



SUN
SAFEGUARDING UNACCOMPANIED
AND SEPARATED CHILDREN'S RIGHTS
THROUGH THE CFREU

PRACTITIONERS' HANDBOOK ON SAFEGUARDING UNACCOMPANIED AND SEPARATED CHILDREN'S RIGHTS THROUGH THE EU CHARTER OF FUNDAMENTAL RIGHTS



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Chapter I: Basic principles in protecting the rights of UASC in the light of Article 24 of the CFREU - **Terre des Hommes Foundation**

Chapter II: Right to Asylum and Procedural Guarantees for UASC - **Comissió Catalana d'Acció pel Refugi**

Chapter III: Migrant Children in Detention and Right to Liberty - **Foundation for Access to Rights - FAR**

Chapter IV: EU Charter and Secondary EU Law Rights Linked to Return Procedures - **Foundation for Access to Rights - FAR**

Chapter V: Access to Family Life and Family Reunification - **Terre des Hommes Foundation**

Chapter VI: Labor Rights of Migrant Children - **Volontarius**

Chapter VII: Access to Education - **Nidos**

Chapter VIII: Access to Healthcare - **Volontarius**

Chapter IX: Access to Adequate Accommodation and Social Security – **Nidos and ARSIS**

Chapter X: Filing and Conducting Strategic Lawsuits Related to Violations of Rights – **ARSIS**

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Abbreviations

AMKA	Social Security Number (Greece)
Asylum Procedures Directive/APD	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 (recast)
BIC	Best interests of the child
CESCR	The Committee on Economic, Social and Cultural Rights
CJEU	Court of Justice of the European Union
CRC	United Nations Convention on the Rights of the Child
CFREU	Charter of Fundamental Rights of the European Union
COA	Central Agency for the Reception of Asylum Seekers (Dutch: Centraal Orgaan Asielzoekers)
Dublin Regulation	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 (recast)
DUO	Dutch Education Executive Agency (Dutch: Dienst Uitvoering Onderwijs)
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as European Convention on Human Rights)
ECtHR	European Court of Human Rights
ESC	European Social Charter
EU	European Union
Family Reunification Directive	COUNCIL DIRECTIVE 2003/86/EC of 22 September 2003 on the right to family reunification
GW	Behavioral sciences
ILO	International Labour Organization
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICM	Intercultural Mediation
ISK	International transition classes
IOM	International Organization for Migration
LOWAN	National Education Working Group for Immigrant Newcomers (Dutch: Landelijke Onderwijs Werkgroep Allochtone Nieuwkomers)
NERM	National Emergency Response Mechanism for UAMS in Grece
NGO(s)	Non-governmental organization(s)
OCW	The Ministry of Education, Culture, and Science (Dutch: Ministerie van Onderwijs, Cultuur en Wetenschap)

OHCHR	Office of the High Commissioner for Human Rights
PAAYPA	Temporary Insurance and Health Care Number for Foreigners (Greece)
SAR	State Agency for Refugees - Bulgaria
SIL	Supported independent living
UASC	Unaccompanied and separated children
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
Qualification Directive/QD	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 (recast)
Reception Conditions Directive/RCD	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 (recast)
Return Directiv	Directive 2008/115/EU on common standards and procedures in Member States for returning illegally staying third-country nationals

Introduction

Unaccompanied and separated children (UASC) represent one of the most vulnerable groups in society. These children, often fleeing conflict, persecution, or severe economic hardship, face numerous risks including exploitation, trafficking, and violence. Ensuring their protection and safeguarding their fundamental rights is not only a moral imperative but also a legal obligation under various international and European Union (EU) legal frameworks.

The EU has established comprehensive regulations and directives to uphold the rights of UASC, recognizing their specific needs and vulnerabilities. Key instruments include the EU Charter of Fundamental Rights, the Dublin Regulation, the Reception Conditions Directive, and the Asylum Procedures Directive. These frameworks emphasize the best interests of the child, ensuring access to education, healthcare, and legal assistance, while promoting family reunification and durable solutions.

This handbook is designed to serve as a practical guide for professionals working with UASC within the EU. Guided by a [Training needs analysis and good practices report on Safeguarding unaccompanied and separated refugee and migrant children's rights through the EU Charter of Fundamental Rights](https://farbg.eu/en/publications/training-needs-analysis-and-good-practices-report-on-safeguarding-unaccompanied-and-separated-refugee-and-migrant-childrens-rights-through-the-eu-charter-of-fundamental-rights)¹, developed under the SUN project, the Handbook aims to provide a thorough understanding of the legal frameworks, principles, and best practices for protecting the rights and well-being of UASC. The target audience includes:

- Social workers in the mainstream alternative care services and child protection officers
- Legal practitioners and advocates
- Young professionals and students
- Immigration and asylum authorities
- Non-governmental organizations (NGOs), civil society organizations and independent human rights bodies
- Educators/teachers, headmasters and healthcare providers

¹ The Training needs analysis can be found on this link: <https://farbg.eu/en/publications/training-needs-analysis-and-good-practices-report-safeguarding-unaccompanied-and-separated-refugee-and-migrant-childrens-rights-through-the-eu-charter-of-fundamental-rights>

- Foster families from the refugee and migrant communities and their associations
- Parents and family members
- Policymakers and government officials

By offering clear guidance and actionable insights, this handbook seeks to empower stakeholders to effectively address the challenges faced by UASC and ensure their rights are respected and upheld.

The handbook is organized into several key sections, each designed to provide comprehensive support to the target groups:

1. **Key definitions** of common terms used in the Handbook.
2. **Legal Frameworks and Standards:** An overview of the relevant international and EU laws, directives, and guidelines pertaining to the rights of UASC.
3. **Best Practices in Child Protection:** Practical examples and guiding principles on safeguarding, and multidisciplinary approaches to care.
4. **Case Studies and Examples:** Real-world examples illustrating successful interventions and initiatives and common challenges in the protection of UASC.
5. **Key points to remember** after each chapter.

Users are encouraged to navigate the handbook according to their specific needs and contexts. Each section is designed to stand alone, providing focused information that can be quickly referenced. Additionally, cross-references within the handbook will guide users to related topics and resources for a more holistic understanding of the issues.

By equipping professionals with the knowledge and tools necessary to protect unaccompanied and separated children, this handbook aims to contribute to a more just and humane treatment of these vulnerable individuals across the EU.

Definitions

Accommodation refers to the house of UASC; their private room and the common areas they can use including organized activities and support.

Child is a person below the age of 18 years.

Detention is deprivation of liberty or confinement in a closed place where a person is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities.

Family reunification means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry.

Irregular stay means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry or other conditions for entry, stay or residence in that Member State.

Reception has currently no real definition, but it goes further than simply providing housing. It also includes providing UASC information about their rights, the asylum procedure, freedom of movement and access to healthcare, education and work. According to the RCD, applicants for international protection (among which UASC) are also entitled to receive accommodation, food, clothes and a daily allowance.

Return is the process of a third-country national child going back, whether in voluntary compliance with an obligation to return, or enforced to: his or her country of origin; a country of transit; another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted.

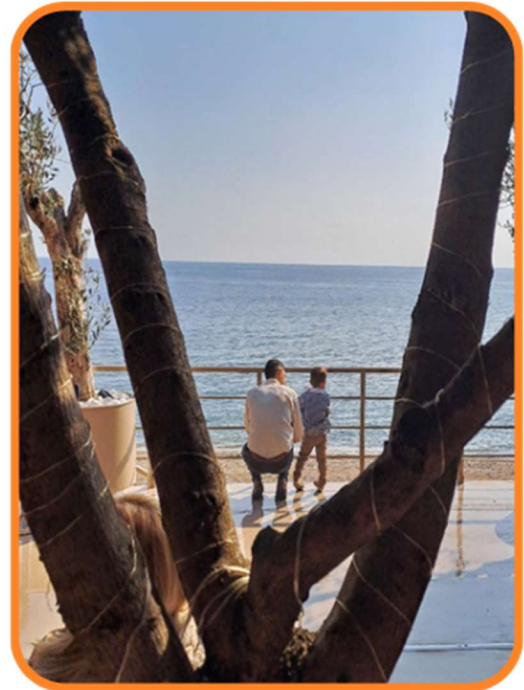
Return decision is an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.

Removal is the enforcement of the obligation to return, namely the physical transportation out of a Member State of the EU

Separated children are those separated from both parents or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

Sponsor is a beneficiary of international protection applying or whose family is applying for family reunification in order to join them in their country of asylum.

Chapter I: Basic principles in protecting the rights of UASC in the light of Article 24 of the CFREU



Unaccompanied and separated children (UASC) are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

This Chapter analyses the application of Article 24 of the Charter of Fundamental Rights of the European Union (CFREU). It included the main rights with reference to the secondary EU legislation, current decisions of the CJEU and an analysis of an ECHR decision.

Article 24 of the CFREU

Article 24 CFREU:

(1) Children have the right to the protection and care necessary to ensure their well-being. They can freely express their opinion. This is taken into account in the issues that concern them, depending on their age and degree of maturity.

(2) In all actions related to children, regardless of whether they are carried out by public authorities or private institutions, the best interest of the child must be considered paramount.

(3) Every child has the right to regularly maintain personal relationships and direct contacts with both parents, except in the case where they are contrary to his/her interest.

The CFREU protects the fundamental rights of citizens in the European Union (EU). It protects and promotes people's rights and freedoms and aims to ensure legal security in the EU. As a legal instrument, the CFREU is applied in correlation with both national and international human rights protection systems.

For the protection of children, it is necessary to implement the Charter, the international human rights laws and the EU legislation. As a general rule, Article 24 of the Charter regulates the rights of the child and sets out the primary principle of the best interests of the child. It is based on the Convention on the Rights of the Child (CRC) thus the guarantees envisaged in CRC will also be reviewed within this Handbook.²

Without any exception, all rights, guarantees and principles mentioned in Article 24 of the CFREU also apply to accompanied or unaccompanied migrant children and to all entry and stay requirements provided for in the EU asylum acquis.

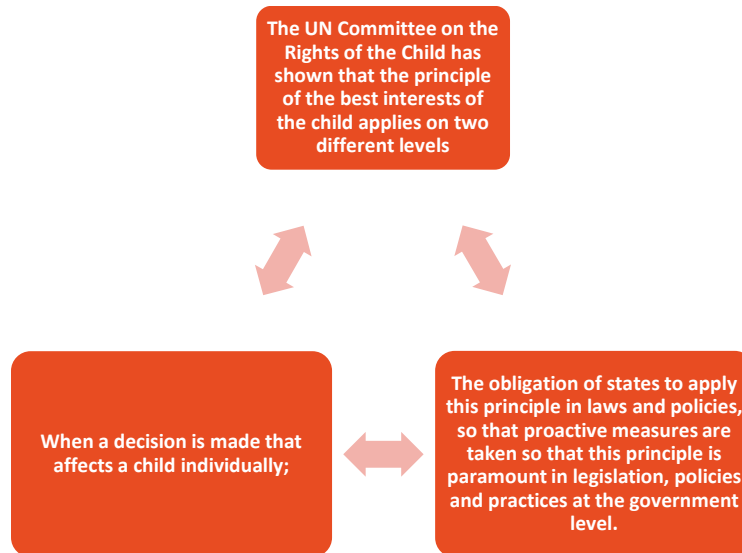
UASC are included in the category of vulnerable people due to their age, distance from home and separation from their parents. Therefore, they need specific safeguards to protect their rights and meet their particular needs. We can extract the following rights and principles that are applicable for UASC from Article 24 of the CFREU:

1. The principle of the best interest of the child

The principle of the best interest of the child will prevail in all actions and decisions concerning children, undertaken by public authorities and authorized private bodies, as well as in cases settled by the courts.

² FRA, *EU Charter of Fundamental Rights. Title III Equality*, <https://fra.europa.eu/en/eu-charter/article/24-rights-child#:~:text=Children%20shall%20be%20guaranteed%20special,shall%20be%20regulated%20by%20law.>

Article 3 of the CRC shows that "*in all actions concerning children, the best interest of the child must be taken into account*". The principle of the best interest of the child is also regulated in the EU's secondary legislation on migration and detention. The Directive on the reception conditions and the Return Directive state that the best interest of the child must be a primary element.



CRC General Comment No. 14 outlines the general components involved in conducting an assessment of a child's best interests:

- ✓ Care, protection and safety of the child
- ✓ Situation of vulnerability
- ✓ Child's views
- ✓ Child's identity
- ✓ Right to health
- ✓ Right to education
- ✓ Family environment and relations ³

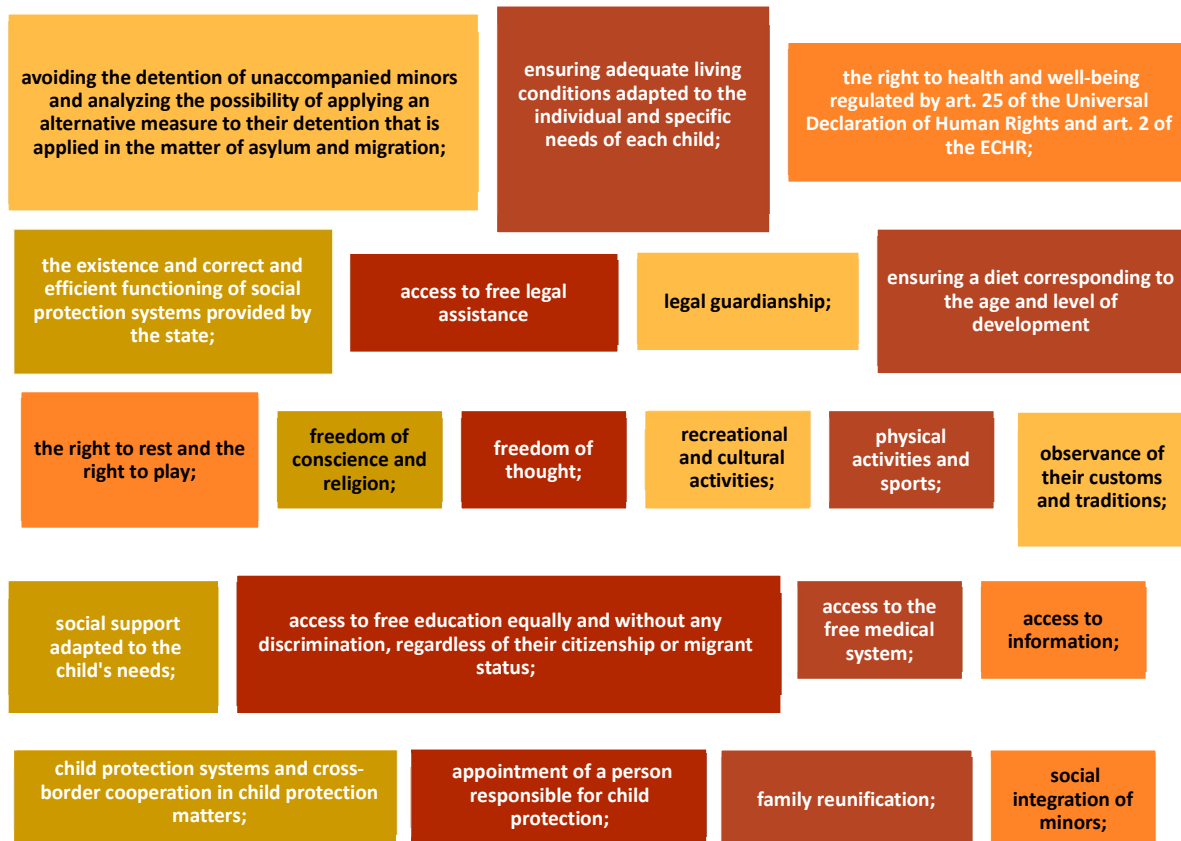
States have the obligation to ensure the protection of the child and to observe their rights. The superior principle of the best interest of the child must prevail in every procedure, including in the age assessment procedure. Given that the age of the child is important element in order to apply the applicable safeguards and principles listed in this Handbook, it is crucial that children are subjected to

³ *ibid*

appropriate age examination procedures when there is doubt about their age. In this sense, **the age examination procedure must be carried out with full respect for the child's dignity**. Article 25 (5) of the Asylum Procedures Directive allows member states of the EU to resort to medical examinations to establish the age of UASC, but, with full respect for individual dignity, to proceed with examinations that are as minimally invasive as possible and carried out by professionals. A violation of this provision could lead to the violation of best interests principle and the child's right to preserve their identity in accordance with Article 8 of the CRC.

2. The right to the protection and care necessary to ensure UASC's well-being

The states, through the authorities, must ensure that the children's well-being is ensured. Well-being is a fundamental right of the child. The CRC establishes in Article 17 the fact that states must protect the "*social, spiritual and moral well-being and physical and moral health*" of all children on their territory. Broadly speaking, we must ensure that the following are observed, including:



Observing these rights and guaranteeing access to them will lead to ensuring that the child's social, spiritual and moral well-being and physical health are ensured.

The well-being of the child depends on the way in which the protection and care of the child is carried out and implemented. The child must have access to all these rights throughout their stay on the territory of a state, regardless of whether they have the status of an asylum seeker, are a beneficiary of a form of protection, with another form of stay on the territory of the state or even without a legal basis to stay. Thus, **UASC must benefit from protection and care from the moment they enter the country.**

UASC need special protection adapted to their specific needs, including avoid irregular stay on the territory of a state, irregular migration, and to avoid the risk of falling victim to migrant and human trafficking. This means that the state must regulate the stay on their territory of the UASC whose asylum request was rejected so that they can benefit from access to all the rights mentioned above.

All states must give priority to the best interests of the child and provide appropriate care for their specific needs, including alternatives to detention, considering their vulnerability, and the traumatized effects that occur as a result of the detention of a migrant child (*See Chapter III*).

3. The right to express views freely and to have these views taken into account in matters that concern migrant children according to their age and maturity

Specifically, for UASC, the observance of this right is important in order to identify the primary, specific and urgent needs, at the time of entering the territory of the host state and throughout their stay on its territory. Therefore, in all the decisions to be taken regarding an UASC, their opinions in relation to age and maturity must be considered by obeying the best interests of the child.

The state authorities must ensure that the child's opinions are untainted, unaltered, influenced by other external factors and must be analysed in relation to age and maturity.

The child's opinion must also be taken into account in the asylum procedure, to evaluate the interview, to grant a form of protection; in the cases of family reunification procedures; and in return procedures.

In order to exercise this right, states must guarantee that children have **access to an interpreter** and that are provided with **age-appropriate information about their rights and procedures**.

4. The right to regularly maintain a personal relationship and direct contact with their parents

Every child has the right to family life and to maintain a relationship and contact with their parents, unless this is contrary to their best interests. For UASC to be able to exercise this right it is essential for them to first identify the respective family members.

In order to respect this right of UASC, states must proceed to find and reunify the family quickly.

In this sense, for example, when starting the asylum procedure, the family members of the child must be identified in order to achieve later family reunification, if necessary. Additionally, **asylum applications submitted by UASC should be analysed with priority and urgently**.

Article 9 of the CRC guarantees the observance of the rights of children who have been separated from both parents to maintain direct contact with both, if this is in the best interest of the child.

The provisions of Article 24 (3) of the CFREU and its relation to the right to family life in accordance with Article 7 of the CFREU will be analysed in detail in Chapter V of the Handbook.

Applicable secondary EU legislation



The principles outlined are incorporated into various EU laws and international conventions, emphasizing the best interest of the child in matters concerning children. Key regulations include:

- 1. EU Regulation 604/2013 (the so-called Dublin Regulation)** prioritizes the child's best interest in social development, well-being, safety, and security, especially for asylum seeking unaccompanied children within return procedures to another competent member state.⁴ (Read more in Chapter IV)
- 2. Directive 2013/32/EU of the European Parliament and of the Council (the so-called Asylum Procedure Directive)** on common procedures for granting and withdrawing international protection shows that member states must take into account the best interests of the child first and foremost when implementing this directive. (read more in *Chapter II Right to Asylum and Procedural Guarantees for UASC*)
- 3. Directive 2013/33/EU (Reception Conditions Directive)** ensures an adequate standard of living for asylum seeking children, considering their special situations ⁵ (read more in *Chapter IX Access to Adequate Accommodation and Social Security*). It also regulates the cases of detention of children and their placement in appropriate facilities ⁶ (read more in *Chapter III Migrant Children in detention and Right to Liberty*).
- 4. The Return Directive 2008/115/EC** emphasizes the child's best interest before issuing return decisions and putting them in public custody.⁷ (Read more in *Chapter IV EU Charter and Secondary EU Law Rights Linked to Return Procedures*)
- 5. According to Regulation (EU) 2016/399** regarding the Schengen Borders Code, in the case of children traveling unaccompanied, the border police must ensure, through a thorough check of travel documents and other documents, that the minors do not leave the territory against the will of the person vested with parental authority over them.
- 6. Various other directives** that address international protection ⁸ on preventing and combating human trafficking and protecting its victims⁹,

⁴ Paragraph 13 of the Preamble of the EU Regulation 604/2013

⁵ Article 23 of Directive 2013/33/EU

⁶ Ibid, Article 11 (2)

⁷ Article 10 and Article 17(5) Return Directive 2008/115/EC.

⁸ Directive 2011/95/EU of the European Parliament and of the Council of December 13, 2011

⁹ Directive 2011/36/EU of the European Parliament and of the Council of April 5, 2011

family reunification¹⁰ (read more in *Chapter V Access to Family Life and Family Reunification*)

7. **The European Convention on Human Rights** prohibits discrimination and inhuman treatment, ensuring protection without distinction.¹¹
8. **The UN Convention on the Rights of the Child (CRC)** contains provisions that regulate children's rights and mandates special protection and assistance for children deprived of their family environment, ensuring their best interests in all decisions including in the field of migration and asylum.¹²
9. **The International Covenant on Civil and Political Rights (ICCPR)** provides that every child, has the right to protection measures and must be registered immediately after birth and have a name. It also ensures the right of every child to acquire a citizenship.¹³

Practice of the CJEU and the ECtHR

The CJEU ensures that EU law is interpreted and applied in the same way in all EU countries and guarantees that EU countries and institutions obey European law. In the field of migration and asylum with reference to UASC, the CJEU issued a series of relevant decisions. For example, with regards to family reunification:

In case *C-550/16*¹⁴ the CJEU concludes that a third country national or stateless person who is below the age of 18 at the time of their entry into the territory of a Member State and of the introduction of their asylum application in that State, but who, in the course of the asylum procedure, attains the age of majority and is thereafter granted refugee status must be regarded as a 'minor' for the purposes of the family reunification procedure.

In relation to practice of the European Court of Human Rights (ECtHR):

¹⁰ Council Directive 2003/86/EC of September 22, 2003

¹¹ Article 3 and 14 of the ECHR

¹² See for example Article 3, 20, 22 of the CRC

¹³ See Article 24 ICCPR

¹⁴ Judgement of 12 April 2018 in case *C550/16, A and S v Staatssecretaris van Veiligheid en Justitie OJ C 38, 6.2.2017.*

In the case *Darboe and Camara v. Italy*¹⁵ ECtHR established that **placement of a child in adult reception centre in inadequate conditions for more than four months and subjected to age-assessment procedure breaches the right to private life laid down in Article 8 of the ECHR**. The case concerns a Guinean national, who arrived in Italy and sought asylum claiming to be an UASC.

Upon the applicant's arrival, the adult reception centre had been overcrowded, with insufficient number of staff and difficulties in accessing medical care. In addition, there were a number of circumstances in themselves problematic with regard to the applicant's vulnerability: despite having declared himself to be a minor, the applicant had been housed in an adult reception centre; once there, he had been subject to an age-assessment procedure conducted in breach of Article 8; and he had then been considered to be an adult and kept there for more than four months. The Court was sensitive to the fact that the reception centre in question had been converted from a former military facility to deal with the massive phenomenon of migration. The number of unaccompanied minors arriving in Italy had dramatically increased during the period in which the facts of the case had taken place. However, the difficulties deriving from the increased inflow of migrant and asylum seekers in particular States from external EU borders did not exonerate member States of the Council of Europe from their obligations under Article 3, which was of an absolute character.

The Court considered that the age of a person was a means of personal identification and that the procedure to assess the age of an individual alleging to be a minor, including its procedural safeguards, was essential in order to guarantee all the rights deriving from a person's minor status. Thus, a holistic and multidisciplinary age-assessment procedure must be ensured. The Court also emphasised the importance of age-assessment procedures in the migration context. The applicability of domestic, European and other international legislation protecting children's rights started from the moment of identification as a child. Determining if an individual was a minor was thus the first step to recognising his or her rights and putting into place all necessary care arrangements. Indeed, if a minor was wrongly identified as an adult, serious measures in breach of his or her rights might be taken.

¹⁵Judgement of 21.07.2022 in the *Darboe and Camara v. Italy*, case No. 5797/17, <https://hudoc.echr.coe.int/eng?i=002-13747#%22itemid%22:%22002-13747%22>}}

Key points to remember from this chapter



- ◆ Without any exception, all rights, guarantees and principles mentioned in Article 24 of the CFREU also applies to accompanied or unaccompanied migrant children and to all entry and stay requirements provided for in the EU asylum acquis.

- ◆ The main principles and rights envisaged in Article 24 are:
 - The principle of the best interest of the child.
 - The right to the protection and care necessary to ensure UASC's well-being.
 - The right to express views freely and to have these views considered in matters that concern UASC according to their age and maturity.
 - The right of children to regularly maintain a personal relationship and direct contact with their parents.

- ◆ Considering that UASC are vulnerable persons, states have the obligation to identify and satisfy any special need that a minor may have from the moment he/she enters the country.

- ◆ States must guarantee that children have access to an interpreter and that are provided with age-appropriate information about their rights and procedures.

- ◆ The state authorities must ensure that the child's opinions are untainted, unaltered, influenced by other external factors and must be analysed in relation to age and maturity.

Chapter II: Right to Asylum and Procedural Guarantees for UASC



In the following Chapter the legal framework on the right to asylum of UASC and on all the procedural guarantees that accompany their right to apply for asylum are examined.

Examination of Article 18 of the CFREU pertaining to the right to asylum

Applying for asylum is a fundamental right of every child and its exercise is not subject to a prior assessment on the side of the authorities. The right to asylum is regulated in Article 18 of the CFREU:

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the EU

This means that all member states of the EU must respect the right of persons to seek asylum and must do so in accordance with the relevant treaties and legislation of the EU.

Article 18 also guarantees that the right to asylum shall be governed by the principles and rules laid down in the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), as well as by the CFREU. This implies that decisions on asylum applications must be taken according to the principles of justice, fairness and respect for human rights.

The CFREU goes further and in Article 19 states that "*no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or inhuman or degrading treatment or punishment.*" This means that EU member states cannot deport a person to a country where he or she would face inhuman or degrading treatment.

In summary, Article 18 of the CFREU guarantees the right to asylum within the EU and establishes principles to protect persons seeking refuge from persecution or inhumane treatment in other countries.

Directive 2011/95, known as the Asylum Qualification Directive, in paragraph 16 of its preamble also refers to Article 18 of the CFREU:

This Directive respects the fundamental rights and observes the principles recognized in particular by the CFREU. In particular, this Directive seeks to ensure full respect for the human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of the said Charter, and should therefore be implemented accordingly.

Procedural guarantees for UASC seeking asylum

Procedural guarantees are specific support measures implemented in order to create the precise conditions for persons with special needs to have effective access to procedures and to present the necessary elements to substantiate their claim for international protection. They enable applicants with special needs to exercise their rights and fulfil their obligations.¹⁶

The legal framework requires that various safeguards are put in place to ensure that the best interests of the child are given due weight as a primary

¹⁶ EASO (now EUAA), *Practical Guide on the Best Interests of the Child in Asylum Procedures*, 2019, p.12

consideration. Many of these safeguards are generally applicable to all asylum-seeking children. What is important is how these safeguards are implemented in practice to secure the best interests of the child, hereafter referred to as BIC. For example, **access to a guardian** is a general guarantee for all asylum-seeking UASC. At the same time, the involvement of the guardian in the BIC process or the inclusion of an assessment by the guardian are part of the safeguards ensuring that the BIC is given primary consideration.¹⁷

In giving primary consideration to the best interests of the child, responsible officials are obliged to ensure on an ongoing basis, at all times, that the necessary procedural safeguards are in place and the rights of each child are protected.¹⁸ Obviously, in the case of an application for international protection of a child, several actors from different authorities are involved. All of them are responsible, each in their area of competence, for ensuring that the BIC is given primary consideration. EUAA has developed a checklist of whether the safeguards for the best interests of the child are in place and what the responsible officials should do to establish these safeguards. This checklist should be used at an early stage of the asylum procedure.¹⁹

UNHCR, in their guidelines on best interests' procedure²⁰ emphasise that the procedural safeguards ensure that decisions affecting children and adolescents are made by persons qualified to do so, maintaining confidentiality, promoting the rights of children and adolescents, and considering their immediate and long-term well-being.²¹

The main procedural safeguards are ²²:

1) The application for international protection is assessed in line with BIC²³. Authorities need to take into account the impact that age and potentially trauma and/ or psychological conditions have on the memory and capacity to give complete and coherent information and thus on the

¹⁷ Ibid, p. 19

¹⁸ Ibid p. 19

¹⁹ Ibid p. 19; EASO. *Practical guide on the best interests of the child in asylum procedures*, 2019, https://euaa.europa.eu/sites/default/files/publications/Practical_Guide_on_the_Best_Interests_of_the_Child_EN.pdf, pp.27-29.

²⁰ UN High Commissioner for Refugees (UNHCR), *2021 UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child*, May 2021, <https://www.refworld.org/policy/opguidance/unhcr/2021/en/122648>

²¹ Ibid, p.43

²² Ibid, *The basis for the safeguards presented in this chapter are pp.43-44*

²³ Para. 33 of the preamble and Article 25(6) of the APD (recast)

In practice...

Nidos, in the **Netherlands**, monitors the asylum procedure and informs the children on their procedure. The lawyers are always available for further questions, however, it is noted that frequently UASC in the Netherlands do not read the information brochures, provided by the Immigration and Naturalization Service (IND), because they find the information in them too complicated.

In **Spain**, the Child Protection Agency is responsible for informing the UASC on their rights and according to their age and development, they can have a direct impact on them.

