

Provisional version

Harmonising the protection of unaccompanied minors in Europe

Report¹

Committee on Migration, Refugees and Displaced Persons
Rapporteur: Manlio Di Stefano, Italy, NR

Summary

This year 30 000 minors applied for asylum in June alone, and almost 90 000 unaccompanied minors applied for asylum in the EU in 2015. The present migration and refugee crisis has exacerbated the challenges reception and assistance of children on the move, and has generated new problems of child protection, in particular in view of the large numbers of unaccompanied children who go missing.

The gravity of the situation has revealed shortcomings in national policies which relate to the treatment of all unaccompanied children – guardianship issues, the way children's rights and aspirations are taken into account, child-friendly age-assessment procedures as well as the rights to social and medical services and education and the avoidance of detention at all costs.

The many relevant existing international standards are unevenly transposed into national regulatory frameworks, and there is consequently an urgent need to harmonise procedures involving unaccompanied migrant children from their arrival in Europe to their integration or return, and to step up international cooperation at all levels.

The present report takes stock of the current situation of unaccompanied migrant minors and of those who go missing, and proposes concrete measures for improving procedures and cooperation aimed to help these children fleeing their homes to find the better lives they seek.

¹ Reference to Committee: Doc. 13646, Reference 4099 of 26 January 2015.

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A. Draft resolution²

1. Almost 90 000 unaccompanied minors applied for asylum in European Union countries in 2015 and in 2016 there are no signs of a reversal of the trend, as the total number of minors applying for asylum in the month of June 2016 alone stood at 30 000. The present migration and refugee crisis has exacerbated the challenges of how to treat and assist these children on the move, and generated new problems with the realisation that large numbers of children are going missing at different stages of their journey, especially directly after arrival at reception centres.

2. New challenges to child protection have also emerged during the recent phases of the crisis, especially in the context of the partial or total closure of routes across Europe, followed by the first effects of the European Union/Turkey agreement of 18 March 2016. The international public was made aware of a major concern when the EU law enforcement agency Europol announced in January 2016 that 10 000 migrant minors were missing in Europe, and there is reason to believe that actual figures were much higher. In May this year, the total number for Germany alone rose to about 9 000, according to the German Federal Criminal Police.

3. The Parliamentary Assembly has voiced its concern about the situation of unaccompanied migrant minors in Europe on several occasions and made proposals for solutions, in particular in its Recommendation 1969 (2011) and Resolution 1810 on unaccompanied children in Europe: issues of arrival, stay and return, which proposes fifteen common principles for handling unaccompanied migrant children, with particular focus on the need to treat unaccompanied children first and foremost as children, not as migrants.

4. Related issues, such as determination of children's age and ending immigration detention of children were taken up in Resolution 1996 (2014) on migrant children: what rights at 18? and in Recommendation 2056 (2014) on alternatives to immigration detention of children. This was the basis for the launching of the ongoing Parliamentary Campaign to End Immigration Detention of Children.

5. The Assembly recalls that the general principle of respect for migrant minors' rights first and foremost as children implies that they should benefit from special protection, including social and health care which ensure their physical and psychological integrity and development, sufficient and child-friendly information, education and empowerment. On observation of the situation in member States, it is clear that these conditions are far from systematically afforded to unaccompanied migrant minors.

6. Referring to the United Nations Convention on the Rights of the Child, specifically Article 3 on the best interests of the child, Articles 19 and 20 on special protection and assistance from the State for unaccompanied and separated children, Articles 22 on the rights of children seeking refugee status and General Comment No 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, to the New York Declaration for Refugees and Migrants adopted by the UN General Assembly on 19 September 2016, as well as to the Council of Europe European Conventions on the Exercise of Children's Rights (CETS No. 160 of 1996), the Convention on Action against Trafficking in Human Beings (CETS No. 197 of 2005) and on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201 of 2007).

7. Reiterating the principles set out in the European Commission Principles on integrated child protection systems, to UNICEF's Seven Point Plan for Refugee and Migrant Children, to the UNHCR Guidelines on Determining the Best Interests of the Child and other guidelines designed to serve as models for the treatment of unaccompanied migrant minors,

8. The Parliamentary Assembly urges member States to work on a national and regional level and through international cooperation to improve the protection of unaccompanied migrant minors and to avoid them going missing, in particular by:

8.1. In the context of international cooperation, including with countries of origin:

8.1.1. ensuring that national police forces cooperate to constitute reliable, comprehensive and regularly updated police databases on unaccompanied children who go missing, involve Europol in investigations against criminal groups that might harm and exploit unaccompanied children, as well

² Draft resolution adopted unanimously by the Committee on 22 September 2016.

as fully cooperating in efforts to track missing children and to support the further development of the Schengen Information System (SIS).

