

# THE MIGRANT CHILDREN AND UNACCOMPANIED MINORS IN THE EU; PERSPECTIVES ON THE ACTION PLAN

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**Abstract:** *The thematic of the paper is based on presenting and analysing the situation related to migrant children and unaccompanied minors in the EU. In 2017 the Council of Europe published the Action Plan on protecting refugee and migrant children, which was adopted and is focuses on ensuring access to rights and child-friendly procedures, providing effective protection, and enhancing the integration of children who would remain in Europe. Despite the considerable improvements to the EU asylum acquis, much more remains to be done to guarantee the well-being of unaccompanied minors and prevent further migrant children from going missing and to address the gaps in legislation.*

**Key words:** *migrant, children, young-asylum seekers, European Union*

## 1. Introduction

Last year, at the international and European level, the subject of many debates was centered on the Migrant Children and Unaccompanied Minors in the EU, as well as on the rights of migrant children in the context of huge waves of migrants to the European area. All those debates were derived from the current issue of migrants from Middle East and African countries and from the implications that this flood has had on the European Union.

It is important to recognize from the beginning that these current issues imposed to all of us to try to reflect, analyze and find solutions and do much more for the children who live the migration experience and especially for those children who are not as lucky as others.

Thus, I consider that the topic of migrant children and more specifically, the situation of the unaccompanied minors, needs more attention and ways to find and develop proper methods of support. The reality of the past years has revealed that a growing number of children in migration have arrived in the EU area; the reports show that many of them are without their families for many reasons e.g. trying to escape from war and conflicts, poverty or natural catastrophes, discrimination or persecution, or even being sent by their family in the expectation of a better life or in order to access education and

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welfare, including medical attention, or to join family members, or they are victims of trafficking destined for exploitation and so on.

## 2. Discussions

The distinction between unaccompanied and separated migrant children is almost non-existent; for, it refers to both unaccompanied and separated children that are not accompanied by their parents or primary caregivers. However, separated children are the children who have not necessarily been separated from relatives or accompanying adults, but meaning that the accompanying adult(s), who could be related to the child, may not be able to, or suitable for, assuming responsibility for their care. In the EU, separated children are generally registered as unaccompanied children. (D'Addato and Guibreteau, 2018, p. 6)

In January 2017, in Europe, 27% of asylum applicants were children (averaging 501 applicants per day) and from those the majority, 89%, of unaccompanied children were boys; 13% were younger than 14, while 2/3 of unaccompanied children are 16-17 years-old (68%, or about 43,300 children); 21% are aged 14 to 15 (around 13,500 children); 10% are aged less than 14 (almost 6,300 children). According to Eurostat, more than a third (38%) of asylum applicants that were considered to be unaccompanied minors in the EU in 2016 were Afghans and about a fifth (19%) were Syrians. In total, in the EU, unaccompanied minors accounted for 16% of all asylum applicants aged less than 18 in 2016. However, in Italy and Slovenia, they represented respectively 54% and 57% of all asylum applicants under 18. (D'Addato and Guibreteau, 2018, p. 5)

As we can see from the report, and the media in general, often the children travel by paying smugglers, or sometimes even having to work along the way to earn the necessary money. The reality proves that those children risk, and will continue risking, their lives to get to Europe by taking dangerous, sometimes fatal routes, most of the time crossing the Aegean Sea by boat, but also using extremely dangerous boats from Northern Africa to Italy. In this regard, the International Organisation for Migration has offered statistics. They show that of 30% of the recorded deaths in the Aegean Sea have been children. Also, more than 10,000 unaccompanied children were reported missing in Europe last year yet the whereabouts of these children remains unknown, or even whether they found the way to their destination or if they have been reunited with their families, relatives or friends; unfortunately, there are statistics that show others have become victims of human trafficking.

The latest information on children arriving in Europe according to the UNICEF shows that some 33,000 children arrived in Greece, Italy, Bulgaria and Spain in 2017; although this is an almost 70% decrease compared to 2016, in 2017 the proportion of children arriving unaccompanied or separated increased by 31%. (UNICEF, 2018)

Some 20,000 unaccompanied and separated children arrived in Europe in 2017; four out of five of them arrived in Italy. On average 86% of children arriving in Italy and Spain were children arriving unaccompanied or separated (UASC). According to UNICEF, seven out of ten children sought international protection in just four European countries: Germany (89,205), France (20,970), Greece (19,790) and Italy (16,309).