Likewise, in **Italy**, the public or private entities are responsible for providing UASC with all the information and assistance they need. Moreover, the procedure of appointing a guardian in Italy is fast and the minors are entitled to receive free legal assistance for as long as the procedure for examining the asylum application lasts. Free legal assistance in Italy is provided by the Ministry of the Interior, through the State Attorney.

credibility assessment during the examination. In the examination of the protection needs of an UASC, it may be necessary to give more weight to certain objective factors when examining the well-founded fear of persecution based and/or the real risk of serious harm. The benefit of doubt should be applied in the examination of the international protection needs of UASC.²⁴

2) Ensuring that the child's right to be heard and express his or her own views and documenting them clearly

is observed allowing them to participate in a safe and meaningful way in all proceedings. A child's perception of his/her experience is often essential for the identification of his/her individual protection requirements, and, in many cases, the child will be the only source of this information. To ensure this right special safe and child-appropriate procedures and environments need to be developed and integrated to gain the child's trust. As mentioned in Chapter I, to exercise this right, children need to be provided with all necessary information about their options and the possible consequences in a language and manner they understand. This includes information about their right to privacy and confidentiality enabling them to express

²⁴ EASO. *Practical guide on the best interests of the child in asylum procedures*, 2019, https://euaa.europa.eu/sites/default/files/publications/Practical_Guide_on_the_Best_Interests_of_the_Child_EN.pdf, pp. 25 and 28

their views without coercion, constraint or fear of retribution.²⁵

- 3) Involvement of personnel with relevant expertise in child protection** and working with children. Having a multidisciplinary team of professionals from the social service workforce (e.g., child protection, refugee protection, social work, psychologists, etc.) ensures that recommendations consider a wide range of factors relevant to the case and are objective.
- 4) Priority treatment:** Priority processing means reduced waiting periods at each stage of the asylum procedure, including as regards the issuance of a decision on the claim. Delays or lengthy decision-making procedures can have adverse effects on children, especially because their perception of time is different from that of adults. Therefore, decisions regarding children should be prioritized and carried out in the shortest possible time, while respecting the child's need for sufficient time to feel confident and without compromising other aspects of the procedure (e.g., sufficient time for a comprehensive assessment; to build trusting relationships with their guardian and other professional staff and to feel safe and secure).²⁶
- 5) Exemption from border/ accelerated/fast-track procedures.** The child should be exempted from border, accelerated and fast-track procedures when the adequate support required by children cannot be secured in the context of such procedures.²⁷ A rest and recovery period should be granted when the needs of the child so require. EU states should further have mechanisms in place to respond to emergency situations that may require the transfer of a child/children to a safer environment.²⁸
- 6) Written and reasoned decision and recommendations.** In addition to describing the circumstances and facts, it is also necessary to document the elements and factors considered, indicating the weight of each in the decision-making process, as well as their rationale. If the decision is not in

²⁵UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <https://www.refworld.org/policy/legalguidance/unhcr/2009/en/71246>, para. 70

²⁶Ibid, para. 66

²⁷ See Article 24(3) Asylum Procedure Directive (recast)

²⁸ EASO (EUAA). *Practical guide on the best interests of the child in asylum procedures*, 2019, https://euaa.europa.eu/sites/default/files/publications/Practical_Guide_on_the_Best_Interests_of_the_Child_EN.pdf, p. 21

line with the child's or adolescent's views, it should be clearly explained and documented why.

- 7) **Child-friendly approach in conveying information** in an age-appropriate manner and in a language children understand. Interviews should be child friendly. Interpreters involved in interviews with children should also be trained to communicate with them.
- 8) **Review of decisions and reopening cases** when there are changes in circumstances based on new facts, evidence, or other considerations that could affect the initial decision. A case may also be reviewed at the request of the child's parent or legal guardian (or, if applicable, by the children themselves). Requests for review made by children accompanied by their parents or legal guardians should also receive due consideration.
- 9) **Legal representative, guardian or support person** for children who are not under the care of their parent or legal guardian must be appointed free of charge²⁹ as soon as possible. The guardian should possess a number of qualities, i.e. expertise with respect to young people, and sufficient capacity along with expertise in child-specific protection needs. It is important that the child have support throughout the asylum procedure, from the appointed guardian/representative as well as access to legal assistance and counselling. It is key to ensure the continuity of the designation of guardians/representatives and set a maximum number of children that they can represent at one time.³⁰
- 10) **Access to legal advice and counselling.** It is good practice to ensure that the child has access to legal aid services free of charge at all stages of the asylum procedure.³¹

²⁹ UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <https://www.refworld.org/policy/legalguidance/unhcr/2009/en/71246>, para 69

³⁰ EASO. *Practical guide on the best interests of the child in asylum procedures*, 2019, https://euaa.europa.eu/sites/default/files/publications/Practical_Guide_on_the_Best_Interests_of_the_Child_EN.pdf, p. 21

³¹ Article 19 and 25(4) APD

11) Respecting family unity. During the asylum procedures, it should be ensured that the concept of family unity is respected, unless concerns for the child's well-being or safety would indicate otherwise.³² (See Chapter V)

12) Avoiding conflict of interest, for example, in cases involving friends or family members. Decisions should aim to balance competing rights in order to identify a solution that ensures the exercise of all rights of children.

In view of the examination of Article 18 and all the procedural guarantees afforded to UASC, it is important to bear in mind several considerations contained in the *UNHCR Guidelines on Asylum Claims of Children*³³. All UASC have unique experiences. The respective decision-making authorities should take into consideration the existing child-specific forms of persecution (e.g. under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital mutilation³⁴), the age of the child, knowledge and/or memory of conditions in the country of origin, vulnerability, their level of maturity and development and their dependency on adults. Children may not be able to articulate their claims to asylum in the same way as adults and, therefore, may require special assistance to do so. They may be too young or immature to be able to differentiate the imagined from reality, to evaluate what information is important or to interpret what they have witnessed or experienced in a manner that is easily understandable to an adult. Thus, what might constitute a lie in the case of an adult might not necessarily be a lie in the case of a child. It is, therefore, essential that examiners have the necessary training and skills to be able to evaluate accurately the reliability and significance of the child's account. This may require involving experts in interviewing children outside a formal setting or observing children and communicating with them in an environment where they feel safe, for example, in a reception centre. It can also include using different non-

³² EASO. *Practical guide on the best interests of the child in asylum procedures*, 2019, https://euaa.europa.eu/sites/default/files/publications/Practical_Guide_on_the_Best_Interests_of_the_Child_EN.pdf, p. 24

³³ UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <https://www.refworld.org/policy/legalguidance/unhcr/2009/en/71246>

³⁴ UN Committee on the Rights of the Child, *General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, CRC/GC/2005/6, Sep. 2005 (hereafter "CRC, General Comment No. 6"), <http://www.unhcr.org/refworld/docid/42dd174b4.html>, para. 74.

verbal communication methods such as playing, drawing, writing, role-playing, story-telling and singing ³⁵

Adopting a child-sensitive approach within the asylum procedure, of course, does not mean, that child asylum-seekers are automatically entitled to international protection. A well-founded fear of persecution or forms serious harm still need to be established.³⁶

With respect to all the information provided, it should be kept in mind that, shortly, the legislation on procedures may be amended by the new EU Migration and Asylum Pact, which is expected to contain provisions relevant to the protection of the rights of UASC.

Good practices

Multidisciplinary Team in France

1

France has implemented multidisciplinary teams in certain regions to address the needs of asylum seeking UASC. These teams are composed of social workers, psychologists, lawyers and other professionals who work together to provide comprehensive support to UASC. They provide legal advice, medical care, psychosocial assistance and guidance on the asylum process, thus ensuring that children receive the support they need to navigate the asylum system effectively.

Specialized Training in Greece

2

In Greece, specialized training programs have been conducted for professionals working with migrant and asylum-seeking children, including UASC. These programs provide training on topics such as child trauma, children's rights, asylum procedures and the identification of specific needs of children. This training helps improve the ability of professionals to understand and address the

³⁵ UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <https://www.refworld.org/policy/legalguidance/unhcr/2009/en/71246>, para. 2, 4, 71, 72

³⁶ *Ibid*, para. 4

unique needs of UASC, thus ensuring more effective protection of their rights during the asylum process.

3

Translation and Interpretation Services in Austria

In Austria, specialized translation and interpretation services have been established for migrant and asylum-seeking children, including UASC. These services ensure that children have access to clear and understandable information about the asylum process in their mother tongue, enabling them to participate more effectively in the process and exercise their rights. In addition, these services help ensure effective communication between the children and the authorities, which is essential to ensure a fair and equitable process.

4

Legal Guardianship System in Italy

Italy has implemented a legal guardianship system for UASC seeking asylum. This system provides children with a legal guardian who advises and represents them in all aspects of their asylum application. These guardians are trained to work with children and are committed to the best interests of the child, which has significantly improved the quality and fairness of the asylum process for UASC in the country.

5

Specialized Counselling Program in Sweden

Sweden has developed a specialized counselling program for UASC seeking asylum. This program provides children with access to counsellors trained in childcare, migration and asylum issues. These counsellors provide psychosocial support, clear and understandable information, and legal assistance throughout the asylum application process, which has improved the children's ability to understand and participate in the process significantly.

6

Protection and Prevention of Human Trafficking in Spain

Spain has implemented measures to protect UASC from human trafficking and exploitation. This includes early identification of potential victims, provision of adequate support and protection, and

collaboration with other countries to combat transnational human trafficking.

With a gender perspective, we can highlight the following examples:

Gender-based violence

In 2020, some EU+ countries implemented new measures to better manage applicants who have suffered sexual or gender-based violence. In Slovenia, the Ministry of the Interior, the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the police and the Ministry of Justice – together with 11 NGOs and UNHCR – signed a new protocol on prevention and action in cases of sexual and gender-based violence in international protection proceedings. Addressing victims requires special mechanisms that complement the existing national system in order to provide adequate protection and assistance.³⁷

Female genital mutilation/cutting (FGM/C)

In France, the National Court of Asylum (CNDA) ruled that Somali girls who have not been subjected to FGM/C – but ran the risk if returned – constitute a particular social group in need of protection. The court found that OPFRA³⁸ had only briefly heard a girl's father, not the mother, even though she could testify that the practice was undertaken in her family. The CNDA reiterated that FGM/C is almost universally practiced throughout Somalia without a significant decline in the practice, and girls at risk if returned therefore constitute a particular social group in need of protection from FGM/C.³⁹

³⁷ 2021 Annual Report on the Situation of Asylum in the European Union, published by the European Union Agency for Asylum (EUAA).

³⁸ The Office Français de Protection des Réfugiés et Apatrides (OFPRA) is a French government office responsible for processing applications for refugee or statelessness status.

³⁹ European Database of Asylum Law (EDAL), France – CNDA, 21 October 2017, Mme E., n° 16029780, <https://www.asylumlawdatabase.eu/en/case-law/france-%E2%80%93-cnda-21-october-2017-mme-e-n%C2%BA-16029780>

Key points to remember from this chapter



- ◆ Article 18 of the CFREU guarantees the right to asylum to refugees, including UASC within the EU and establishes principles to protect persons seeking refuge from persecution or inhumane treatment in other countries.
- ◆ Procedural safeguards ensure that decisions affecting children and adolescents are made by persons qualified to do so, maintaining confidentiality, promoting the rights of children and adolescents, and considering their immediate and long-term well-being.
- ◆ The main procedural safeguards are:
 - Ensuring the child's right to express his or her own views documenting them clearly allowing them to participate in a safe and meaningful way in all proceedings.
 - Involvement of personnel with relevant expertise in child protection and working with children.
 - Priority treatment of cases involving children, while respecting the child's need for sufficient time for a comprehensive assessment
 - Issuing written and reasoned decision and recommendations.
 - Applying a child-friendly approach in conveying information to children
 - Review of decisions when there are changes in circumstances.
 - Ensuring a legal representative, guardian or support person for children who are not under the care of their parent or legal guardian
 - Avoiding conflict of interest

Chapter III: Migrant Children in Detention and Right to Liberty



This Chapter focuses on the examination of the EU regulation covering detention of migrant children and the available alternatives to detention and their successful implementations in EU countries.

WHY IS THE CHARTER IMPORTANT?⁴⁰

National provisions of EU Member States regulating the right to liberty must be compatible with the CFREU to fall within the scope of article 6 of the Charter. National authorities must ensure that those national provisions are interpreted and applied in conformity with the Charter.

Judges can interpret national law in the light of the Charter, or they can disapply the national law that is not in compliance with the Charter.

Relevant EU law provision can have direct effect, and national courts can disapply national provision, without requesting or waiting for the conflicting national provision to be fixed by legislative or constitutional means.

⁴⁰ Article 51(1) CFREU; European University Institute Center for Judicial Cooperation, *E-Booklet on the Use of the Charter of Fundamental Rights of the EU (2019)*, https://cjc.eui.eu/wp-content/uploads/2020/05/eNACT_ebooklet.pdf

Article 6 of the CFREU - the right to liberty and security

Everyone has the right to liberty and security of person, by virtue of the CFREU (Article 6) and European Convention on Human Rights (ECHR) (article 5). **No one shall be deprived of such liberty except on lawful exhaustive grounds and in line with procedures established by law.⁴¹**

Understanding the EU Charter often requires also studying the ECHR. When the Charter includes rights corresponding to rights guaranteed by the ECHR, the meaning and scope of those rights should be the same as those laid down by the Convention.⁴² In this sense, Article 6 of the Charter and Article 5 of the ECHR have the same meaning and scope.⁴³ In the context of migration, among the conditions permitting deprivation of liberty, subparagraph (f) of Article 5(1) of the ECHR, for example, pertains to lawful arrest or detention aimed at preventing unauthorised entry into a country or for individuals subject to deportation or extradition proceedings. The Charter's right to freedom and integrity encompasses also the procedural guarantees set out in Article 5 of the ECHR, including:

- ◆ The **right to be promptly informed**, in a language understood by the individual, of the reasons for detention or arrest.
- ◆ The **right to have detention or arrest reviewed by a judge**.
- ◆ The **right to receive compensation** in cases of unlawful arrest or detention.

Within their national legislation all EU Member States envisage the right to freedom.⁴⁴ The Charter adds little to existing human rights obligations when it enshrines the right to freedom. The right to freedom and integrity should be understood in a narrow sense - it protects against arrest and other forms of compulsory detention. Nevertheless, it is important that, together with the Charter, EU law provides for a written prohibition on unjustified restrictions on the freedom

⁴¹ International Commission of Jurists, *Care of Migrant Children: The Need for Alternatives to Detention Training Materials on Alternatives to Detention for Migrant Children* (2022), https://www.icj.org/wp-content/uploads/2022/04/ENGL-CADRE_Module-I.pdf

⁴² Article 52(3) CFREU

⁴³ Official Journal of the European Union C 303/17, 2007, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2007:303:FULL&from=EN>

⁴⁴ Gabriel Toggenburg, *The 6th of all EU-r rights: Liberty, security and how the Charter contributes*, 2020, <https://www.eurac.edu/en/blogs/eureka/the-6th-of-all-eu-r-rights-liberty-security-and-how-the-charter-contributes>

and security of persons covered by EU law. As EU law covers the fields of asylum and migration, this prohibition also protects migrants and refugees who are on EU territory. Moreover, it extends to the protection of the rights of vulnerable groups, such as migrant children, who may be deprived of their liberty and must be provided with adequate legal protection and procedural guarantees.

Rights of migrant children in detention

Children, by reason of their age, are inherently in a vulnerable situation when it comes to deprivation of liberty. The rights of children who are forcibly displaced from their country might be significantly violated. Children may experience severe mistreatment at various stages of their migration journey, posing threats to their physical, moral, and psychological well-being in countries of origin, transit, and destination. In this context, it is paramount to examine the rights of the child in case of detention considering that young detainees, due to their vulnerability in the migration context, are likely to experience more intensely the negative consequences of detention than adults.⁴⁵

In practice...

Detention and protective custody are not allowed for unaccompanied asylum-seeking children in **Italy and Greece**. Although brief periods of detention may occur in Greece, they typically last only a few days and are primarily due to delays in entering the child protection system.

In **the Netherlands** UASC can only be detained in exceptional circumstances, such as previous disappearances, suspicion or conviction of a crime, or pending deportation to their home country. However, UASC are not routinely detained in practice.

In **Romania**, minors cannot be placed in public custody, unless they are accompanied by at least one parent or their legal representative. Additionally, UASC are exempt from border procedures in Romania, which could entail up to 20 days detention at border checkpoints

In **Bulgaria** detention of UASC for immigration purposes is prohibited. Accompanied children can be detained for up to three months along with their parents. There is no prohibition regarding the detention of accompanied or unaccompanied asylum-seeking children in Bulgaria, and the law does not specify a maximum detention period for them.

⁴⁵ Human Rights Committee, *General Comment 35, para. 18*; *A. v. Australia, HRC, Communication No. 560/1993, Views of 3 April 1997, UN Doc. CCPR/C/59/D/560/1993, paras. 9.3–9.4*; *Samba Jalloh v. Netherlands, HRC, Communication No. 794/1998, Views of 26 March 2002, UN Doc. CCPR/C/74/D/794/1998, para. 8.2*; *Nystrom v. Australia, HRC, Communication 1557/2007, Views of 18 July 2011, UN Doc. CCPR/C/102/D/1557/2007, paras. 7.2 and 7.3*; *Saadi v. United Kingdom, ECtHR, Application No. 13229/03, Judgment of 29 January 2008, para. 74*; *Baban v. Australia, HRC, Communication 1014/2001, Views of 18 September 2003, UN Doc. CCPR/C/78/D/1014/2001, para. 7.2*; *Bakhtiyari v. Australia, HRC, Communication 1069/2002, Views of 6 November 2003, UN Doc. CCPR/C/79/D/1069/2002, paras. 9.2–9.3*; *UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012), guideline 4.3 and annex A (describing alternatives to detention).*

Detention must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time.

When it comes to deprivation of liberty, in the context of migration and asylum, generally two types of detention can be outlined: 1) **immigration detention for the purposes of return** and/or to carry out the removal process and 2) **detention within the asylum procedure**. In any of these cases, the grounds for detention must clearly be laid down in national law.⁴⁶

Migrants may be detained only under clearly defined exceptional circumstances as a last resort measure, for the shortest period only where other less restrictive alternatives are not feasible following a thorough assessment of all relevant facts and circumstances in the individual case.⁴⁷

Such circumstances as defined in the EU Reception Directive are:

- (a) to determine or verify their identity or nationality;
- (b) to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
- (c) to decide, in the context of a procedure, on the applicant's right to enter the territory;
- (d) when protection of national security or public order so requires;
- (e) within the return procedure, to prepare the return and/or carry out the removal process.
- (f) while determining the Member State responsible for examining an application for international protection lodged in one of the Member States, to secure transfer procedures and there is significant risk of absconding, based on an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.⁴⁸

⁴⁶ Article 8(3) 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 (recast)

⁴⁷ Recital 15 Directive 2013/33/EU and Article 17 of the Directive 2008/115/EC; CJEU, *Hassen El Dridi case*, Case no. C-61/11, 28 April 2011, para. 39; CJEU, *Bashir Mohamed Ali Madi case*, Case no. C-146/14, 5 June 2014, para. 64; *Rahimi v. Greece*, ECtHR, Application No. 8687/08, Judgment of 5 April 2011, para. 109.

⁴⁸ Article 8(3) 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 (recast)

Detention can occur in various settings, such as land and sea borders, international transit zones at airports, islands, boats and closed refugee camps. Regardless of the designation of the detention location, the crucial considerations revolve around whether the person is effectively being deprived of liberty and whether this deprivation complies with international legal standards.⁴⁹

The applicable criteria and standards relating to the detention of adults apply with even greater force to children, who **ideally should not be detained at all**.⁵⁰ The CRC imposes specific international legal obligations concerning children and delineates several guiding principles regarding their protection:

THE BEST INTERESTS OF THE CHILD

The best interests of the child should be the primary consideration in all matters concerning children, including children seeking asylum and refugees (Article 3 in conjunction with Article 22, CRC).

NO DISCRIMINATION

There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or other status, or on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members.

RIGHT TO LIFE

Each child has a fundamental right to life, survival and development to the maximum extent possible (Article 6, CRC).

CHILD'S RIGHT TO PARTICIPATE IN ANY JUDICIAL OR ADMINISTRATIVE PROCEEDINGS

Children have the right to participate in any judicial or administrative proceedings related to them, either directly or through a representative or appropriate entity, as stipulated by the procedural rules of national legislation. (Article 12 of the CRC).

⁴⁹ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, <https://www.refworld.org/policy/legalguidance/unhcr/2012/en/87776>

⁵⁰ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, <https://www.refworld.org/policy/legalguidance/unhcr/2012/en/87776>

Children’s vulnerability takes precedence over their migrant status, and the primary principle guiding all actions concerning them should be **ensuring their best interests**. Member States must have the well-being of the child as a primary consideration and ensure a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.⁵¹

Children in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education (See Chapter VII on the right to education).⁵² The UN Committee on the Rights of the Child, the UN Special Rapporteur on the human rights of migrants and the Parliamentary Assembly of the Council of Europe all make it clear that immigration detention of migrant children is per se **not in their best interest** and that detention of vulnerable individuals, including UASC is prohibited in international law.

The duty to act in the best interests of the child requires, in the situation of UASC, a comprehensive **assessment of the identity of the child in a child friendly manner**, and in consideration of such factors as their age, nationality and cultural and other background.⁵³

If detention of UASC becomes necessary, they must be segregated from adults and, as far as possible, be provided with accommodation in institutions provided with **personnel and facilities which take into account the needs of persons of their age and maturity**.⁵⁴ This obligation is one that Member States cannot overlook when determining the best interests of the child.

When it comes to the **child's right to participate in judicial or administrative proceedings** the provision of Article 12 CRC extends to the **child's entitlement to receive information** concerning their detention, which should be communicated to them appropriately.

When a child is detained with their family, it is presumed that parents or adult family members will provide this information. While there are no specific

⁵¹ Article 23(1) Reception Directive

⁵² Article 17(3) of the Directive 2008/115/EC

⁵³ International Commission of Jurists, *Care of Migrant Children: The Need for Alternatives to Detention Training Materials on Alternatives to Detention for Migrant Children* (2022), https://www.icj.org/wp-content/uploads/2022/04/ENGL-CADRE_Module-1.pdf

⁵⁴ Article 17(4) of the Directive 2008/115/EC

regulations on how the child should be informed, it should be done in a suitable manner.

In cases involving UASC, the guardian/representative is responsible for conveying all necessary information regarding the child's legal status. The **prompt appointment of a competent guardian** for every UASC must be ensured, and detention procedures should proceed after the guardian's appointment. Furthermore, if a child is involved in administrative or asylum procedures, they should have a legal representative alongside their guardian, advocating for the child's rights and interests throughout formal procedures.

Where a child is held in detention they should have effective access to the necessary procedural guarantees, such as **judicial remedy before a national judicial authority**. Certain state authorities must adhere to the **child's right to be heard**, which mandates that a child cannot be detained without first being heard by a judge.⁵⁵

Alternatives to detention

In the case of children, states are obligated to carefully examine alternatives to detention. No child should be held in detention due to migration reasons, and instead, such detention should be substituted with suitable alternative care.⁵⁶ Detention of a minor can only be justified after all alternative measures to detention, not involving deprivation of liberty, have been duly considered. The aim is to preserve the physical and psychological integrity of the child, whose development undergoes structural changes. Any alternative measure to detention must respect the fundamental human rights of the applicants.⁵⁷

The term "alternatives to detention" is not a formal legal phrase but is employed in this handbook to describe any laws, policies, or practices permitting children to live within the community under certain conditions or limitations on their mobility.

⁵⁵ FRA, *European legal and policy framework on immigration detention of children*, Luxembourg: Publications Office of the EU, 2017, p. 64-65.

⁵⁶ PACE resolution 1810 (2011), 2011, *Unaccompanied children in Europe: issues of arrival, stay and return*.

⁵⁷ Recital 20 of the Reception Directive

It is worth highlighting that the practices of the ECtHR suggest that the Contracting Parties of the ECHR should provide alternatives to detention. Therefore, states are obligated to incorporate them into their legislation and should consider them in each individual's case. According to ECtHR jurisprudence, the principle of the best interest of the child entails the duty to deliberate on all alternatives to detention. If state authorities fail to adequately investigate the child's situation and ascertain whether detention is a last resort, they violate the child's right to liberty. Consequently, the ECtHR has determined that the failure of state authorities to verify the availability of alternative measures results in the unjustified detention of the child and constitutes a breach of their obligations under the Convention ⁵⁸.

The principle not to detain but to look for an alternative applies not only to unaccompanied and separated children, but also to accompanied migrant children. When children are accompanied, the need to keep the family together is not a valid reason to justify the deprivation of liberty of a child. When the child's best interests require keeping the family together, the imperative requirement not to deprive the child of liberty extends to the child's parents and requires the authorities to choose **non-custodial solutions** for the entire family.⁵⁹ The authorities have a duty to consider the children's best interests when assessing whether a measure is proportionate in achieving the aim pursued. The protection of the best interests of the child calls both for families to be kept together as far as possible, and alternatives to be considered so that detention of children is truly a measure of last resort.⁶⁰

Considering the various national contexts and the practice of finalizing or exhaustively listing alternative measures, there is no definitive approach. Different terms may be used to describe the same type of alternative in different contexts, and conversely, the same term may carry different meanings in varying circumstances. In practice, various types of alternatives are often used together rather than separately. In this context, it is extremely important to ensure that any measure or combination of measures serves as an alternative **to** detention, rather than its alternative form **of** detention. It is often practical and significant to use

⁵⁸ ECtHR, *Popov v. France*, No. 39472/07 and 39474/07, 19 January 2012, para. 119.

⁵⁹ Joint general comment No. 4 (2017) of the Committee on the Protection of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, *op. cit.*, para. 11

⁶⁰ CoE, *Legal and Practical aspects of effective alternatives to detention in the context of migration*, 7 December 2017, §69.

multiple types simultaneously and/or combine them depending on the opportunities, needs, and risks associated with each specific case.

Alternatives to detention are already in place for children and families in various European countries. While concerns about children absconding from asylum and other immigration procedures remain, these practices have clearly demonstrated how appropriate care, linked services and support can be implemented towards better protection for asylum-seeking, refugee and migrant children.⁶¹

UNHCR summarises what it considers to be the best practices for an adequate reception facility as follows:⁶²

- ◆ Instead of enforcing strict migration rules, in the cases of children, an ethic of care should be the guiding principle, including the decision on accommodation.
- ◆ Children should be integrated into the mainstream child protection system.
- ◆ Family based care arrangements should be prioritised.
- ◆ Institutional care should be used only in very limited circumstances.
- ◆ Every child's right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development should be respected when deciding on placement.
- ◆ Alternative care arrangements need to be identified which can cater for the child's physical and mental development while longer term solutions are being considered.
- ◆ Due regard must be paid to the desirability of continuity of a child's upbringing and to their ethnic, religious, cultural and linguistic background.

Good practices

Based on the above-mentioned criteria, in this section some good practices are listed to exhibit their protective and beneficial outcomes.

⁶¹IOM UNHCR UNICEF, *Safety and dignity for refugee and migrant children: Recommendations for alternatives to detention and appropriate care arrangements in Europe*, 2022.

⁶²UNHCR, *Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families*, 2015, p. 2.

Supported independent living

1 Supported independent living (SIL) entails providing assistance to young individuals in residing in their own residence, a group home, hostel, or similar living arrangement, with the objective of fostering independence. SIL typically accommodates 4-6 children in long-term housing until they reach adulthood and is primarily intended for older children who possess some degree of self-sufficiency. While social workers and support services are accessible, they do not offer continuous supervision, aiming instead to prepare older children for independent adulthood.

In France, several departmental councils collaborate with NGOs like France Terre D'Asile and Apprentis d'Auteuil to provide support for independent living arrangements for older children, including unaccompanied migrant, asylum-seeking, and refugee children. These children are accommodated in small groups and offered medical care, psychosocial support, legal assistance, education, and vocational training. Staff members are trained in social work and equipped to address the specific needs of refugee and migrant children. The objective of these services is to aid young individuals in achieving autonomy, including providing assistance after they reach 18 years of age.

In Greece, Supported Independent Living (SIL) apartments are available for children over the age of 16, with each apartment accommodating a maximum of four children. This initiative, introduced and tested by UNHCR and UNICEF in 2018, was expanded through collaboration with the Ministry of Labour, IOM, and NGOs, and officially established in 2019-2020 through Ministerial decisions. Currently, there are over 500 SIL placements in Greece, capable of hosting 23 percent of unaccompanied children in the country, given that most children arriving in Greece are over 14 years old.

The long-term accommodation facilities operated by ARSIS play a crucial role in the comprehensive care of UASCs. These facilities offer a stable and secure environment, promoting the ongoing well-being of UASCs and instilling a sense of stability. A key factor contributing to the effectiveness of these facilities is their consistency and safety, which provide UASCs with a dependable and protected setting. These facilities offer comprehensive care that follows a

holistic approach, addressing a wide range of needs. The continuity of care provided ensures a lasting positive impact on the lives of UASCs.

Foster and family-based care

2 Foster and family-based care involve placing asylum-seeking, refugee, and migrant children in the domestic setting of a family other than their own. These families are carefully selected, assessed, approved, and supervised to ensure they can provide appropriate care for the children.

In the Netherlands, approximately 30 percent of unaccompanied migrant, asylum-seeking, and refugee children are placed in family-based care, totalling 2132 by the end of 2022. Nidos, the organisation tasked with guardianship for UASCs, arranges these foster care placements for children under the age of 15, as well as for those over 15 who have specific needs. For children older than 15, who do not fit the foster care criteria, (semi) independent living facilities are arranged. A thorough matching process is conducted to identify the most suitable family to meet the child's needs. A specially designated department at Nidos oversees the recruitment of foster families, the matching process, and the monitoring and support of foster placements. Additionally, Nidos maintains temporary foster carers who reside near asylum application centers and are available to offer short-term care for children (approximately one week) while they await longer-term foster placements.⁶³

Supervision and case management as alternatives to detention

3 Child protection case management is the process of organising and executing efforts to address the specific needs of an individual child (and their family) in an appropriate, systematic, and timely manner, utilising

⁶³ IOM UNHCR UNICEF, *Safety and dignity for refugee and migrant children: Recommendations for alternatives to detention and appropriate care arrangements in Europe, 2022.*

direct support and referrals.

In **Italy** territorial social services operate at municipal or regional level and provide direct support and day-to-day assistance to unaccompanied minors. In addition to that the Institute of Voluntary Guardians is proven to be of significance to the protection of the rights of UASC under CFREU, as the voluntary guardians provide psychological, representative, administrative and other assistance. They cooperate with the competent authorities and organisations to protect the interests of the children. The list of guardians is provided by the Guarantor for Childhood and Adolescence, which is an independent authority in charge of monitoring and promoting the rights of minors in Italy, including unaccompanied migrant children. The authority plays a supervisory and oversight role on policies and practices related to unaccompanied minors.

The rights of unaccompanied foreign minors and the procedures that concern them are governed by specific regulations (the Zampa law) which has introduced important provisions on the age assessment of UASC. It lays down a multidisciplinary approach in the assessment procedures and the treatment of the child as a minor until the conclusion of the procedure. It provides that a social and medical age assessment procedure may be ordered by the judicial authority, when there are well-founded doubts about the age declared by a presumed unaccompanied minor and it is impossible to establish his or her age through documentary evidence. The child must be informed about the objectives, methods and consequences of the age assessment and must be treated as a minor until the conclusion of the procedure. According to the law, age assessment procedures must be carried out with a multidisciplinary approach, by professionals with appropriate expertise, involving a cultural mediator.⁶⁴

⁶⁴ SUN, *Training needs analysis and good practices report on Safeguarding unaccompanied and separated refugee and migrant children's rights through the EU Charter of Fundamental Rights*, 2024, <https://bit.ly/4ddrbkP>

In Ireland, unaccompanied children are directed to the Child and Family Agency (CFA), also known as Tusla, Social Work Team for Separated Children Seeking Asylum. A social worker conducts a child protection needs assessment. The findings of this assessment shape the child's personalized statutory care plan, which is managed and implemented by a social worker assigned to the child immediately after the intake assessment. Children aged 12 and above are placed in one of three residential intake units and stay there for a few weeks while the most suitable placement is determined. This could involve foster care or supported lodging. Close coordination exists between the Social Work Team and local teams to ensure a seamless transition from intake units to local placements. Residential centers for children are staffed by social workers around the clock and provide various health services, including general practitioners, therapists, and psychologists.⁶⁵

Key points to remember from this chapter

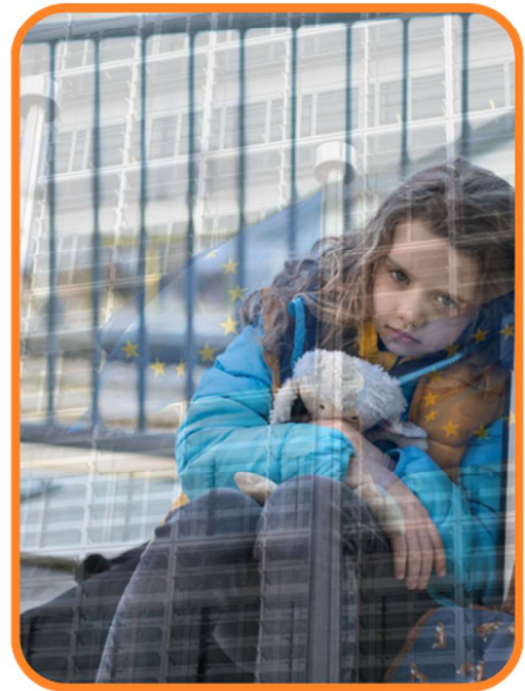


- ◆ The alignment between Article 6 of the EU Charter and Article 5 of the ECHR underlines the European Union's obligation to protect fundamental human rights, including the rights of persons detained. This obligation extends to the protection of the rights of vulnerable groups of the population, including children, who may be deprived of their liberty and must be provided with adequate legal protection and procedural guarantees.
- ◆ For children, their extreme vulnerability takes precedence over their migrant status, and the primary principle guiding all actions concerning them should be ensuring their best interests. Member States must have the well-being of the child as a primary consideration and ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.
- ◆ The main procedural rights of children include:

⁶⁵ IOM UNHCR UNICEF, *Safety and dignity for refugee and migrant children: Recommendations for alternatives to detention and appropriate care arrangements in Europe, 2022.*

- Right to a fair hearing and access to court
 - Appointment of a guardian
 - Right to a public hearing
 - Legal assistance and representation
 - Access to information
 - Right to privacy
 - Right to interpretation
 - Right to an effective remedy
- ◆ The detention of minors prior to return may only occur as a last resort and after considering all possible alternatives.
- ◆ Child immigration detention cannot be justified solely on the basis of a child being unaccompanied or separated. When children are accompanied, the need to keep the family together also is not a valid reason to justify a child's detention.
- ◆ Alternatives to detention are already in place for children and families in various European countries. While concerns about children absconding from asylum and other immigration procedures remain, these practices have clearly demonstrated how appropriate care and linked services and support can be implemented towards better protection for asylum-seeking, refugee and migrant children.

