thus, the ongoing debate about migration is basically a cultural debate over political cleavages and cultural values, rather than over an objective inability to cope with the phenomenon. Acknowledging this perspective, it is claimed that only a deliberate and voluntary move towards harmonization of asylum policies at EU level and a commitment to place the respect for human rights and the protection of children as core elements of such shared asylum policies²⁸⁹ can make the difference in improving the conditions of unaccompanied minor migrants.

For the cause, it is desirable that courts, at every level, give an “extensive and evolutionary interpretation of international norms, in order to reach the scope [the protection of unaccompanied minors] through a flexibility

²⁸² Ibid.

²⁸³ McAdam J., *Human Rights and Forced Migration*, in Fiddian-Qasmiyeh, E., Loescher, G., Long, K., & Sigona, N. (Eds.), *The Oxford handbook of refugee and forced migration studies*. OUP Oxford, 2014

²⁸⁴ Cherubini, F., *Asylum law in the European Union*. Routledge, 2014

²⁸⁵ Bank R., *Forced Migration in Europe*, in Fiddian-Qasmiyeh, E., Loescher, G., Long, K., & Sigona, N. (Eds.), *The Oxford handbook of refugee and forced migration studies*. OUP Oxford, 2014

²⁸⁶ Garry H. R., *Harmonisation of Asylum Law and Policy within the European Union: A Human Rights Perspective*, 20 Neth. Q. Hum. Rts. 163, 2002

²⁸⁷ Tocci N. et al., *Thinking beyond the crisis: labour migration and mobility in the Euro-Mediterranean region*, Istituto Affari Internazionali – IAI, 19 May 2017

²⁸⁸ Eurostat, statistics explained, Migration and migrant population statistics, https://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics

²⁸⁹ Garry H. R., *Harmonisation of Asylum Law and Policy within the European Union: A Human Rights Perspective*, 20 Neth. Q. Hum. Rts. 163, 2002

of application [of the norms]”.²⁹⁰ This has already happened in some cases in Europe, as previously stated, and we can witness a “judicial convergence”²⁹¹ between national courts, the ECJ and the ECtHR on the matter of unaccompanied minor migrants.

Besides the active and positive role of the European courts, some steps could be done at the institutional level of the EU in the decision making process as well. It is not the first time that Member States “cooperate outside the Treaties”²⁹² in the history of the Union. For example, we can recall when the Dublin Convention entered into force and more signatories joined the Schengen Agreement, even if at the time “the Treaty of Maastricht failed to give the institutions incisive powers in the area of asylum”²⁹³. It was not until 1999, with the sign of the Treaty of Amsterdam, that the Dublin Convention and the Schengen Agreement became part of the Community law. This is one example of intergovernmentalism between Member States that later has become institutionalized in EU law.

Among scholars and advocacies active in the field of protection of children, in particular of unaccompanied minors, it is strongly argued that policy makers at EU level shall focus on long-term solutions for unaccompanied minors.²⁹⁴ Such “durable solutions” shall entail targeted policies for their entry into education and employment, in other words for their successful development into adulthood and society. On the other hands, there is wide criticism over “quick-fix” solutions²⁹⁵, which in turn put unaccompanied minors at risk of harm. Such solutions are, for example, stricter controls at the external borders, fight against smugglers, agreements with third countries to discourage or prevent migrants to come to Europe. Such practices put unaccompanied minor migrants, as well as migrants in general, at serious risk of degrading treatments and other perils.

In the ongoing political climate, it is hard to visualize ad hoc policies for the protection and well-being of unaccompanied migrants, given that such policies would require patience, resources and long-term work.²⁹⁶ Given such difficulties, I claim that it is essential to support the mainstreaming of children’s rights²⁹⁷ in the

²⁹⁰ Lenzerini F., *La protezione dei minori stranieri non accompagnati nel diritto internazionale*, published in *Diritti umani degli immigrati. Tutela della famiglia e dei minori*, edited by R. Pisillo Mazzeschi, Editoriale Scientifica, p 293, 2010

²⁹¹ Fasone C., *Towards a Convergence in the Judicial Enforcement of the ECHR and EU Law*, 10 *EuConst* 182, 2014

²⁹² Cherubini, F., *Asylum law in the European Union*. Routledge, 2014

²⁹³ *Ibid.*

²⁹⁴ Parusel B., *Unaccompanied minors in the European Union – definitions, trends and policy overview*, *Social Work and Society International Online Journal* Vol 15, No 1 (2017), 2017

²⁹⁵ *Ibid.*

²⁹⁶ *Ibid.*

²⁹⁷ “Eurochild defines mainstreaming as the mechanism of ensuring that all actors involved in EU legislative and policy processes as well as programme design and implementation comply with children’s rights, including those that do not explicitly work on children’s rights.”

EU legislative framework. All the stakeholders shall bear in mind that there is no child neutral policy.²⁹⁸ Especially because political will may change over time²⁹⁹, it is essential that the concept of mainstreaming of children's rights is firmly embedded in all EU legislative processes. Moreover, the protection of the rights of the child is explicitly expressed as one of the objectives of the EU in Art. 3 of the Treaty on the European Union.³⁰⁰

I would argue that given the intersectionality of the matter, it is difficult to foresee an improvement of the policies related to unaccompanied minor migrants in the short run. In other words, this vulnerable category is falling between the scope of different policy areas, such as asylum law, family law, minors' law, security law etc... and most of these legislative areas are competences of the Member States. Therefore, it is unrealistic to expect the creation and implementation of a unitary system of policies for the reception and welcoming of unaccompanied minor migrants in the European Union in the short run.

Rather, I support the vision of a "social" Europe. I believe in an European Union that helps culturally diverse societies to be prosperous, cooperative and democratic. An European Union that fights against discrimination and boosts economic progress, while providing for socially inclusive policies.³⁰¹

It is plenty of theories on European integration which argue that social policies will follow from economic integration due to the spill-over effect, as classically argued by the neo-functional approach.³⁰² On the other hand, intergovernmentalists affirm that Member States retain primary control and competence over social policies.³⁰³ Moreover, the process enlargement poses new challenges to the European Union, as it "has generally increased the heterogeneity of EU membership"³⁰⁴ and "new Member States may have integration and policy preferences [...] that fall outside the core of the old Member States".

Eurochild, Mainstreaming children's rights in EU legislation, policy and budget, Lessons from practice, Discussion Paper February 2014, 2014

http://bit.ly/Mainstreaming_CR_in_EU

²⁹⁸ De Vylder, *Macroeconomic issues and the rights of the child*, in *Understanding Children's Rights: Collected Papers Presented at the Seventh International Disciplinary Course on Children's Rights.*, Ed. by Weyts A., 2004

²⁹⁹ Eurochild, Mainstreaming children's rights in EU legislation, policy and budget, Lessons from practice, Discussion Paper February 2014, 2014 http://bit.ly/Mainstreaming_CR_in_EU

³⁰⁰ Drywood E., *'Child-proofing' EU law and policy: interrogating the law-making processes behind European asylum and immigration provision*, *International Journal of Children's Rights* 19, 2011

³⁰¹ European Commission, *Reflection paper on the social dimension of Europe*, COM (2017) 206, 26 April 2017

³⁰² Haas, E. B., & Dinan, D., *The uniting of Europe: Political, social, and economic forces, 1950-1957* (Vol. 311). Stanford: Stanford University Press, 1958

³⁰³ Prosser T., *Economic union without social union: The strange case of the European social dialogue*, *Journal of European Social Policy*, 2016, Vol. 26(5) 460–472

³⁰⁴ Schimmelfennig F. & Winzen T., *Eastern enlargement and differentiated integration: towards normalization*, *Journal of European Public Policy*, 24:2, 239-258, 2017

In the perspective of a differentiated integration, the only viable way to the implementation of an unitary mechanisms on the reception of unaccompanied minor migrants would be that of a multispeed³⁰⁵ Europe with an enhanced social pillar, aimed at protecting vulnerable categories, such as unaccompanied minor migrants. In this scenario, the Italian law n.47/2017 on the protection of unaccompanied minor migrants could be replicable at the EU level. It could be a model for other Member States and a starting point for further developments on the matter. Improvements may be done in strengthening the protection of minors at the arrival, providing adequate accommodations and living conditions. Moreover, it is reported by scholars and social workers that the development of a shared protocol between the institutions working with unaccompanied minors is desirable³⁰⁶, since the coordination of efforts between all the actors involved, such as immigration agencies, child welfare agencies, etc... would result in better care and protection for unaccompanied minors. Further improvements may be made by shaping ad hoc education and employment policies, which shall take into account the different background of unaccompanied minors in respect to their native-born peers and shall recognize their value³⁰⁷, by helping them building their identities in the new society. A coherent strategy behind the policies and practices for unaccompanied minor migrants would improve their living conditions and future possibilities of integration. Only with an integrated and unitary system at EU level, the rights of unaccompanied minor migrants would be guaranteed, regardless of their status, country of origin or country of arrival.