Over 11,200 children benefited from the EU relocation scheme in Greece and Italy by the end of 2017 and among them there were 465 unaccompanied or separated children (UASC). The conclusion is that the number of relocated children increased two times in 2017 as compared to 2016, i.e. 3,474 as compared to 7,763. (UNICEF, 2018)

According to European Commission, in the last years, around thirty percent of asylum applicants in the European Union were children; meaning there has been a six-fold increase in the total number of child asylum applicants in the last six years.

The EU has a moral duty as well as a legal responsibility for managing the flood of migrants and refugees which is the largest movement of people in Europe in this century. Regarding this fact, the EU has taken several measures to manage the migration crisis as well as to improve the system the asylum seekers go through; the EU is obliged to manage the refugee crisis but also numerous issues that arise from it, such as human trafficking, the problem of immigrants, the status of these migrants (including the children's), setting up procedures concerning their assimilation or expulsion, the status of asylum seekers, etc.

According to a joint study by the Special Rapporteur on the sale and sexual exploitation of children and the Special Rapporteur on trafficking in persons aimed to identify emerging vulnerabilities on children "on the move" who are fleeing conflict, violence or humanitarian crisis considered that Europe, has been "the heart of the sale of, trafficking in and other forms of exploitation" and increasing sharply due to the "migration crisis". (Disturbing UN Report, 2018)

The EU Directive on Family Reunification and the right to family reunification should be practiced in accordance with the values and principles that prevail in the Member States; and in particular, they must consider and respect the rights of women and children. The waves of migration have influenced such a serious, yet indirect, violation of family life and equality of thousands of European citizens. Children should be the top priority as they are the most vulnerable, especially when they have nobody to guide them. Their best interests must be taken into consideration at all stages of the migration process.

The integration of migrant and unaccompanied children into European societies depends on how fast they can go back to a stable life. For this to happen all those children require specific, appropriate and immediate protection from the authorities that do not protect and respect their rights, regardless of the circumstances.

Protecting people, not only the children, in migration mean upholding European values of respect for human rights, dignity, and other positive rights. Therefore, the most important rights of children are: the right to life, survival and development; the right to a name and nationality, freedom of expression and access to information about them; the right to live in a family environment or alternative care and to have contact with both parents if possible; the right to education, leisure, culture and the arts; health and welfare rights, the right to health care and social security; the right to life, survival and development. It is important that special protection be ensured for refugee children, for the children in the juvenile justice system, for children that are deprived of their liberty and to those children who are suffering from economic, sexual or other forms of exploitation.

The concept of *corpus juris* in matters related to children implies recognition of a series of fundamental norms that are linked for the purpose of guaranteeing the human rights of children and adolescents. In this regard, the Inter-American Court of Human Rights has established that: “the *corpus juris* of International Human Rights Law is formed of a series of international instruments with different legal content and effects (treaties, conventions, decisions, and declarations), in addition to the decisions adopted by international organizations. Its dynamic development has had a positive impact on international law, by confirming and developing the capacity of the latter to regulate relations between states and the human being under their respective jurisdictions.” (According to Inter-American Commission)

International human rights law establishes that the fundamental obligations of states in the area of human rights are to respect and guarantee the full exercise of those rights. International law also provides for suspension of these obligations in highly exceptional circumstances in which certain human rights are restricted or limited. This does not imply the temporary suspension of the rule of law, or the absence of legal limits on the action of the state.

All EU Member States have ratified the UN Convention on the Rights of the Child (CRC), which applies to all children irrespective of migration status. Article 20 states that children temporarily or permanently deprived of a family environment should receive special protection or assistance from the State. Furthermore, Article 22 of the CRC provides that unaccompanied asylum-seeking and refugee children should receive protection and humanitarian assistance ensuring access to their rights, and the same protection as any other child deprived of a family environment. (D’Addato and Guibreteau, 2018, p. 6)

The UN Committee on the Rights of the Child monitors the implementation of the UNCRC and has provided relevant guidance on unaccompanied children as can be seen below: Child rights Committee GC no. 6 on the treatment of unaccompanied and separated children outside their country of origin; Child rights Committee GC no. 22 on the general principles regarding the human rights of children in the context of international migration; Child rights Committee GC no. 23 on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return. (D’Addato and Guibreteau, 2018, pp. 6-7)

The UN adopted Guidelines for the Alternative Care of Children in 2010, which can be applied in the context of migration and in 2015 the UN adopted the 2030 Agenda for Sustainable Development, a global framework with the aim to eradicate poverty and achieve sustainable development over the next 15 years.