Chapter IV: EU Charter and Secondary EU Law Rights Linked to Return Procedures



This Chapter focuses on the EU Charter and secondary EU legislation concerning the rights of UASC in the context of return procedures. It will explore the legal framework aimed at safeguarding the specific needs and vulnerabilities of UASC during return processes, including provisions for their best interests. The Chapter will provide insights into the practical application of these rights and their importance in ensuring the well-being and protection of children.

EU Charter rights concerning return procedures of children

As stressed in previous chapters, children are considered "vulnerable individuals", and this statement applies also for return procedures. EU Member States must consider children's unique circumstances when applying EU legislation. Regulations concerning the return of children vary depending on factors such as their nationality, their parents' nationality, and the circumstances of their migration.⁶⁶

⁶⁶FRA, *Handbook on European law relating to the rights of the child*, 2022,
https://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-2022-handbook-child-rights_en.pdf

A guiding point when analysing EU legislation on return procedures is Article 24 CFREU. In any actions concerning the return of migrant or asylum-seeking children, regardless of whether they're initiated by public authorities or private entities, EU Member States and their immigration enforcement agencies, police, and other authorities responsible for return procedures are obliged to prioritise and assess the best interests of the child.

International law and UN organisations outline some of the specific criteria that authorities should take into account when evaluating the best interests of an unaccompanied child to establish a lasting solution, particularly regarding the issuance of a return decision.

CRC General Comment No. 6 outlines the elements pertaining to the return of UASC:

- ✓ Safety, security and other conditions awaiting child upon return.
- ✓ Availability of care.
- ✓ Child's views.
- ✓ Level of integration in host country.
- ✓ Child's rights to preserve their identity, including nationality, name and family relations.
- ✓ Desirability of continuity in child's upbringing and to their ethnic, religious, cultural and linguistic background.
- ✓ Availability of care by parents/family members, or advance secure and concrete arrangements for care and custodial responsibilities upon arrival in country of origin.⁶⁷

UNICEF has also formulated key principles to be fulfilled in any procedure relating to the return of UASC:

- ✓ A child-sensitive approach must be ensured in all policies and practices. UASC must be treated as children first and migrants second.
- ✓ The four guiding principles of the CRC should serve as the foundation for any procedure involving the return of UASC: non-discrimination; prioritizing the best interests of the child; ensuring the right to life, survival, and development; and promoting the right to participation.
- ✓ A gender-sensitive approach must be ensured in all policies and practices.

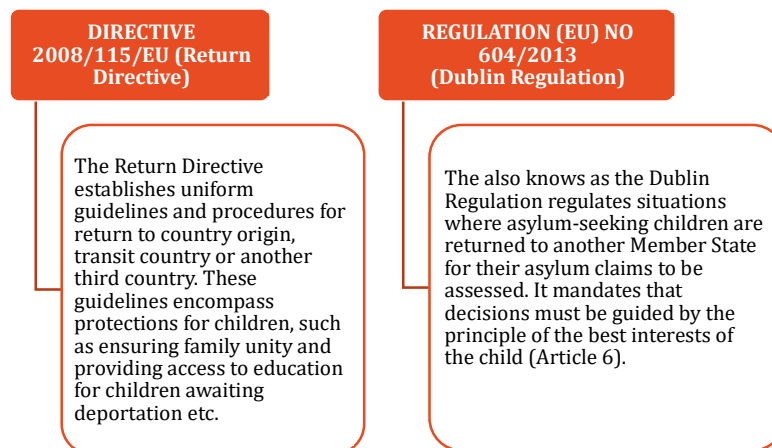
⁶⁷ *ibid*

- ✓ There must be adequate procedures for determining the BIC.
- ✓ Return must only be used as a protection measure, not a punitive measure.
- ✓ UASC must not be detained and accommodation for UASC must be child sensitive.
- ✓ The right to seek asylum (refugee status or other international protection categories) must be ensured.
- ✓ States must respect the principle of non-refoulement.
- ✓ Due process must be ensured in all procedures relating to the return of UASC.
- ✓ Durable solutions must be sought for UASC.
- ✓ Return mechanisms must be safe and child sensitive.⁶⁸

The requirements listed above necessitate the early involvement of child protection services, which should remain actively engaged throughout all stages of the return process.

Secondary EU law rights concerning return procedures of children

In the figure below you can see the main secondary EU law, regulating the procedure for the return of migrant children:



⁶⁸ UNICEF, *Children's rights in return policy and practice in Europe*, 2015, <https://childhub.org/sites/default/files/library/attachments/54e4854c4.pdf>

1 Return of migrant children to the country of origin, transit country or another third country

As mentioned above the Return Directive sets out common standards and procedures to be applied in Member States for returning irregularly staying third-country nationals including children, in accordance with fundamental rights as well as international law, including refugee protection and human rights obligations.⁶⁹ In line with Article 24 of the CFREU, the Return Directive specifically emphasize that **decisions regarding the return of unaccompanied minors should be guided by their best interests.**

To comply with these obligations authorities must, before deciding to issue a return decision in respect of an UASC, seek assistance by appropriate bodies, other than the authorities enforcing return, with due consideration being given to the best interests of the child.⁷⁰

In addition to that, prior to deporting an UASC, authorities must **ensure that the child will be reunited with a family member, an appointed guardian, or placed in suitable reception facilities in the country of return.**⁷¹ It is important to mention that the mere fact that orphanages exist in the country of return does not always mean that there is a sufficient or adequate reception arrangement. A sound methodology should be in place to assess if adequate living

In practice...

In **Italy** and **Spain**, the expulsion of UASC is prohibited if they would face a risk of persecution or serious harm in their home country.

As of 2023 in **Romania**, after approving the *National Mechanism for the identification and referral of victims of human trafficking*, no repatriation can be done without a prior assessment. What is more, if the family members of the child cannot be identified, or they are not accepted in the country of origin, the child is granted the right of permanent residence.

In **Italy** expulsions are allowed when there are serious reasons of public order or state security. The law also gives the possibility of hosting those who are between 16 and 18 years old in reception centres for adults in case there are no places in facilities for minors

In **Bulgaria, Greece, Italy, Romania, the Netherlands, and Spain**, the principle of non-refoulement and the best interests of the child are enforced either through national legislation or directly derived from the Return Directive and the practice of the CJEU.

⁶⁹ Article 1 of the Return Directive

⁷⁰ Article 5 and 10 of the Return Directive

⁷¹ Article 10(2) of the Return Directive

conditions for the child exist.⁷² Should adequate reception facilities be identified and the decision to return is deemed appropriate, it should be promptly implemented to prevent situations of legal uncertainty for the child.

The ultimate purpose of examining the child's best interests should be to ensure the full and effective enjoyment of all the rights recognized in the CRC, notably their safety, including **respect for the principle of non-refoulement, and the holistic development of the child**. This involves considering the various elements that are relevant for the child's best interests, and if necessary, balancing them against each other to find the appropriate outcome with regards to the purpose of the procedure. The procedure must also ensure appropriate procedural safeguards at all stages.⁷³



In the case of *T.Q. v Staatssecretaris van Justitie en Veiligheid*⁷⁴, the CJEU examined the situation of an unaccompanied minor from Guinea who entered the Netherlands at the age of 15 years and four months and was required to leave the country due to the absence of a residence permit. The CJEU ruled that regardless of the age of the unaccompanied minor, Member States must conduct an assessment of the child's best interests before making a decision on their return. Within this framework, Member States must ensure the availability of suitable reception facilities for the unaccompanied minor in the country of return. Furthermore, the CJEU specifies that if a Member State is satisfied with the existence of appropriate reception facilities and has already decided on the return of an unaccompanied minor, that Member State is prohibited by Article 8(1) of the Returns Directive from delaying the removal of the child until they reach the age of 18. The CJEU clarifies that in such circumstances, the child must be returned unless there are changes in their circumstances.

However, Member States retain the authority to opt out of applying the Return Directive to individuals denied entry at borders and those apprehended or

⁷² *European Network of Guardianship Institutions (ENGI), Care for unaccompanied minors, Minimum standards, risk factors and recommendations for practitioners ENGI – Guardianship in practice. Final report Utrecht, October 2011*
Authors: Joris van Wijk & Jan Murk

⁷³ UNICEF, the UN Human Rights Office (OHCHR), the International Organization for Migration (IOM), Save the Children, the Platform for International Cooperation on Undocumented Migrants (PICUM), the European Council for Refugees and Exiles (ECRE) and Child Circle. *Guidance to respect children's rights in return policies and practices Focus on the EU legal framework, September 2019*

⁷⁴ CJEU, *TQ v Staatssecretaris van Justitie en Veiligheid*, C-441/19, 14 January 2021

intercepted while engaging in irregular border crossings.⁷⁵ Nevertheless, even if the Return Directive is not applied, children still retain their legal protections under EU law. Member States are still obligated to adhere to the essential safeguards outlined in the Return Directive.⁷⁶ These safeguards encompass the absolute observance of the non-refoulement principle and the duty incumbent upon national authorities to guarantee that the legal protection afforded to UASC is not less favourable than that outlined in the provisions of the directive governing the restrictions on the use of coercive measures.⁷⁷ Moreover, Member States are required to implement safeguards concerning the postponement of removal⁷⁸ to provide emergency healthcare and necessary medical treatment, and to consider the needs of unaccompanied children as a vulnerable group.⁷⁹

Member States are required to effectively enforce and adhere to the provisions of the Return Directive in line with international human rights norms, such as those outlined in the CRC, and with obligations concerning refugee protection, alongside compliance with the principles enshrined in the CFREU.

Return of asylum-seeking children to another EU Member State

2 In situations where asylum-seeking children are returned to another Member State for their asylum claims to be assessed, the Dublin Regulation also mandates that decisions must be guided by the principle of the best interests of the child.⁸⁰

Additionally, the Regulation offers a checklist of factors to aid authorities in determining what is in the child's best interests. This checklist includes:

- ✓ considerations for the child's potential for family reunification;
- ✓ their well-being and social development;
- ✓ safety and security concerns, especially where there's a risk of the child being trafficked;

⁷⁵ Article 2(2)(a) of the Return Directive

⁷⁶ Article 4(4) of the Return Directive

⁷⁷ Article 8(4)(5) of the Return Directive.

⁷⁸ See Article 9 of the Return Directive

⁷⁹ FRA, *Returning unaccompanied children: fundamental rights considerations*, 2019,

https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-returning-unaccompanied-children_en.pdf

⁸⁰ Article 6 of the Dublin Regulation

- ✓ the child's views, in accordance with their age and maturity.⁸¹



In *The Queen, on the application of MA and Others v. Secretary of State for the Home Department*, the CJEU was tasked with determining the jurisdiction in the case of an unaccompanied minor who had filed asylum applications in various EU Member States and had no family or relatives in any other EU Member State. The CJEU clarifies that if there is no family member legally residing in a Member State, the state where the child is physically present bears responsibility for processing such a claim. This determination was based on Article 24(2) of the CFREU, which stipulates that the best interests of the child must be a primary consideration in all matters concerning children ⁸².

It is important to mention that the Dublin Regulation requires the authorities of member states to conduct a personal interview with the asylum-seeking child, to determine more easily the responsible member state and to provide information about the procedure. The Regulation mentions several criteria to which this personal interview must adhere:

- ◆ The personal interview takes place in a timely manner and in any event before any decision is taken to transfer the applicant to the responsible Member State.
- ◆ The personal interview is to be held in a language that the child understands or can reasonably

In practice...

In **Greece**, even when a deportation order is exceptionally issued against an UASC, the return hardly ever materializes as authorities fail to facilitate communication with the country of return.

In the **Netherlands**, a denied application for international protection is treated as equivalent to a decision to return. Consequently, when the Immigration and Naturalisation Service reviews an asylum application, they must also assess whether an unaccompanied child can be returned to a family member, guardian, or suitable reception facilities. This ensures that UASC are safeguarded against return without prior investigation. A decision to remove may be delayed if the assessment of suitable reception is still ongoing.

In many countries challenges arise when UASC reach the age of 18, as return orders may be issued or previously issued ones may be activated, sometimes leading to pre-removal detention.

⁸¹ Article 6(3) of the Dublin Regulation

⁸² CJEU, *The Queen, on the application of MA and Others v. Secretary of State for the Home Department*, C-648/11, 6 June 2013

be assumed to understand and communicate in.

- ◆ The personal interview takes place under conditions that ensures a suitable level of confidentiality.
- ◆ The member state that conducts the personal interview makes a written summary with at least the main information that the applicant provided at the interview. The member state ensures that the applicant and/or legal advisor or other counsel representing the applicant, has timely access to the summary.⁸³

Protections afforded to migrant children during return procedures

As stated above the prerequisite for any return of any child - accompanied, unaccompanied or separated, is that their best interests have been carefully evaluated, and return is determined to be a sustainable solution in their best interests. This requires formal and robust individual procedures, considering the perspectives of children, for every decision that could result in a child's return.

Immediate deportation, forced return, or the detention of children based on their migration status constitutes a violation of children's rights and should not be among the measures employed by states when dealing with children.

When considering the return of children, appropriate procedural safeguards must be implemented, aligning with international standards. These safeguards may include:

- ◆ **providing relevant information** to the child in a language they comprehend or can reasonably be expected to understand;
- ◆ ensuring independent **legal representation**;
- ◆ conducting **family tracing**;
- ◆ assessments, evaluating the availability and **adequacy of reception facilities**, and establishing follow-up and reintegration plans to ensure the child's short-term and long-term support ⁸⁴.

⁸³ Article 5 of the Dublin Regulation

⁸⁴ Save the Children, *International cooperation and governance of migration in all its dimensions, including at borders, on transit, entry, return, readmission, integration and reintegration*,

https://refugeesmigrants.un.org/sites/default/files/ts3_save_the_children.pdf; Article 12(2) of the Return Directive

- ◆ Ensuring that a child who possesses the ability to express their own opinions has the entitlement to freely voice those opinions in all matters concerning them and is given the **opportunity to be heard**, either directly or through a representative or suitable entity, in any legal or administrative proceedings impacting them (the right to be heard).⁸⁵

The right of children to express their opinions is a firmly established general principle that applies to all EU Member States.

If returning the child is deemed to be in their best interests, priority must be given to **voluntary departure**, as this will ensure the observance of fundamental rights during the implementation of return decisions and that the necessary conditions for their well-being upon return are met.⁸⁶ This includes:

- ✓ providing adequate time and support for the child and their family to prepare;
- ✓ offering accurate information on the return process, and access to psycho-social counselling in a language they understand;
- ✓ ensuring access to free, quality legal representation throughout the return process;
- ✓ ensuring that effective remedies with suspensive effect are available, including access to appeal procedures;
- ✓ developing individual reintegration plans in consultation with the child, family, and guardian;
- ✓ setting up departure periods based on individual assessments, taking into consideration uninterrupted access to education.

⁸⁵ Article 12 (2) of the CRC; FRA, *Children in migration: fundamental rights at European borders*, 2023, <https://rm.coe.int/prems-162623-gbr-2050-children-in-migration-16x24-web-bat/1680add8c8>

⁸⁶ CJEU, *Z. Zh. v. Staatssecretaris voor Veiligheid en Justitie and Staatssecretaris voor Veiligheid en Justitie v. I. O.*, C-554/13, 11 June 2015, para. 47



It's crucial to ensure that **all actors involved in the departure process are trained in child rights and protection** and have basic knowledge about the possibilities and impossibilities to return, and that independent child protection officers are involved where necessary.⁸⁷

Additional safeguards for UASC include ⁸⁸:

- 1 Ensuring the full involvement of the child's guardian in assisting them during the return process.
- 2 Care and custodial arrangements essential for the child's best interests should be confirmed and organized in advance.
- 3 Efforts to promote family reunification before return should be continued where applicable.
- 4 Formal procedures are needed to transfer care and custody responsibilities to the right person or authority in the home country, including family members.
- 5 The child should be accompanied to the destination by their guardian, or another chosen individual, who should ensure a proper handover of custodial responsibility.

In case if voluntary departure does not occur, essential safeguards should be implemented before **proceeding with removal**. It is worth noting that according

⁸⁷ *Guidance to respect children's rights in return policies and practices, 2019*, https://picum.org/wp-content/uploads/2019/09/2019_Guidance_childrens_rights_in_return_policies.pdf; European Network of Guardianship Institutions (ENGI), *Care for unaccompanied minors, Minimum standards, risk factors and recommendations for practitioners ENGI – Guardianship in practice. Final report Utrecht, October 2011* Authors: Joris van Wijk & Jan Murk

⁸⁸ *ibid*

to the Return Directive, removal is considered as a possibility if voluntary departure has not taken place within the specified time frame.

Removal should only be contemplated as a last resort, and only when it unequivocally serves the best interests of the child. ⁸⁹

In cases where voluntary departure has not occurred within the specified time frame for the return of a child or a child within a family, the body responsible for conducting the best interests' procedure leading to the return decision should make a documented decision regarding the next steps. This decision-making process should consider the individual circumstances of the child, including whether to set a new period for voluntary departure or prolong the existing one. Additionally, any changes in the circumstances underlying the decision that return is in the child's best interests should be assessed, with a focus on the sustainability of return, the child's well-being, and the availability of necessary conditions. If it becomes apparent that return is no longer in the child's best interests, an alternative, durable solution should be identified. ⁹⁰

All decisions regarding the return of a child must be reasoned and documented, including the decision to proceed with removal if voluntary departure cannot be carried out within the set time period. The reasons for the return must be explained to the children and their families in a language and manner they understand.⁹¹

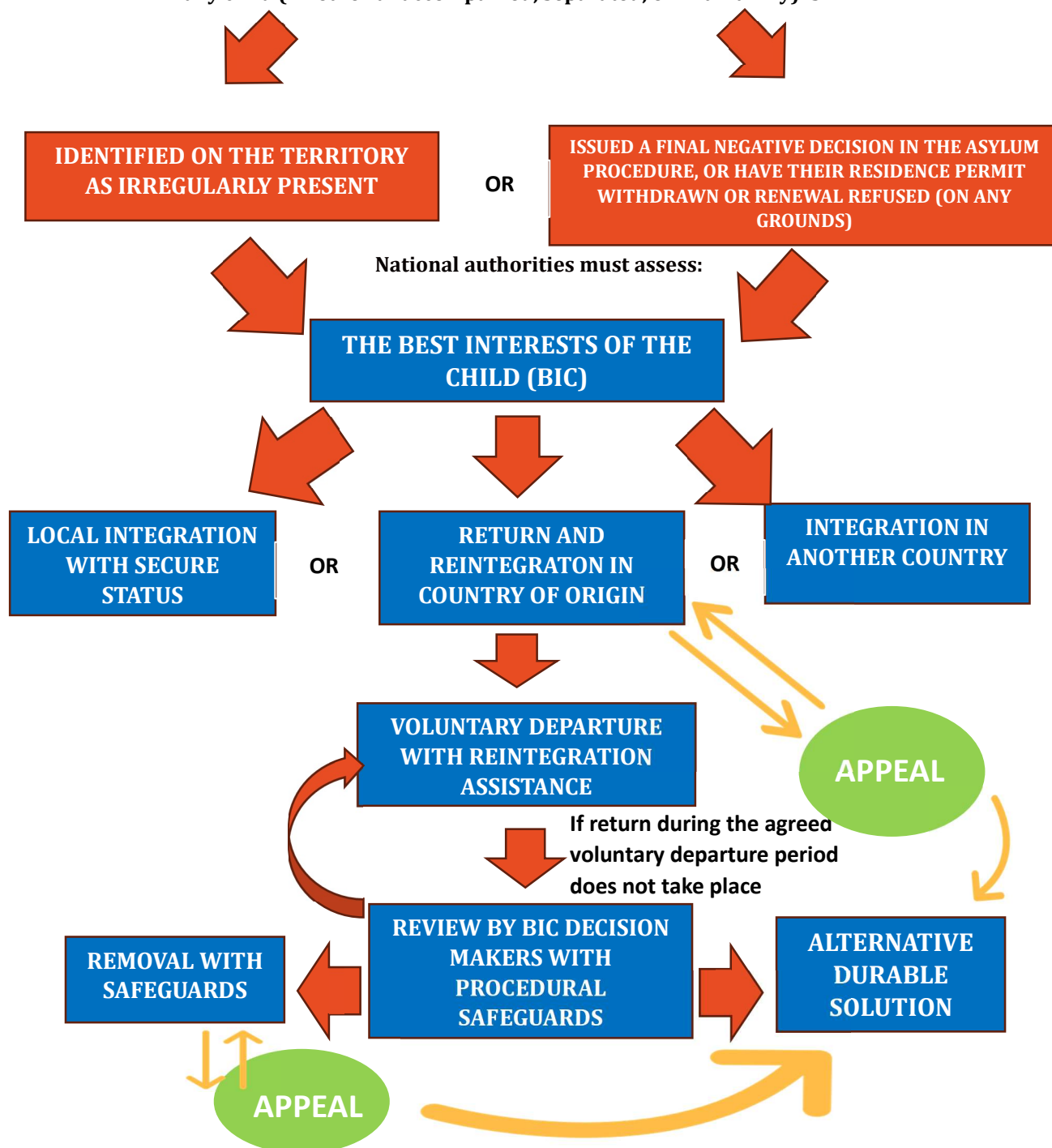
⁸⁹ Article 8 of the Return Directive

⁹⁰ Guidance to respect children's rights in return policies and practices, 2019, https://picum.org/wp-content/uploads/2019/09/2019_Guidance_childrens_rights_in_return_policies.pdf

⁹¹ Ibid

FLOWCHART OF RETURN PROCESS OF UASC⁹²

any child (whether unaccompanied, separated, or with family) is



⁹² Guidance to respect children's rights in return policies and practices Focus on the EU legal framework. September 2019, UNICEF, OHCHR, IOM, Save the Children, PICUM, ECRE and Child Circle, p.10

Good practices

1 The European Guardianship Network (EGN), coordinated by Nidos in **the Netherlands** has a **cross-border working group** tasked with overseeing the protection of children's rights during cross-border movements and preventing them from falling victim to trafficking and exploitation. They also focus on the improvement of cooperation between (guardianship) organisations in EU member states on this topic. Furthermore, the cross-border working group is currently developing a comprehensive checklist to guide professionals when there are indications that a child may be planning to move across borders, including points to consider when there are signs that a child is going to move cross-border:

2 In **Catalonia (Spain)**, significant measures have been implemented to prevent administrative irregularities and uphold the rights of UASC, particularly regarding residence and work permits. Since 2021, there has been a streamlined process making it easier for unaccompanied foreign minors and young people previously under guardianship to obtain and renew their residence and work permits. One crucial aspect contributing to the effectiveness of these Spanish best practices is the efficient coordination among various public administrations responsible for child protection. Additionally, coordination between these administrations and social organizations overseeing the reception of these minors is emphasized. Another vital factor is the ongoing, specialized training provided to all professionals involved in working with unaccompanied migrant children. This includes social workers, legal practitioners (such as lawyers, prosecutors, and judges), as well as police officers responsible for border control and immigration procedures⁹³.

Key points to remember from this chapter



◆ According to Article 24 CFREU, in all actions relating to children, whether taken by public authorities or private institutions, **the child's best interests must be a primary consideration**. When determining the return of an unaccompanied minor without the right to remain in the EU,

⁹³ The same

immigration enforcement agencies, police, and other authorities responsible for return procedures are obligated to prioritize the best interests of the child. This necessitates the early involvement of child protection services, which should remain actively engaged throughout all stages of the repatriation process.

- ◆ All actors involved in the voluntary departure process must be trained in child rights and protection.
- ◆ Removal should only be contemplated as a last resort, and only when it unequivocally serves the best interests of the child.
- ◆ Member State must ensure that the child will be reunited with a family member, an appointed guardian, or placed in suitable reception facilities in the country of return.
- ◆ If return is determined to be in the best interests of the child, specific and appropriate implementation measures must be taken. In such a case, voluntary departure applies, and critical security measures must be taken before removal begins if voluntary departure is not achieved.

Chapter V: Access to Family Life and Family Reunification



The right to family life is mentioned in several legal instruments that protect human rights. Among them are Article 7 and 24(3) of the CFREU, Article 16(3) of the Universal Declaration of Human Rights, Article 17(1) of the ICCPR and Article 8 of the ECHR.

In this Chapter, special attention is paid on the application of Article 7 in conjunction with Article 24(3) of the CFREU. The correlation of these provisions with secondary EU legislation and international legislation is also analysed by highlighting the rights and guarantees envisaged for UASC.

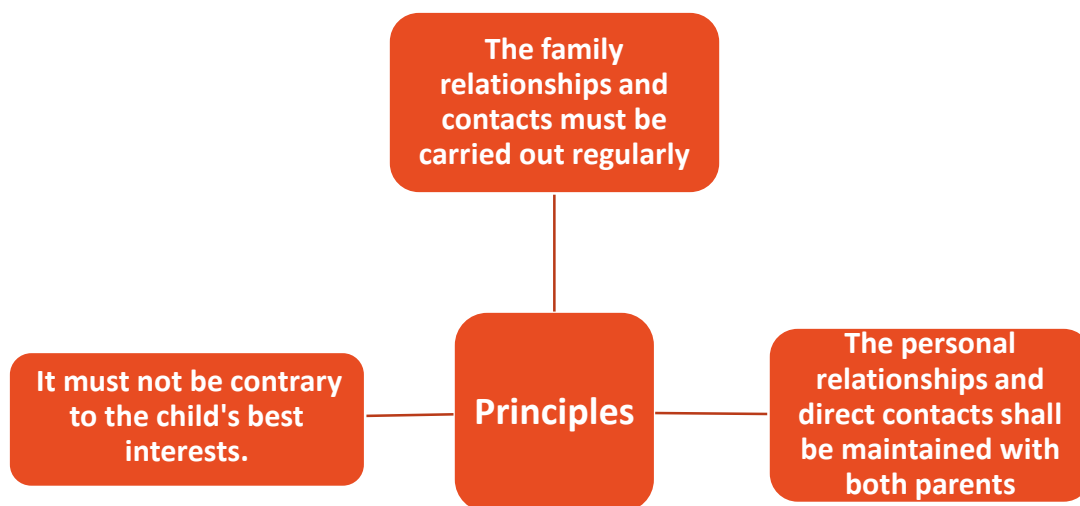
Article 7 and Article 24(3) of the CFREU regarding UASC's access to family life and reunification

Article 7 of the CFREU emphasizes the importance of the family unit and is applied in close connection with Article 24(3) of the CFREU. These articles revolve around the idea that the main concern of every state must be to give effectiveness to the principle of family unity in relation to the best interest of the child. When an UASC is identified on the territory of a host state, actions must be taken by national

authorities towards identifying and tracing family members (parents and/or other persons who can ensure their care).

The family reunification procedure must be based on the principle of the child's best interests and be carried out in safe conditions. This can be done either in the host country, the country of origin, or in another EU country where a family member has been identified.

When analysing the reunification of the child with the family from the perspective of the child's best interest, it is taken into account that the relatives with whom the reunification is to be carried out are able to exercise their parental duties for the benefit of the child. Article 24(3) makes a reference to several principles, that must be considered, namely:



It is visible that when observing the right to family life of the child the best interests of the child is again given priority. (Read more in Chapter I).

Article 7 of the Charter corresponds also to Article 8 of the ECHR which regulates the right to respect for private and family life. **This right is often invoked as a protection measure against the expulsion of children before the ECtHR**

as forced separation from close family members has negative consequences on education, social and emotional stability and identity.⁹⁴

Specific regulations for migrant children's access to family life and family reunification can also be found in the EU's secondary legislation on migration and asylum.

For example, the **Family Reunification Directive 2003/86/EC** requires the member states to authorize the entry and stay of the family member of the UASC who is a citizen of a third country, in situations where it is not in the best interest of the child to join the parents/guardian/other member of his/her family (if applicable) abroad. According to **Article 17 of this Directive** the right to family life must be respected throughout the family reunification process and member States have the obligation to examine each case individually.

The directive recognizes that "*family reunification is a necessary way to make family life possible. It contributes to the creation of a socio-cultural stability that facilitates the integration of third-country nationals in the member states, a fact that also allows the promotion of economic and social cohesion*".⁹⁵

According to **Article 24(3) of the Reception Conditions Directive** authorities shall immediately start searching for family members of UASC, if necessary, with the help of international organizations or other relevant organizations, after the application for international protection is submitted, while protecting the best interests of the child. In cases where the physical integrity or life of a minor or his/her relatives could be threatened, especially if they have remained in their country of origin, the collection, processing and dissemination of information on those persons must be done confidentially, in order to avoid endangering their safety.

Article 15 of Directive 2001/55/EC on temporary protection seeks to accelerate the reunification of family members who have been separated, taking into account the wishes of the respective family members, the best interests of the child as well as the extreme difficulties they would face if the family reunification did not take place.

⁹⁴ ECtHR, *Sen/Netherlands*, no. 31465/96, December 21, 2001; ECtHR, *Tuquabo – Tekle and others/Netherlands*, no. 60665/00, December 01, 2005

⁹⁵ Para. 4 of the Preamble of the Family Reunification Directive

Article 31 of the Qualification Directive foresees that UASC shall be placed with adult relatives/in a host family; in centres specialized in the accommodation of children or in other accommodation adapted for children in the host state and must not be separated from their brothers/sisters. In this context, the child's opinion must be taken into account, depending on their age and maturity and the change of places of residence must be limited to a minimum.

According to **Article 8 of the Dublin Regulation** when determining the competent member state, EU member states are obliged to reunite UASC with their relatives, provided that it is in their best interests. If the UASC has a relative legally present in another Member State and if it is determined, based on an individual examination, that the relative can take care of him/her, the said Member State shall reunite the UASC with the relative. Additionally, when family members, brothers, sisters or relatives, reside in several Member States, the responsible Member State is determined according to what is in the best interests of the UASC. In the absence of a family member, the responsible Member State is the one where the UASC submitted his/her application for international protection, if this is in the best interests of the child. (read more in Chapter IV about the Dublin Procedure)

According to the **Return Directive** before removing an UASC from the territory of a Member State, the authorities of that Member State shall ensure that the child is sent to a member of his family, an appointed guardian or appropriate reception centers in the returning State.⁹⁶ More information about the return procedure can be read in Chapter IV.