³⁰⁵ "Multispeed: Mode of differentiated integration according to which the pursuit of common objectives is driven by a core group of Member States which are both able and willing to go further, the underlying assumption being that the others will follow later. In multi-speed Europe, the vision is positive in that, although admitting differences, the Member States maintain the same objectives which will be reached by all members in due time. [...] Hence, a multi-speed Europe tries to avoid variable geometry and Europe à la carte solutions, both of which admit to permanent differentiation by maintaining a less ambitious set of common objectives."

Stubb A.C.G. , *A categorization of differentiated integration*, Journal of Common Market Studies Vol. 34, No. 2 , June 1996

³⁰⁶ Shamseldin L., *Implementation of the United Nations Convention on the Rights of the Child 1989 in the Care and Protection of Unaccompanied Asylum Seeking Children: Findings from Empirical Research in England, Ireland and Sweden*, International Journal of Children's Rights 20 (2012) 90-121, 2012

³⁰⁷ Devine D., *'Value'ing Children Differently? Migrant Children in Education*, Children & Society, Volume 27, pp. 282–294, 2013

Bibliography

- Ager, A. & Strang, A., “*Understanding Integration: A Conceptual Framework*”, *Journal of Refugee Studies*, 21(2), 166-191., 2008
- Alto Commissariato Nazioni Unite per i Rifugiati - Rappresentanza per il Sud Europa, *L'accertamento dell'età dei minori stranieri non accompagnati e separati in Italia*, Rome, March 2014
- Andersson H.E., *International Convention and the regulation of Migration: the Convention on the Right of the Child and Sweden*, *International Journal of Children's Rights* 20 (2012), pp. 122-140
- Arrêté du 17 novembre 2016 pris en application du décret n° 2016-840 du 24 juin 2016 relatif aux modalités de l'évaluation des mineurs privés temporairement ou définitivement de la protection de leur famille, JORF n°0269 du 19 novembre 2016, texte n° 25 <https://www.legifrance.gouv.fr/eli/arrete/2016/11/17/JUSF1628271A/jo/texte>
- Arrêté du 28 juin 2016 pris en application du décret n° 2016-840 du 24 juin 2016 relatif aux modalités de calcul de la clé de répartition des orientations des mineurs privés temporairement ou définitivement de la protection de leur famille, JORF n°0151 du 30 juin 2016, texte n° 33 <https://www.legifrance.gouv.fr/eli/arrete/2016/6/28/JUSF1617871A/jo/texte>
- Assfam et al., *Centres et locaux de rétention administrative*, Report 2017, 2017 http://www.asylumineurope.org/sites/default/files/resources/2018_rapport_retention_2017_interassoc_iatif.pdf
- Asylum Information Database - AIDA, *Country Report: France*, Update 2017 <http://www.asylumineurope.org/reports/country/france>
- Asylum Information Database – AIDA, *Regular Procedure Sweden*, <http://www.asylumineurope.org/reports/country/sweden/asylum-procedure/procedures/regular-procedure>
- Autorità Garante per l'Infanzia e l'Adolescenza, *Stato di attuazione delle disposizioni sul sistema di prima e seconda accoglienza previste dalla Legge n. 47 del 2017 – richiesta informazioni*, Protocollo N.0001127/2018, 04/05/2018
- Autorità Garante per l'Infanzia, *Partecipazione a 360 gradi - Primo ciclo di visite dell'Autorità garante per l'infanzia e l'adolescenza ai centri di accoglienza FAMI per minori stranieri non accompagnati (novembre 2016 - aprile 2017)*, 2017

- Autorità Garante per l'Infanzia, *Stato di attuazione delle disposizioni sul sistema di prima e seconda accoglienza previste dalla Legge n. 47 del 2017 – richiesta informazioni*, Protocollo Generale, n.0001127/2018, 4 May 2018
- Bank R., *Forced Migration in Europe*, in Fiddian-Qasmiyeh, E., Loescher, G., Long, K., & Sigona, N. (Eds.), *The Oxford handbook of refugee and forced migration studies*. OUP Oxford, 2014
- Brendler-Lindquist, M. & Hjern, A., *Reception of asylum seeking and refugee children in the Nordic countries – The Swedish Report*, 2010
- Buchanan A., Kallinikaki T., *Meeting the needs of unaccompanied children in Greece*, International Social Work 1 –14, 2018
- Camera dei Deputati, Assemblea, *Resoconto stenografico, Seguito della discussione della proposta di legge: Zampa ed altri: Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati*, XVII LEGISLATURA, Seduta n. 769, 29/03/2017
- Camera dei Deputati, Commissione parlamentare d'inchiesta sul sistema di accoglienza, di identificazione ed espulsione, nonché sulle condizioni di trattenimento dei migranti e sulle risorse pubbliche impegnate, *Dossier dati statistici al 23 febbraio 2018*, pag. 79-81, 2018
- Camera dei Deputati, *Misure di protezione di minori stranieri non accompagnati*, A.C. 1658-A, XVII Legislatura, 21/10/2016 <http://documenti.camera.it/leg17/dossier/pdf/AC0296a.pdf>
- *capacità ricettiva del sistema di seconda accoglienza dei minori stranieri non accompagnati*”, February 2017
- Carswell, K., Blackburn, P. & Barker, C., *The relationship between trauma, post-migration problems and psychological well-being of refugees and asylum seekers*, International Journal of Social Psychiatry, 2009
- Çelikaksoy, A. & Wadensjö, E., *Mapping Experiences and Research about Unaccompanied Refugee Minors in Sweden and Other Countries*, IZA Discussion Paper No. 10143., 2016
- Çelikaksoy, A. & Wadensjö, E., *Policies, Practices and Prospects: The Unaccompanied Minors in Sweden*, Social Work and Society International Online Journal, vol.15 n.1 (2017), 2017 <https://www.socwork.net/sws/article/view/499/1003>
- Çelikaksoy, A. & Wadensjö, E., *Refugee Youth in Sweden Who Arrived as Unaccompanied Minors and Refugee Children*”, Journal of Refugee Studies, 2017, doi:10.1093/jrs/few042.
- Çelikaksoy, A. & Wadensjö, E., *The Unaccompanied Refugee Minors and the Swedish Labour Market*”, IZA Discussion Paper No. 9306., 2015
- Çelikaksoy, A. & Wadensjö, E., *Unaccompanied Minors and Separated Refugee Children in Sweden: An Outlook on Demography, Education and Employment*, IZA Discussion Paper No. 8963., 2015

- Çelikaksoy, A. & Wadensjö, E., *Hur har de ensamkommande barnen det i Sverige?*, *Socialmedicinsk tidskrift*, 93(1), 28-36., 2016
- Charter of Fundamental Rights of the European Union, 2012/C 326/02, OJ C 326, 26.10.2012, p. 391–407, http://data.europa.eu/eli/treaty/char_2012/oj
- Cherubini F., *La Corte di giustizia in merito alla decisione del Consiglio sulla ricollocazione: riflessioni sulla politica d'asilo dell'UE*, *Quaderni costituzionali*, 37(4):923-6, 2017
- Cherubini, F., *Asylum law in the European Union*, Routledge, 2014
- Cherubini, F., *Asylum law in the European Union*. Routledge, 2014
- Code de l'entrée et du séjour des étrangers et du droit d'asile, Version consolidée au 1 janvier 2019, art. L.221-1/5

<https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158>

- Commission Nationale Consultative des Droits de l'Homme - CNCDH, *Unaccompanied and separated asylum-seeking and refugee children turning eighteen: What to celebrate?*, UNHCR/Council of Europe field research on European State practice regarding transition to adulthood of unaccompanied and separated asylum -seeking and refugee children, March 2014, Strasbourg, France
- Correa-Velez I., Nardone M., Knoetze K., *Leaving family behind: Understanding the irregular migration of unaccompanied asylum-seeking minors*, published in *A Long Way to Go: Irregular Migration Patterns, Processes, Drivers and Decision-making*, edited by McAuliffe M., Koser K., ANU Press., 2017 <https://www.jstor.org/stable/j.ctt20krxxh.14>
- Costello C., *Courting Access to Asylum in Europe: Recent Supranational Jurisprudence Explored*, 12 *Hum. Rts. L. Rev.* 287, 2012
- Council of Europe, *Action Plan on Protecting Refugee and Migrant Children in Europe*, Committee of Ministers, CM /2017(54-final) Nicosia, 19 May 2017 https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168071484e
- Council of Europe, Commissioner for Human Rights, Strasbourg 28 September 2017 <https://rm.coe.int/letter-to-the-minister-of-interior-of-italy-regarding-government-s-res/168075baea>
- Council of Europe, Commissioner for Human Rights, Strasbourg 28 September 2017 <https://rm.coe.int/letter-to-the-minister-of-interior-of-italy-regarding-government-s-res/168075baea> (Nils Muiznieks's letter to Marco Minniti)
- Council of Europe, *European Convention on Human Rights*, Rome 4 November 1950
- Council of Europe, *European Convention on the exercise of children's rights*, European Treaty Series n.160, Strasbourg 25/01/1996