8.1.2. assuring security protection of children from trafficking and criminal activities to which they are particularly vulnerable and stepping up cooperation with the countries of origin and transit in this area;

8.1.3. harmonising the rules concerning the establishment of guardians and legal representatives and a common definition of their mandate and role;

8.1.4. upholding the right to family reunion in the case of separated migrant minors in accordance with each child's right to live with their parents, as enshrined in Article 22 of the UN Convention on the Rights of the Child;

8.2. In the context of national and regional policies and action:

8.2.1. ensuring that all unaccompanied migrant children are adequately registered upon arrival in Europe, and that registration data are exchanged between the various authorities involved in their reception and care;

8.2.2. ensuring that unaccompanied migrant minors are treated first and foremost as children immediately on arrival in Europe, and that they are allocated dedicated accommodation, access to health care and sanitary conditions which minimise their physical and psychological predicament;

8.2.3. providing child-friendly information and trained interpretation for children on arrival to avoid children's confusion and misunderstandings at the outset, which, added to sub-standard reception conditions, are a push factor in children's decisions to abscond from reception centres;

8.2.4. in cases where a child's age cannot be established by identity documents and only where there is doubt as to the individual's status as a minor, carrying out early and non-intrusive age assessment in full respect for the dignity and integrity of children;

8.2.5. improving or introducing accelerated asylum application procedures for unaccompanied minors, including the early designation of sufficiently-trained guardians and legal representatives who can assist children and who are each allocated a small number of migrant children;

8.2.6. ensuring that children have access to education on registration and throughout waiting periods, then facilitating their entry into mainstream education systems once the procedures for asylum or other forms of regularisation are engaged;

8.2.7. allocating sufficient funding to the structures put in place for care and protection of unaccompanied migrant minors, in particular the associations and other civil society bodies, but also ensuring that domestic legislation and regulations are adapted to provide specific administrative procedures for lone child migrants;

8.2.8. with respect to missing migrant children, ensuring that responsibilities are transferred seamlessly during the different stages from reception to integration of migrant minors, in order to minimise the risk of unaccompanied minors "slipping through the gaps" in protection and absconding;

8.2.9. identifying and implementing durable solutions for unaccompanied children, based on a thorough assessment of the best interests of the child, on her or his right to safety, protection and development and on the definition of a life project with each child, and establishing monitoring procedures on compliance with the best interests of the child in case of return of the children;

8.2.10. in all cases, ensuring that unaccompanied or separated migrant minors are never refused entry into a country in accordance with the non-refoulement obligations deriving from international human rights, humanitarian and refugee law.

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9. The Assembly also calls on the European Union to continue taking into account the need for special protection for unaccompanied migrant minors when implementing the review of the Dublin III Regulation, in particular by introducing a provision on asylum applications for unaccompanied minors in the country where they are located, to avoid adding unnecessary transfers to their already traumatising journeys.

B. Explanatory memorandum by Mr Di Stefano, rapporteur

1. Introduction

1.1. Missing migrant children – a “new” challenge

1. New challenges to child protection have emerged during the recent phases of the migrant and refugee crisis, especially in the context of the partial or total closure of routes across Europe, followed by the first effects of the EU/Turkey agreement of 18 March 2016. The international public was made aware of a major concern when the EU law enforcement agency Europol announced in January 2016 that 10 000 migrant minors were missing in Europe. There is good reason to believe that actual figures were much higher as, for instance, the German Federal Criminal Police had already announced in the same month that 4 749 unaccompanied children were considered to be missing in Germany, of whom 431 under 13 years old and 4 287 between 14 and 17. In May 2016, the total number for Germany alone rose to about 9 000, according to the same source.

2. Against the background of these worrying revelations, I was appointed rapporteur in April 2016 to replace Mr Rouquet who had left the Committee, and decided to include in the scope of the present report an analysis of the factors which lead to the disappearance of unaccompanied children after their identification and registration, with a view to recommending preventive measures and solutions.