According to **Articles 3 and 9(1) CRC**, the child has the right not to be separated from his parents, except for the situation in which it is in the best interest of the child to be separated.

Rights and guarantees of UASC related to family reunification

Families separated during the migration process face numerous obstacles to reunification, resulting in prolonged separation. According to the IOM, these obstacles include restrictive eligibility criteria, difficult-to-obtain financial and

⁹⁶ Art. 10 (2) Return Directive

evidentiary requirements, lack of information and support, as well as logistical barriers.

The increase in arrivals of migrants and asylum seekers in the EU in recent years has meant that Member States are faced with the challenge of processing an ever-increasing number of applications. In addition, according to UNICEF, some Member States impose additional procedural requirements, resulting in lengthy **procedures**.

In this tensed context, to prevent violation of UASC's right, all family reunification proceedings must be conducted under **the following general legal principles**:

- ◆ **Observing the best interests of the child** in all decisions that affect UASC directly or indirectly, including decision concerning the right to family life. (See Chapter I)
- ◆ **Non-discrimination**. The right to protection of family life must be realized for all children without discrimination of any kind, regardless of their residence status or nationality, or the status of their parents, legal guardians or family members.
- ◆ **The right to be heard and listened** to within the family reunification procedure. Children must be heard separately from their parents and their opinions as well as their individual circumstances must be taken into account.
- ◆ In order to be able to exercise this right, **UASC should receive in their own language all information about the family reunification procedure** as well as the different programs and services associated with it. According to the Council of Europe, providing information on family reunification at an early stage is essential to identify the possibilities for the child to be reunited with family members in another State without the need to file an asylum application in the country of arrival. UNHCR also notes the need to apply a child-centered approach in assessing a UASC's feelings towards family reunification, addressing through counselling and social services reluctance caused by painful memories of separation, feelings of anger at abandonment, or fear of having to live with people with whom the child is unfamiliar.

- ◆ **The right to life, survival and development.** Although it is an obligation of States to establish environments that guarantee the integral development of all children and adolescents, family separation is one of the main risks of migration processes. According to the Council of Europe, lack of effective opportunities for family reunification may expose UASC to various risks such as trafficking, sexual abuse and sexual exploitation, and other forms of exploitation or involvement in criminal activities that could cause additional harm.
- ◆ **The right to an effective remedy.** It is an obligation of states to guarantee the right to an effective remedy, when the right to family life is violated, as set forth in Article 13 of the ECHR and Article 47 of the CFREU.⁹⁷ In the case of UASC, having access to effective remedy requires procedures to be adapted to their age and level of development. Therefore, UASC must be notified of the existence of a procedure, of any decision taken and of the possibilities and implications of appeal. Especially when family reunification is denied to children and/or their family, the children must be provided with age-appropriate information about the reasons for the decision and the right to appeal. Additionally, according to CJEU, it is also required that a Member State to which a take charge request has been made, in accordance with the Dublin Regulation, grants a right to a judicial remedy against its refusal decision to the unaccompanied child, who applies for international protection.⁹⁸

The following **procedural guarantees** should also be taken into account:

- ◆ The **involvement of child protection actors** alongside migration authorities so that the specific needs of UASC are considered.
- ◆ The application of a **multidisciplinary and multi-agency approach** when assessing the best interests of the UASC.
- ◆ **Cross-border cooperation** between countries of origin, transit and destination.

⁹⁷ Article 47 of the CFREU further establishes the right to an effective remedy for any person whose rights and freedoms guaranteed by EU law have been violated.

⁹⁸ CJEU, Judgement of 1 August 2022, Case C-19/21, *I, S v Staatssecretaris van Justitie en Veiligheid*, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=263731&pageIndex=0&doclang=EN&mode=lst&dir&occ=first&part=1&cid=1494>

The EU Member States bound by the Family Reunification Directive have broad discretion in determining the procedure for assessing applications for family reunification. However, certain rules must be respected.

- ◆ **Waiting time before starting the procedure.** The Family Reunification Directive prohibits States from imposing a waiting period on refugees before they and their family may apply for family reunification. However, the Directive does not regulate the situation of holders of subsidiary protection.
- ◆ **Time limit for submitting the application.** The Directive allows States to apply more favourable rules on family reunification to applicants and their families who have applied within three months after the applicant for international protection has been granted protection.
- ◆ **Filing of the application.** The Directive grants the States discretion on deciding on who may file an application for family reunification. In cases where it is up to the family to initiate the procedure, difficulties may arise in gaining access to certain diplomatic offices. When the procedure must be initiated by the sponsor (the applicant for international protection), the difficulties may arise in obtaining original documents from the country of origin. In any case, the procedure is more accessible when it is the sponsor who can initiate the family reunification procedure. UNHCR highlights as good practices 1) allowing the applicant to apply for family reunification; 2) allowing family members to fulfil all embassy formalities at a different **European** diplomatic representation; 3) limiting the number of appearances at diplomatic missions⁹⁹ and; 4) issuing visas to family members upon arrival in the country of asylum.
- ◆ **Housing, health insurance and resource requirements.** For those who have applied for reunification within three months after the granting of the status, no housing, health insurance or resource requirements may be imposed. Member states, however, can also apply more favourable rules and not put time limitation.¹⁰⁰

⁹⁹ See also *Judgement in Case C-1/23 PPU*, CJEU, 18 April 2023,

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=272582&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3745083>

¹⁰⁰ For example, currently in Bulgaria there are no such requirement, regardless of when the applicant has applied for family reunification and even if it beyond 3 months. However, a proposal for legislative changes in the Law on Asylum and Refugees and imposing the 3-month restriction period have been made.

- ◆ **Documentation and evidence.** The sponsor and/or their family must provide certified copies of the travel documents of the family members, as well as evidence of the family relationship with the sponsor and of compliance with any specific conditions applied in each State in terms of accommodation, medical insurance and resources. In the case of refugees, there should be more flexibility in the interpretation of what counts as proof of the family relationship and the possibility of proving the family relationship based on different documentary evidence in case the original documents cannot be obtained. UNHCR has repeatedly pointed out the risks that refugee families may face in cases where they must turn to the authorities in their country of origin to obtain documents.
- ◆ **Fees.** Although the Directive does not mention the financial aspects of family reunification, the case law of the CJEU¹⁰¹ has indicated that it is lawful to charge fees for family reunification procedures provided that they are reasonable and proportionate and, in any case, that they cannot constitute an obstacle to the exercise of the rights provided by the Directive. Both the European Commission and the UNHCR recommend exempting children and adolescents from such fees.¹⁰²
- ◆ **Information and access to legal assistance.** Both the applicant and his or her family need to be informed about the procedure in a comprehensive and timely manner, especially with regard to aspects that are unfavorable to them, such as time limits, age limitations, etc. The European Commission and the Council of Europe have pointed out that States should draw up practical guides available in several languages to inform applicants.¹⁰³ With regard to legal aid, the Council of Europe criticized the fact that it is non-existent or restricted in family reunification procedures and recommended that legal aid be guaranteed to all children and adolescents.
- ◆ **Decision period.** The applicant must be notified in writing of the decision as soon as possible and, in any event, no later than nine months after the filing of the application for family reunification. Only in exceptional

¹⁰¹ CJEU, *European Commission v Kingdom of the Netherlands*, C-508/10, 26 April 2012, available at: <http://bit.ly/3ZFFKGY>, paras 62, 64-65.

¹⁰² AIDA, *Not there yet: Family reunification for beneficiaries of international protection*, December 2022, p. 24

¹⁰³ *Ibid*, pp.25-26; Council of Europe, *Family Reunification for Refugee and Migrant Children*, April 2020, available at: <http://bit.ly/3WhirR5>, p53.

circumstances may this time limit be extended with adequate justification. The CRC provides that applications relating to children and their parents should be dealt with in a positive, humane and expeditious manner and the ECtHR has determined that in cases of refugee children the application should be assessed with promptness, care and special diligence.¹⁰⁴

The obligation to guarantee the right to family reunification is not effectively fulfilled simply by allowing access to the territory. It requires a stable legal status and access to social rights:

- ◆ **Residence authorization.** The Directive provides that family members must be granted a residence permit for at least one year, which must be renewable. Although the duration of the permit may be longer, its duration must not exceed the expiration date of the sponsor's residence permit. Since family reunification is a right of the sponsor, in case of family separation or if the sponsor's international protection status is withdrawn or revoked, the family may also lose its status and right of residence. In the case of refugees, after a maximum of five years of residence, spouses and children of refugees must have access to an autonomous residence permit. Member States are free to offer more favourable solutions, such as extending the protection status, and EU law does not prevent family members from applying for asylum in their own right.
- ◆ **Work authorization and right to education.** Family members reunited with a refugee have the right to access education, vocational guidance and initial and continuing training. They must also be able to access employment and self-employment, although States may restrict this right for the first twelve months, subject to a review of the labour market situation.

In relation to UASC family reunification processes, organizations such as IOM or UNICEF¹⁰⁵ recommend to EU member states to:

- ◆ Extend family reunification rights for persons under subsidiary protection to enjoy the same rights as refugee children.

¹⁰⁴ ECtHR, *Mugenzi v France*, No 52701/09, 10 July 2014, available at: <http://bit.ly/3GNldYh>, para 52; AIDA, *Not there yet: Family reunification for beneficiaries of international protection*, December 2022, p. 27

¹⁰⁵ UNICEF, *The Right of the Child to Family Reunification*, advocacy brief by UNICEF, 2016, https://migrant-integration.ec.europa.eu/library-document/right-child-family-reunification-advocacy-brief-unicef_en

- ◆ Allow UASCs granted temporary protection status to exercise their right to family reunification and sponsor their family members to join them in destination countries when it is in their best interests.
- ◆ Ensure that families separated due to conflicts and disasters can be reunited as soon as they apply for international protection in a European State.
- ◆ Encourage flexible use of existing family reunification mechanisms to respond to humanitarian situations, providing for procedures and conditions that help save the lives of children and ensure their best interests.
- ◆ Broaden the definition of family for all children so that UASC can include their siblings in family reunification programs and interpret the concept in a more culturally sensitive manner. When the parents cannot be traced the UASC should be allowed to join any other family member, as this right should be guided by the best interests of the child and by a flexible interpretation of the documentary evidence.
- ◆ Repeal or amend legislation that establishes a less favourable family reunification regime for older children.
- ◆ Reduce processing times for family reunification applications and facilitate the procedure for applicants to prevent family members from taking dangerous routes or minors from becoming adults.
- ◆ Regarding the requests for reunification of the child with his/her family, the national courts must ensure that the parents do not exploit their children in order to obtain residence permits in the respective country.¹⁰⁶

3 Additional points that should also be considered are that:

- ◆ In the case of refugee children, the child's right to family reunification should not depend on whether the application is filed within three months of the granting of status as this is too short a time for a refugee to understand the system and procedures in place, locate and contact family members, obtain the necessary documents.

¹⁰⁶ UNICEF, *Judicial implementation of art. 3 of the CRC in Europe (Judicial Implementation of Art. 3 of the CRC in Europe)*, p.104.

- ◆ The role of the child protection services holding guardianship of the child be expanded to assist UASC during family reunification procedures.

During the procedure competent family reunification authorities should:

- ◆ Consider the type of documents available in the countries of origin when establishing the list of required official documents.
- ◆ Establish a dual system in which both the sponsor and the family member(s) have the right to file applications.
- ◆ Implement reduced application fees for children as well as a reduction of fees depending on the number of children applying.

See Annex 1 for additional CJEU practice on family reunification.

Case study - Romania

Establishing the responsible member state for UASC seeking asylum.

Two unaccompanied children with Afghan citizenship were identified on the territory of Romania. They requested international protection; thus an asylum procedure was initiated, and they became asylum seekers. Emergency placement was instituted for them, and they were accommodated at the juvenile centre within the General Directorate of Child Protection and Social Services and were immediately assigned a legal representative.

On the occasion of the first interview, the existence of a relative in France of the two children was established and the procedure to define the member state responsible for resolving the asylum request was initiated in accordance with the national legal provisions and the Dublin Regulation.

The General Inspectorate for Immigration proceeded to issue the decision to suspend the asylum procedure during the Dublin procedure. Checks were carried out regarding the identification of the French relative of the two unaccompanied children and on his form of residence in the territory of the French state. It was found that he has a refugee status.

In the procedure for establishing the responsible member state, the consent of the relative of the two children was obtained and the opinion of the legal representative and the children was taken into account.

According to the legal provisions, the General Inspectorate for Immigration is obliged to take measures as soon as possible to identify the relative of the unaccompanied child, protecting, at the same time, the best interest of the child. The entire procedure and all data and information obtained are confidential.

Following the verification of the fulfilment of all conditions stipulated by law, it was established that the responsible member state is France, where their asylum request should be reviewed. The French state has accepted the request for the transfer of responsibility for the processing of asylum applications.

The children were accompanied for the transfer including by their legal representative. The transfer was monitored until they were taken over by the French authorities at the Paris airport and taken to the asylum centre.

Throughout the procedure, the minors were assisted by a legal representative, they received legal assistance from a lawyer and benefited from the assistance of an NGO.

Key points to remember from this chapter



- ◆ The family reunification procedure must be based on the principle of the child's best interests and be carried out in safe conditions. This can be done either in the host country, the country of origin, or in another EU country where a family member has been identified.
- ◆ The relatives with whom the reunification is to be carried out must be able to exercise their parental duties for the benefit of the child.
- ◆ Family reunification is a necessary way to make family life possible. It contributes to the creation of a socio-cultural stability that facilitates the integration of third-country nationals in the member states, a fact that also allows the promotion of economic and social cohesion.

- ◆ Through the family reunification procedure, the following **procedural guarantees** should also be taken into account:
 - involvement of child protection actors alongside migration authorities
 - application of a multidisciplinary and multi-agency approach
 - Cross-border cooperation between countries of origin, transit and destination.
- ◆ The obligation to guarantee the right to family reunification is not effectively fulfilled simply by allowing access to the territory. It requires a stable legal status and access to social rights such as the right to work and education.

Chapter VI: Labor Rights of Migrant Children



In 2021, we marked the International Year for the Elimination of Child Labour, which spotlighted a grave global issue. Despite the global progresses, in 2020, there were still 160 million children in child labour, with 79 million children enduring hazardous work. This is a heavy blow, as this was the first increase in the last 2 decades.

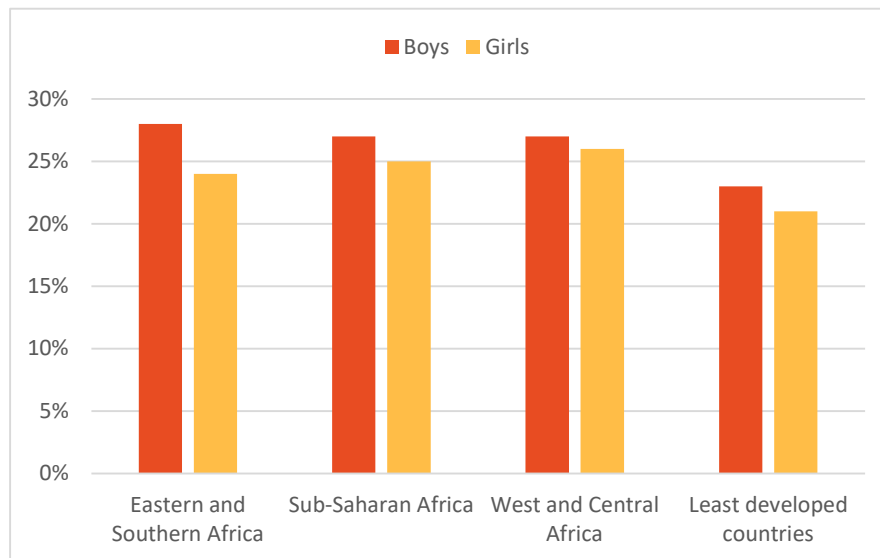
Despite strong indicators that signal patterns of child labour in Western regions such as Europe, this issue is often seen as exclusive to developing countries. Monitoring efforts predominantly targets Eastern Europe countries, which still carry the stigma of development and ongoing democratization. Indeed, most reports by the International Labor Organization (ILO) tend to focus on countries in the Global South, only mentioning child labour in Europe in a marginal way.¹⁰⁷

According to the EU's statistical office (Eurostat), in 2020, 1.5 percent of children between the ages of 7 and 14 in Europe were employed. The ILO estimates that in 2021, 3.8 million children and adolescents between the ages of 5 and 17 were engaged in child labour in Europe and Central Asia. And for example, Save the Children Italia states in a report that in 2023 about 336,000 children between the ages of 7 and 15 are engaged in child labour in Italy.

¹⁰⁷ ILO, 2017; ILO 2021

The definition of "child labour" can vary between countries and international organizations, encompassing work in agriculture, industry, services, and domestic work. Child labour can have serious consequences on children's health, education, and psycho-social development.

Across all regions, girls are equally likely as boys to be engaged in child labour. Bellow you can see the percentage of children aged 5 to 17 years engaged in child labour, by sex and by region in 2014-2022:



Notes: Regional estimates represent data from countries covering at least 50 per cent of the regional population of children aged 5 to 17. Data coverage was insufficient to calculate a global estimate and regional estimates for the regions not shown.

Source: UNICEF global databases, 2023, based on Demographic and Health Surveys (DHS), Multiple Indicator Cluster Surveys (MICS) and other national surveys, 2014-2022.

Children are the future, and their well-being is essential. This is particularly true for migrant children, who often face unique challenges in accessing education and safe working conditions. This chapter establishes a baseline for child labour protections, prohibiting employment below the minimum school-leaving age and ensuring work is age-appropriate and doesn't hinder development.

However, for migrant children, the reality can be far bleaker. The following sections will delve into the specific challenges they face, including exploitation and hazardous work environments. We will critically analyse the existing legal framework and its implementation to understand how effectively migrant children's rights are being upheld. By examining these issues, we can work towards a future where all children, regardless of migration status, are protected and empowered to thrive.

Examination of Article 32 of the CFREU

Article 32 (CFREU) states the following:

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

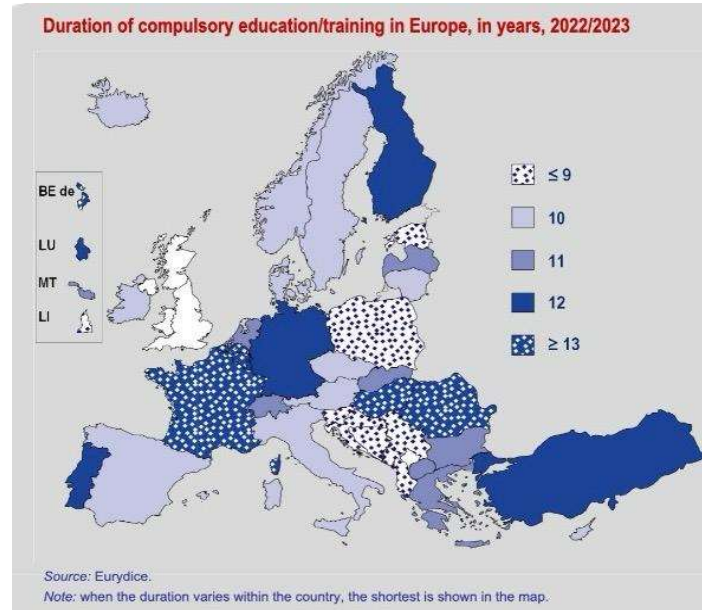
Young people admitted to work must have appropriate working conditions for their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

As we see the article 32 CFREU sets three main points for child labour:

- 1) **The minimum age** to work that can't be lower than the age when children finish mandatory schooling.
- 2) Exceptions can be made to the above, but only if they **benefit young people** or are in **very specific situations**.
- 3) Young workers have the **right to safe and age-appropriate working conditions**. This means protection from economic exploitation, hazardous work environments, and anything that could negatively affect their health, morals, or ability to learn.

The *first paragraph* prohibits child labour, defining it as that carried out by persons under the age at which they finish compulsory schooling, which varies from one member state to another.

In Europe, full-time compulsory education/training usually lasts 10-11 years and ends at the age of 15-16. The shortest duration (8-9 years) is set in Estonia, Croatia, Poland, Slovenia, Albania, Bosnia and Herzegovina, Liechtenstein, Montenegro, and Serbia. Some of these countries may require children to attend pre-primary education programmes part-time (250 or less hours per year).



In Italy and Spain, compulsory education lasts for 10 years, from the ages of 6 to 16. Similarly in Greece, compulsory education lasts for 10 years, however a year of pre-primary (preschool) education is mandatory, so children conclude the compulsory school at the age of 15.

In the Netherlands compulsory education lasts 11 years, from age 5 to 16 children are obliged to attend full-time education. Students who have not obtained a basic qualification (*Startkwalificatie*) must continue their education/training until they turn 18 or get a senior general secondary (HAVO) or pre-university (VWO) or VET¹⁰⁸(at least MBO 2¹⁰⁹) diploma.

Similarly in Bulgaria compulsory education lasts 11 years, from age 5 till age 16, which includes two years of preschool education.

In the Romanian school system compulsory education lasts for 13 years, from the ages of 5 (last year of preschool) till 18 years (secondary school).

This creates the first hurdle for children who arrive in European countries in late adolescence (after 15 years old). They may have missed out crucial foundational education, making it difficult to integrate into the school system and

¹⁰⁸ Vocational and educational training

¹⁰⁹ In the Netherlands MBO means “basic vocational training”. MBO courses are given at four different levels of training, each leading to a specific job qualification: level 4: middle-management training; level 3: professional training; level 2: basic vocational training; level 1: assistant training.

in some cases since there is no obligation to get subscribed to the education system, they remain excluded.

In addition to the minimum age, Article 32(1) of the CFREU also provides for the possibility of limited derogations, as long as they do not endanger the health and development of minors or their attendance at school. Some exceptions are possible for cultural, artistic, sports and advertising activities as well as for certain training contracts and certain kinds of light work by those aged at least 13 or 14.

Example of cases where child labour is legal

ITALY: Activities of a cultural, artistic, sporting or advertising nature: provided that they do not prejudice the safety, psycho-physical integrity and development or school attendance of the minor. Agricultural work from the age of 14, with the consent of the parents and compatible with school hours, and apprenticeship from the age of 15.

BULGARIA: As an exception, a labour relation between the guardians of the person, who have not reached 15 years of age and an employer can be formed when it concerns the participation in the creating works of art, filming TV programs, etc.¹¹⁰

ROMANIA: The Labor Code of Romania prohibits the employment of children below the age of 15, with some unique exceptions, subject to specific conditions. A notable stipulation is that exceptionally, children aged 15 may be hired for light work that does not harm their health and development, nor interfere with their education.

SPAIN: Persons over 16 and under 18 need permission from their parents or legal guardians.

¹¹⁰ See Ordinance of the Ministry of Labour and Social Policy for the order and conditions for labour for persons, who have not reached 15 years., <https://lex.bg/laws/ldoc/-552857598>

THE NETHERLANDS: Children between 7 and 13 years of age can only participate in performances, such as acting in a film, fashion or TV show or commercial, or performing in a theatre, with a dispensation from the ban on child labour from the Netherlands Labour Authority (*Nederlandse Arbeidsinspectie, NLA*). From 13 years on young people can do light work. ¹¹¹

Article 32(2) CFRUE protects young people in the workplace, ensuring they have appropriate working conditions, and are shielded from economic exploitation and any work that may harm their safety, health or physical, mental, moral or social development.



ILO/Flickr: Creative Commons

Article 32 of the CFRUE is consistent with the jurisprudence of the CJEU and the ECtHR, both of which have acknowledge the significance of the prohibition of child labour and safeguarding young people in the workplace to uphold human dignity and promote the harmonious development of the child's personality.

Why Migrant Children Work?

Before analysing the rights of migrant children at work, let's provide an overview of why migrant children work:

Lack of rights awareness: Migrant children often lack awareness of their legal rights and the protections available to them. Without knowledge of their

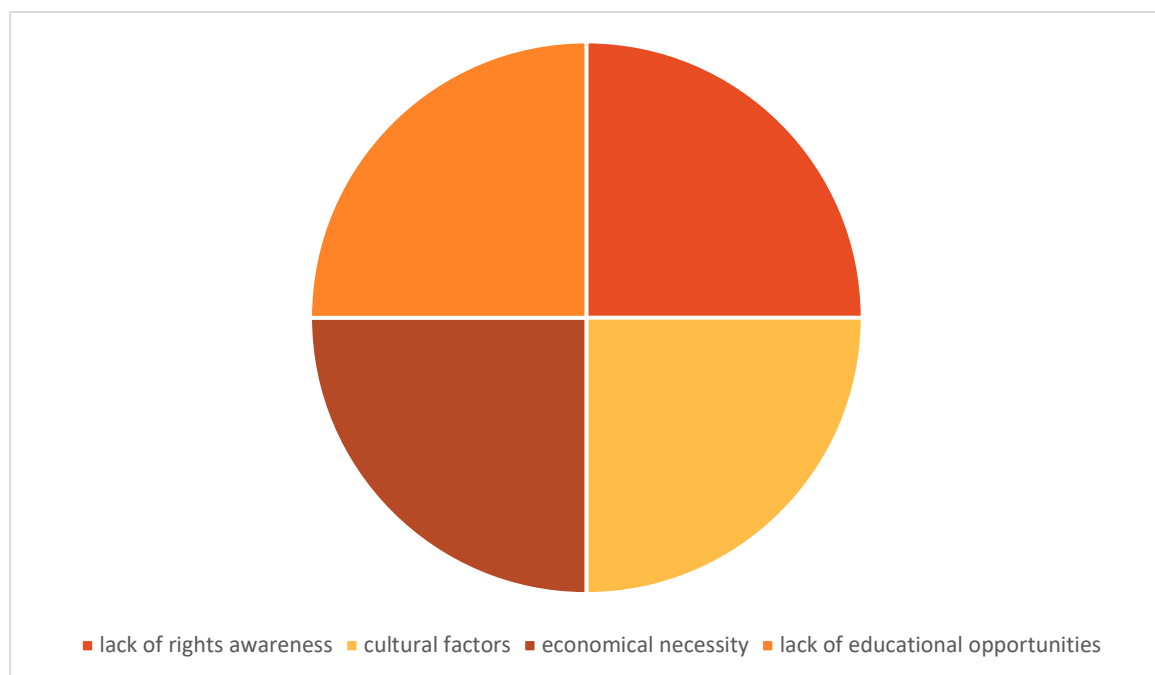
¹¹¹ *Employment of minors and young adults, Netherlands Enterprise Agency, RVO, <https://business.gov.nl/regulation/employment-young-people/>*

rights, they may not seek help or report exploitation and may accept work conditions that violate labor laws.

Economic Necessity: Many migrant families rely on their children income for survival. Poverty and limited access to social safety nets force children into the workforce.

Lack of Educational Opportunities: In some situations, education may not be readily available, leaving work as the only option for children to occupy their time.

Cultural Factors: Certain cultural norms may view work as a way to teach responsibility or contribute to the family's social standing.¹¹²



The Importance of shared Labor Laws

To have in place shared European labour laws is important because:

¹¹² Amir Radfar, Seyed Ahmad Ahmadi Asgharzadeh,1 Fernando Quesada,2 and Irina Filip3, *Challenges and perspectives of child labor*; 2018, *Ind Psychiatry J.* 2018 Jan-Jun; 27(1): 17–20; *ILO, Causes*, 2011, <https://www.ilo.org/resource/causes>

PROTECT CHILDREN: Labor laws establish minimum age requirements and working conditions to prevent exploitation, hazardous work, and damage to a child's physical and mental development.

PROMOTE EDUCATION: By limiting work hours and ensuring appropriate work environments, these laws allow children to attend school and obtain an education, crucial for their future.

FAIR COMPETITION: Standardised labour laws ensure fair competition among businesses across Europe, preventing companies from gaining an unfair advantage by exploiting child labour.

PREVENT "RACE TO THE BOTTOM"¹¹³: Without common standards, countries might weaken their laws to attract businesses, leading to a decline in protections for all children.

CONSISTENCY FOR MIGRANT CHILDREN: Shared laws ensure that migrant children receive consistent protection regardless of the country they work in.

ENFORCEMENT POWER: The EU has greater resources and power to enforce labour laws compared to individual member states.

In conclusion, migrant children often work due to economic hardship and lack of alternatives. Shared European labour laws are crucial to protect them from exploitation, promote education, and create a fair playing field across the continent.

What is Financial Exploitation of Migrant Child Labour?

Financial exploitation is a major concern when discussing migrant child labour in all European countries. Exploitation can take place in different forms.

- ◆ **Wage Theft:** Children may be paid less than the minimum wage or not at all for their work. Employers might exploit their lack of knowledge about labour laws and fear of deportation to underpay them.

¹¹³ A race to the bottom refers to heightened competition between nations, states, or companies, where product quality or rational economic decisions are sacrificed in order to gain a competitive advantage or reduction in product manufacturing costs.

- ◆ **Debt Bondage:** Children or their families might be tricked into taking loans to cover travel or recruitment costs. This creates a situation where they are forced to work long hours to repay the debt, often with high interest rates. This debt can be passed down through generations, trapping families in a cycle of exploitation.
- ◆ **Confiscation of Documents:** Employers might withhold migrant children's passports or identification documents, further limiting their mobility and ability to leave exploitative work situations.
- ◆ **Deception and False Promises:** Children and their families might be lured with false promises of high wages and good working conditions. Once they arrive, they find themselves in exploitative situations with little control over their finances.¹¹⁴

Member States are responsible for enacting national laws that comply with different directives such as:

- ◆ The Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work.
- ◆ Directive 2013/33/EU that sets the rules on living conditions for asylum seekers.
- ◆ ILO Convention No. 182 on the Worst Forms of Child Labour

Most member states have ratified all the above-mentioned international sources and are bound by Article 32 of the CFREU as an integral part of the Union's legal order. Thus, they have incorporated it into their national labour Acts.

In **Greece** with limited exceptions, the rule is that an employee cannot be less than 15 years' old, considering that adulthood occurs at the age of 18 years. For the employment of an under-age employees (not less than 15 years old) special formalities should be observed such as keeping a special book with the hired under-age persons, notifying the Labour Inspectorate about the nature of the work that will be assigned, submitting them to medical examinations etc.

¹¹⁴ Eurojust: Prosecuting trafficking of human being (THB) for the purpose of labour exploitation (EuroJust Report, 2015).

Young employees (between 15 and 18 years old) cannot be employed in heavy or hazardous works. They cannot be employed for more than 8 hours per day and 40 hours per week. Such limits are reduced even further for young employees that have not exceeded the age of 16 and attend some sort of school. Overtime work of underage employees is prohibited.

Given that this precedes the issuance of a child's workbook, the authorities of the Regions that issue the permits of foreigners, when it comes to a child, should note on them that: its validity begins with the issuance of the child's workbook by the Labor Inspectorate.¹¹⁵

The **Bulgarian** legislation provides special protection to working children and young persons who have not reached majority, by defining the minimum age for job employment (16), possible exceptions and specific labour conditions (e.g. prohibition of overtime and night work or working more than 40 hours per week¹¹⁶), which the employers must have in mind when employing minors. The basic legal texts can be found in the Labour Code, Ordinance № 6 of the Ministry of Labour and Social Policy for the rules and conditions for issuing work permits to persons who have not reached 18 years of age and Ordinance for work of persons, who have not reached 15 years of age of the Council of Ministers.

Children from 15 to 16 years of age can be employed for non-hazardous work, which cannot be harmful for their health or for their right physical, mental and moral development and which implementation wouldn't be an obstacle for a regular school attendance or for participation in programs for professional orientation or education. Persons who have not reached 16 years of age are employed with the permission of the Labour inspection, issued in every exact case, after a medical examination.