- Council of Europe, *Report of the fact-finding mission to Italy by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 16-21 October 2016*, Information Documents SG/Inf(2017)8, 2 March 2017
https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806f9d70
- Council of Europe, *Report of the fact-finding mission to Italy by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 16-21 October 2016*, Information Documents SG/Inf(2017)8, 2 March 2017
https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806f9d70
- Council of the European Union, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member States in receiving such persons and bearing the consequences thereof*, OJ L 212/12
<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>
- Council of the European Union, *Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification*, OJ L 251, 3.10.2003, p. 12–18
<http://data.europa.eu/eli/dir/2003/86/oj>
- Council of the European Union, *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*, OJ L 31, 6.2.2003, p. 18–25
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003L0009>
- Council of the European Union, *EUNAVFOR MED operazione SOPHIA: mandato prorogato fino al 31 dicembre 2018*, 25/07/2017
<https://www.consilium.europa.eu/it/press/press-releases/2017/07/25/eunavformed-sophia-mandate-extended/>
- Court of Justice, *The Queen, on the application of MA and Others v Secretary of State for the Home Department*, Judgment of the Court (Fourth Chamber), 6 June 2013, Case C-648/11, ECLI:EU:C:2013:367
<http://curia.europa.eu/juris/celex.jsf?celex=62011CJ0648&lang1=fr&type=NOT&ancre=>
- Court of Lyon, *Decisions No.16/0043, 16/00602, 16/00770*, 11 January 2017

- De Vylder, *Macroeconomic issues and the rights of the child*, in *Understanding Children's Rights: Collected Papers Presented at the Seventh International Disciplinary Course on Children's Rights.*, Ed. by Weyts A., 2004
- Décret n° 2016-840 du 24 juin 2016 pris en application de l'article L. 221-2-2 du code de l'action sociale et des familles et relatif à l'accueil et aux conditions d'évaluation de la situation des mineurs privés temporairement ou définitivement de la protection de leur famille , JORF n°0148 du 26 juin 2016 , texte n° 18
- Decreto del Presidente del Consiglio dei Ministri 12 Gennaio 2017, *Definizione e aggiornamento dei livelli essenziali di assistenza, di cui all'articolo 1, comma 7, del decreto legislativo 30 dicembre 1992, n. 502.*, GU Serie Generale n.65 del 18/03/2017 - Suppl. Ordinario n. 15
- Decreto del Presidente del Consiglio dei Ministri 9 December 1999, n. 535 , *Regolamento concernente i compiti del Comitato per i minori stranieri, a norma dell'articolo 33, commi 2 e 2-bis, del decreto legislativo 25 luglio 1998, n. 286*, GU n.19, 25/1/2000
- Decreto del Presidente della Repubblica 31 Agosto 1999, n. 394, *Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, a norma dell'articolo 1, comma 6, del decreto legislativo 25 luglio 1998, n. 286.*, GU n.258, 3/11/1999 - Suppl. Ordinario n. 190
- Decreto Legge 6 Luglio 2012, n. 95, *Disposizioni urgenti per la revisione della spesa pubblica con invarianza dei servizi ai cittadini ((nonche' misure di rafforzamento patrimoniale delle imprese del settore bancario)),* GU n.156, 6/7/2012 - Suppl. Ordinario n. 141
- Decreto Legislativo 18 agosto 2015, n. 142, *Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonche' della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale*, GU n.214, 15/9/2015
- Decreto legislativo 18 agosto 2015, n.142, *Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonche' della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale*, art.2, comma 1, lettera e), G.U. n 214, 15/09/2015
- Decreto Legislativo 22 Dicembre 2017, n. 220, *Disposizioni integrative e correttive del decreto legislativo 18 agosto 2015, n. 142, di attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale nonche' della direttiva 2013/32/UE recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale.*, GU n.12, 16/1/2018

- Decreto legislativo 25 luglio 1998, n. 286, *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*, GU n.191, 18/8/1998 - Suppl. Ordinario n. 139
- Decreto Legislativo 25 luglio 1998, n. 286, *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*, GU n.191, 18/8/1998 - Suppl. Ordinario n. 139, art. 19 comma 2 lettera a)
- Decreto Legislativo 28 gennaio 2008, n. 25, *Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato*, GU n.40 16/02/2008
- Défenseur des droits, *Décision du Défenseur des droits n° 2017-144*, 26 June 2017 https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=16694
- Défenseur des droits, *Decision MDE-2016-052*, 20 April 2016 https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=14546
- Défenseur des droits, *Droits de l'enfant en 2017 – Au miroir de la Convention international des droits de l'enfant*, November 2017 <https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/rae-2017.pdf>
- Défenseur des droits, *Droits de l'enfant en 2017 – Au miroir de la Convention international des droits de l'enfant*, November 2017 <https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/rae-2017.pdf>
- Devine D., *'Value'ing Children Differently? Migrant Children in Education*, Children & Society, Volume 27, pp. 282–294, 2013
- Drywood E., *'Child-proofing' EU law and policy: interrogating the law-making processes behind European asylum and immigration provision*, International Journal of Children's Rights 19, 2011
- Drywood E., *"Child-proofing" EU law and policy: interrogating the law-making processes behind European asylum and immigration provision*, International Journal of Children's Rights, 19 (2011), 405-428, 2011
- ECtHR - *Popov v France*, Application Nos. 39472/07 and 39474/07 http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/POPOV%20v%20FRANCE_French.pdf
- ECtHR, *A.B. v. France*, Application No 11593/12, *R.M. and M.M. v. France*, Application No 33201/11, *A.M. v. France*, Application No 24587/12, *R.K. v. France*, Application No 68264/14 and *R.C. v. France*, Application No 76491/14, Judgments of 12 July 2016.

- Eide, K & Hjern, A., “*Unaccompanied refugee children – vulnerability and agency*”, *Acta Paediatrica*, 102(7), 666-668., 2013
- Eurochild, *Mainstreaming children’s rights in EU legislation, policy and budget, Lessons from practice*, Discussion Paper February 2014, 2014

http://bit.ly/Mainstreaming_CR_in_EU

- European Commission, *Communication from the Commission to the European Parliament and the Council, The protection of children in migration*, COM(2017) 211 final ,Brussels, 12/4/2017
https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_communication_on_the_protection_of_children_in_migration_en.pdf
- European Commission, *Annex 4 to the Communication from the Commission to the European Parliament, the European Council and the Council - Progress report on the Implementation of the European Agenda on Migration*, COM (218) 250 final, Brussels 14/03/2018
https://ec.europa.eu/homeaffairs/Sites/homeaffairs/files/what-we-do/policies/european-agendamigration/20180314_annex-4-progress-report-europeanagenda-migration_en.pdf
- European Commission, *Commission Recommendation of 20 February 2013, Investing in children: breaking the cycle of disadvantage*, 2013/112/EU, OJ L59/5, Brussels, 02/03/2013
<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32013H0112>
- European Commission, *Communication from the Commission to European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An EU Agenda for the Rights of the Child*, COM(2011) 60 final, Brussels 15/02/2011
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52011DC0060>
- European Commission, *Communication from the Commission to the European Parliament and the Council, Action Plan on Unaccompanied Minors (2010 – 2014)*, COM(2010)213 final, Brussels, 6/5/2010,
<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF>
- European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A European Agenda on Migration*, COM (2015) 240 final, Brussels, 13/05/2015

- European Commission, Communication from the Commission to the European parliament and the Council, *The protection of children in migration*, COM(2017) 211 final, Brussels 12/04/2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_communication_on_the_protection_of_children_in_migration_en.pdf
- European Commission, *Communication from the Commission to the European Parliament, the European Council and the Council, Managing migration in all its aspects: progress under the European Agenda on Migration*, COM(2018) 798 final, Brussels, 4/12/2018 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20181204_com-2018-798-communication_en.pdf
- European Commission, *Communication from the Commission to the European parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, COM/2014/0210 final