1.2. Unaccompanied minors: a subject for concern for the Parliamentary Assembly

3. The Parliamentary Assembly has reported several times on the issue of unaccompanied children, since its Recommendation 1596 (2003) on “The situation of young migrants in Europe”. A comprehensive report from 2011 (see Doc. 12539) proposes 15 common principles for handling unaccompanied migrant children, with particular focus on the need to treat them as children above all, and not as migrants, which implies special protection, guardianship and assistance in defining a “life project” for the children concerned.

4. Recommendation 2056 (2014) on “The alternatives to immigration detention of children” asks the Committee of Ministers to “launch a study to collect qualitative and quantitative data on the immigration detention of children and the use of non-custodial, community-based alternatives to detention for children and families, and promote the sharing of these practices across Europe” and to “set up guidelines for conducting child-friendly age-assessment procedures for migrant children.”

5. Resolution 1996 (2014) on Migrant children: what rights at 18? contains useful recommendations from a social and humanitarian point of view which become even more important in the case of unaccompanied children who do not benefit from parental presence and support: these include benefit of the doubt and informed consent in age assessment procedures, respect for family reunion as a part of a life project and raising the awareness of civil society as an intermediary between the public administration, the authorities and young migrants.

1.3. Preparation of the report

6. The Committee on Migration, Refugees and Displaced Persons held a joint hearing with the Committee on Social Affairs, Health and Sustainable Development on “Missing unaccompanied migrant children” during PACE’s April 2016 part-session, with the participation of experts from UNICEF, UNHCR and the NGO Missing Children Europe, which served to gain a good overview of the main issues at stake, whilst giving food for thought on possible coordinated action to prevent the large-scale and widespread disappearances.

7. I also participated in the launching conference of the third Council of Europe Strategy for the Rights of the Child for the period 2016-2021, on 5-6 April in Sofia, and in the visit of the ad hoc committee of the PACE Bureau (30-31 May 2016) to accommodation centres in Greece, which enabled me to experience realities on the ground concerning the reception of children. An exchange of views with Europol on 22 September 2016 helped to clarify some of the procedures and processes involved in dealing with unaccompanied minors, as well as the need for more coordinated actions against criminal groups that might harm and abuse unaccompanied children.

8. In the course of my parliamentary work in Italy, I have also visited several identification centres for undocumented immigrants requesting refugee status (CARAs) and “centres for identification and expulsion” for

irregular immigrants (CIEs) in the regions of Lazio (Castelnuovo di Porto, Ponte Galeria), Lombardia (Tavernola), Friuli Venezia Giulia (Gradisca) and Sicily (Caltanissetta, Pantelleria) where I was able to witness first-hand the problems related to reception and care of unaccompanied minors.

2. Unaccompanied and missing migrant children in Europe

2.1. Unaccompanied minors on the move

9. Unaccompanied minors are either third-country nationals, or stateless persons below the age of 18 who arrive on the territory of a member State unaccompanied by an adult responsible for them, or minors who are intentionally left unaccompanied after they have entered the territory of the member State. An added aspect related to their status as children is that while some take an individual decision to move, others are sent away by parents who decide that separation is the best course, some become accidentally separated, often in tragic circumstances, and others may be victims of human trafficking.

10. The motives for the departure of lone children from their homes are not always clear, as minors can be reluctant to reveal the real reasons through fear of consequences, a certain conception of loyalty to their families or sheer trauma, but the main motivations are related to security (in particular in conflicts zones where conscription as child soldiers is an additional risk) and economic and social hardship (including lack of access to education). Gender violence risks make circumstances particularly hard for girls (forced marriages, domestic violence, prostitution), phenomena which are often present over the whole of the migration process.

2.2. Minors who go missing

11. According to Save the Children,³ “following the EU-Turkey Deal, children, and specifically unaccompanied children, are being detained in inhumane conditions for extended periods of time. These children are fleeing bombs, bullets and torture in war zones like Syria, only to end up stranded and living in desperate conditions which lack the right protection, information, and services they so desperately need.” The NGO Missing Children Europe states that “Once in Europe, some children go missing from care facilities with a specific migration plan in mind, often linked to a wish to be reunited with family members in other Member States. Many run away because of the fear of being sent back to the situation they tried to escape from, or to avoid an unwanted Dublin transfer. Others are groomed by traffickers and end up being exploited in prostitution, forced labour or begging.”⁴

12. It is in these circumstances that about half of the children arriving alone run away from asylum centres or shelters within two days of their arrival, for the above reasons but also sometimes spontaneously through discouragement and frustration at the apparent complexity and length of processes they face, or for fear of being sent back home or to the country where they first arrived. In many cases they leave involuntarily because they are or have become victims of trafficking, including labour and sexual exploitation, forced begging and drug smuggling. At least 15% of registered victims of trafficking are children, and child trafficking is reported by member states as one of the most sharply increasing trends in the EU.⁵