¹¹⁵ α.π. 30136/31-1-2002 Υπ. Εργασίας; Νόμος 1837/1989 (ΦΕΚ Α 85), ΠΔ 62/1998 (ΦΕΚ Α 67), Νόμος 3144/2003 άρθρο 4

¹¹⁶ Article 140 and 147 of the Labour Code of Bulgaria

Similarly in **Spain** the minimum working age is 16, although permission from parents or guardians is usually required up to 18 years of age. Children under 18 years of age are prohibited from working at night (between 22:00 and 06:00) or more than eight hours per working day. Employers must ensure that young employees receive an adequate rest period - a minimum of 12 hours between shifts. Workers under 18 years of age must also be allowed 30 minutes rest period for every 4.5 hours work.

The contracts used in youth employment are collectively known as los contratos formativos.

Children are allowed to work in **Romania** but only with the fulfilment of special conditions, such as being over the age of 16. The employment of persons under the age of 15 is prohibited. (Art 13 of the Labour Code)

Children can conclude an employment contract as an employee also at the age of 15, with the consent of their parents or legal representatives, for activities appropriate to his physical development, skills and knowledge.

Employment in hard, harmful or dangerous jobs can be allowed only after reaching the age of 18.

In the **Netherlands** special rules apply to the employment of young people regarding the kind of work and their working hours and rest times. These rules differ per age category.

Children aged between the ages of 13 and 16 are allowed to work outside school hours and during holidays, but only under certain conditions. From the age of 16, young people are free to do any kind of work. Young people from 15 to 20 receive the minimum youth wage.

In **Italy** the prohibition of child labour and the protection of young people at work has been incorporated in its Constitution (Articles 31 and 37), in its Civil Code

(Articles 8 and 9) and in its ordinary legislation (Legislative Decree No. 345/1999 and Legislative Decree No. 81/2008).

Italy has adopted specific legislation for UASC, which provides for their reception, protection, integration, and assisted repatriation. In particular, Legislative Decree No. 142/2015 and Law No. 47/2017 regulate the procedures for the identification, age registry, taking charge, placement in appropriate facilities, health care, education, vocational training and job placement of UASCs.

Law No. 977 of 1967 lays down the general rules on child labour such as the minimum age for admission to work at 16, coinciding with the end of compulsory schooling. It also provides for derogations for certain activities, such as those of a cultural, artistic, sporting or advertising nature, provided that they do not prejudice the safety, psycho-physical integrity and development or school attendance of the minor.

Legislative Decree No. 345 of 1999, which implements the European Directive 94/33/EC on the protection of young people at work, regulates child labour to promote safety, health, and well-being, by setting limits on working hours and mandating rest and holidays.

Challenges

There are several problems that can arise between an egalitarian framework and its implementation in the real world. Here are some key areas of tension:

1. **Resource Allocation:** Egalitarian frameworks often call for a fairer distribution of resources. However, implementing this can be difficult. How do you define "fair"? What if meeting everyone's needs requires taking from those who have more? This can lead to political resistance and challenges in reaching a consensus.
2. **Enforcement and Monitoring:** Ensuring everyone receives their fair share requires effective enforcement mechanisms. This can be expensive and bureaucratic, and there's always the risk of corruption or unequal application of the rules.

3. **Individual Needs vs. Equality:** True equality may not always be achievable. Some people may have greater needs due to disabilities, age, or other factors. Balancing individual needs with the overall goal of equality can be tricky.
4. **Cultural Differences:** Concepts of fairness and equality can vary across cultures. What works in one society may not translate well to another. Implementing an egalitarian framework needs to be sensitive to these differences.
5. **Unforeseen Consequences:** Well-intentioned policies can sometimes have unintended negative effects. For example, redistributing wealth could stifle innovation or economic growth. It's important to carefully consider potential consequences before implementing an egalitarian framework.

Despite the legal framework established to protect child labour, migrant children, especially those who are unaccompanied, face a significantly heightened risk of exploitation. This vulnerability is likely linked to several factors, including the conditions in their country of origin, the hardships they endured during their journey, and the rule of law in the country they arrive in.

Preventing exploitation of child labour, especially for migrant children, requires a multi-pronged approach that addresses the root causes and vulnerabilities on multiple levels.

Child labour exploitation thrives on a complex web of factors, but some of the root causes include:

- ◆ **Poverty:** This is a major driver. Families struggling financially may see child labour as a way to contribute income, even if it means sacrificing the child's education and well-being. Poverty can limit access to education, which in turn makes children more vulnerable to being entrapped in exploitation.
- ◆ **Lack of access to quality education:** If education isn't readily available or affordable, children may be pushed into the workforce instead.
- ◆ **Poor access to decent work for adults:** When adults can't find good jobs, the burden of income generation may fall on children.
- ◆ **Limited understanding and information of child labour laws:** In some communities, awareness about the rights of children and the dangers of child labour exploitation may be low.

- ◆ **Natural disasters & climate change:** These can disrupt livelihoods and force families into desperate situations where child labour becomes a way to survive.
- ◆ **Social norms:** In certain cultures, child labour may be accepted or even encouraged, making it harder to break the cycle.

Landmark Court Cases and EU Legislation and Strategies

The EU takes a strong stance against child exploitation and is committed to protecting children from it. This commitment is evident in rulings by both the CJEU and the ECtHR.

The ECtHR has also held EU member states accountable for protecting children. For example, the ECtHR condemned Italy for not adequately protecting a child victim of both labour and sexual exploitation.¹¹⁷ In the case *C.R. v. Romania (2017)* ECtHR found Romania in violation of human rights for failing to take sufficient measures to prevent child exploitation in begging situations.

These court cases demonstrate the EU's commitment to a high standard of child protection.

The EU has also taken further measures to combat child exploitation. These might include initiatives such as:

In practice...

In Italy, Law No. 92 of 28 March 2013 'Provisions on combating labour exploitation and aiding and abetting illegal immigration' punishes labour exploitation of minors with imprisonment from one to six years and a fine from 516 to 1032 euros.

Italy has adopted several measures to combat child labour and ensure the protection of young people in the workplace, both for Italian children and migrant UASC. These measures include: the strengthening of inspection controls; the promotion of training and professionalization courses; collaboration with trade unions, trade associations and non-governmental organisations; raising public awareness; and criminal prosecution of those responsible for exploitation and trafficking.

¹¹⁷ *M. and others v. Italy and Bulgaria*, application no. 40020/03, Judgment 31 July 2012, <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2240020/03%22%5D,%22itemid%22:%5B%22001-112576%22%5D%7D>

- ◆ *Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography* establishes minimum rules for the definition of offences such as the sexual abuse and sexual exploitation of children, as well as for the penalties to be applied to perpetrators.
- ◆ The *EU Strategy for the Rights of the Child (2021-2027)* aims to strengthen the protection of children's rights in all areas, including the fight against labour exploitation.

By implementing these strategies, we can create a system that discourages exploitation, empowers children, and promotes safe and fair working conditions for all. This is a complex issue with no easy solutions, but by working together, we can make a significant difference in protecting vulnerable children.

Good practices

Bellow you will find some successful initiatives that can positively impact UASC's labour rights and a list of good practices at European level for the integration of minors into the workforce.

Vocational Training programs:

1 UASC should have access to vocational training irrespective of the recognition of their previous education, especially when mainstream classes are not considered in the best interests of the child. Training can play a crucial role in preventing child labour and exploitation in a few keyways:

- ✓ **Equipping children with skills** that make them more employable in the formal sector once they reach the legal working age. This reduces the pressure to take up low-paying, dangerous jobs as children.
- ✓ **Empowering Youth.** Training fosters a sense of agency and self-worth in young people. When they have skills and knowledge, they are less likely to feel trapped in exploitative situations.
- ✓ **Breaking the Cycle of Poverty.** By providing access to training and better job opportunities, families are less likely to rely on children's income for survival. This helps break the cycle of poverty that often pushes children into the workforce at a young age.

- ✓ **Raising Awareness.** Training programs can include components that educate children, families, and communities about child labour laws and the dangers of child exploitation. This empowers them to identify and report instances of child labour and preparing for Formal Work.

2 Work-school alternation

It results as a valuable training experience for several reasons:

1. **Approach to the working world.** It allows students to become familiar with a real working environment, observing the dynamics and professions involved.
2. **Development of practical skills:** It offers the opportunity to put into practice the theoretical knowledge learned at school, developing skills that can be used in the labour market.
3. **Career guidance.** It helps students to focus on their passions and aptitudes, facilitating the choice of their future study or work path.
4. **Reduction of the skills mismatch.** It allows the school and the working world to dialogue, promoting the training of professional figures that are adequate to the needs of the market.
5. **Increased awareness.** It promotes a greater awareness among students of the value of work and the responsibilities involved.
6. **Acquisition of soft skills.** It allows students to develop soft skills such as communication, teamwork, problem solving and adaptability.
7. **Increased employability.** Work-school alternation experiences are often considered a benefit by employers, increasing employment opportunities for students.
8. **Personal growth:** Work-school alternation is an opportunity for personal growth for students, who face new challenges and responsibilities.

In short, work-school alternation represents a bridge between the world of education and the world of work, promoting a more effective and conscious transition for young people. Furthermore, work-school alternation can also have positive effects on companies as it allows them to identify and train future talents, improving the company's competitiveness and it promotes corporate social responsibility.

There are different ways to implement work-school alternation, which can vary depending on the country, the school, and the type of company. For example, in Italy, work-school alternation was introduced with Law No. 107 of 2015 (c.d. "Buona Scuola") and is compulsory for all students in the last three years of high school.

Case studies

The following two case studies showcase the challenges faced by migrant children and the successful interventions that can support them.

Case 1: Success Story (Ardit): Highlights how a paid internship led to a legal apprenticeship, education, and eventually, opening his own business.

Ardit (Albania) arrived in Italy on 30/10/2010 at the age of 16 and he entered directly into the reception centre for unaccompanied migrants. He attended the internal Italian language course and actively participated in all activities. The organization Volunatarius initiated a request for a residence permit for minors, convertible to adulthood in a permit of employment or subordinate work. Within 4-5 months, Ardit learned the Italian language. Meanwhile, an assessment of his skills was carried out. In parallel training was provided on how to search for a job and how to conduct a job interview. With the support of social operators Ardit started looking for a job and identified a painting company. Through Vocational Training programme, he started 300 hours paid internship. At the end of it Ardit was hired as an apprentice (with a three-year alternating school-work program). Shortly before reaching adulthood, Ardit applied for emancipation, in collaboration with the relevant Social Services. The Juvenile Court granted his request. In the meantime, he found accommodation at the Youth Worker's House. Today, after completing his school-work alternation path, Ardit opened his own painting company.

This paid internship program helped Ardit integrate and gain experience in the world of work. Through this possibility he was able to obtain a legal apprenticeship, which gave him the possibility to gain money and at the same time proceed with his education and obtain a diploma.

Case 2: Challenge story (Abdul): Illustrates the difficulties UASC face even with legal frameworks are in place.

When Abdul (Bangladesh), first arrived in Italy, he was wrongly considered as an adult. After different interviews with social operators and mediators, and with a photocopy of his document sent by his mother he was declared a minor (17 years old). Only at that moment Abdul was transferred to an adequate hosting facility. He first applied for asylum, and he enrolled in high school for 4 months. In this period, he was able to learn the Italian language.

Then Abdul expressed his strong desire to find a job and withdraw his asylum application. In the beginning his social operators could not understand the reasons behind such decisions. After a short period, it was clear that Abdul had the urge to send money to his country of origin because his family was at risk and had to pay back the smugglers. Only then the social operators understood the importance of his demand and offered him the possibility of an internship in a restaurant and supported him to convert his residence permit. Unfortunately, Abdul abandoned the facility accommodation in order to reach another Italian city where some fellow nationals were living and his urge to earn money as soon as possible obliged him to accept an offer of undeclared labour in the agricultural sector.

This comes to illustrate that even if the legal framework protects the specific needs of the UASC, their particular situation does not always enable them to fully take advantage of the protections offered. This emphasises the need for additional support systems such as BIA - Basic Income Allowance

It is crucial to emphasise that child labour exploitation is a blatant violation of children's rights. It can have devastating consequences on their physical health, leading to malnutrition, injuries, and even exposure to dangerous chemicals. The demanding physical labour itself can stunt their growth and

development. Children in hazardous work environments face constant safety risks, from accidents and injuries to exposure to toxins. Furthermore, child labour disrupts education, robbing them of the opportunity to learn and build a brighter future. The psycho-social impact is equally concerning, as child labour can lead to anxiety, depression, and social isolation.

Related articles of the CFREU

Chapter IV of the CFREU is called “Solidarity”. Apart from article 32 that was reviewed in detail in this Chapter, it also contains the following rights:

- [workers' right to information and consultation within the undertaking](#)¹¹⁸
- [right of collective bargaining and action](#)¹¹⁹
- [right of access to placement services](#)¹²⁰
- [protection in the event of unjustified dismissal](#)¹²¹
- [fair and just working conditions](#)¹²²
- [family and professional life](#)¹²³
- [social security and social assistance](#)¹²⁴
- [health care](#)¹²⁵

118 See more, European Commission, *Workers' right to information and consultation within the undertaking*, https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/solidarity/workers-right-information-and-consultation-within-undertaking_en

119 See more, European Commission, *Right of collective bargaining and action*, https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/solidarity/right-collective-bargaining-and-action_en

120 See more, European Commission, *Right of access to placement services*, https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/solidarity/right-access-placement-services_en

121 See more, European Commission, *Protection in the event of unjustified dismissal*, https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/solidarity/protection-event-unjustified-dismissal_en

122 See more, European Commission, *Fair and just working conditions*, https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/solidarity/fair-and-just-working-conditions_en

123 See more, European Commission, *Family and professional life*, https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/solidarity/family-and-professional-life_en

124 See more, European Commission, *Social security and social assistance*, https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/solidarity/social-security-and-social-assistance_en

125 See more, European Commission, *Health care*, https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/solidarity/health-care_en

- [access to services of general economic interest](#)¹²⁶
- [environmental protection](#)¹²⁷
- [consumer protection](#)¹²⁸

Key points to remember from this chapter



- ◆ In accordance with Article 32 of the CFREU child labour is prohibited and the minimum working age must be in line with the minimum school-leaving age;
- ◆ Children must be ensured additional safeguards in the workplace with appropriate working conditions to uphold human dignity and promote the harmonious development of the child's personality and must be protected from economic exploitation and any work that may harm their safety, health or physical, mental, moral or social development.
- ◆ To tackle the issues related to child labour it is as important to understand the reasons why migrant children work such as economic hardships; lack of alternatives and educational opportunities; lack of awareness of their legal rights and the protections available to them; and cultural factors.
- ◆ Shared European labour laws are crucial to protect UASC from exploitation, promote education, and create a fair playing field across Europe.
- ◆ Financial exploitation is a major concern when discussing migrant child labour in all European countries and can take place in different forms such as: wage theft; debt bondage; confiscation of documents; deception and false promises.

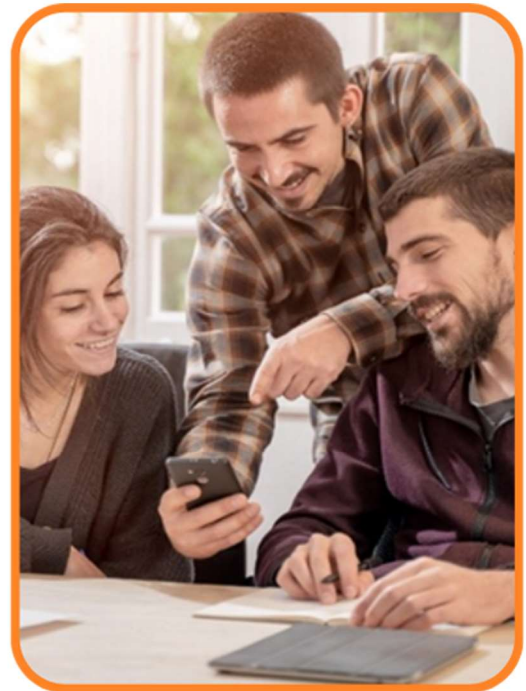
¹²⁶ See more, European Commission, *Access to services of general economic interest*, https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/solidarity/access-services-general-economic-interest_en

¹²⁷ See more, European Commission, *Environmental protection*, https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/solidarity/environmental-protection_en

¹²⁸ See more, European Commission, *Consumer protection*, https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/solidarity/consumer-protection_en

- ◆ Preventing exploitation of child labour, especially for migrant children, requires a multi-pronged approach that addresses the root causes and vulnerabilities on multiple levels.
- ◆ UASC should have access to vocational training irrespective of the recognition of their previous education, especially when mainstream classes are not considered in the best interests of the child.
- ◆ Work-school alternation represents a bridge between the world of education and the world of work, promoting a more effective and conscious transition for young people.

Chapter VII: Access to Education



This chapter is about the access to education for the UASC. We delve into the legal framework and article 14 CFREU, which embodies the universal right to education. After that, we provide an overview of the legal framework and rights for education of UASC, and the specific policies or programs promoting access to education and facilitating integration into the education system in other European countries.

Further, we focus on the Dutch educational system for UASC and the challenges it faces, as well as the different organizations responsible for the educational system.

Lastly, an overview of a successful (political) intervention/law in the Netherlands that have positively impacted the UASC's right to education is made and good practices to better depict the topic of education are presented.

UASC's right to education. Legal Framework

Education as a fundamental human right enshrined in the CRC and the 1951 Refugee Convention. It is protective and empowering, giving children the

knowledge and skills to live productive, fulfilling and independent lives.¹²⁹ According to UNESCO¹³⁰ education has the following characteristics:

- ✓ **it is a right:** Education is not a privilege or subject to political or charitable whims. It is a human right. It places mandatory demands on duty-bearers (particularly the state, but also parents, children, and other actors;
- ✓ **it is universal:** Everyone has the right to education without discrimination. This includes children, adolescents, youths, adults, and older people;
- ✓ **it is high priority:** Education is a key priority of the state. Obligations to ensure the right to education cannot be easily dismissed;
- ✓ **it is a key right:** Education is instrumental in the exercise of all other human rights. It has economic, social, cultural, civil, and political dimensions.

As everyone has the right to education, the word everyone includes also UASC. The right to education places legal obligations on states when they make decisions regarding education and the education system. It offers an internationally agreed normative framework for the standards that states must not fall beneath with regards to the education of its citizens and non-citizens. These standards delineate what states must do and refrain from doing in order to ensure the dignity of the individual.¹³¹

On an EU level such standards with which all EU countries must comply are envisaged in the CFREU.

Article 14 CFREU: Right to education

Everyone has the right to education and to have access to vocational and continuing training.

This right includes the possibility to receive free compulsory education.

The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and

¹²⁹ MUN Refugee Challenge, supported by UNHCR, Background Guide, Access to Education for Refugees, <https://www.unhcr.org/sites/default/files/legacy-pdf/5df9f1767.pdf>

¹³⁰ UNESCO, Right to Education Initiative (UK), 2019, <https://unesdoc.unesco.org/ark:/48223/pf0000366556>, p. 28

¹³¹ *ibid*

teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

The right to education covers a right of access to educational institutions existing at a given time ¹³², transmission of knowledge and intellectual development ¹³³ but also the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which have been completed ¹³⁴, for example by means of a qualification.

Article 2 of Protocol No. 1 to ECHR

Right to education “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

Article 2 of Protocol No. 1 does not specify the language in which education must be conducted in order for the right to education to be respected. However, the right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be.¹³⁵

The standards for migrant children’s right to education, including UASC are regulated in the Reception Directive and the Qualification Directive.¹³⁶ According to them, asylum-seeking children, and children granted protection must be granted access to the education system under similar conditions as children who are nationals of the hosting country for so long as an expulsion measure against them or their parents is not actually enforced. Moreover, secondary education shall not be withdrawn for the sole reason that the child has reached the age of majority.

The Reception Directive also sets a maximum period in which inclusion to the education system can be postponed and more precisely that children should

132 *Belgian linguistic case*, § 4 of “the Law” part

133 *Campbell and Cosans v. the United Kingdom*, § 33

134 *Belgian linguistic case*, §§ 3-5 of “the Law” part

135 *Council of Europe, ECtHR (2021), Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights – Right to education*, 31 August 2021, https://ks.echr.coe.int/documents/d/echr-ks/guide_art_2_protocol_1_eng

136 See Article 14 of the Reception Directive and article 27 of the Qualification Directive

have access within no more than three months from the date on which the application for international protection was lodged by or on behalf of the child. Preparatory classes, including language classes, shall be provided to children where it is necessary to facilitate their access to and participation in the education system. Finally, the directive envisages that where access to the education system is not possible due to the specific situation of the child, the Member State concerned shall offer other education arrangements in accordance with its national law and practice.

According to the Return Directive, even migrant children who are pending removal and/or are put in detention, must be granted access to the basic education system for the length of their stay, in case the removal is postponed.¹³⁷

Education for UASC in Europe

There are specific policies or programs to promote UASC's access to education and facilitate integration into the education system in the European countries.

In **Bulgaria, Spain, Italy, and the Netherlands** education is compulsory until the age of 16 (in the Netherlands from the age of 5) and in **Greece** until the age of 15. For 16-18 years old children in **the Netherlands** a qualification requirement applies, meaning that persons in this age group who do not have a middle school diploma, still need to study for their 'start qualification'. Thus, in all examined countries UASC should be enrolled in school, regardless of their immigration status.

In **the Netherlands**, municipalities are responsible for ensuring education for migrant children and need to discuss this with schools in the area.

The *Coordination of Refugees Education* in **Greece** oversees every educational directorate with an existing refugee population. In most cases the figure of the legal guardian is the one responsible to enrol children in the educational system.

For secondary education in **the Netherlands** there are special schools for migrant children called international transition classes (ISK in Dutch), which are focused on learning the Dutch language and are specifically developed to facilitate the integration into the Dutch educational system. In **Italy** as well, Italian language

¹³⁷ Article 14(1)(c) and Article 17 Return Directive.

courses are provided and school enrolment can take place at any time of the school year.

In **Spain** children over 16 years old, must enrol in the Basic Vocational Training (FPB) - a specific free training for 2 years, regulated in the law, which allows the validation of these studies with the title of compulsory education. This training includes work practices, with the aim of promoting the inclusion in the labour market of UASC's.

With regards to access to education, the most common obstacle, pointed out in **Bulgaria, Romania** and **Spain**, is the language barrier. There is also a lack of “resource teachers”, who can support the UASC in Bulgaria. In **Romania** and **Bulgaria**, the school system is unable to facilitate the integration of UASC's. Issues occur particularly with older children who have passed the age of 14 and no longer attend school because they see no purpose. There are also reports of bullying.

While challenges persist, such as issues related to transportation and delays in forming reception classes, in **Greece** accessing the educational system is generally more straightforward for UASC residing in shelters and alternative accommodations, compared to children in camps with their parents.

Participation in the educational process, appears to be of even greater importance for UASC and former UASC in **Greece** as they might be potentially eligible for a 10-year residence permit under the New Migration Code, effective since April 1, 2023. However, the practical implications of this regulation remain to be verified considering the current legal constraint that young adults cannot enrol in high school if not previously enrolled as minors.

The examples presented above illustrate that there are different approaches to access to education throughout the different countries, and there is no unifying option that fits all. This puts some children in more favourable position with access to more opportunities than others, depending on where in Europe they are located. Below the Dutch educational system will be presented as a good example.

Nidos and the Dutch education system for UASC

1. Guardianship

In the Netherlands, national law stipulates that all UASC must be under guardianship. Guardianship is understood to mean parental authority or custody. Nidos is the national guardianship institution that carries out guardianship for all UASC in the Netherlands on the basis of the Civil Code.

The responsibility of Nidos is to take care of the mental and physical well-being of the child as well as promoting personal development. For example, a guardian must make sure that the child is in safe reception, that his interests are properly represented in the asylum procedure, that the child has access to (mental) health care and education. The starting point in this context is that **every child is unique**. Therefore, Nidos as a guardian is always guiding a child keeping in my mind what *this* child needs.



2. Primary and secondary education for UASC

For all migrant children in the Netherlands, like all other children, education is compulsory from the age of 5 to 16, until they reach a starting qualification. For 16–18-year-old children, a qualification requirement applies. Based on the European Reception Directive, **all migrant children must receive access to**

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education within three months after their arrival in the host country¹³⁸. The education attendance officer at the municipalities in the Netherlands must monitor this. Municipalities are responsible for ensuring that there is enough education available for migrant children. They need to discuss with schools in the area to provide education for migrant children.

For primary education, there is sometimes an educational facility available on location (for example at reception centres). In other cases, primary school children can enter regular primary schools (with or without a special language class) or they first go to a specialized primary school for language education.

For secondary education, there are special schools for migrant children which focus primarily on learning the Dutch language, in addition to other subjects. These are called international transition classes (ISK in Dutch). It has been specifically developed to facilitate integration into the Dutch education system. After finishing these classes (approximately after 2 years), the children can enter regular secondary schools, secondary vocational education, higher professional education or, after graduating with the right degree, they can study at university.

The role of Nidos in terms of education is to safeguard the rights of education and the welfare of the child. In the Netherlands they have different organizations that are involved in the educational system of UASC.

3. International transition Classes (ISK)

The ISK is a major part of the Dutch education system for the UASC. Each newcomer (children of immigrant, EXPATs, refugees or UASC) from 12-18 years old who comes to the Netherlands, first starts their educational program at the ISK. .

To give a view on how these classes work you can watch [four videos](#)¹³⁹ that illustrate the ISK in relation to the Dutch education system and contain:

- Introduction: how is the ISK positioned in the Dutch education system and what do you learn at the ISK.
- Learning route 1, and the corresponding graduate/student profile of this route 1.
- Learning route 2, which further schools does the student work towards in route 2.

¹³⁸ See Article 14(2) of the Reception Directive

¹³⁹ LOWAN playlist, <https://www.youtube.com/playlist?list=PL-g7XkGMIYr9smjvLBTsurnC4E5zfcw-h>

- Learning route 3, which further education is possible for the graduate/student to profile route 3

4. Network organisations in education

Local authority

- Responsible for ensuring that all children can go to school & for enforcing compulsory education.
- Consults with school boards and possibly with LOWAN/primary education council/secondary education council about education.
- Responsible for housing schools and student transport of status holders established in the municipality.

LOWAN

- Support schools in organizing education for UASC.
- municipalities can directly involve LOWAN/primary education council/secondary education council in educational issues.
- Provides information about financial arrangements and further organization of education.

School (boards)

- Responsible for providing education.
- Consults with COA and municipality about organizing education.
- Consults with the municipality about housing.
- Ensures sufficient, authorized and skilled staff for the target group.

OCW/DUO

- Provides regular funding & special funding on request based on existing schemes.
- OCW is available for proposing solutions & problems with implementation.

Inspector of education

- Monitors and reports on the quality of facilities and education for UASC
- Thinks about the dissemination of good examples.
- Is approachable in case of bottlenecks and participates in solving them.

In general, there are different organisations responsible for the education system for the UASC. The table below shows an overview:

The challenges of education for UASC

Some of the biggest challenges of education for UASC are:

- ***Fragmentation and collaboration: no national guidelines and many different stakeholders***

The organization of education is fragmented. Various ministries and organizations are involved in organizing, financing and coordinating education. The complex situation contributes to uncertainty in ownership and implementation. As a result, it is not possible to jointly comply with the applicable laws and regulations; namely the right to education.¹⁴⁰

- ***Ad-hoc policies are inefficient and expensive***

During periods of higher influx of UASC, in some countries a lot is invested in scaling up educational facilities (locations/teachers/expertise). In periods of low(er) inflow, little is invested in maintaining and updating this knowledge and expertise. In the longer term, this leads to higher costs for scaling up/downscaling facilities and expertise, as well as social security and health care.

- ***Access to education***

(Timely) access to education is insufficiently regulated for UASC. This problem is especially acute in (crisis) emergency shelters and other temporary locations. For example, in the Netherlands, there is no central overview of which children are in emergency shelters and to what extent they have access to (timely) education. This means that there is no clear picture of the number of children who miss out on education. Additionally, the language barrier especially when it comes to older children lowers the motivation to attend schools and leads to an early drop-out of the education system.

- ***Linking care and education***

When placing children/young people in a reception location, organizing education is insufficiently taken into account. On the one hand, this has to do with the placement policy, where the focus is primarily on accommodation and basic right of living, and on the other hand, with the reluctance of municipalities to open

¹⁴⁰ International Convention on the Rights of the Child, article 28

'child-friendly childcare' where, among other things, access to education is given a more prominent role.¹⁴¹

- **Comparing Refugee Minors to their peers in the hosting country**

When minor refugees are compared with children from the hosting community of the same age, the refugees past trauma and experiences are often used as a basis for equalization to avoid overwhelming the minor asylum seekers. This can lead to unequal expectations and/or outcomes.

- **Intolerance**

The hardships among UASC is increasing, and there is intolerance towards each other. The traumas during the flight are increasing, and the lack of solidarity of the society also plays a role.¹⁴²

- **Quality and continuity: providing appropriate education**

The first period in a new country is crucial for the psychological health and opportunity for long-term integration for UASC. School and education play a core role in this. Routine, mutual contact with peers and a safe environment are crucial in increasing the self-confidence and well-being of a child/young person. In the context of quality and continuity of education, the following areas of attention can be highlighted:

- 1) **Differences in quality of education**

In some countries there is a lack of national guidelines and frameworks. The form of organization and support therefore depends on local agreements between, for example, school boards and municipalities. Due to the lack of a national guideline, unaccompanied minors receive insufficient support.

- 2) **No suitable offer for the entire target group**

- First of all, there are major differences within the target group in terms of level and guidance needs.
- Secondly, there are no differentiation options based on the (future) perspective of children/young people. Education focuses exclusively on

¹⁴¹ "Letter from the Working Group on Child in AZC" (Committee debate on Aliens and Asylum Policy, February 2023)

¹⁴² P.Ford, manager ISK, 18 March, 2024

young people/children with prospects for integration, and is not suitable for young people/children with prospects for return.

3) Transition from 18- to 18+: insufficient guarantee of continuity of education

- Due to insufficient language level of young people/children, it appears difficult to progress to (appropriate) further education.
- UASC can be placed in regular asylum reception facilities or if they are already granted protection, they are required to leave the child protection facilities after turning the age of majority. This leads to insufficient assurance of education in the transition phase from 18 to 18+.

The conclusion is that there are currently bottlenecks in the education for UASC in the areas of (1) cooperation, (2) access and (3) quality and continuity. Increasingly, children/young people cannot attend education, which in the short term is the most acute problem in the development and overall well-being of the child. The complexity of the education system for UASC (many different parties, unclear division of roles and tasks, different interests) partly contributes to the lack of a common action plan.

Successful (political) intervention/law that have positively impacted UASC's right to education

Recently, the Minister¹⁴³ of Education, Culture, and Science (OCW) in the Netherlands made a positive decision to implement newcomer funding for UASC. OCW is assessing the needs of the youth and exploring ways to better integrate UASC into the education system, thereby facilitating smoother transitions for youth. Nidos will be involved in this process, particularly through the ICM, behaviour science and policy departments. It implicitly means that UASC will be better facilitated in their right to education, regardless of their status or origin. Students who receive less or different newcomer education than usual may possibly transition to mainstream education, including secondary vocational education, at an adequate level. It remains essential that the education sector has the task of providing all children who are present with a fitting place.

¹⁴³ M.Paul, Minister for Primary and Secondary Education, letter to parliament on newcomer education, April 9, 2024.