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52014DC0210>
- European Commission, Directorate General for Justice and Consumers, *10th European Forum on the rights of the child: the protection of children in migration*, Brussels 28-30 November 2016, https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34456
- European Commission, *Investing in children: breaking the cycle of disadvantage*, Commission Recommendation of 20 February 2013, (2013/112/EU), OJ L 59, 2.3.2013, p. 5–16, <http://data.europa.eu/eli/reco/2013/112/oj>
- European Commission, *Reflection paper on the social dimension of Europe*, COM (2017) 206, 26 April 2017
- European Commission, *Report on the progress made in the fight against trafficking in human beings*, 2016 https://ec.europa.eu/antitrafficking/sites/antitrafficking/files/report_on_the_progress_made_in_the_fight_against_trafficking_in_human_beings_2016.pdf
- European Court of Justice, Judgment of the Court (Fourth Chamber) of 6 June 2013, *MA, BT, DA v Secretary of State for the Home Department*, Case C-648/11, OJ C 225, 3.8.2013, p. 18–18 <http://curia.europa.eu/juris/celex.jsf?celex=62016CC0550&lang1=en&type=TXT&ancre=>
- European Court of Justice, Judgment of the Court (Fourth Chamber) of 6 June 2013, *MA, BT, DA v Secretary of State for the Home Department*, Case C-648/11, OJ C 225, 3.8.2013, p. 18–18 <http://curia.europa.eu/juris/celex.jsf?celex=62016CC0550&lang1=en&type=TXT&ancre=>
- European Court of Justice, Judgment of the Court (Grand Chamber) of 27 June 2006, *European Parliament v Council of the European Union*, Case C-540/03, EU:C:2006:429

- European Court of Justice, *Judgment of the Court (Second Chamber) of 4 March 2010, Rhimou Chakroun v Minister van Buitenlandse Zaken*, Case C-578/08, EU:C:2010:117
- European Court of Justice, Opinion of Advocate General Bot delivered on 26 October 2017, *A and S v Staatssecretaris van Veiligheid en Justitie*, Case C-550/16, EU:C:2017:824 <http://curia.europa.eu/juris/celex.jsf?celex=62016CC0550&lang1=en&type=TXT&ancre=>
- European Court of Justice, Opinion of Advocate General Bot delivered on 26 October 2017, *A and S v Staatssecretaris van Veiligheid en Justitie*, Case C-550/16, EU:C:2017:824 <http://curia.europa.eu/juris/celex.jsf?celex=62016CC0550&lang1=en&type=TXT&ancre=>
- European Migration Network – EMN , *EMN Policy Report Sweden 2015*, 2015 http://www.emnsweden.se/download/18.2d998ffc151ac38715917abb/1484748703258/Policy%20Report%20Sweden_2015.pdf
- European Migration Network – EMN , *Policies, practices and data on unaccompanied minors in the EU Member States and Norway*, European Migration Network Synthesis Report for the EMN Focussed Study 2014., 2015
- European Migration Network - EMN, *Policies on reception, return and integration arrangements for, and numbers of, unaccompanied minors, an EU comparative study* , National Report for Sweden-Study 2008 (II), 4 June 2009 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/26_sweden_national_report_on_unaccompanied_minors_version_16june09_en.pdf
- European Migration Network – EMN, *Policies, practices and data on unaccompanied minors in the EU Member States and Norway – Synthesis Report*, Brussels, 2015
- European Migration Network – EMN, *Asylum and Migration Glossary 3.0.*, Brussels, 2014
- European Migration Network - EMN, *Challenges and practices for establishing the identity of third - country nationals in migration procedures*, Country Report Sweden Report from EMN Sweden Migrationsverket (Swedish Migration Agency), 2017 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/17a_sweden_id_study_en_0.pdf
- European Migration Network - EMN, *EMN Flash 1/2018, What happens to unaccompanied children on arrival in Europe following the status determination?*, 2018 http://emn.ie/media/00_eu_uam_flash_en1.pdf
- European Migration Network – EMN, *Policies on Reception, Return and Integration arrangements for, and numbers of, Unaccompanied Minors – an EU comparative study*, Brussels, 2010

- European Migration Network - EMN, *Policies relating to the reception, integration and return of unaccompanied minors*, France National Report on unaccompanied minors, 2009 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/09a_france_national_report_on_unaccompanied_minors_version_10june09_en.pdf
- European Parliament, Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted*, OJ L 337, 20.12.2011, p. 9–26 <http://data.europa.eu/eli/dir/2011/95/oj>
- European Parliament, Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection*, OJ L 180, 29.6.2013, p. 60–95, <http://data.europa.eu/eli/dir/2013/32/oj>
- European Parliament, Council of the European Union, *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection*, OJ L 180, 29.6.2013, p. 96–116, <http://data.europa.eu/eli/dir/2013/33/oj>
- European Parliament, Council of the European Union, *Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)*, OJ L 77, 23.3.2016, p. 1–52, <http://data.europa.eu/eli/reg/2016/399/oj>
- European Parliament, Council of the European Union, *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person*, OJ L 180, 29.6.2013, p. 31–59, <http://data.europa.eu/eli/reg/2013/604/oj>
- European Parliament, Council of the European Union, *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*, OJ L 101, 15.4.2011, p. 1–11, <http://data.europa.eu/eli/dir/2011/36/oj>
- European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' rights and Constitutional Affairs, Civil liberties, Justice and Home Affairs, *European framework of law for children's rights*, PE462.445, April 2012
- European Parliament, *New rules for temporary border controls within the Schengen area*, Press Release, 29/11/2018

<http://www.europarl.europa.eu/news/en/press-room/20181120IPR19549/new-rules-for-temporary-border-controls-within-the-schengen-area>

- European Union, Charter of Fundamental Rights of the European Union, (2000/C 364/01), art.24
- European Union, Treaty on the European Union, (2016/C 202/01), OJ C 326, 26.10.2012, p. 13–390, art.3.5
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT>
- Eurostat, *Asylum applicants considered to be unaccompanied minors by citizenship, age and sex Annual data (rounded)*,
http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyunaa&lang=en
- Eurostat, *European Statistics on Migration*. <http://ec.europa.eu/eurostat/web/population-demography-migration-projections/migration-and-citizenship-data>.
- Eurostat, statistics explained, Migration and migrant population statistics,
https://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics
- Eurostat, statistics explained, *Distribution by age of (non-EU) first time asylum applicants in the EU and EFTA Member States, 2017 (%) YB18.png*,
[https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Distribution_by_age_of_\(non-EU\)_first_time_asylum_applicants_in_the_EU_and_EFTA_Member_States,_2017_\(%25\)_YB18.png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Distribution_by_age_of_(non-EU)_first_time_asylum_applicants_in_the_EU_and_EFTA_Member_States,_2017_(%25)_YB18.png)
- Eurostat, statistics explained, *Distribution by status of (non-EU) asylum applicants from minors in the EU and EFTA Member States, 2017 (%) YB18.png*,
[https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Distribution_by_status_of_\(non-EU\)_asylum_applicants_from_minors_in_the_EU_and_EFTA_Member_States,_2017_\(%25\)_YB18.png#file](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Distribution_by_status_of_(non-EU)_asylum_applicants_from_minors_in_the_EU_and_EFTA_Member_States,_2017_(%25)_YB18.png#file)
- Fabbrini S., *Intergovernmentalism in the European Union. A comparative federalism perspective*, Journal of European Public Policy, 24:4, 580-597, DOI:10.1080/13501763.2016.1273375
- Fasone C., *Towards a Convergence in the Judicial Enforcement of the ECHR and EU Law*, 10 EuConst 182, 2014