Having to account for the high number of the children in migration as well as those unaccompanied in the EU, should give some answers to the question regarding the reason why countries fail to protect children in migration.

A possible response can be the weak child protection systems and the existence of parallel child protection systems. Moreover, the lack of targeted support to children in migration, as well the lack of quality alternatives; on the other hand, the lack of long-term strategies for sustainable change that would also ensure efficient use of funds.

It is necessary for the EU and the Member states to abide by the ratified agreements and Conventions and open the borders for the people that are fleeing their war-torn homes. The EU institutions should lead the creation of a European system for the identification and protection of the unaccompanied children.

The European Commission Communication on the protection of children in migration was published in 2017 and offers a comprehensive framework, including principles and recommendations to protect the rights of all children in the context of migration, from arrival in Europe to integration. Based on a child-rights approach, it urges Member States to “ensure that a range of alternative care options for unaccompanied children, including foster/family-based care are provided”, provides recommendations on reception conditions, and calls for the provision of EU funds to support implementation. (D’Addato and Guibreteau, 2018, p. 7)

The European Reception Conditions Directive is part of the Common European Asylum System and is currently being revised but in this moment it offers minimum standards for the reception of asylum-seekers by EU Member States, and covers main aspects as accommodation, access to education, healthcare and guardianship. Refugee and migrant children often live in detention centres or refugee camps, with no possibility to interact with the local community or attend school. The reality shows that the institutional care is too often used over other forms of care such as family or community-based care, despite the fact that institutional care is recognized as having severe negative effects on the children’s physical, cognitive and emotional development, and is not cost effective in the long run. In this regard, the provision of appropriate care adapted to the needs of unaccompanied and separated migrant children is essential for their well-being, protection and development.

Children in migration should be integrated from day one and it is important that upon reception, they should have access to child friendly information and guardianship. It is also very important for them to stay in reception facilities for the shortest period of time and with highest standards and a live in family (foster care, kinship care) or community based (small group homes, protected shelters, independent facilities) alternatives according to their individualized needs.

### **3. Conclusions**

The EU has a number of funding instruments to support the implementation of the above-mentioned standards.

The Asylum, Migration and Integration Fund (AMIF) aims to manage migration flows and promote a common approach to asylum and migration across the EU. It has a total budget of 3.137 billion Euros to be allocated over the period 2014-2020. It is the main EU funding instrument that supports better care services for unaccompanied and separated migrant children. In its Toolkit on the use of EU funds for the integration of people with a migrant background, the European Commission stated clearly that support for unaccompanied children “should contribute to placing [them] in family-based care, such as foster care, and according to the child’s individual needs”; in particular, the AMIF can support: training, capacity building and networking for

guardians and foster parents as well as social workers and educators. (D'Addato and Guibreteau, 2018, p. 8)

The child's best interests must be the primary consideration in all actions or decisions concerning children. Children should be protected according to their individual needs and that of their families regardless of their migration status; they must be protected and have access to universal services. In the last two years, the rights of unaccompanied migrant children are high on the public agenda and at the European level and at international level, we have seen the efforts and research from civil society and other relevant stakeholders which has led to a consensus on the importance of promoting and protecting the rights of children who are in migration as well as of the unaccompanied children.

There can be taken into consideration some policy recommendations for those who are in charge of devising the special strategies and regulations related to the child in migration, for example: to listen to the voices of migrant and refugee children and youth; to provide safe and regular pathways for children and youth seeking escape from harm or better opportunities; to work together across borders to protect children on the move and fight trafficking and exploitation; to strengthen services to protect migrant children within countries of origin, transit and destination; to make sure that children on the move have access to education and other services; to end the detention of children; to fight racism, xenophobia and discrimination against migrants; to gather more evidence on children on the move.

As a final conclusion, migrant children should be treated first and foremost as children and the best interest of the child and the principle of non-discrimination should be primary considerations in all actions that concern migrant children, and should take precedence over migration status; and most importantly not to forget that migrant children have the right to the same level of protection as other children.

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