In the short term, there will be an improvement in newcomer funding. Currently, schools in the Netherlands receive two years of additional funding for newcomers, calculated from the date of settling in the country (primary education) or the first date of residence permit or date of entry into the Netherlands (secondary education). It has been decided to adjust the current system by using the date of first enrolment in school as the starting date for funding. For primary education, the regulations are currently being amended so that funding can be based on the first day of school starting from July 1, 2024. The system in secondary education is also being adjusted, with the aim of implementation by January 1, 2026.¹⁴⁴

In general, policies that concern the education of UASC, require to apply greater flexibility by establishing a stronger foundation in education. More attention to the diverse learning needs of UASC is needed as well as improving the intake and progression of students in education. Because education for UASC requires a specialized approach, education for newcomers is typically characterized by a high degree of local and regional collaboration between schools and schoolboards.

¹⁴⁴ M.Paul, Minister for Primary and Secondary Education, Letter to parliament on newcomer education, April 9, 2024.

Good practices

Succes stories in education in practice

In the Netherlands due to shortages of teachers and no available ISK, activities supervisor from COA provides tailored Dutch language lessons to all UASC in Winschoten. The activities supervisor stresses that: “You have to be able to see children on an individual basis, considering each person’s personality and identity, and above all, not generalize. The handbook every teacher should know combines teaching with independent learning along with Maslow’s hierarchy of needs (order, discipline, consistency, regularity, peace, and cleanliness).”¹⁴⁵

Local companies in the Netherlands sponsor students and/or offer work study programs, regardless of the fact that they may not have a diploma, as long as they have shown that they are good in a certain field.

Through (youth education) fundraising, the ISK in the Netherlands provides a breakfast/meal service so that they no longer have hungry and inattentive students in class.

Ukrainian volunteers, supported by UNICEF established the Foundation Fond DOBRO which aims to support the integration and socialisation of Ukrainian refugees in Bulgaria by providing educational and sports activities for children. The project Dobro-hub is the largest educational space in Bulgaria for Ukrainian refugee children and consists of 4 centres for children located in Sveti Vlas, Sunny Beach, Nessebar and the SKY STAR sports school in Sveti Vlas. Fond Dobro is a successful example because it manages to impact a large number of children and supports the integration of the children in the Bulgarian educational system, providing them with a close-to-school safe environment, and communication with other children. It also shows the power of the community to solve upstanding issues.

¹⁴⁵ Interviews with D.Voskuil, activities supervisor + NT2 teacher - COA, 20 March 2024

It also boosts the child's motivation to stay in the country, learn and develop themselves and give them an actual chance to integrate.

Key points to remember from this chapter

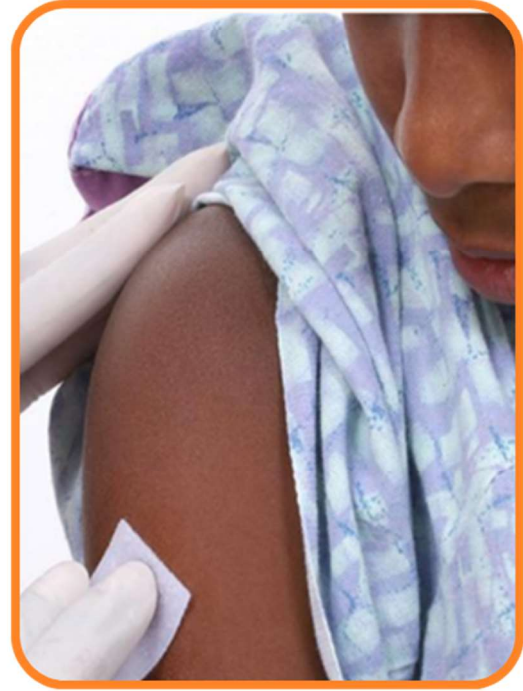


- ◆ All UASC must receive access to education and vocational and continuing training as soon as possible after their arrival in the host country.
 - ◆ The cultural (flight) context needs to be taken into account in the customization of education. This highlights the importance of flexibility and adaptability in education that values unique learning styles and the importance of support roles, particularly when working with diverse populations.¹⁴⁶
- ◆ Following good education (specifically measured for UASC) is the best for the mental well-being and the development of UASC. Therefore, the improvement of education systems in the different EU member states is of great importance in order to safeguard the rights of UASC.
- ◆ UASC demonstrate resilience, adaptability, and creativity especially when they face unprecedented challenges.



¹⁴⁶ S. Abdillahi, intercultural mediator, interview, 25 April 2024

Chapter VIII: Access to Healthcare



Health is a very wide concept, internationally; it was first articulated in the 1946 Constitution of the World Health Organization (WHO), whose preamble defines health as “*a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity*”. The preamble further states that “*the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.*”

The inclusion of migrants into the health system of destination countries is an essential component of their integration. The migration process and the living conditions children and young migrants experience can carry exceptional risks to their physical and mental well-being. This is linked to factors such as unequal access to health care and services, marginalization, discrimination and poor socio-economic conditions.¹⁴⁷ Therefore, its acknowledgement and protection is not easy for contemporary legal systems.

In this chapter we will examine the existing legal framework and its implementation to understand how effectively migrant children's rights are being upheld in relation to their right to access the healthcare.

¹⁴⁷ Anderson, Ascher, Björnberg, Eastmond, & Mallander, 2005

Article 35 of the CFREU

The Article 35 of the CFREU states:

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices.

A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 35 of the CFREU is in line with United Nations texts regarding health rights including the Universal Declaration on Human Rights (Article 25), the International Covenant of Economic, Social and Cultural Rights, International Convention on the Elimination of all Forms of Racial Discrimination (Article 5 (e) (iv)) and the CRC (Article 24).

Article 35 affirms that everyone, including UASC, has the access to preventive healthcare and medical treatment. This grants everyone the right to receive preventative measures like checkups and vaccinations, along with medical treatment when needed. However, it's crucial to understand that this right exists within the framework established by national laws and practices. This means specific details regarding access and treatment may vary depending on the EU Member State.

The right to healthcare is:

- **Non-Enforceable Right:** It's important to remember that Article 35 doesn't directly create a legally enforceable right for individuals. While it emphasizes the importance of healthcare access, enforcing these principles often relies on national legislation and existing legal frameworks.
- **Guidance for EU Institutions:** The primary function of Article 35 is to guide EU institutions when creating legislation. By highlighting these principles, the Charter nudges EU law towards prioritizing healthcare access.
- **Complementary to National Laws:** National healthcare systems remain the primary tools for ensuring access and protection. Article 35 serves as a guiding principle at the EU level.

A study held in 2016 in all EU countries has demonstrated that a migrant child who is legally categorized as an asylum seeker is more likely to be entitled to health care on equal terms with a resident child than other migrant children without permanent residency. Twenty out of the 30 states have a policy to care for an asylum-seeking child in the same way as they do for the host population. Only 11 states have similar arrangements for irregular migrant or undocumented children from non-EU/EEA countries (See Table 1). Eight countries have similar entitlements for asylum-seeking children to that of the host population in a parallel primary care organization outside of the general primary health care.

Table 1: Levels of equality regarding entitlements to health care for three groups of migrant children compared to national children. (no data =no data was available)¹⁴⁸

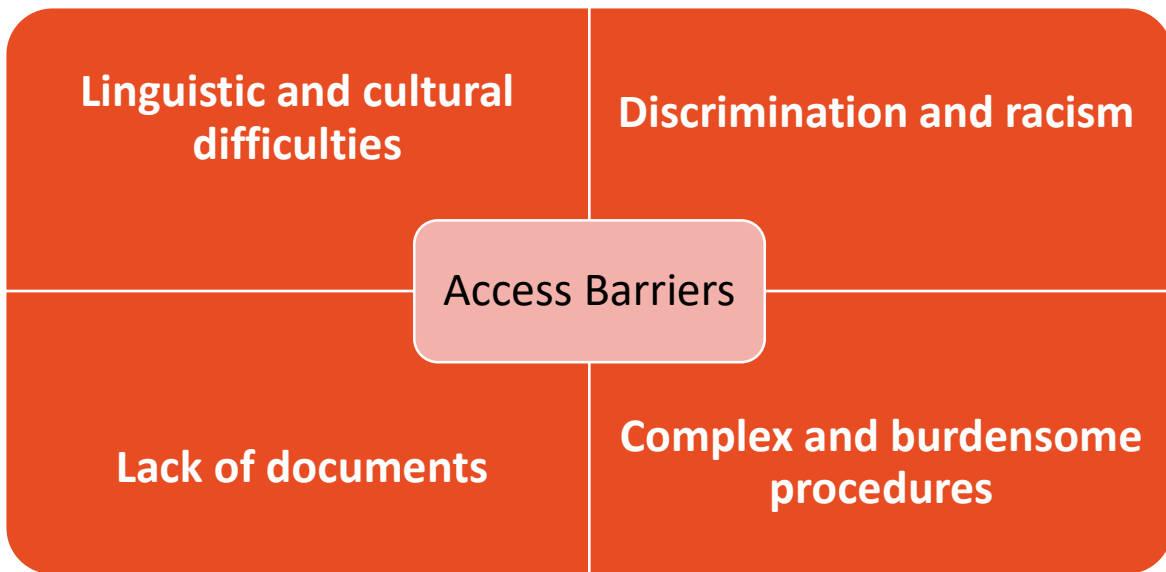
Colour code			
Entitlements equal to nationals regarding coverage and cost and included in same health care system			
Entitlements equal to nationals regarding coverage and cost but enrolled in parallel health care system			
Entitlements restricted compared to nationals/No legal entitlements Unclear legal provision			
Unclear legal provision			
	Equality dimension		
	Child asylum seekers	Children of irregular third-country migrants	Children of irregular migrants from other countries
Austria			
Belgium			
Bulgaria			
Croatia			no data
Cyprus			no data
Czech Republic			no data
Denmark			
Estonia			no data
Finland			
France			
Germany			
Greece			
Hungary			
Iceland			
Ireland			
Italy			no data

¹⁴⁸ *Migrant Children in Europe: Entitlements to Health Care, 2016*

Latvia			
Lithuania			
Luxembourg			
Malta			no data
Netherlands			
Norway			
Poland			
Portugal			
Romania			
Slovakia			
Slovenia			
Spain			
Sweden			
UK			no data

Access Barriers

In general, at European level, access to healthcare for UASC can still be hindered by a number of barriers:



Linguistic and cultural difficulties include lack of knowledge of the language of the host country, which can hinder communication with doctors and understanding of health information.

2023: A UNICEF report found that only 35% of migrant children in Europe have access to language and cultural mediation services.

2022: A survey conducted by Save the Children in Italy found that 45% of migrant children have difficulty communicating with doctors because of language.

UASC may be victims of **discrimination and racism** by healthworkers.

2022: A WHO report found that 20 % of migrant children in Europe experienced discrimination by health workers.¹⁴⁹

2023: A survey conducted by Oxford University found that 30% of migrant children in Europe are afraid of being discriminated against by doctors.

Lack of documents: undocumented UASC may find it difficult to access health services.

2022: The United Nations High Commissioner for Refugees (UNHCR) estimates that 15per cent of migrant children in Europe are undocumented.

2023: A Council of Europe report found that only 5% of undocumented migrant children have access to primary health care.

The healthcare systems of some European countries may have **complex and burdensome procedures** for access to medical care.

2022: A WHO report found that 25 % of migrant children in Europe have difficulty understanding the procedures for accessing medical care.

2023: A survey conducted by Save the Children found that 40 per cent of migrant children had to pay for medical care, even though in theory it should have been free.

Furthermore, according to the Statistical Office of the European Union, in 2022 10% of migrant children between the ages of 0 and 14 had no access to necessary medical care. 13% of migrant children between the ages of 0 and 14 had no access to necessary dental care.

The WHO estimates that in 2023 29% of migrant children in Europe were not vaccinated against measles and 25% were not vaccinated against diphtheria, tetanus and whooping cough.

¹⁴⁹ World report on the health of refugees and migrants, 2022, <https://www.who.int/teams/health-and-migration-programme/world-report-on-the-health-of-refugees-and-migrants>

Health rights of migrant children in Europe

UASC, as a vulnerable group, are entitled to a number of fundamental rights, including the right to health regardless of their migration status.

Where possible, gender should be taken into consideration when providing healthcare, (e.g. access to female medical personnel when requested and available).¹⁵⁰

It must be ensured that healthcare is available within reception facilities or within a reasonable distance on foot or via public transport and if needed UASC are accompanied by staff or the representative. Additionally adequate arrangements must be in place to ensure that UASC are able to communicate effectively with the medical personnel.¹⁵¹

In order to fully ensure the right to healthcare of UASC, specific arrangements must be in place for UASC with special medical needs. This would include, for example, access to a paediatrician, gynaecologist, or prenatal healthcare or ensuring that UASC with disabilities are provided with necessary arrangements.¹⁵²

In order for UASC to take advantage of their health rights, it must be ensured that they receive information about the right to healthcare service, the purpose and meaning of medical screening, health assessment and vaccination programmes immediately after arrival in the country.¹⁵³ Additionally they must be able to express their concerns and if their age and maturity allows so to be asked for consent when medical interventions are needed.

Along with physical health, UASC's psychological wellbeing and mental health is as important and must be taken into account and safeguarded during day-to-day care. Special attention is given to signs of anxiety, stress, loneliness, mourning, depression, trauma and sleeping problems. When necessary, psychological support is provided through listening, acknowledging UASC's feelings, giving advice or through referral to more specialist professionals like

¹⁵⁰ EUSA, *Guidance reception unaccompanied children*, 6.2 Access to necessary healthcare, <https://euaa.europa.eu/guidance-reception-unaccompanied-children/62-access-necessary-healthcare>

¹⁵¹ *ibid*

¹⁵² *ibid*

¹⁵³ *Ibid*, 6.1 Medical screening and health assessment, <https://euaa.europa.eu/guidance-reception-unaccompanied-children/61-medical-screening-and-health-assessment>

psychologists or therapists.¹⁵⁴

In Europe, several pieces of legislation guarantee access to medical care for migrant children, regardless of their legal status.

A number of legislative devices have been adopted to facilitate and guarantee access to healthcare for unaccompanied foreign minors; however, persistent barriers require ongoing efforts to overcome them.

In accordance with the **Reception Directive**, UASC, who are applicants for asylum, must be **provided with information about the available health care and when necessary to receive health care including, at least, emergency care and essential treatment of illnesses and of serious mental disorders**. Special attention is put not only on physical but also mental care.¹⁵⁵

It also regulates that the health, including mental health, of UASC, applicants for asylum **in detention**, who are vulnerable, **shall be of primary concern to national authorities**. Where UASC are detained, they must be ensured regular monitoring and adequate support taking into account their particular situation, including their health.¹⁵⁶

The **QD** stipulates that access to healthcare, including both physical and mental healthcare, should be ensured to beneficiaries of international protection under the same eligibility conditions as nationals of the Member State that has granted the protection. Member States are obliged to provide adequate healthcare, including treatment of mental disorders when needed, to beneficiaries of international protection who have special needs, such as pregnant women, disabled people, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict.¹⁵⁷ In this regards UASC also have the right to **equal and non-discriminatory access to health care** in the host Member State.

¹⁵⁴ EUAA, *Guidance reception unaccompanied children*, 4. Day-to-day care, 4.2 Health and wellbeing, <https://euaa.europa.eu/guidance-reception-unaccompanied-children/42-health-and-wellbeing>

¹⁵⁵ Article 17 and 19 of the Reception Directive

¹⁵⁶ Article 11 of the Reception Directive

¹⁵⁷ Para. 46 of the Preamble and Article 30 of the QD

The **Return Directive** also sets some basic standards in relation to healthcare. It states that during periods for which removal has been postponed emergency health care and essential treatment of illness must be provided.¹⁵⁸ Further, it is stressed that the state of health of the third-country national, including UASC, who are a subject of return must be considered in respect of the principle of non-refoulement.¹⁵⁹ In this regard the CJEU confirms a Member State cannot adopt a return decision or remove a third-country national who are staying illegally on the territory of that Member State and suffering from a serious illness, where there are substantial grounds for believing that returning them would expose them, on account of appropriate care not being available in the receiving country, to a real risk of a significant reduction in their life expectancy or a rapid, significant and permanent deterioration in their state of health, resulting in intense pain.¹⁶⁰

To address challenges and **promote equal access to health services for migrant children**, many European countries have adopted specific legislation and policies and developed good practices that can be summarized as follows:

- **The provision of language and cultural mediation** services to facilitate communication between migrant children and health workers.
- **Training for health workers:** raising awareness among health workers about the specific needs of migrant children and barriers to accessing health care.
- **Simplification of procedures:** Adoption of simpler and more uniform procedures for access to medical care for migrant children.
- **Specialised health services** for migrants and asylum seekers, which offer medical care that is sensitive to migrants' needs, including linguistic and cultural assistance.
- **Collaboration between the health sector and non-governmental organisations:** Many good practices are based on collaboration between the health sector, non-governmental organisations and the local community to provide accessible and culturally appropriate health services to migrant children. This may include training health workers on cultural diversity and

¹⁵⁸ Article 14(1)(b) Return Directive

¹⁵⁹ Article 5(c) Return Directive

¹⁶⁰ CJEU, *Judgment of the Court (Grand Chamber) of 22 November 2022, X v Staatssecretaris van Justitie en Veiligheid*. Case No C-69/21, para. 66

the importance of a patient-centred approach.

- **Awareness and information programs:** Some European countries have developed awareness and information programs for migrants, which provide information on health rights and available services and promote access to health services through multilingual information materials and advertising campaigns.
- **Local and community initiatives:** Many local communities in Europe have developed local and community initiatives to support children in accessing health services, e.g. by providing transport services to reach health facilities or organising mobile health clinics in rural areas.
- **National legislation and inclusion policies:** Many European countries have adopted laws and policies that recognise the health rights of migrant children and promote equal access to health services for all children, regardless of migration status. These laws may include ensuring free basic medical care for all children, regardless of migration status, and access to interpretation and cultural mediation services.

Good practices

ITALY:

- **National Health Service (SSN):** The law provides for the mandatory and free registration of UASC with the SSN. It is not necessary to have or a residence permit to register an UASC with the SSN. UASC can register with the SSN and take advantage of medical examinations, hospital treatment, medicines and other necessary health services.¹⁶¹ Health services for unaccompanied foreign minors are provided without payment of the health ticket, provided their income is less than €8,263.31 per year or they receive social allowances
- **Cultural mediators:** Cultural mediators are available in many health facilities to assist UASC who have language or cultural difficulties communicating with doctors and health personnel.¹⁶²
- **Training for health personnel:** Training courses for health personnel are organized to improve their understanding of the specific needs of UASC and to

¹⁶¹ Law No. 47 of 2017

¹⁶² Decree-Law No. 86 of 14 June 2018, converted with amendments by Law No. 92 of 3 August 2018

provide culturally sensitive health care.¹⁶³

ROMANIA:

- **Refugee Health Care Program:** This is a government program that provides free healthcare to refugees, including UASC. The program covers doctor visits, hospital treatment, medication and other necessary health services.¹⁶⁴
- **Mobile clinics:** Mobile clinics are organised to reach UASC living in rural or remote areas who may not have access to permanent health facilities.¹⁶⁵
- **Mental health services:** Mental health services are available for UASC who have suffered trauma or have other mental health problems.¹⁶⁶

NETHERLANDS:

- **Basic health care:** UASC are entitled to basic health care, which covers doctor visits, hospital treatment, medication and other necessary health services.¹⁶⁷
- **Mental health care:** Mental health services are available for UASC who have suffered trauma or have other mental health problems.¹⁶⁸
- **Health education:** Health education programmes are organised for UASC to inform them about their health rights and how to stay healthy.¹⁶⁹

SPAIN and GREECE:

- **National health system:** The Spanish and Greek national health systems provide free healthcare to all citizens resident in Spain/Greece, regardless of their migration status. UASC can register with the national health system and benefit from medical examinations, hospital treatment, medication and other necessary health services.¹⁷⁰
- **Cultural mediators:** Cultural mediators are available in many health facilities to assist UASC who have language or cultural difficulties communicating with

¹⁶³ Ministry of Health: <https://www.salute.gov.it/>; National Integration Plan 2021-2023

¹⁶⁴ Order No. 1043/2014 of the Ministry of Health

¹⁶⁵ National Strategy for the Integration of Refugees 2018-2023

¹⁶⁶ Romanian Association for Human Rights (APADOR-CH): <https://www.apador.org/>; Mental Health Act No. 18/2002

¹⁶⁷ Wet Geneeskundige Betrekkingen Zorgverzekering - Law on Medical Relationships in Health Insurance

¹⁶⁸ Wet Bopz - Compulsory Treatment of Psychiatric Disorders Act

¹⁶⁹ Wet Geneeskundige Verzorging Van Asielzoekers (Wvva): <https://www.infomigrants.net/en/post/54727/dutch-parliament-approves-controversial-asylum-seeker-law>; Rijksoverheidsplan Gezondheidsbevordering en Ziektepreventie 2018-2023 - National Plan for Health Promotion and Disease Prevention

¹⁷⁰ Legislative reference: Ley 14/1986, de 13 de marzo, General de Sanidad - General Health Law

doctors and health personnel.¹⁷¹

- **Mental health services:** Mental health services are available for UASC who have suffered trauma or have other mental health problems.¹⁷²

BULGARIA:

- **Free healthcare with the National Health Insurance Fund:** Registration with the National Health Insurance Agency (NHIF) is compulsory for UASC which guarantees them access to a wide range of free health services, including medical examinations, hospital treatment and medication.

These are just a few examples of successful initiatives that have had a positive impact on the right to healthcare for UASC in Europe. It is important to note that the situation of children varies greatly from country to country and that UASC's specific healthcare needs may vary according to their individual experiences.

Despite the progress made, there is still much to be done to ensure that migrant children have access to healthcare in Europe. It is important to continue to monitor the situation, collect up-to-date data and promote effective interventions to overcome barriers to access and improve the health and well-being of migrant children.

It is crucial that governments, NGOs and other actors continue to work together to ensure that all children have access to the health care they need to stay healthy and thrive.

Case Study

Bellow you will be presented the case of a 17-year-old girl of Nigerian origin who arrived in Italy.

The girl arrives in south Italy in 2017 and independently reached South Tyrol, where she was tracked down and placed in an accommodation female facility in Bolzano. She directly declared the state of pregnancy. Being a minor, the girl had access to medical care and was registered with the National Health System.

The court appointed her a guardian, who in this case was the Social Services

¹⁷¹ Real Decreto 1177/2011

¹⁷² Ministry of Health: <https://www.sanidad.gob.es/>; Ley 41/2007, de 7 de diciembre, de reforma del Estatuto B; Ministry of Health: <https://www.moh.gov.gr/>; National Public Health Organisation: <https://www.ecdc.europa.eu/en/ethnikos-organismos-dimosias-ygeias-hellenic-national-public-health-organization-eody>

Coordinator. She received free antenatal support, with antenatal examinations, ultrasound scans and counselling. A reception social worker accompanied her to all the appointments.

She could benefit from psychological counselling to deal with the emotional difficulties related to pregnancy and her situation. The accommodation center put her in contact with a psychologist who spoke English.

She was informed about the options for childbirth (hospital or birth centre) and about natural childbirth or caesarean section. The medical staff provided her with the information she needed to make an informed decision in English.

She received postnatal support to care for the baby, with advice on breastfeeding, assistance with nursing and help with finding accommodation.

After the childbirth, the girl was taken in at the Provincial Institute for Child Welfare (IPAI), which accommodates pregnant women; mothers and children aged 0 to 3 years in difficulty. The aim of the institute is to protect minors, promote parenting and develop parenting skills.

During her stay at IPAI, the girl was monitored and assessed on her parenting skills through psychological interviews, interactions with health workers and educators.

Despite the presence of English-speaking personnel, there is evidence of a lack of interaction between the Service, the girl and the community of Nigerian women, who could have provided concrete support. No mediator of her mother tongue (Edo language) was present in any of the meetings.

Having reached the age of majority, the Court declared the woman's parental incapacity. The girl was placed in a facility for women in emergency, while the newborn daughter remained in the care of IPAI. The Social Services Coordinator remained the guardian of the newborn.

Although access to medical care for the minor and her daughter was not an obstacle and in line with the article 35 of CFREU, the question arises as to whether the health care system took a holistic approach. In this specific situation, a mainly benefit-focused approach emerges, without taking into account the specific needs of the girl as an UASC.

Other provisions of the CFREU, related to the fundamental right to health:

- human dignity (Art. 1),
- the right to life (Art. 2)
- the right to physical and mental integrity (Art. 3), which includes informed consent and a wider respect of the human body.
- Article 7 (Respect for private and family life)
- Art. 8 (Protection of personal data)
- Art. 25, on the rights of the elderly, and
- Art. 26 CFREU on persons with disabilities.

In conclusion, Article 35 of the CFREU plays a significant role in emphasizing the importance of healthcare access and environmental protection within the EU. It guides EU institutions and complements national efforts to ensure these rights for all citizens. While not directly enforceable itself, it lays the foundation for a more comprehensive approach to healthcare and well-being within the EU.

UASC have the right to access medical care in Europe. However, several barriers can hinder this right. It is important to be aware of existing regulations and practices to improve access to medical care for migrant children.¹⁷³

Key points to remember from this chapter



- ◆ UASC are entitled to the right to equal and non-discriminatory access to healthcare regardless of their migration status. The inclusion of UASC into the health system of destination countries is an essential component of their integration.

¹⁷³ For more information read:

- EMN: *Children in Migration*, 2021, https://migrant-integration.ec.europa.eu/library-document/emn-children-migration_en
- Save the Children, *Minori migranti* <https://www.savethechildren.it/cosa-facciamo/protezione/minori-migranti>
- UNICEF, *Minori migranti e rifugiati*, <https://www.unicef.it/minori-migranti-rifugiati/>

- ◆ Where UASC are detained, they must be ensured regular monitoring and adequate support considering their particular situation, including their health.
- ◆ Along with physical health, UASC's psychological wellbeing and mental health is as important and must be taken into account and safeguarded during day-to-day care.
- ◆ Access to healthcare, including both physical and mental healthcare, should be ensured to UASC who are granted international protection under the same eligibility conditions as nationals of the Member State that has granted the protection.
- ◆ During periods for which removal of UASC, who do not have residence permits, has been postponed emergency health care and essential treatment of illness must be provided.
- ◆ Member States must take into consideration the state of health of UASC and not issue return decision or remove UASC who are staying illegally and suffering from a serious illness, where returning them would expose them to a real risk of a significant reduction in their life expectancy or a rapid, significant and permanent deterioration in their state of health, resulting in intense pain.

Chapter IX: Access to Adequate Accommodation and Social Security



This chapter reviews the legal framework and guarantees for adequate accommodation and social security of UASC. Further, standards and indicators for appropriate accommodation are also described. Last but not least a list of good national practices and successful initiatives are showcased.

Article 1 and 34 CFREU

Article 1 CFREU: Right to Human Dignity

Human dignity is inviolable. It must be respected and protected.

The dignity of a human person constitutes the real basis of fundamental rights, enshrined in the Universal declaration of Human Rights. It is described as the foundation of freedom, justice and peace in the world. In 2001 the CJEU confirmed that a fundamental right to human dignity is part of EU law. This means among other things that the dignity of a human person is part of the rights laid down in the CFREU and it must therefore be respected, even where a right is restricted.¹⁷⁴

A violation of the right to human dignity enshrined in Article 1 of the EU Charter combined with a prohibition of degrading treatment in Article 3 of ECHR,

¹⁷⁴ Official Journal of the European Union. C 303/17, 14 December 2007, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2007:303:FULL&from=EN>

may trigger the responsibility of the state to provide social security and housing to UASC, taking into consideration their possible lack of access to the labour market and their particular vulnerabilities.¹⁷⁵ The ECtHR found that a State may have responsibilities to ensure that an individual does not face a situation of destitution and that insufficient social benefits may raise an issue under Article 3.¹⁷⁶ Therefore in this Chapter the term “social security” should be considered in relation to social benefits granted to vulnerable groups of the population, such as UASC, children with disabilities or physical-mental illnesses, children in distress, etc

The CRC, which applies to all children without distinction, requires that the state ensure to the extent possible the child’s survival and development, and in a separate provision, provides for the right of the child to an adequate standard of living, which includes also the mental, spiritual, moral and social aspects of his or her development.¹⁷⁷

According to Article 34 CFREU:

Article 34 CFREU: Right to Social Security and Social Assistance

- 1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.*
- 2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.*
- 3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.*

The three paragraphs of Article 34 refer to EU law and national law. The first paragraph is addressed to the Union and requires recognition and respect of the entitlement to social security benefits. It does not guarantee a right to benefit in case the risks mentioned materialise. Since the EU has not adopted minimum provisions on social security, apart from recommendations, this provision can be

¹⁷⁵ ECRE, *The right to housing for beneficiaries of international protection*, December 2016, <https://ecre.org/wp-content/uploads/2016/12/The-Right-to-housing-for-beneficiaries-of-international-protection.pdf>, p. 4

¹⁷⁶ ECtHR, *Budina v Russia*, Application no. 45603/05, 18 June 2009; ECtHR, *Larioshina v Russia*, Application no. 56869/00 23.04.2002

¹⁷⁷ Arts. 6(2) and 27, *Convention on the Rights of the Child*, G.A. Res. 44/25, November 20, 1989, entry into force September 2, 1990.

applied only when a particular EU instrument, or the implementation of this instrument in national law, impacts on social security rights.

The second paragraph of Article 34 is not addressed to the EU but gives ‘everyone’ residing and moving legally within the EU the entitlement to social security benefits and social advantages in accordance with Union law and national laws and practices. This provision is elaborated in Regulation 883/2004 on the coordination of social security systems¹⁷⁸ and Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and several Directives relevant to third-country nationals.

The third paragraph recognises and respects the right to social and housing assistance for all those who lack sufficient resources. This right is subject to EU national law and practices.¹⁷⁹

The principle set out in Article 34(1) is based on Articles 153 and 156 of the TFEU, Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Articles 153 and 156 of the TFEU. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist.

While Articles 1 and 34 of the CFREU don't directly address adequate accommodation, they do connect to social security which can indirectly impact housing. Although the CFREU does not guarantee a right to housing, Member States have the obligation to respect, protect, and fulfill social rights like social security. Social security benefits can provide financial resources to help individuals and families obtain adequate housing. Other provisions of the Charter may also be relevant to social security and social assistance, such as the provision that human dignity is inviolable, the right to property, the prohibition of discrimination, the guarantee of equality between men and women and the right to freedom of expression.

¹⁷⁸ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland)

¹⁷⁹ Frans Pennings, “Does the EU Charter of Fundamental Rights have Added Value for Social Security?” *European Journal of Social Security*, Volume 24, Issue 2, Pages: 117 - 135

A significant number of fundamental rights are in the field of labour and social security; some Charter provisions have a well-known corresponding instrument implementing it, such as Directive 2000/78 establishing a general framework for equal treatment in employment and occupation as counterpart of Article 21 of the CFREU and the principle of non-discrimination.¹⁸⁰

National laws of EU member states often translate this obligation to ensure social security and accommodation into concrete social security and housing assistance programs. For example, in the case of UASC and/or young adults, the Greek State has already taken care of their accommodation in structures for temporary or long-term accommodation for UASC or for their stay in semi-autonomous living apartments, if they are over 16 years old. Articles 1 and 34 of the CFREU lay the foundation for social welfare policies that can indirectly impact access to adequate social security. However, specific rights and programs related to social security would be determined by national laws within the EU framework.

Although the Charter does not create new competences, it may thus enable new interpretations of EU law and have an impact on national law. These are effects that did not follow from other EU instruments and give added value to the Charter.