- French Contact Point for the European Migration Network, *Annual Report on Migration and Asylum*, 2017 part II, 2017

https://ec.europa.eu/home-affairs/sites/homeaffairs/files/10a_france_arm2017_part2_en.pdf
- Garry H. R., *Harmonisation of Asylum Law and Policy within the European Union: A Human Rights Perspective*, 20 Neth. Q. Hum. Rts. 163, 2002
- Haas, E. B., & Dinan, D., *The uniting of Europe: Political, social, and economic forces, 1950-1957* (Vol. 311). Stanford: Stanford University Press, 1958
- Hannah R. Garry, *Harmonisation of Asylum Law and Policy within the European Union: A Human Rights Perspective*, 20 Neth. Q. Hum. Rts. 163, 2002
- Hermanin C., *Immigration Policy in Italy: Problems and Perspectives*, IAI Working Papers, 17 - 35, December 2017
- Hjern, A., Brenndler-Lindqvist, M. & Norredam, M., “Age assessment of young asylum seekers”, *Acta Paediatrica*, 101(1), 4–7., 2012
- Human Rights Watch – HRW, *France: Unaccompanied Children Detained at Borders*, 8 April 2014
- Human Rights Watch, *Seeking Refuge: Unaccompanied Children in Sweden*, Human Rights Watch Report, June 2016.
- International Organization for Migration – IOM, *Tracking deaths along migratory routes* <http://missingmigrants.iom.int/region/mediterranean>
- International Organization for Migration, *Migration flows to Europe. 2017 overview*, 2017, http://migration.iom.int/docs/2017_Overview_Arrivals_to_Europe.pdf
- International Organization for Migration, *Mixed Migration Flows in the Mediterranean and Beyond*, 2017, pag. 1. http://migration.iom.int/docs/2016_Flows_to_Europe_Overview.pdf
- Intersos, *Unaccompanied and Separated children along Italy’s northern borders*, 2017
- Josefsson, J., ‘We beg you, let them stay!’: Right claims of asylum-seeking children as a socio-political practice. *Childhood*, 24(3), 316-332, 2017
- Keating M., *Europe as a multilevel federation*, *Journal of European Public Policy*, 24:4, 615-632, DOI: 10.1080/13501763.2016.1273374
- La Cimade, *Des enfants mal protégés car étrangers – Mieux comprendre la situation en France des jeunes en danger*, 13 November 2018
- La Cimade, *Mettre fin à l’enfermement des enfants en rétention*, 11 July 2017 <https://www.lacimade.org/mettre-fin-a-lenfermement-enfants-retention/>

- Legge 27 maggio 1991, n. 176 , *Ratifica ed esecuzione della convenzione sui diritti del fanciullo, fatta a New York il 20 novembre 1989*, G.U. n.135 11/06/1991 - Suppl. Ordinario n. 35
- Legge 4 maggio 1983, n. 184, *Diritto del minore ad una famiglia*, G.U. n.133, 17/5/1983 - Suppl. Ordinario
- Legge 7 Agosto 1990, n. 241, *Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi*, GU n.192, 18/8/1990
- Legge 7 aprile 2017, *Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati*, G.U. n.93, 21/04/2017
- Lenzerini F., *La protezione dei minori stranieri non accompagnati nel diritto internazionale*, published in *Diritti umani degli immigrati. Tutela della famiglia e dei minori*, edited by R. Pisillo Mazzeschi, Editoriale Scientifica, pp 271-295, 2010
- Loi n° 2016-297 du 14 mars 2016 relative à la protection de l'enfant (1), JORF n°0063 du 15 mars 2016, texte n° 1 <https://www.legifrance.gouv.fr/eli/loi/2016/3/14/FDFX1507648L/jo/texte>
- Loi n° 2018-778 du 10 septembre 2018 pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie (1), JORF n°0209 du 11 septembre 2018, texte n° 1, <https://www.legifrance.gouv.fr/eli/loi/2018/9/10/INTX1801788L/jo/texte>
- Malmsten, J, “*Unaccompanied children living in transitional houses – voices from Sweden*”, *International Journal of Migration, Health and Social Care*, Vol. 10(1), 18-35, 2014
- McAdam J., *Human Rights and Forced Migration*, in Fiddian-Qasmiyeh, E., Loescher, G., Long, K., & Sigona, N. (Eds.), *The Oxford handbook of refugee and forced migration studies*. OUP Oxford, 2014
- Member States’ notifications of the temporary reintroduction of border control at internal borders pursuant to Article 25 et seq. of the Schengen Borders Code, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control/docs/ms_notifications_-_reintroduction_of_border_control_en.pdf
- Migration Agency, *Migration Agency Guideline Decision.*, MIG 2014, 1., 2014
- Ministero del Lavoro e delle Politiche Sociali, *Report di monitoraggio sui MSNA in Italia. Dati al 31 dicembre 2017*, 2018
- Ministero dell’Interno, Dipartimento della Pubblica Sicurezza, *Riepilogo sbarcati per nazionalità*, 2017
- Ministero dell’Interno, Dipartimento delle Libertà Civili e Immigrazione, *Cruscotto statistico giornaliero - al 7 marzo 2018*, pag. 7, http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto_statistico_giornaliero_07-03-2018.pdf

- Ministero dell'Interno, Dipartimento per le Libertà civili e l'Immigrazione, *Decreto di approvazione della graduatoria dei progetti presentati a valere sull'avviso "Potenziamento della*
- Ministero dell'Interno, *Graduatoria dei progetti per l'accoglienza dei minori stranieri non accompagnati*,
<http://www.interno.gov.it/it/notizie/graduatoria-dei-progetti-accoglienza-dei-minoristranieri-non-accompagnati>
- Ministero dell'Interno, *Illegittimo il respingimento di un minore straniero al confine franco-italiano. Il Tribunale amministrativo di Nizza sanziona il comportamento delle Autorità francesi*, 31 gennaio 2018, <http://www.integrazionemigranti.gov.it/Attualita/Notizie/Pagine/illegittimo-il-respingimento-di-un-minore-al-confine-franco-italiano.aspx>
- Ministero dell'Interno, *La nostra sfida da vincere in Africa*, La Repubblica, 12 July 2017, <http://www.interno.gov.it/it/sala-stampa/interventi-e-interviste/nostra-sfida-vincere-africa>
- Ministero dell'Interno, *Piano accoglienza 2016*, 2016, http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/sub-allegato_n_7_piano_accoglienza_2016.pdf
- Ministero dell'Interno, *Procedure Operative Standard (SOP) applicabili agli hotspots italiani*, www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots_sops_-_versione_italiana.pdf
- Ministry of Interior, *Instruction 19th July 2016 on the application of the Dublin III Regulation*, NOR: INTV1618837J <https://www.lacimade.org/wp-content/uploads/2017/01/instruction-Dublin-19-juillet-2016.pdf>
- Ministry of the Interior, *Circulaire of 6 July 2012 sur la mise en oeuvre de l'assignation à résidence prévue à l'article en alternative au placement des familles en rétention administrative*, NOR INTK1207283C <https://www.gisti.org/IMG/pdf/norintk1207283.pdf>
- Ministry of the Interior, Public security Department, *Oggetto: Legge 7 aprile 2017, n. 47 recante "Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati"*, in force since 6 May 2017 <http://www.piemonteimmigrazione.it/mediato/images/circolare-interno-28-08-2017-minori-Legge-47-2017-scansionata.pdf>
- Missing Children Europe, *Lost in migration: Working together in protecting children from disappearance*, Malta 26-27 January 2017, <http://missingchildreneurope.eu/News&press/Post/1063/Lost-in-migration-Working-together-in-protecting-children-from-disappearance>
- New Pact for Europe, *National Report Italy 2017*, www.newpactforeurope.eu

- Nicolosi S., *Shedding Light on the Protective Regime for Unaccompanied Minors Under the Family Reunification Directive: The Case of A and S*, European papers, 05/11/2018 <http://www.europeanpapers.eu/it/europeanforum/shedding-light-on-protective-regime-for-unaccompanied-minors>
- Niemeyer, M., “*The Cultural and Social Capital of Unaccompanied Refugee Children. A policy study of the education of unaccompanied refugee children in Sweden and Germany*”, Institute of International Education, Department of Education, Stockholm University, 2015
- Office français de protection des réfugiés et apatrides - OFPRA, *2016 Activity Report*, 2016
- Office français de protection des réfugiés et apatrides – OFPRA, *France terre d’asile*, Newsletter n°62, December 2013
- Ombudsman for Children in Sweden, *Safety and Fundamental Rights at Stake for Children on the Move*, ENOC Report of Taskforce Children on the Move, 2016
- Paksuniemi, M., “*Finnish refugee children’s experience of Swedish refugee camps during the Second World War*”, *Migration Letters*, 12(1), 28-37, 2015
- Parkes, A. *Children and international human rights law: the right of the child to be heard*. Routledge, 2013.
- Parusel B., *Unaccompanied minors in the European Union – definitions, trends and policy overview*, *Social Work and Society International Online Journal* [Vol 15, No 1 \(2017\)](#), 2017
- Patroni Griffi A., *Lineamenti della tutela costituzionale dei minori stranieri*, published in *Diritti umani degli immigrati. Tutela della famiglia e dei minori*, edited by R. Pisillo Mazzeschi, Editoriale Scientifica, pp 255-270, 2010
- Pobjoy, J. M., *A child rights framework for assessing the status of refugee children – Contemporary issues in refugee law*, pp. 91 – 143, 2013
- Presidenza del Consiglio dei Ministri, *Intesa tra il Governo, le Regioni e gli Enti locali sul piano nazionale per fronteggiare il flusso straordinario di cittadini extracomunitari, adulti, famiglie e minori stranieri non accompagnati*, n.77/CU, 10/07/2014 http://www.statoregioni.it/Documenti/DOC_044430_77%20CU%20PUNTO%202%20ODG.pdf
- Prosser T., *Economic union without social union: The strange case of the European social dialogue*, *Journal of European Social Policy*, 2016, Vol. 26(5) 460 –472
- Ramel, B., Jakob T., Lindgren, A. and Johansson, B. A., “*Overrepresentation of unaccompanied refugee minors in inpatient psychiatric care*”, SpringerPlus, 4,131, 2015

- Rappresentanza permanente dell'Italia presso il Consiglio d'Europa, Strasbourg 12 October 2017 https://www.asgi.it/wp-content/uploads/2017/11/2017_10_11_lettera_Minniti_COE.pdf (Marco Minniti's reply letter to Nils Muiznieks)
- Regio Decreto 16 marzo 1942, n. 262, *Approvazione del testo del Codice civile*, 042U0262, GU n.79, 4/4/1942, Art. 343 and the following
- Santavirta T., Nina S., Betancourt, T. S. and Gilman, S. E., "Long term mental health outcomes of Finnish children evacuated to Swedish families during the second world war and their non-evacuated siblings: cohort study", *British Medical Journal*, 2015
- Save the Children, *Atlante minori stranieri non accompagnati Italia 2017*, 2017
- Save the Children, *Atlante minori stranieri non accompagnati Italia 2018*, 2018
- Save the Children, *Governance Fit for Children, To what extent have the general measures of implementation of the UNCRC been realised in the EU Institutions?*, 2011 http://europe.savethechildren.se/Global/scs/EUROPE/Our%20focus/Gov_for_children/EU_webb_fin_al.pdf
- Save the Children, *I flussi migratori verso l'Italia*, December 2017 https://www.savethechildren.it/sites/default/files/files/Analisi%20Sbarchi%20Gen-Dic_2017.pdf
- Schimmelfennig F. & Winzen T., *Eastern enlargement and differentiated integration: towards normalization*, *Journal of European Public Policy*, 24:2, 239-258, 2017
- Sénat, *Rapport d'information fait au nom de la commission des affaires sociales (1) sur la prise en charge sociale des mineurs non accompagnés*, Mme Élisabeth Doineau et M. Jean-Pierre Godefroy, Sénateurs, Sénat n. 598, 28 June 2017 <https://www.senat.fr/rap/r16-598/r16-5981.pdf>
- Senato della Repubblica, *Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati*, A.S. 2583, XVII Legislatura, 1/03/2017
- Senato della Repubblica, *Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati*, A.S. 2583, XVII Legislatura, 22/02/2017
- Shamseldin L., *Implementation of the United Nations Convention on the Rights of the Child 1989 in the Care and Protection of Unaccompanied Asylum Seeking Children: Findings from Empirical Research in England, Ireland and Sweden*, *International Journal of Children's Rights* 20 (2012) 90-121, 2012
- Skolverket, *Curriculum for the compulsory school, preschool class and the recreation center 2011*, Stockholm 2011
- Smyth C., *European Asylum Law and the Rights of the Child*, Routledge Research in Asylum, Migration and Refugee Law, 2014

- Söderqvist, Å., “Leaving care with cultural baggage: the development of an identity within a transnational space”, *Australian Social Work*, 67(1), 39-54, 2014
- Söderqvist, Å., Sjöblom, Y. and Bulow, P., “Home sweet home? Professionals’ understanding of home within residential care for unaccompanied youths in Sweden”, *Child and Family Social Work*, doi: 101111/cfs.12183., 2014
- Stretmo, L., *Governing the Unaccompanied Child – Media, Policy and Practice*, Doctoral Dissertation at the Department of Sociology and Works Science, University of Gothenburg, ISBN: 978-91-981195-9-6, 2014
- Stubb A.C.G. , *A categorization of differentiated integration*, *Journal of Common Market Studies* Vol. 34, No. 2, June 1996
- Swedish Government, *Aliens Act*, 2005:716, 29 September 2005, with amendments up to and including *Swedish Code of Statutes* 2009:16 https://www.government.se/49cf71/contentassets/784b3d7be3a54a0185f284bbb2683055/aliens-act-2005_716.pdf
- Swedish Government, *Budget Bill for 2009*, 2008/09:1, p. 11
- Swedish Government, *Communication Skr*, 2006/07:58, p. 7
- Swedish Government, *Communication Skr*, 2008/09:33, p. 4.
- Swedish Government, *Convention on the Rights of the Child about to become Swedish law*, 10th October 2017, <https://www.government.se/articles/2015/02/convention-on-the-rights-of-the-child-about-to-become-swedish-law/>
- Swedish Government, *Reception of Asylum Seekers and Others Act*, 1994:137
- Swedish Government, *The Administrative Judicial Procedure Act*, 1971:291
- Swedish Government, *The Administrative Procedure Act*, 1986:223
- The Swedish Migration Agency, “Aktuellt om ensamkommande barn & ungdomar”, October 2016.
- Tocci N. et al., *Thinking beyond the crisis: labour migration and mobility in the Euro-Mediterranean region*, Istituto Affari Internazionali – IAI, 19 May 2017
- Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 2007/C 306/01, OJ C 306, 17/12/2007, p. 1–271, <http://data.europa.eu/eli/treaty/lis/sign>
- Tribunal Administratif De Nice, *M. M. H. Association Nationale d’Assistance aux Frontiers pour les Etrangers*, M. Emmanuelli - Juge des référés, Ordonnance du 22 janvier 2018 - [JRTA Nice, 22-01-2018, Mr. H. Anafé, No. 1800195](http://www.anafe.org/IMG/pdf/jrta_nice_22_janvier_2018_m_h_anafe_no1800195-2.pdf)
http://www.anafe.org/IMG/pdf/jrta_nice_22_janvier_2018_m_h_anafe_no1800195-2.pdf

- UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html> [accessed 7 February 2019]
- UNICEF, *UNICEF hails new Italian law to protect unaccompanied refugee and migrant children as model for Europe*, News Note, Roma, Geneva, 29 March 2017 https://www.unicef.org/media/media_95485.html
- United Nations High Commissioner for Refugees, *Guidelines on Policies and procedures in dealing with Unaccompanied Children Seeking Asylum*, Geneva, February 1997, <https://www.unhcr.org/publications/legal/3d4f91cf4/guidelines-policies-procedures-dealing-unaccompanied-children-seeking-asylum.html>
- United Nations High Commissioner for Refugees, *Europe, Dead and missing at the Sea. Number of dead and missing by route – January 2015 – November 2017*, 2017, <https://data2.unhcr.org/en/documents/download/61290>
- United Nations High Commissioner for Refugees, *Global Trends 2015*, June 2016, pag. 52, www.unhcr.org/576408cd7.pdf
- United Nations High Commissioner for Refugees, *Global Trends: Forced Displacement in 2015*, Geneva 2016
- United Nations International Children’s Emergency Fund, *Unrooted, the growing crisis for refugee and migrant children*, 2016
- United Nations, Committee on the Rights of the Child, *General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, CRC/C/GC/14, 29 May 2013
- United Nations, Committee on the Rights of the Child, *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, CRC/C/GC/2005/6, 1 September 2005
- United Nations, *Convention on the Rights of the Child*, New York 20 November 1989 https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf
- Vandenhoe, W., Desmet, E., Reynaert, D., & Lembrechts, S. (Eds.), *Routledge international handbook of children’s rights studies*, Routledge, 2015
- Vervielt M. et al., *That I Live, that’s Because of Her’: Intersectionality as Framework for Unaccompanied Refugee Mothers*, British Journal of Social Work 44, 2023-2041, 2014

- Wallin, A. M. and Gerd A., “*Unaccompanied young adult refugees in Sweden, Experiences of their life situation and well-being: a qualitative follow-up study*”, *Ethnicity & Health*, Vol. 10(2), 129-144., 2011
- Wernesjö, U., “*Unaccompanied asylum-seeking children: Whose perspective?*” *Childhood*, 19(4), 495-507, 2011
- Wimelius, M.E., Eriksson, M., Isaksson, J. et al., *Swedish Reception of Unaccompanied Refugee Children—Promoting Integration?*, *Int. Migration & Integration* 18: 143., February 2017
<https://doi.org/10.1007/s12134-016-0472-2>

Summary

The present research has been conceived to shed a light on the current scenario of unaccompanied minor migrants in Italy and in the European Union.