Legal framework for reception and accommodation of UASC

The right to adequate accommodation is a human right and it is derived from the right to an **adequate standard of living for everyone** (which also includes food and clothing) and the continuous improvement of living conditions. It is of central importance for the enjoyment of all economic, social and cultural rights, and corresponds to Article 11 of the Covenant on Economic, Social and Cultural Rights.¹⁸¹

The reception and accommodation of UASC is governed by EU law, in particular by the Reception Conditions Directive¹⁸². It lays down standards for the reception of applicants for international protection in order to ensure a dignified standard of living and comparable living conditions in all EU member states. Article

¹⁸⁰ Pennings, F. (2022). Does the EU Charter of Fundamental Rights have Added Value for Social Security? *European Journal of Social Security*, 24(2), 117-135. <https://doi.org/10.1177/13882627221095105>

¹⁸¹ CESCR General Comment No.4: The Right to Adequate Housing (Art 11 (1) of the Covenant, 13 December 1991, <https://www.refworld.org/legal/general/cescr/1991/en/53157>

¹⁸² Reception conditions Directive 2013/33/EU, 26 June 2013, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>

21 of the RCD defines the special categories of vulnerable applicants of international protections which includes UASC whose specific situations should be taken into account. Member states need to assess whether the applicant is an applicant with special reception needs, for example an UASC, **within a reasonable period of time**.¹⁸³

The RCD also envisages special reception and treatment rules for UASC who shall be placed:

- A) with adult relatives;
- B) with a foster family;
- C) in accommodation centers with special provisions for children; or
- D) in other accommodation suitable for children.¹⁸⁴

Moreover, as far as possible, siblings shall be kept together, taking into account the best interest of the child, their age and degree of maturity.¹⁸⁵ Also, EU member states may place UASC aged sixteen or over in accommodation centers for adult applicants, **only** if this is in their best interest.

Article 23(1) RCD: Minors (the best interest of the child)

The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.

Standards and indicators for accommodation of UASC

In order to safeguard children's rights and guide EU+ states¹⁸⁶ in the implementation of the key provisions of the RCD, the European Union Agency for Asylum (EUAA), has outlined some special operational standards and indicators for reception conditions for UASC.¹⁸⁷ This also includes standards and indicators for accommodation which follow the principle of the best interest of the child and the principles of:

¹⁸³ See Article 22 of the RCD

¹⁸⁴ Article 24(2) of the RCD

¹⁸⁵ Article 23(1) RCD

¹⁸⁶ EU member states including Norway and Switzerland

¹⁸⁷ EASO (now EUAA) Guidance on reception conditions for unaccompanied children: operational standards and indicators, December 2018, <https://euaa.europa.eu/sites/default/files/Guidance-on%20reception-%20conditions-%20for-unaccompanied-children.pdf>

- **Transparency and accountability:** the provision of reception conditions should be based on fair rules and decision-making processes.
- **Confidentiality:** all people who work with UASC should respect the confidentiality rules provided for in national and international law when obtaining any information.
- **Participation:** reception authorities are expected to facilitate the participation and engagement of all UASC in the management of the reception conditions in order to respect children's participation rights under the EU charter and the CRC.
- **Non-discrimination:** all UASC have equal access to reception without any form of discrimination.

In general, EU+ member states have the freedom to choose different types of accommodation to provide to UASC as long as they consider the special reception needs for UASC. These types of accommodation can range from reception centers to alternative arrangements such as foster care or private houses. There are several aspects of accommodating facilities that need to be taken into consideration by member states while appointing a certain type of accommodation to UASC. A number of them are outlined below. The full list of standards and indicators for the reception of UASC (among which accommodation) can be found in the guidance of EUAA.¹⁸⁸

The first aspect is **location**. In general, the accommodation should be located in areas that are intended for residential use. An important standard is to ensure effective geographical access to relevant services such as schools (no longer than 45 minutes by public transport), healthcare services, legal aid, shops and leisure activities. Besides simplifying their daily life activities, it also influences the integration opportunities for UASC. It is considered good practice to involve local resident populations to define the location of the accommodation in order to enable interaction to avoid isolation.

The second aspect which needs to be taken into account is **infrastructure** within the accommodation. Hereby an important standard is sufficient space in the bedroom in a collective accommodation (minimum of 4m² per person and 2.10M height of walls). There needs to be enough space for at least a bed and one

¹⁸⁸ Ibid.

(lockable) cupboard per person. A '(bed)-room' is defined by four walls with a door that can be closed, window that can be opened and, in a shared accommodation, the room needs to be lockable with access for the staff. Thereby, **respect for privacy and safety** of the children need to be ensured. Indicators are that there is a maximum of four children in one bedroom and there exist separate bedrooms for single male and female UASC with no possible access for children of the opposite sex. It is considered good practice with regards to privacy and safety for UASC that there is a minimum passageway of 90cm between the beds and that the children have a personal key of their bedroom.

Besides, there needs to be at least one **common area** in a shared accommodation where UASC can eat, study and spend their leisure time. They must be furnished in a child-friendly manner including a sufficient number of tables, chairs and sofas and general decoration. The existence of such spaces will give more possibilities for UASC to engage in collective leisure activities which helps to bring more structure in their day which will have a positive impact on their mental health and decreases tensions and isolation. Some indicators are that there is a minimum of leisure activities located at reasonable, safe walking distance and that sufficient activities also available inside the accommodation. Also, UASC from 0-12 years old should have daily access to playgrounds and playrooms appropriate for their age and UASC from 13-17 years old should have weekly access to indoor and outdoor sports facilities.

Also in shared kitchens, personal (refrigerator) space and enough cooking supplies must be provided for each UASC. The overall sanitary infrastructure must be well functioned and adequate. An example of an indicator is that there is at least one functioning, lockable (separated) toilet and shower per eight children, preferably in the same building as the bedrooms. At all times, the infrastructure inside and outside of an accommodation designated to house UASC with reduced mobility should be adapted to their needs.

In addition, **sanitation** (keeping places clean) and **maintenance** (conserve the original condition of the accommodation as much and as long as possible) are important aspects within accommodation as well. While both of these aspects fall under the overall responsibility of the authorities, UASC may also be involved in these activities on voluntary, educational basis as well, supervised by staff. Examples of indicators are that there is cleaning schedule, that areas are cleaned at least daily, cleanliness and the functioning of furniture and equipment is checked

on regular basis and that UASC are able to do their laundry, or have it washed by a laundry service which is accessible at least five days a week.

Furthermore, adequate **security** of accommodations and facilities should be ensured. There must be enough security measures present, for example the regular conducting of risk-assessments, monitored access (by video) of the premises, possibilities to report security issues to the responsible staff in a safe manner, ensure measures that also focus on the detection and prevention of gender-based violence including appropriate lighting for areas, restricting the need for UASC to walk alone through isolated areas, locks on doors, etc. It is considered good practice to make private spaces available where children/people can express security concerns in order to encourage the reporting of violence and incidents.

The last set of standards and indicators are around **communication equipment and services**. Communication plays an important role in the life of UASC, either with friends and family members as well as with representatives and organisations providing legal aid and other relevant services. Daily adequate access to a telephone must be provided at each accommodation. Adequate access to communication has proven to contribute to children's mental health and prevents anxiety. Also, UASC should have daily and free access to the Internet for contact with family and school. This should be age-appropriate and regulated by the staff. It is considered to be good practice to facilitate access to a television in at least two languages most widely spoken by the UASC in the accommodation.

Overall, adequate accommodation is of vital importance for UASC in Europe and this must therefore be regulated well by state authorities in association with relevant stakeholders, care-providers, mentors, guardians and other involved professionals in order to safeguard these rights for UASC. Not only for their well-being, also for their safety and protection as outlined in Article 34 of the CFREU.

"If a country's asylum reception is inadequate, there are not only frequent incidents of aggression, fights and alcohol abuse, but also more sadness, despair and suicidal behaviour. Experiences of situations like these really show the importance of a period of rest and safety after the flight. A period during which the child experiences sufficient safety to recover from the hardships, look for their family, mourn what is

lost, and also build friendships with their peers, while beginning to understand what support they can expect from professionals.”¹⁸⁹

Reception model example – accommodation of UASC in the Netherlands

There are differences between EU member states when it comes to reception models for UASC. As an example, the reception model for accommodation of UASC in the Netherlands is outlined below.

In the Netherlands, a new reception model for UASC came into effect in 2014. In this model, small-scale accommodation is the starting point. The Reception Model sets out the broad outlines of the reception system. **Customization remains crucial** in this. For example, if it is in the best interest of the child that a child of 16 years old is better to be placed with an adult blood relative than in the first reception of the Central Agency for the Reception of Asylum Seekers (COA), measures will be taken to realise this.

All UASC are placed with family if possible, if not:		
	Age 0-15 + older vulnerable UASC	Age 15-18(+)
Asylum procedure	Specialised foster family Nidos	Process Reception Location (POL) from COA for a max. period of 3 months
	First foster family Nidos	
Residence permit	Foster family Nidos	Small scale reception (KSO) from Nido (contract partners) in a municipality
No residence permit	Foster family Nidos	Small scale reception (KWV) from COA in or close to asylum center or small scale Perspective reception location (PON) from Nidos

Figure 1 Reception of UASC in the Netherlands – Nidos

Children under the age of fifteen

¹⁸⁹ Marjan Schippers, *Children on the Move*, February, <https://www.egnetwork.eu/wp-content/uploads/2021/10/Children-on-the-move-A-guide-to-working-with-unaccompanied-children-in-Europe.pdf>

In the reception model, children under the age of fifteen are cared for in (cultural) foster families of Nidos. Nidos, the guardianship authority for UASC in the Netherlands, has a separate internal department dealing solely with foster families. This concerns the recruitment and screening of families. Nidos takes into account the cultural background of the children and the families as much as possible. The idea behind it is that in this way, a child can make an easier transition from his/her country of origin to the Netherlands. This is therefore in the best interest of the child.

The same day that an UASC under the age of 15 arrives in the Netherlands they are assigned to a first foster family from Nidos. In some cases, no immediate match is found. In that case the child will stay a few days in a specialised foster family of Nidos to overbridge this time. During the first three months, they are monitored if the first foster family is still the best match. If so, they can stay in this family (this happens most of the time) and if not, another foster family of Nidos is found. Children can also stay with their own adult blood relatives, although these families first need to be screened by Nidos as well.

Children over the age of fifteen in the asylum procedure

Children over the age of fifteen who arrive in the Netherlands go to temporary Process Reception locations (POA) of COA for a maximum of three months. These are fairly large-scale shelters with room for about 80 young people. COA mentors supervise the child 24 hours a day, seven days a week.

Children with a residence permit

A child who receives a residence permit goes to a small-scale shelter of Nidos or one of their contract partners. Nidos has agreements with various youth institutions in which arrangements have been made about the reception of UASC. Youth institutions can offer two types of care. First, the Children's Residential Groups (KWG) for children that are not yet so self-reliant. There is room for a minimum of nine and a maximum of 15 young people in this type of care.

Second, there are the so-called small-scale shelters (KWE). This is a childcare facility for children who are already relatively self-reliant. They receive guidance for four hours a day by a mentor from one of the youth institutions. There is a place for 4-5 children in a KWE. If it is in the best interest of the child, a vulnerable child over 15 years old can also be placed in a foster family of Nidos or with adult blood relatives.



Successful initiatives on accommodation and social security for UASC

The IOM Safe Zones - Bulgaria

In Bulgaria, in almost all cases, UASC are placed respectively in reception centres (if they are asylum seekers) or child protection centres and alternative care. However, conditions in the refugee reception centres are reportedly inappropriate (small rooms, insects, no private space, and tasteless food). Since 2019 and 2020, IOM facilitates the so-called Safe Zones¹⁹⁰ for UASC within two of SAR's reception centres in Sofia. They provide: uninterrupted social support; 24/7 security guards on site; interpretation and cultural mediation services; social, legal, and psychological support and access to general practitioner/medical assistance. They also organize information sessions on various topics, including the support provided by IOM, the rights and obligations during the proceedings for international protection, the Safe Zone house rules, proceedings under the Dublin Regulation and other important information regarding UASC.

Within the Safe Zones, support is provided to UASC who attend school and non-food items such as clothing, hygiene supplies and other items are distributed if

¹⁹⁰ IOM Bulgaria, *Safe zones Snapshot 2023*, https://bulgaria.iom.int/sites/g/files/tmzbd11291/files/inline-files/2023-zones-snapshot_final_0.pdf

necessary. Also, cultural, art and sports activities are organized for the children. Some key facts from 2023¹⁹¹:

- 2569 UASC were accommodated in the two safe zones in Bulgaria
- 541 UASC received medical assistance, supported financially by IOM
- 705 social and psychological consultations were provided to UASC
- 17006 UASC participated in sports activities¹⁹²

The Safe Zones are managed within the project “Support for unaccompanied minors, seeking international protection” funded by the national programme of the Asylum, Migration and Integration Fund (AMIF).

Resilience Innovation Facilities (RIF) – Romania

As part of the Emergency Response Programme for Ukrainian UASC, Terres des Hommes set up three Resilience Innovation Facilities (RIF) ¹⁹³ in Bucharest, Constanta and Brasov. These are the places where most Ukrainians have settled. They were opened in March 2023 in partnership with UNHCR to support the integration of children and youth from Ukraine and to take care of their emotional well-being. The centres are equipped with 3D technology especially for children. They are able to explore their own talents and skills by playing creatively. In order to connect with the Romanian community, also local Romanian children can go to these centres.

ARSIS Association for the Social Support of Youth in Greece

In Greece, given the need to provide housing for unaccompanied children, as mentioned above in this chapter, it was of fundamental importance for children to have access to health care services through the acquisition of a Social Security Number (AMKA). This number was linked to both access to health and access to work, as for every person residing in the country.

Unaccompanied children are entitled - from the moment they join the National Emergency Response Mechanism ¹⁹⁴ for the identification and protection of

¹⁹¹ Ibid.

¹⁹² UASCs have participated in more than one activity

¹⁹³ <https://www.tdh.org/en/projects/fablabrif>

¹⁹⁴ The National Emergency Response Mechanism (NERM) of the Special Secretariat for the Protection of Unaccompanied Minors (SSPUAM) of the Ministry of Migration and Asylum was launched in 2021 with the support of UNHCR, the UN Refugee Agency, in Greece and institutionalized with article 66 (33) (AI) of Law 4939/2022 (OGG A' 111), which was added with article 39 of Law 4960/2022 (OGG A' 145). The purpose of the NERM is to identify and immediately refer and place a homeless unaccompanied child or a child living in precarious conditions in emergency accommodation facilities, pursuant to Article 43 of Law 4760/2020 (A 247) on the abolition of the protective custody of unaccompanied children. You can read more about NERM in the NERM procedural Handbook:

unaccompanied children - to a small monthly financial allowance (larger for those living alone in apartments), free transport to and from their school, a reduced fare for public transport, just like other children. However, on the important issue of access to health services, it is worth noting that ARSIS Association for the Social Support of Youth has assisted over 600 UASC by guiding them through the process for getting Health Care Number for Foreigners (PAAYPA) and informing them of their right to social security. Prior to reaching adulthood, unaccompanied minors are equipped with knowledge of accessing social benefits, youth support benefits, and other relevant resources.

ARSIS has also conducted interventions highlighting the deficiencies in the administration's provision of access to social benefits. As part of advocating for the rights of UASC, on August 2, 2017, ARSIS sent an open letter to the then-called Ministry of Migration Policy, the Minister of the Interior, the Minister of Administrative Reconstruction, the Minister of Health, the Minister of Labor, Social Security, and Social Solidarity, and the Minister of Finance, along with 24 other NGOs, addressing repeated incidents of violation of asylum seekers' and refugees' rights by the administration, including issues related to and Social Security Number (AMKA).¹⁹⁵ In 2019, administrative authorities ceased granting social security numbers to all applicants for international protection and UASC until legislative changes were made, thereby depriving them of access to social benefits and healthcare. ARSIS actively participated in protecting the rights of UASC to access social security and benefits through a press release.¹⁹⁶

In 2020, ARSIS, along with 17 other NGOs, sent an open letter to the Ministry of Migration and Asylum, requesting the immediate restoration of access to primary health care for all individuals who have arrived since July 2020 and those who continue to arrive, by reinstating access to the AMKA and activating the PAAYPA or any other equivalent scheme¹⁹⁷. Since 2020 and the digitalisation of social security procedures, the main problems in relation to UASC have eventually been

A safety net for unaccompanied children identified in precarious living conditions, produced by the Special Secretariat for the Protection of Unaccompanied Minors of the Greek Ministry of Migration and Asylum with the support of UNHCR, the UN Refugee Agency, and the European Union, <https://migrant-integration.ec.europa.eu/system/files/2023-03/NERM%20Procedural%20Handbook.pdf>

¹⁹⁵ ARSIS, Joint letter - petition of 25 organizations on "Repeated incidents of violation of rights of asylum seekers and refugees by the Administration (TIN, AMKA, unemployment card, right to work)", 2017, <https://arsis.gr/kini-epistolianafora-25-organoseon-me-thema-epanalamvanomena/>

¹⁹⁶ ARSIS, PRESS RELEASE: Immediately lift the exclusion of refugees from the public health system, 2019, <https://arsis.gr/deltio-typoy-amesi-arsi-apokleismoy-prosfygwn-apo-to-dimosio-systima-ygeias/>

¹⁹⁷ <https://arsis.gr/open-letter-to-mr-notis-mitarakis-minister-on-migration-and-asylum/>

resolved¹⁹⁸. Joint Ministerial Decision [717/2020](#) of the Ministries of Migration and Asylum, Education and Religious Affairs, Health, Labor and Social Affairs decided to assign a Temporary Insurance and Health Care Number to all applicants for international protection without exception¹⁹⁹. The above legislation was amended and improved by Joint Ministerial Decision [605869/2022](#). Since then, the PAAYPA and AMKA are issued with the application for international protection card at the time of registration by the Asylum Service and ensures the provision of health care to UASC asylum seekers and their access to the labour market and are indicated on the card. The PAAYPA is attributed to the local asylum services, where the relevant application is registered.

Case study

In June 2019, the following problem was observed in the Accommodation Structures for UASC in Greece: A ministerial decision was adopted, whereby applicants for international protection were entitled to issue a social security number to the so-called Citizen Service Centres. The necessary documents for issuing this number was: 1) for beneficiaries of international protection – a residence permit document; and 2) for applicants for international protection the applicant’s card for international protection.

This made it possible to issue a Social Security Number (AMKA) for hundreds of UASC. NGOs pushed to speed up the registration of UASC in the asylum service in order to obtain an AMKA. In July 2019, with the change of government in Greece, a directive was issued by the Ministry of Labour and Social Affairs, according to which the previous ministerial decision was revoked and detailed instructions on the issuance of AMKA would follow. Unfortunately, these instructions came after many months.

As a result, many children, especially those who had not been able to issue AMKA in June of the same year, when this ministerial decision was in force for a few weeks, or the children who entered the country after the Ministerial Decision was revoked, were left uninsured. In the summer of 2019, workers in accommodation facilities and reception centres for asylum seekers, where there were special places to accommodate UASC, reported issues related to spreading

¹⁹⁸Ministry of Migration and Asylum, Hellenic Republic, <https://migration.gov.gr/en/applications/ypiresies-asyloy/>
¹⁹⁹<https://migration.gov.gr/en/epilysi-thematon-prosorinis-ygeionomikis-perithalpsis-aitoynton-asyloy/>

diseases and lack of health care. A child suffering from a serious heart problem, who, as he had no way to receive the necessary medical care, decided – and probably managed – to leave to another EU country, irregularly through traffickers, in order to receive the treatment, he needed.

It is clear that revoking UASC of their social security rights increase the risk of a child being exposed to insecure living conditions and being physically and mentally traumatised or exploited and abused. During the next months and until all UASC were granted AMKA, the caregivers of the accommodation facilities witnessed outbreaks of diseases among children and staff, as a result of the lack of medical assistance.

Key points to remember from this chapter



- ◆ The right to adequate accommodation is a human right and it is derived from the right to an adequate standard of living for everyone (which also includes food and clothing) and the continuous improvement of living conditions. It is of central importance for the enjoyment of all economic, social and cultural rights
- ◆ Although the CFREU does not guarantee a right to housing, Member States have the obligation to respect, protect, and fulfill social rights like social security. Social security benefits can provide financial resources to help individuals and families obtain adequate housing.
- ◆ The reception and accommodation of UASC is governed by EU law, in particular by the Reception Conditions Directive
- ◆ In order to safeguard children's rights and guide EU+ states in the implementation of the key provisions of the RCD, the EUAA, has outlined some operational standards and indicators for reception and accommodation conditions specifically for UASC. This includes standards on: location, infrastructure, common areas, sanitation, maintenance, security and communication.

- ◆ The flexibility and the possibility to customize reception and accommodation facilities in accordance with UASC's best interests is curtail
- ◆ In the Dutch reception model, small-scale accommodation is paramount and all UASC under the age of 15 will be placed in (cultural) foster families.
- ◆ Specific rights and programs related to social security should be determined by national laws within the EU framework.
- ◆ The principles of respect for human dignity, the right to property, non-discrimination, the guarantee of equality between men and women and the right to freedom of expression should apply to the provision of social security.

Chapter X: Filing and Conducting Strategic Lawsuits Related to Violations of Rights



For the purposes of this Chapter under “strategic litigation” or “strategic lawsuits” it is meant a combination of legal actions taken in a court and other tactics beyond that, which are consciously aimed at achieving rights-related changes in law, policy, practice, and/or public awareness above and the individual case or interest.²⁰⁰ The Chapter analyses the basic strategies for submitting and conducting strategic lawsuits concerning violations of children’s rights and the protection of their fundamental rights in terms of judicial protection. Strategic litigation involves more than simply presenting a case before a court or judge. It encompasses broader goals related to children’s rights within this framework. This Chapter also addresses important considerations before entering the courtroom and the indirect effects of strategic litigation during judicial procedures.

Further the invocation of the CFREU in legal proceedings is examined and good practices regarding strategic litigation in Greece are presented.

²⁰⁰ Open Society Foundations, *Open Society Justice Initiative, Strategic Litigation Impacts Insights from Global Experience*, 2018, <https://www.justiceinitiative.org/uploads/fd7809e2-bd2b-4f5b-964f-522c7c70e747/strategic-litigation-impacts-insights-20181023.pdf>, p. 25; EDAL, Ana-Maria Bucataru, *Is strategic litigation a way of ensuring that the rights of unaccompanied minors are fully considered in law, policy and practice?*, 2017, <https://www.asylumlawdatabase.eu/en/journal/strategic-litigation-way-ensuring-rights-unaccompanied-minors-are-fully-considered-law>

Strategies for filing and conducting lawsuits at national and European levels for violations of UASC's rights

Filing lawsuits at the national and European levels should advocate for the full implementation of children's rights as part of broader advocacy actions, especially raising awareness about the issues faced by vulnerable groups like UASC.

Successful strategic litigation can lead to lasting political, economic, or social changes and the development of existing law.

Specifically, in strategic litigation for children's rights, articles 3, 4, 18, 24, and 47 of the CFREU should be prioritized in actions supporting the rights of UASC and their legal representation before national and European courts. Anyone involved in the legal support of UASC or responsible for their care should ensure that children seeking asylum have the genuine right to appeal in cases involving international protection claims. Given that children usually do not have an income, they must have **free access to legal advice and representation in courts**.

When dealing with child protection cases and pursuing strategic litigation, **professionals must consider whether their actions serve the best interests of the child**. Bringing a case involving children before the courts requires careful consideration of the potential impact on the judicial process and, more importantly, on the children's lives.

Professionals must **weigh the expected benefits of judicial developments against potential harm to the interests of the concerned child and other UASC**. A possible rejection of a request in court may have direct or indirect consequences for other children who have not brought an action. Additionally, the cost and duration of court proceedings should be assessed to ensure they align with the best interests of the child.

For example, in Greece and according to Greek legislation, the primary—if not the sole—means of obtaining legal residence for UASC in the country is to apply for international protection status. Until April 2024, no residence

permit for UASC had been provided for in Greek legislation, despite ongoing and valid requests from civil society organizations in Greece. The procedure for granting international protection includes the submission of the initial application, a personal interview with the applicant, and the issuance of a positive or negative decision at first instance by the competent officers of the Asylum Service. In the event of a negative decision, the applicant has the right to appeal before the Independent Appeals Committees, which is composed of administrative judges either singly or in a three-member composition. The Independent Appeals Committees then renders a decision on the appeal at the second instance. As the vast majority of decisions reject the appeal, the only legal recourse left to the UASC applicant is either to file a subsequent application for asylum, based on new facts related to the initial application, or to lodge an application for annulment before the Administrative Courts of First Instance of Athens and Thessaloniki, depending on the area in which the asylum application was lodged. It should be noted that the deadline for submitting the request for annulment is 30 days from the receipt of the rejection decision. This deadline, which changed in 2020 (it was previously 60 days), significantly limits the preparation time, as the administrative file of the child typically reaches the lawyer's attention several days after the decision is received

Once the lawyer or legal adviser takes over the case, they must coordinate with the professionals supporting the child to quickly gather the necessary material. They should inform the child and the guardian of the proceedings and their rights, explaining the purpose, expected benefits, and potential negative consequences of the legal proceedings. In this context, the cost of judicial actions should also be assessed.

Unfortunately, many NGOs active in the field of child protection and implementing programs to accommodate unaccompanied children lack both the funds and the expertise for the judicial representation of the beneficiary minors. Filing an application for annulment or an application for suspension of return decision or application for interim judicial protection require many fees and expenses.

In Greece since 2020, ARSIS has been implementing programs for judicial representation for UASC who have received a second-degree negative decision. ARSIS's

primary policy is to complete and submit the application for annulment within 30 days to the competent Administrative Court of First Instance. Additionally, ARSIS develops a strategy for each specific case to increase the chances of success of the application for annulment and to obtain temporary judicial protection, which involves the re-issuance of the applicant's international protection card to the child and protection against expulsion. Once an organization has referred a case for judicial representation, the process begins with the collection of the entire administrative file of the child. This file includes copies of the request for international protection to the asylum service, medical documents, the referral document for accommodation from the General Secretariat for Vulnerable Persons & Institutional Protection of the Ministry of Migration and Asylum in a UASC shelter, a document from the competent prosecutor of minors, the document appointing a guardian (if any), a certificate of school attendance, a certificate of attendance for any other activity, and a certificate confirming that the child is not employed and therefore cannot bear the high costs required for the trial. Immediately after the filing of the application for annulment — the only procedure with a time limit (30 days after receipt of the rejection decision) — the right to legal representation in the courts for each child according to article 47 of the CFREU must be guaranteed. As mentioned, these judicial costs cannot be covered by the Ministry of Migration and Asylum or the organizations providing accommodation and care for children. On the other hand, ARSIS's specialized support cannot be fully covered by the relevant funding. An inability to be represented in the courts would directly contradict the provisions of the CFREU. To address this issue, the relevant legislative provisions are invoked to provide free legal aid to those who cannot afford to pay the costs of the court proceedings and legal aid.²⁰¹

Thus, leveraging the relevant legislation, applications for exemption from court fees and for the appointment of a lawyer free of charge for procedural steps and stages other than the application for annulment are often submitted. This ensures children's right to legal aid in judicial proceedings. Out of the 57 requests for exemption from expenses and trial fees (or the appointment of a lawyer by the State), 55 have been granted. Upon the adoption of the relevant decision to waive the costs of the proceedings or appoint a lawyer, the application for temporary judicial protection

²⁰¹ Article 76 of Law 4939/2022 "... In the event of an appeal before a court, applicants (for international protection) may receive free legal aid, under the terms and conditions of the provisions of Law No. 3226/2004, which shall apply accordingly. Free legal aid and assistance shall be provided to applicants who are demonstrably present in the territory of the country."

Article 1 of Law 3226/2004 states: "1. Legal aid beneficiaries are low-income citizens of EU Member States. Beneficiaries are also low-income citizens of third countries and stateless persons, provided they have EU residence or domicile." Additionally, Article 2 of the same law outlines the application process and necessary supporting documents to demonstrate financial need. Failure to pay the required fees and other expenses for lodging and hearing applications should not result in a denial of legal protection, which would contravene the right of access to a court as enshrined in Article 20 of the Greek Constitution, Article 6(1) of the ECHR, and Article 47 on the right to an effective remedy and a fair trial of the Charter of Fundamental Rights of the EU. These provisions stipulate that "Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice."

begins to be drawn up and filed. This document, along with any other document filed from this point until the final decision is issued, is prepared with the support of ARSIS lawyers and in collaboration with the lawyer from the register of the Bar Association of Thessaloniki, appointed by the relevant court decision, who files each document and represents the child before the administrative courts. Since March 2020, when an application concerning an UASC is first filed, Administrative Courts of First Instance have granted legal aid to all relevant applications. In cases of UASC, where tax identification numbers and documents proving poverty are lacking, Administrative Courts of First Instance rely on certificates of absence from the Accommodation Centres for Unaccompanied Minors and placement documents from the General Secretariat for Vulnerable Persons and Institutional Protection and the local Public Prosecutor's Office. In other cases, the cited decisions adequately delineate the scope of applicant eligibility for pro bono legal aid and assistance.

To begin representing a child, **the professional must ensure that by the time the trial or relevant proceedings conclude, there is no deterioration in the child's personal and legal situation or overall rights.** In this context, the professional should act immediately to secure a court decision suspending any unfavourable decision against the child, such as the rejection of an application for international protection. The professional must always ensure, through a court decision, the protection of the child's rights by highlighting their vulnerability. This includes ensuring the child's uninterrupted safe residence, school attendance, and addressing any physical or mental health issues that require increased protection.

The potential for irreparable harm from an unfavourable administrative act against the child, such as a decision to return the child to their country of origin, is a crucial legal argument for seeking temporary judicial protection of the child's rights.

At this stage, preparing and defending the child's rights requires **multidisciplinary cooperation.** This cooperation is essential to demonstrate that the best interests of the child necessitate protection against any threats to their fundamental rights or established situation until the court has made a decision on the main matter of the proceedings.

In Greece, after dozens of applications for temporary judicial protection²⁰² and with hundreds of decisions reissuing the international protection card to UASC or young

²⁰² The application for provisional judicial protection is based on Article 15 of Law 3068/2002, as amended by Article 57 of Law 4689/2020, which is currently in force. Article 15 of Law 3068/2002 stipulates: "1. The Tripartite Administrative Court of First Instance shall be competent for appeals against individual administrative acts: a) ... b)

adults issued since 2020, the focus of court applications has shifted towards proving that the applicant's potential forced return would result in devastating consequences for their life and development. They would find themselves in the country they left, facing actual danger to their life and physical well-being, often without an appropriate family support network in their country of origin. Additionally, there has been no assessment of their best interests regarding their possible return, nor any communication with authorities in the country of origin for reception and care of the child.