By following the steps of the latest mainstream of children rights and of migration policies, of Italian legislation and of European Union's legislative activities, the present research can be classified at the exact intersection of these areas of interest. The result is an attempt to critically assess the current regulatory framework in Europe and in Italy, in particular, on such a delicate and worrisome issue.

The reader will find out that, unlike other matters, the case of unaccompanied minor migrants has been regulated thanks to the collaboration of both institutional and non-institutional actors. Similarly, a wider scope of action can be reached only with a synergy between national and supranational actors, i.e. between national governments and EU institutions in this case.

According to Italian legislation, unaccompanied foreign minors are “*citizens of non-EU States and stateless persons, whose age is inferior to 18 years old, who are in the national territory, for whatever reason, without assistance and legal representation*”.

The definition is restated in the law n.47 of 7th April 2017, on unaccompanied foreign minors (cfr. Italian title: *Legge Zampa, Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati*). This law amends previous legislation on the matters, specifically law n.286 of 25th July 1998 and others concerning unaccompanied minor migrants. The text was presented in Parliament on 4th October 2013 and finally approved on 29th March 2017. The *iter* of the law was successful, thanks to the work of the political decision makers and the commitment of NGOs, such as Save the Children and many others. The latest Italian legislation on unaccompanied migrants is a successful step in the path of the protection of children, as acknowledged by UNICEF. Nonetheless, there is still a long way ahead until a comprehensive reception and a fully regulated welcoming system is rightly implemented.

In the first chapter, the thesis provides the reader with an outlook on the situation of unaccompanied minor migrants arriving on the Italian shores. In the second chapter, the Italian law on unaccompanied minor migrants will be analysed in detail, with its highlights and pitfalls. The third chapter will analyse every piece of European Union legislation and jurisdiction that has been pivotal or has contributed to the creation of a legislative framework on the issues of migration and the protection of children. In the fourth and last chapter, the Swedish and French reception systems for unaccompanied minors will be assessed, by analysing similarities and asymmetries, in order to provide the reader with two different cases of EU Member States'

legislation on unaccompanied minor migrants. To conclude, the comparative analysis will be useful to assess whether the Italian law on unaccompanied minor migrants can be a suitable model in other EU countries.

Prior to the analysis of the regulatory framework, it is essential to offer an overview on the up-to-date real situation of unaccompanied minor migrants in Italy. The concept which lies beneath every legislative effort in favour of the mainstreaming of children's rights is that of the supreme interest of the child, as stated by Art.3 of the United Nations Convention on the Rights of the Child. Behind those numbers, figures and statistics, hundreds of thousands of individual human histories are bond together. Respect for human lives and understanding of different cultures are essential in order to build a strong and effective immigration policy. Such values are even more important when we consider minors as subjects of those policies. Further care and attention shall be given to these children, who are likely to have already suffered many perils at the moment of arrival on European shores.

If it is true that the majority of minors present in the reception system are boys and girls aged between 16 and 17, there can be found a significant number of pre-adolescent boys and girls as well, aged even less than 14 years. Therefore, because of their younger age, they find themselves in a condition of even greater vulnerability.

The number of unaccompanied minor migrants does not change over the years in percentage terms, constantly representing about 9% of the children accepted, but it grows year by year in absolute values. If in 2012 there were 698 unaccompanied minors in Italy, two years later they were almost double (1.380). By 31st December 2016 there are 2.050, while one year later, by 31st December 2017, they were more than 18.000. Children and girls, very young and even more alone, who need a special attention that allows them to find that childhood, which has been inevitably lost after the escape from their country.

The rights of unaccompanied minor migrants in Europe are placed at the intersect of multiple systems of rules. Firstly there are international norms which protect the rights of minors and teenagers, secondly European Union norms and thirdly national and even local (i.e. regional) legislation.

International, European and domestic rules set a standard for legal protection of children and teenagers without family care and away from their country of origin, aiming at protecting them firstly as children. Along with such protection, they fall within the scope of the legislation concerning citizens of countries outside the European Union and therefore of migrants, asylum seekers, refugees or victims of trafficking. It is of fundamental importance to understand that those minors shall be treated firstly as children and only secondly as migrants, even if the legislation concerning migrants aims at the protection of the subjects. In other words, unaccompanied minor migrant shall be firstly considered as children and therefore protected as such, while their status of migrant shall be taken into consideration only in a secondary moment, after such primary protections is granted.

The framework provided by the European Union on the matter of unaccompanied minor migrants is made up of both legislative and non-legislative tools. The Treaties and the Charter provide general standards for the respect of human rights and dignity, the Directives are specific on relevant matters and, together with the Treaties, provide legal sources for subsequent case law and for the implementation of national norms. The Communications and the international meetings provide guidance and a chance of dialogue on future strategies. The European Commission's direction regarding children and, specifically, unaccompanied minor migrants, is that of protection, hospitality and inclusion. Nonetheless, a case by case analysis outlines the situation of unaccompanied minor migrants in Europe as extremely risky, uneven across Member States and not often tackled with the right measures. There are multiple reasons to explain such scenario. First of all, the flow of migrants and the arrival of unaccompanied minors is still considered as an "emergency" situation than a regular one, and thus not yet well-regulated and tackled by Member States with the right measures. Secondly, the situation is different across Member States: since Italy and Greece have been facing the vast majority of arrivals, especially by sea, the numbers of migrants is disproportionately higher in such Member States than in the others. The failure of the resettlement and relocation scheme and the political unwillingness of Member States to modify the Dublin system have negatively influenced the situation of distress of migrants and of first and second reception institutions. Thirdly, the category of unaccompanied minor migrants fall under several policy fields, such as migration, family law, social investments, which are still competences of the Member States.

Yet, the presence of an European Union legislative framework on unaccompanied minor migrants and the initiatives taken by the European Union institutions and civil society in favor of the protection of children in migration are positive signals on the direction of a more comprehensive and harmonized common policy on the welcoming and protection of unaccompanied minor migrants.

Ultimately, I believe that the comparison between two other Member States' reception systems on unaccompanied minors is useful for the research, in order to provide the reader with an outlook on two divergent examples of reception and welcoming policies and practices. The choice has fallen upon Sweden and France. Sweden is exemplar in providing a set of policies which attempt to cover every step of the path of the unaccompanied minor in the country, from the initial identification and registration activities to the accommodation, and the access to education and later employment. Moreover, Sweden has been the largest receiving country of asylum applications from unaccompanied minors in 2015. On the other hand, France has reportedly violated Art.3 and others of the European Convention on Human Rights and it has been condemned several times by the European Court of Human Rights for detention of unaccompanied minor migrants. Notwithstanding the judgements of the ECtHR and even of national tribunal, such as the sentence of the Tribunal of Nice of January 2018 on the unlawful denial to an unaccompanied minor to entry the country and

to lodge asylum application, there are no improvements of the conditions of unaccompanied minors in France. Rather in practice children's rights have been reportedly violated, especially at the border's zone.

Thus, Sweden is an example of a receiving country with an efficient asylum process system and a relative well developed system for unaccompanied minor migrants in comparison to other European Union countries. Challenges reside in imbalance across municipalities and a lack of a national monitoring body, limited cooperation among different actors who are responsible for minors and need for a follow up strategy after the transition into adulthood. On the contrary, in France the situation is more severe, with many cases of violation of human rights and of denial of such rights to unaccompanied and accompanied minor migrants.

The comparison of the two countries in respect to policies and practices relating to unaccompanied minor migrants highlights the differences and similarities among the two systems. For example, it is praiseworthy that in Sweden some importance is given to the further enhancement of gender - based employment policies for young adults entering the labour market. On a totally different spectrum, in France most of the ongoing debate is on the denial of the right of entry in France territory. Not to mention the lack of any scheme for supporting unaccompanied minors to enter the employment market at a later stage. Furthermore, the practice of detention is absent in Sweden while it is highly widespread in France, where they can be detained either accompanied or unaccompanied by their families. These and more elements result from the analysis of the two countries' systems on the reception of unaccompanied minor migrants. Sweden thus offers a relatively better system of reception and welcoming conditions for unaccompanied minors, while, as previously stated, France has repeatedly violated international and regional norms on the protection of children.

As it has been shown throughout the research, there is an ongoing issue with the reception and welcoming of unaccompanied minor migrants in Italy and in the European Union. Current data provide us with an overview on the numbers and histories behind the migration flow. The comparative legislative analysis on the norms and policies on unaccompanied minor migrants demonstrate that there is a wide divergence between the systems of reception and welcoming among Member States and that the implementation of international standards into national practice is not always straightforward.