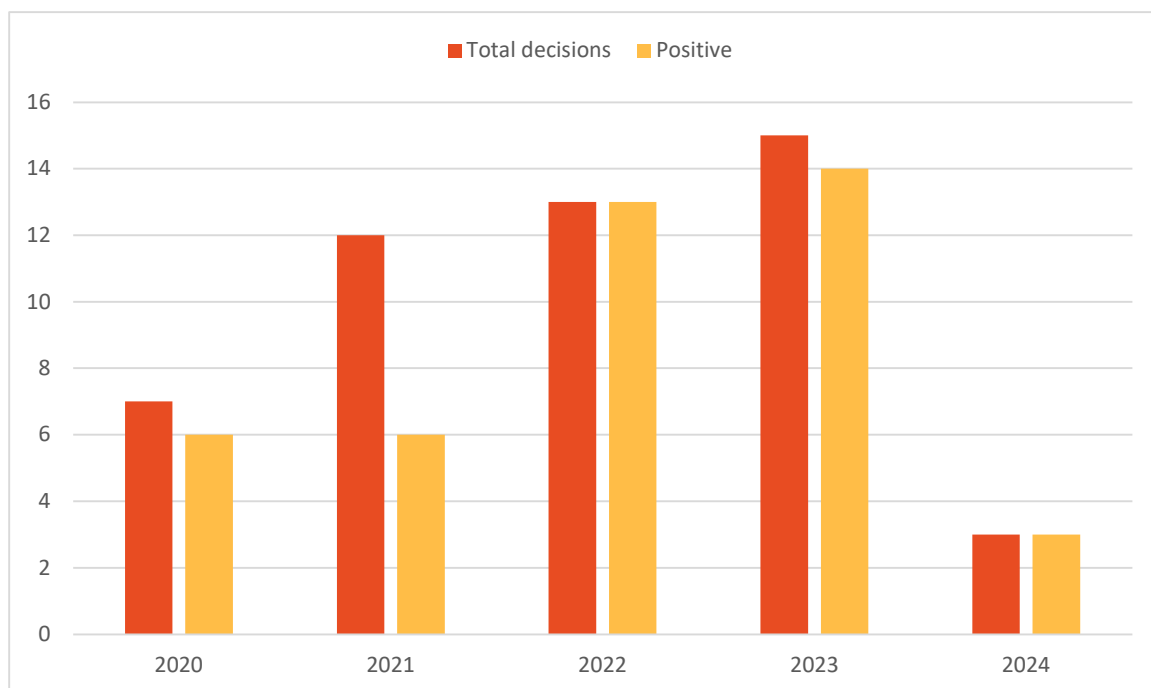
Moreover, the argument that once a child enters Greece, joins the National Emergency Response Mechanism (NERM)²⁰³ for the protection of UASC, and made significant efforts to integrate smoothly into Greek society, has had a positive impact on these court decisions. The living and social ties that the child has developed in Greece, their belonging to the vulnerable social group of UASC, and their attendance of formal or non-formal education led to the conclusion that their removal from Greece would result in unbearable consequences or would constitute expulsion from the country, amounting

concerning the recognition of a foreign national as a refugee, within the sense of the Geneva Convention ratified by Article 1 of Law No 3989/1959 and the relevant 1967 New York Protocol ratified by Article 1 of Law No 389/1968 ... for annulment applications under para. 1 subpara. (b) following the stay of enforcement application, the competent Judge-Rapporteur grants interim judicial protection by summary judgment. [...] The Judge-Rapporteur's decision on the application shall be issued within seven (7) days following the expiry of the aforementioned time limits, provided that the relevant proof of notification (to the Minister of Migration and Asylum) has been submitted to the Court." Moreover, the provisions of Presidential Decree 18/1989 apply mutatis mutandis. Article 52 of PD 18/1989 states: "1... 2. At the request of annulment applicants, the Judicial Council [...] may suspend the enforcement of the disputed act by summary reasoned judgment issued in Concilium... A stay of enforcement application shall be admissible when the immediate enforcement of the disputed act would cause the applicant irreparable or hard-to-repair damage in view of a favourable ruling in the annulment application. However, the application may be rejected if, in evaluating the harm against the applicant, the interests of third parties and the public interest, it is considered that the negative consequences of granting the application would outweigh the applicant's benefit. If the Committee considers that the annulment application is manifestly well-founded, it may accept the suspension application, even if harm against the applicant resulting from the immediate enforcement of the disputed act would not cause the applicant irreparable or hard-to-repair damage. On the contrary, the suspension application may be rejected, even if the damage is irreparable or hard-to-repair; if the Committee considers that the application for annulment is manifestly inadmissible or manifestly unfounded. In addition to suspending the enforcement of the disputed act, the Committee may order any other appropriate measure, irrespective of disputing party submissions." Through this procedure, pending a final decision on the annulment application, the applicant seeks an order to compel the administration to refrain from any action exclusively grounded in the disputed act that would result in the applicant's compulsory departure from Greece. Furthermore, the administration is instructed not to proceed with dispossessing the applicant of their international protection seeker card, or if that card has already been removed, to return it to the applicant to fully reinstate them to the status prior to the rejection of their application for international protection by means of the disputed decision.

203 The National Emergency Response Mechanism (NERM) of the Special Secretariat for the Protection of Unaccompanied Minors (SSPUAM) of the Ministry of Migration and Asylum was launched in 2021 with the support of UNHCR, the UN Refugee Agency, in Greece and institutionalized with article 66 (33) (AT) of Law 4939/2022 (OGG A' 111), which was added with article 39 of Law 4960/2022 (OGG A' 145). The purpose of the NERM is to identify and immediately refer and place a homeless unaccompanied child or a child living in precarious conditions in emergency accommodation facilities, pursuant to Article 43 of Law 4760/2020 (A 247) on the abolition of the protective custody of unaccompanied children. You can read more about NERM in the NERM procedural Handbook: A safety net for unaccompanied children identified in precarious living conditions, produced by the Special Secretariat for the Protection of Unaccompanied Minors of the Greek Ministry of Migration and Asylum with the support of UNHCR, the UN Refugee Agency, and the European Union, <https://migrant-integration.ec.europa.eu/system/files/2023-03/NERM%20Procedural%20Handbook.pdf>

to a violation of Article 8 of the ECHR. This is especially evident in cases where there are no reasons of public interest requiring the immediate execution of expulsion.

The courts at this stage consider that due to the legal provision of granting provisional injunction of the execution of the contested decision with an application for annulment, there is a risk of arrest and a return decision against the child until the decision on the application for annulment they have lodged. This situation is viewed as disastrous considering the factual circumstances described above. In such cases, the child may be placed in administrative detention, even for a few days until an appropriate shelter is found, without the provisions of Law 3907/11 being able to be refoled for the period up to adulthood. The administration is often ordered to reissue the asylum card to the child, with the condition to attend or continue attending Greek school. This approach fully satisfies the situation.



At the level of temporary protection, the sole refusals pertain to young adults who are neither attending school nor employed.

It is imperative that **concurrent actions are undertaken until the judicial process concludes**, which will exert pressure on the relevant bodies and bolster the arguments for achieving the desired outcome. Organizing events centered around topics akin to the primary petition to the court, encompassing themes such as the best interests of the child, the right to family, asylum, and other fundamental rights, serves as an illustrative method to fortify strategic litigation. The

involvement of judges, governmental representatives, academics, and civil society stakeholders in such events can yield equally significant results.

In Greece ARSIS conducts a minimum of one conference annually focusing on the protection of UASC and the legal intricacies pertinent to this domain. However, the paramount tool for dissemination of information and simultaneous exertion of pressure is the compilation and dissemination of court decisions pertaining to UASC²⁰⁴. In this manner, not only are lawyers apprised, but judges themselves are also informed about judicial developments and legal rationales. The invocation of such decisions before the courts establishes jurisprudence, binding judges adjudicating similar matters.

Indirect Effects of Strategic Litigation During Judicial Procedures

Although it is uncertain whether court proceedings aimed at securing a decision with positive effects for all UASC will succeed, certain actions and aspects of these proceedings can positively influence the factual and legal situation of the children. Developing and implementing a strategic litigation plan can, at various points in the process, highlight practices or benefits for children that support their rights, even if these benefits are not directly related to the subject matter of the trial.

It is a judgment's measurable but indirect changes to government policy, laws, or institutions that can have the greatest impact on the largest number of people. Truly far-reaching change often requires enabling policies, jurisprudence, institutions (including the judiciary itself), and legislation to translate the benefits of a judicial decision to the lives of those not directly involved in the legal case. In short, changes achieved in these areas often offer the most visible evidence that the ambitious objectives of strategic litigation are (or are not) being fulfilled.²⁰⁵

²⁰⁴ "Seeking International Protection: A Case - Law Handbook • 2022-2023", ARSIS Association for the Social Support of Youth, available at <https://arsis.gr/wp-content/uploads/2024/01/ΑΡΣΙΣ-ΝΟΜΟΛΟΓΙΑ-ΔΙΕΘΝΟΥΣ-ΠΡΟΣΤΑΣΙΑΣ-2022-2023α.pdf> & "Children Seeking International Protection: A Case Law Handbook", ARSIS Association for the Social Support of Youth, available at <https://arsis.gr/wp-content/uploads/2022/12/Επιτομή-Νομολογίας-2020-2022-τελικό-WEB-site.pdf>

²⁰⁵ Open Society Foundations, Open Society Justice Initiative, *Strategic Litigation Impacts Insights from Global Experience*, 2018, <https://www.justiceinitiative.org/uploads/fd7809e2-bd2b-4f5b-964f-522c7c70e747/strategic-litigation-impacts-insights-20181023.pdf>, p. 49

Overall the indirect effects of strategic litigation in protecting the rights of UASC can be summarised as follows:

1. **Policy Changes:** Strategic litigation can lead to the adoption of new policies or the modification of existing ones to better protect UASC. For example, litigation might result in policies that ensure quicker family reunification processes, ensuring the best interests of the child, or improved access to education and healthcare etc.
2. **Judicial Precedents:** Court decisions in strategic cases involving unaccompanied children can set important legal precedents. These precedents can shape future rulings and ensure that children's best interests are consistently prioritized in asylum and immigration proceedings.
3. **Awareness and Public Opinion:** High-profile cases can draw public attention to the specific challenges faced by UASC, leading to greater societal empathy and support for their rights. This can also spur advocacy efforts to support these children.
4. **Empowerment and Mobilization:** Successful litigation can empower other UASC and their advocates, demonstrating that the legal system can be a tool for securing their rights. This can encourage more organizations and individuals to engage in legal advocacy.
5. **Institutional Accountability:** Litigation can compel government agencies and institutions to adhere to legal standards and protect the rights of UASC. This promotes accountability and transparency in how these children are treated.
6. **Resource Allocation:** Legal victories can prompt governments and organizations to allocate more resources towards improving conditions for unaccompanied children, such as better shelters, legal aid, psychological support, and educational programs.
7. **Deterrence of Unlawful Practices:** The prospect of litigation can deter government agencies and other entities from engaging in practices that violate the rights of UASC, such as unlawful detention or inadequate care.
8. **Educational Impact:** Strategic litigation can educate judges, lawyers, and the public about the specific needs and rights of UASC. This increased

understanding can lead to more child-sensitive approaches in legal and policy decisions.

9. **International Influence:** Successful litigation in one jurisdiction can influence practices and policies in other countries. Cases involving international human rights standards can set benchmarks for the treatment of UASC globally.

Case study

The main problem identified in Greece is the delay in the hearing of the applications for annulment (cancellation) of a decision rejecting international protection. Invoking the Charter in annulment applications has contributed to the situation established since February 2023. Since then, the Plenary of the Greek Council of State (GCS) has referred questions to the CJEU



regarding the national list of Turkey as a safe third country for asylum seekers whose applications are rejected as inadmissible. This judgment followed an annulment application by civil society organizations against the Joint Ministerial Decision designating Turkey as a safe third country for asylum seekers from Syria, Afghanistan, Somalia, Pakistan, and Bangladesh²⁰⁶.

Specifically, the GCS has asked the CJEU questions about the legality of the national list considering Turkey's refusal for over 20 months to readmit applicants for international protection, and the uncertainty regarding Turkey's potential change in position in the near future. As of April 2024, no relevant decision has

206 Plenary of Council of State, No 177/2023: Preliminary questions to the CJEU as published at <https://rsaegean.org/en/key-points-tourkey-safe-third-country/>

been issued by the CJEU, resulting in the suspension of decisions for all cases involving the Turkey-related argument.

One of the main arguments in the annulment application submitted to the GCS, which prompted this preliminary question, was the fundamental rule of refugee protection under the Geneva Convention: the principle of non-refoulement. This principle is enshrined in the CFREU, legally binding under Article 6 paragraph 1 of the Treaty for the EU²⁰⁷, in the relevant Greek law²⁰⁸ and in various international conventions aimed at protecting human rights.

Considering the situation in Turkey from 2020 until today, particularly its cessation of compliance with the 2016 agreement with the EU²⁰⁹, the pre-trial question arises as to whether the country meets the conditions to be considered safe for third-country nationals entering Greece and applying for asylum, including UASC.

Furthermore, the presentation of another similar argument²¹⁰ in the Greek administrative courts led to a second preliminary question before the Council of State. According to the decision, which had to examine the constitutionality of the one-member Independent Appeals Committee the above authorities

“contained within the structure of the Executive, and they exercise powers of jurisdictional nature in the sense of article 89 para. 2 of the Greek Constitution, established in order to safeguard the protection of rights enshrined in Article 46 of Directive 2013/32/EU “*right to an effective remedy before a court [...] in the case of unipartite bodies, accountability is personalised to the maximum extent possible, which results in a risk that the credibility of a Judge exercising their functions as a single-member body may be called into question if their decisions are challenged before Courts.*” Hence, that suffices for the Constitution to not permit (“especially for that reason”) the appointment of a Judge to exercise functions of such uni-partite body,

207 as amended by the Treaty of Lisbon dated 13.12.2007

208 See Law 3671/2008

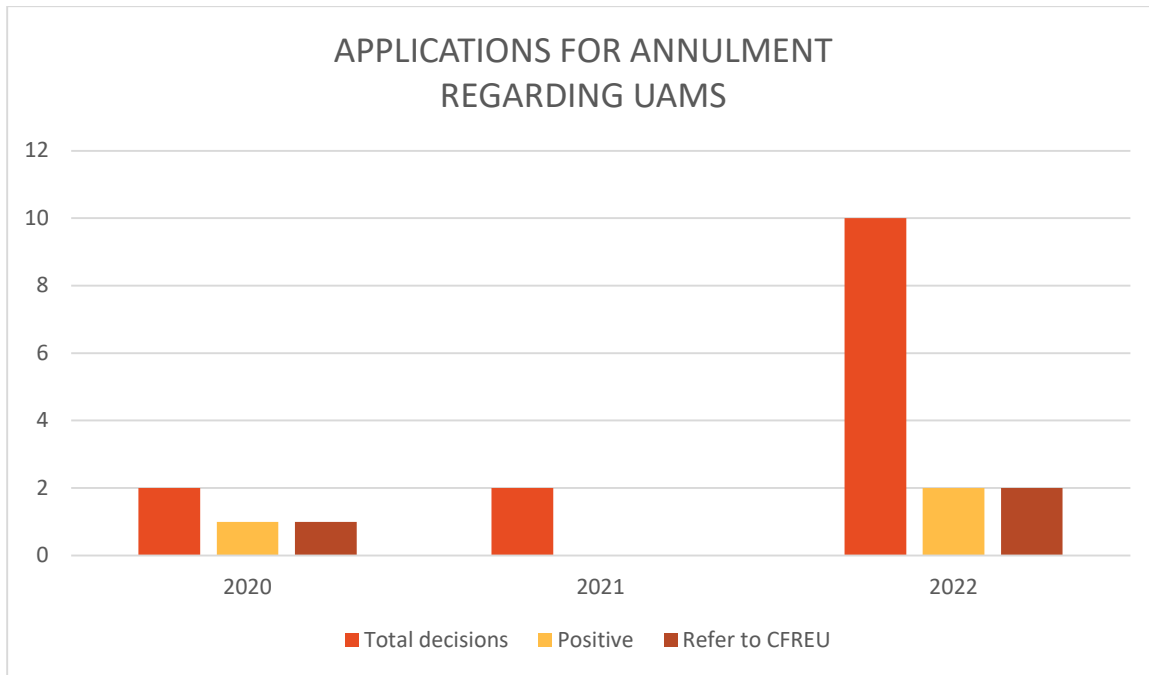
209 On 18 March 2016, the European Council and Turkey reached an agreement aimed at stopping the flow of irregular migration via Turkey to Europe. According to the EU-Turkey Statement, all new irregular migrants and asylum seekers arriving from Turkey to the Greek islands and whose applications for asylum have been declared inadmissible should be returned to Turkey. Read more at: European Parliament, Legislative Train Schedule, EU-TURKEY STATEMENT & ACTION PLAN, <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eu-turkey-statement-action-plan>

210 Administrative Court of First Instance of Thessaloniki No 534/2022 published at “Seeking International Protection: A Case - Law Handbook • 2022-2023”, ARSIS Association for the Social Support of Youth, page 48, available at <https://arsis.gr/wp-content/uploads/2024/01/ΑΡΞΙΣ-ΝΟΜΟΛΟΓΙΑ-ΔΙΕΘΝΟΥΣ-ΠΡΟΣΤΑΣΙΑΣ-2022-2023a.pdf>

irrespectively of its judicial or non-judicial nature. In addition, it should be borne in mind that Independent Appeals Committees composed of Judges carry judicial functions [...] but they nevertheless remain part of the structure of the Executive”.

As a result the Court took into account that this issue was crucial and conclusive for the ruling on the annulment application in question, since it constitutes an alleged ground for annulment, relating to whether or not the unicameral body which issued the contested decision was established in accordance with the provisions of Article 89 of the Constitution and ordered the suspension of a final decision on the annulment application at hand and referred (...) question to the Council of State for a preliminary ruling.

With the legal tools mentioned above and clear references to the CFREU, all related applications for the annulment of decisions issued to UASC, addressing specific issues among others, are not adjudicated. As long as all children have received temporary judicial protection, they legally remain in the country. In this manner, although this legal issue is pending before the Greek Council of State, reliance on the aforementioned decision impedes the progress of the trial and ensures the legal residence of children who have lodged an application for annulment. This is despite the issuance of a return decision against them following the rejection of their asylum application.



2023: all the cases were postponed due to the legal issues which are pending before the Council of State

Invocation of the CFREU in legal proceedings

Several judgments assert that the CJEU has consistently acknowledged the Geneva Convention as the cornerstone of the international legal system for the protection of refugees. Furthermore, the directives establishing the Common European Asylum System, such as QD and the APD, were adopted to facilitate the competent authorities of the Member States in applying the convention based on common concepts and criteria. The provisions of these directives must be interpreted collectively, considering their overall scheme and purpose, in alignment with the Geneva Convention and other relevant international conventions referenced in Article 78(1) TFEU. Such interpretation must also uphold the fundamental rights recognized by the CFREU. This stance has been affirmed in judgments of the CJEU²¹¹.

The most frequent references concern Article 24 CFREU and the best interests of the child and Article 18 of the CFREU that stipulates that the right to asylum shall be guaranteed in compliance with the rules of the Geneva Convention

²¹¹ See C-199/12 to C-201/12, *X and Others*, para 39 and 40, and case C-472/13, *Shepherd*, para. 22 and 23

of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on EU and the TFEU.

Regarding the support of children by NGOs and the possibility of exemption from fees and appointment of a lawyer free of charge for the relevant proceedings, both applications and decisions also refer to Article 47 of the CFREU which states that:

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.

Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Good practices

The Advocacy and Legal Support for UASC Program implemented by ARSIS – Association for the Social Support of Youth, Greece

This program is implemented since 2020. The project “*Improving Living Conditions for Unaccompanied Minors (UAMs) and Defending their Fundamental Rights*” is supported and funded by the humanitarian organisation “German Doctors e.V.” An important part of the programme is the legal representation of UASC in courts for cases related to the right to international protection. ARSIS has represented more than 70 children before the Administrative Courts in cases against second instance negative decisions for international protection, having developed a specific methodology, which significantly reduces the cost of representation and ensures the legal residence of children in the country for a long period of time, at least until they reach adulthood.

Out of a total of 69 cases – applications for annulment from January 2020 to April 2024, 5 have been finally accepted, 23 have been rejected and the remaining 41 have been issued a decision suspending the proceedings until preliminary

rulings have been issued before the Greek Council of State and the CJEU, where specific legal questions are pending. The above suspension of the proceedings was ordered as in the relevant applications for annulment have been included the issues of constitutionality as well as compatibility of the relevant ministerial decisions with EU law, which are pending before the Greek Council of State or the CJEU.

Of the 56 applications for temporary judicial protection concerning UASC or young adults (formerly unaccompanied), only 7 were rejected. All seven cases involved young adults. The relevant judicial judgements considered that the asylum applications of the applicants concerned were either unfounded or there was no need for temporary judicial protection, as they had already reached adulthood, not belonging anymore to the child protection framework.

This ensures that the procedure is extended without a final decision on whether or not to apply for international protection, while at the same time the applicant (who has often already reached the age of majority and otherwise would face immediate deportation) retains or receives a new asylum card and legally resides in the country.

Case studies

Bellow two judicial cases of the Greek courts that have played an important role in the implementation of the CFREU are presented:

Case No. 1 - Article 1 of the CFREU – the right to human dignity

This case concerns a claim for damages against the Greek state by a refugee family with minor children residing in a temporary shelter camp, where a fire caused serious injury to the children as a result of burns. Specifically, there was a fire in a tent in a refugee accommodation camp due to a short circuit of an electric cable inside the tent where the family was living. The tents were placed inside the building in a row next to each other, with a gap of about 20 cm between them. None of the tents had heating or household appliances. An electrical installation outside the tents was used for shared use by refugees. During the fire department's examination, it was found that most of the tents had electricity inside them because the refugees pulled wires in a sloppy way from the communal area to the tents without anyone's approval. In the place where the

fire occurred, there was a pulled power supply cable. The fire was put off by refugees using fire extinguishers. The Administrative Court of First Instance of Thessaloniki²¹² held that the continued residence of the applicants, particularly the children, in the makeshift tent accommodation provided to them constitutes a condition of material deprivation as more than four months have passed since their relocation to the refugee camp accommodation facility and with winter approaching, without heating and electricity. This fails to meet their basic human need for decent housing, sustainable and suitable for minor children, especially in terms of the bad weather conditions which is in contradiction with Article 1 of the CFREU. Moreover, the competent authorities failed to take appropriate measures to prevent or alleviate this situation, such as temporarily transporting the applicants exposed to cold to heated areas or providing them with adequate means of heating. Given these circumstances, the action was upheld in part, and the Greek State was obligated to pay compensation of 10,000€ to the first applicant - mother individually as reasonable compensation for non-pecuniary damage, 15,000€ to the first and second applicants (both parents) on behalf of their minor daughter as reasonable compensation for non-material damage, and 120,000€ on behalf of their minor son, as reasonable compensation. The Greek state has appealed the decision and the case is still pending before the Administrative Court of Second Instance.

Case No. 2 - Article 24(2) of the CFREU - bests interests of the child assessment

The case²¹³ concerns a 13-year-old boy from Pakistan, who applied for asylum at the moment he was living in a shelter for UASC. Although he was appointed a guardian and was accompanied by members of the structure during the whole procedure for the international protection, claiming that he was a victim of trafficking by his relatives back in the country of his origin his application was rejected at the first and also at the second instance by the competent authorities. ARSIS legal team took over the case and filled and submitted an application for annulment of the rejection decision, projecting the argument that the decision was not lawful as it did not take into account the child's best interest by ordering his return to Pakistan. ARSIS' lawyers also argued that the Independent Appeals Committee's opinion that, there were no grounds to grant the boy a residence permit for humanitarian reasons, because his best interests, as a minor child, is

212 Administrative Court of First Instance of Thessaloniki, No 454/2022, published at ARSIS Association for the Social Support of Youth, "Children Seeking International Protection: A Case Law Handbook", page 97 available at <https://arsis.gr/wp-content/uploads/2022/12/Επιτομή-Νομολογίας-2020-2022-τελικό-WEB-site.pdf>

213 Administrative Court of First Instance of Thessaloniki, No 300/2020, published at ARSIS Association for the Social Support of Youth, "Children Seeking International Protection: A Case Law Handbook", page 67 available at <https://arsis.gr/wp-content/uploads/2022/12/Επιτομή-Νομολογίας-2020-2022-τελικό-WEB-site.pdf>

to be close to his family, as he has no social ties in Greece because of the short period of residence, was unlawful as it did not assess the best interests of the child. The Court held that the Committee's decision was not fully justified: the fact that the applicant has left the country as unaccompanied at the age of only 10 years old, whereas, according to him, members of the family are involved with a network of traffickers; that in the country, his mother, according to what is stated, never want to communicate with him; the fact that in his country of origin there are no appropriate shelters for UASC; also that during his two-year stay in the Greece- this is a period that is particularly relevant to his young age, cannot be considered small; and also the fact that he started attending a Greek school, should be taken into account when determining the best interests of the child. Considering this the court states that the best interests of the child is observed by the non—returning the applicant to his country of origin.

Key points to remember from this chapter



- ◆ Although dealing with the filing of pleadings is primarily an object of lawyers, the exercise of strategic litigation requires good multidisciplinary preparation among the professionals responsible for the care and protection of the child.
- ◆ The best interests of the child should be at the forefront of any such proceedings. A positive judicial decision concerning a child's legal status, which may however have negative consequences for e.g. his or her personal or family situation, should not lead to the filing of an action or appeal.
- ◆ A case brought before the courts needs to have direct or indirect beneficial effects on a large number of persons and not only on the applicant himself.
- ◆ The child and his or her guardians should be informed of their rights, the procedure and the expected results.
- ◆ Parallel actions and events to support the rights concerned and to put pressure on the competent bodies can have equally significant results.

Conclusion

In summary, the comprehensive review of the legal frameworks and practical measures in place for the protection and integration of UASC highlights several key findings. Firstly, the protection of UASC under various international and EU laws emphasizes the importance of ensuring their safety, health, and education regardless of their immigration status to adhere to the highest childcare standards and the primary principle of the best interests of the child. Legal provisions such as those found in CFREU, international law and secondary EU law play a critical role in safeguarding these vulnerable children and must serve as a guiding point when developing and implementing national policies and legislations.

Secondly, practical implementations in countries like Greece, Italy, France, and the Netherlands showcase a variety of successful initiatives. These include family-based care, independent living arrangements, and the involvement of NGOs and government bodies to provide holistic support encompassing medical care, psychological assistance, legal aid, and educational opportunities that lead to effective childcare and integration practices. Harmonizing these practices across all EU countries can guarantee UASC's equal access to fundamental rights, regardless of their location, and can prevent secondary movements and harmful practices of human trafficking, smuggling and exploitation.

Moreover, the case studies and court decisions reviewed demonstrate the necessity of multidisciplinary cooperation to ensure the best interests of the child are prioritized in all judicial and administrative proceedings. It is important to apply an individual and flexible approach to maintain the child's stability and continuity in education, work opportunities and health services, as well as to prevent harmful returns, access to the asylum procedure and to support family unity. Additionally, initiating strategic legal proceedings to uphold the rights of children constitutes a significant undertaking with ramifications, whether direct or indirect, for a broader array of individuals.²¹⁴

214 Administrative Court of First Instance Thessaloniki Decision Number: 300/2020 published at ARSIS Association for the Social Support of Youth, "Children Seeking International Protection: A Case Law Handbook", page 69, available at <https://arsis.gr/wp-content/uploads/2022/12/%CE%95%CF%80%CE%B9%CF%84%CE%BF%CE%BC%CE%AE-%CE%9D%CE%BF%CE%BC%CE%BF%CE%BB%CE%BF%CE%B3%CE%AF%CE%B1%CF%82-2020-2022-%CF%84%CE%B5%CE%BB%CE%B9%CE%BA%CF%8C-WEB-site.pdf>, Administrative Court of First Instance Thessaloniki Decision Number: : 51/2022 published at ARSIS Association for the Social Support of Youth, "Children Seeking International Protection: A Case Law Handbook", [155](https://arsis.gr/wp-</i></p></div><div data-bbox=)

To further strengthen the protection and integration of UASC, it is imperative to take concurrent actions that build on the findings of this handbook. Stakeholders, including legal professionals, social workers, government agencies, and NGOs, should continue to collaborate and advocate for the rights of UASC. Specific actions include:

- 1. Enhanced Training and Resources:** Provide ongoing training for professionals working with UASC to ensure they are equipped with the latest legal knowledge and best practices for child protection and integration.
- 2. Policy Advocacy:** Engage in advocacy efforts to influence policy changes that enhance the legal frameworks protecting UASC and ensure their implementation at national and EU levels.
- 3. Community Engagement:** Foster community-based support systems, including the involvement of diaspora communities, to provide cultural and linguistic support to UASC.
- 4. Awareness Campaigns:** Conduct public awareness campaigns to highlight the plight of UASC and garner broader societal support for their integration and protection.

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- 5. Monitoring and Evaluation:** Establish robust monitoring and evaluation mechanisms to assess the effectiveness of existing programs and identify areas for improvement.

By taking these actions, we can ensure that UASC receive the comprehensive support they need to thrive and integrate successfully into their host societies. The collective efforts of all stakeholders will be crucial in making a meaningful difference in the lives of these children.

Annex 1

Court of Justice of the European Union (CJEU) cases in relation to Chapter V

1. Case C-560/20

CR and Others v Landeshauptmann von Wien

Operative part of the judgment

1. Article 10(3)(a) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as meaning that, in order to be able to base a right to family reunification on that provision and thereby benefit from the more favourable conditions laid down therein, that provision does not require the first-degree relatives in the direct ascending line of an unaccompanied minor refugee to submit the application for entry and residence for the purposes of family reunification with him or her within a given period, where that refugee is still a minor on the date on which that application is submitted and reaches majority during the family reunification procedure.

2. Article 10(3)(a) of Directive 2003/86 must be interpreted as requiring a residence permit to be granted to the adult sister of an unaccompanied minor refugee, who is a third-country national and who, on account of a serious illness, is totally and permanently dependent on the assistance of her parents, where a refusal to grant that residence permit would result in that refugee's being deprived of his or her right to family reunification with his or her first-degree relatives in the direct ascending line, conferred by that provision.

3. Article 10(3)(a) of Directive 2003/86 must be interpreted as meaning that a Member State may not require that, in order to be able to benefit from the right to family reunification with his or her first-degree relatives in the direct ascending line under that provision, an unaccompanied minor refugee or his or her first-degree relatives in the direct ascending line meet the conditions laid down in Article 7(1) of that directive, irrespective of whether the application for family reunification has been submitted within the period laid down in the third subparagraph of Article 12(1) of the said directive.

2. Case C-1/23 PPU X and Others v État belge

Operative part of the judgment

Article 5(1) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, read in conjunction with Article 7 and Article 24(2) and (3) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it

precludes national legislation which requires, for the purposes of submitting an application for entry and residence with a view to family reunification, that the sponsor's family members, in particular those of a recognised refugee, appear in person at the diplomatic or consular post of a Member State competent in respect of the place of their temporary or permanent residence abroad, including in a situation where it is impossible or excessively difficult for them to travel to that post, without prejudice to the possibility for that Member State to require that those members appear in person at a later stage of the application procedure for family reunification.

3. Case C – 91/20 LW v Bundesrepublik Deutschland,

Operative part of the judgment

Article 3 and Article 23(2) of 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 must be interpreted as not precluding a Member State from granting, under more favourable national provisions, as a derived right and for the purpose of maintaining family unity, refugee status to the minor child of a third-country national who has been recognised as having that status under the system established by that directive, including in the case where that child was born in the territory of that Member State and, through that child's other parent, has the nationality of another third country in which he or she would not be at risk of persecution, provided that the child is not caught by a ground for exclusion referred to in Article 12(2) of that directive and that the child is not, through his or her nationality or any other element characterising his or her personal legal status, entitled to better treatment in that Member State than that resulting from the grant of refugee status. It is not relevant in that regard to ascertain whether it is possible and reasonably acceptable for the child and the child's parents to move to that other third country.

4. Case C 129/18 SM v Entry Clearance Officer, UK Visa Section

The concept of a 'direct descendant' of a citizen of the Union referred to in Article 2(2)(c) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as not including a child who has been placed in the permanent legal guardianship of a citizen of

the Union under the Algerian kafala system, because that placement does not create any parent-child relationship between them.

However, it is for the competent national authorities to facilitate the entry and residence of such a child as one of the other family members of a citizen of the Union pursuant to Article 3(2)(a) of that directive, read in the light of Article 7 and Article 24(2) of the Charter of Fundamental Rights of the European Union, by carrying out a balanced and reasonable assessment of all the current and relevant circumstances of the case which takes account of the various interests in play and, in particular, of the best interests of the child concerned. In the event that it is established, following that assessment, that the child and its guardian, who is a citizen of the Union, are called to lead a genuine family life and that that child is dependent on its guardian, the requirements relating to the fundamental right to respect for family life, combined with the obligation to take account of the best interests of the child, demand, in principle, that that child be granted a right of entry and residence in order to enable it to live with its guardian in his or her host Member State.

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