Without the tireless and passionate commitment of NGOs operating on the field, many more lives would have been lost in the Mediterranean. Indeed, social workers often fill the gap between the daily life struggle of migrants and the activity of the institutions. There are outstanding examples of solidarity and humanity towards newcomers, but there is not an unitary vision behind the policies of welcoming and reception. Therefore, institutions often lack the resources and the operational mechanisms to cope with the needs of migrants and, in particular, of unaccompanied minors. The consequences of such situation are harmful for the minors, who have already suffered many perils on their way to Europe, and they can account to violations of international law on human rights.

With the analysis of the existing legislation, we can see how policy makers attempt to cope with the situation and the needs of such vulnerable category. I claim that the Italian law n.47/2017 is a step forward in the protection of the rights of unaccompanied minors and it is commendable that Italy is the first country to pass this kind of law among the European Union Member States. The law has filled legislative gaps, in particular those falling in between the fields of immigration law and protection of minors. Despite many pitfalls in the implementation and the absence of a compulsory and well- distributed nation-wide accommodation system, I believe that the law n.47/2017 is an experiment on the path to a more comprehensive and solid protection of children's and migrants' rights worldwide. It is even more outstanding when considering that other EU Member States do not have any similar legislation yet.

The European Union legislative framework provide for specific norms on unaccompanied minors but not in an unitary text. Such provisions are spread in a series of legal acts that differ between them both in nature and in scope. Thus, we can find explicit references to unaccompanied minors in the Directives on Temporary Protection, Family Reunification, Qualification and Reception. During the most recent years, the European Court of Justice has ruled over cases concerning unaccompanied minors, such as “A,S v Staatssecretaris van Veiligheid en Justitie” and others, providing guidance for Member States on how to deal with exceptional circumstances concerning unaccompanied minors. The judgement of the ECJ has insofar been in favor of a non-restrictive application of the articles of the Directives concerning unaccompanied minors in order to serve the ultimate scope beneath the legislative acts, that is that of the supreme interest of the child, in line with international law. The Treaty of Lisbon and the legal recognition of the European Charter of Fundamental Rights have contributed to consolidate the protection of children's rights in the EU. Moreover, they have made the EU's mandate in mainstreaming children's rights more explicit. Other non-binding actions, such as, among others, the European Commission's Communications “The Action Plan on unaccompanied Minors 2010-2014”(2010) and “The Protection of Children in Migration” (2017) have contributed to shape the EU's institutions directions on possible scenarios for further developments of policies on unaccompanied minor migrants.

The depicted scenario clearly shows the current issues in Europe with unaccompanied minors. Despite the international and EU law on the protection of children, the ongoing debates on deportation, detention and inadequate treatment of unaccompanied minor migrants show the core problem beneath the situation: the difficulty to enforce international standards in the daily practice with non-citizen children in migration. Scholars have recognized the unbalance between universal rights of the minors and the implementation of migration and security policies. It is reported that human rights of forced migrants have been frequently violated and that one of the main issues with the protection of human rights is translating the international law into national policies.

I claim that the current framework needs to be changed since it is unable to craft effective solutions for the long-term well-being of unaccompanied minor migrants. In the European Union, asylum policy is subject to the need to serve two masters: on one side, the EU itself and, on the other side, the Member States. In particular, it is found that in European Union Council's negotiations, the national thinking prevails over the European one, by the fact creating a situation in which national delegations attempt to defend the national status quo.

By analyzing the existing legislation and practice, it seems that the path of EU towards harmonization of asylum law and human rights protection will continue to be jeopardized by the national concerns on security, economic performances and cultural identity. I would like to stress, indeed, that there is a common misbelief on the so called "migration crisis" in the EU. It is not a crisis of numbers but rather of cultural values. To make an example, in Italy there are about 5 migrants per 1000 inhabitants, and the proportion is similar or slightly higher in most of EU Member States. Thus, the ongoing debate about migration is basically a cultural debate over political cleavages and cultural values, rather than over an objective inability to cope with the phenomenon. Acknowledging this perspective, it is claimed that only a deliberate and voluntary move towards harmonization of asylum policies at EU level and a commitment to place the respect for human rights and the protection of children as core elements of such shared asylum policies can make the difference in improving the conditions of unaccompanied minor migrants.

For the cause, it is desirable that courts, at every level, give an "extensive and evolutionary interpretation of international norms, in order to reach the scope [the protection of unaccompanied minors] through a flexibility of application [of the norms]". This has already happened in some cases in Europe, as previously stated, and we can witness a "judicial convergence" between national courts, the ECJ and the ECtHR on the matter of unaccompanied minor migrants.

Besides the active and positive role of the European courts, some steps could be done at the institutional level of the EU in the decision making process as well. It is not the first time that Member States cooperate outside the Treaties in the history of the Union. For example, we can recall when the Dublin Convention entered into force and more signatories joined the Schengen Agreement, even if at the time the Treaty of Maastricht failed to give the institutions incisive powers in the area of asylum. It was not until 1999, with the sign of the Treaty of Amsterdam, that the Dublin Convention and the Schengen Agreement became part of the Community law. This is one example of intergovernmentalism between Member States that later has become institutionalized in EU law.

Among scholars and advocacies active in the field of protection of children, in particular of unaccompanied minors, it is strongly argued that policy makers at EU level shall focus on long-term solutions for unaccompanied minors. Such "durable solutions" shall entail targeted policies for their entry into education

and employment, in other words for their successful development into adulthood and society. On the other hands, there is wide criticism over "quick-fix" solutions, which in turn put unaccompanied minors at risk of harm. Such solutions are, for example, stricter controls at the external borders, fight against smugglers, agreements with third countries to discourage or prevent migrants to come to Europe. Such practices put unaccompanied minor migrants, as well as migrants in general, at serious risk of degrading treatments and other perils.

In the ongoing political climate, it is hard to visualize ad hoc policies for the protection and well-being of unaccompanied migrants, given that such policies would require patience, resources and long-term work. Given such difficulties, I claim that it is essential to support the mainstreaming of children's rights in the EU legislative framework. All the stakeholders shall bear in mind that there is no child neutral policy. Especially because political will may change over time, it is essential that the concept of mainstreaming of children's rights is firmly embedded in all EU legislative processes. Moreover, the protection of the rights of the child is explicitly expressed as one of the objectives of the EU in Art. 3 of the Treaty on the European Union.

I would argue that given the intersectionality of the matter, it is difficult to foreseen an improvement of the policies related to unaccompanied minor migrants in the short run. In other words, this vulnerable category is falling between the scope of different policy areas, such as asylum law, family law, minors' law, security law etc... and most of these legislative areas are competences of the Member States. Therefore, it is unrealistic to expect the creation and implementation of a unitary system of policies for the reception and welcoming of unaccompanied minor migrants in the European Union in the short run.

Rather, I support the vision of a "social" Europe. I believe in an European Union that helps culturally diverse societies to be prosperous, cooperative and democratic. An European Union that fights against discrimination and boosts economic progress, while providing for socially inclusive policies.

It is plenty of theories on European integration which argue that social policies will follow from economic integration due to the spill-over effect, as classically argued by the neo-functionalist approach. On the other hand, intergovernmentalists affirm that Member States retain primary control and competence over social policies. Moreover, the process enlargement poses new challenges to the European Union, as it "has generally increased the heterogeneity of EU membership" and "new Member States may have integration and policy preferences [...] that fall outside the core of the old Member States".

In the perspective of a differentiated integration, the only viable way to the implementation of an unitary mechanisms on the reception of unaccompanied minor migrants would be that of a multispeed Europe with an enhanced social pillar, aimed at protecting vulnerable categories, such as unaccompanied minor migrants.

In this scenario, the Italian law n.47/2017 on the protection of unaccompanied minor migrants could be replicable at the EU level. It could be a model for other Member States and a starting point for further developments on the matter. Improvements may be done in strengthening the protection of minors at the arrival, providing adequate accommodations and living conditions. Moreover, it is reported by scholars and social workers that the development of a shared protocol between the institutions working with unaccompanied minors is desirable, since the coordination of efforts between all the actors involved, such as immigration agencies, child welfare agencies, etc... would result in better care and protection for unaccompanied minors. Further improvements may be made by shaping ad hoc education and employment policies, which shall take into account the different background of unaccompanied minors in respect to their native-born peers and shall recognize their value, by helping them building their identities in the new society.

A coherent strategy behind the policies and practices for unaccompanied minor migrants would improve their living conditions and future possibilities of integration. Only with an integrated and unitary system at EU level, the rights of unaccompanied minor migrants would be guaranteed, regardless of their status, country of origin or country of arrival.