13. One of the problems with the system into which migrant minors enter and which increases the risk of them going missing is that the different stages of their trajectory involve different administrative and humanitarian bodies, and children are likely to “slip through” the gaps where responsibilities are unclear, unless they are appointed individual guardians or advisors for the whole period from reception to application and waiting periods, up to integration (or return). While migration services handle children arriving at borders, it is then the role of social workers to provide assistance and care. When children go missing, responsibility is taken over by national police forces, which in many countries only search actively for children who abscond after their asylum applications have been rejected.

³ Overview July 2016: Children on the move in Europe: Save the Children's response to the deepening child refugee and migrant crisis in Europe.

⁴ SUMMIT report: “Best practices and key challenges on interagency cooperation to safeguard unaccompanied children from going missing”.

⁵ Report from the Commission to the European Parliament and the Council on the progress made in the fight against trafficking in human beings (2016), 19.05.2016

2.3. Figures for unaccompanied minors...⁶

14. The numbers of unaccompanied children travelling towards Europe are drastically increasing. According to Eurostat figures,⁷ a total of 88 300 unaccompanied children applied for asylum in the European Union member states in 2015 representing, in December 2015, 7% of all asylum applications lodged, up from 12 725 in 2014. 2 633 unaccompanied children applied for asylum in May 2016 – 2.7% of the total number of applications. 42% of unaccompanied children were Afghan citizens, followed by Somalians (8 %), Syrians (7%) and Pakistanis (6%). However, unaccompanied children do not all apply for asylum, so total numbers are higher. Tragically, 40 children lost their lives on the route to Europe in May 2016, and 137 children have died en route to Europe since the beginning of 2016 (as at 15 June 2016). In 2015, 91% of unaccompanied minors seeking asylum were boys, but there is a steady increase in the percentage of girls in general, including unaccompanied girls.

15. The largest shares of unaccompanied minors among all minor asylum applicants in 2015 were recorded notably in Italy (56.6%) and Sweden (50.1%), followed by the United Kingdom (38.5%), the Netherlands (36.5%), Denmark (33.7%), Finland (33.2%) and Bulgaria (33.1%). In 2015, the highest number of asylum applicants considered to be unaccompanied children was registered in Sweden (35 000, or 40% of all those registered in the EU member states), followed by Germany with 14 400 (16%), Hungary with 8 800 (10%) and Austria with 8 300 (9%). These four states accounted for three-quarters of all asylum applicants considered to be unaccompanied minors registered in the EU in 2015.⁸ Latest figures reported by UNHCR for Italy state that between 1 January and 05 September 2016, 16 611 unaccompanied asylum-seeking children arrived in Italy by sea, compared to 12 360 in the whole of 2015 (and 13 026 in 2014).⁹

16. The relocation of unaccompanied minors arriving at Europe's borders remains at a pitifully low level, as is the case for adult migrants: according to the European Commission's June 2016 update, for instance as at 15 June, 23 unaccompanied children had been relocated from Greece: 20 to Finland, 1 to the Netherlands and 2 to Luxembourg.¹⁰

2.4. ... and for minors going missing

17. Exact figures for unaccompanied children who go missing are difficult to establish, as saturated registration systems mean that Europe does not have a full and clear picture of the number of children arriving, nor is there efficient tracking of their onward route. Double registration is common, for instance, when minors cross borders; they eventually "re-appear" on official registers in another country. The 10 000 children reported missing by Europol are reported to have absconded very shortly after registration, so total numbers are much higher as many children go missing before being registered, while others disappear during prolonged waiting periods or when asylum applications are refused. On their arrival in **Germany**, for instance, minors must be registered and fingerprinted with the aliens' authority - those who go missing during the waiting period for the appointment (from several days to weeks) are not even registered.

18. Key trends for missing children have nevertheless been identified: approximately 25% of the disappearances of unaccompanied children seeking asylum happen within the first 48 hours upon arrival, and up to half of unaccompanied children go missing each year from reception centres.

19. During February 2016, in **Hungary** children were reported as missing at an estimated rate of 90-95%, after spending one to three days in reception institutions (this figure is in part explained however, by the fact that most asylum-seekers arriving in Hungary do not stay in the country). In **Slovenia**, about 80% of children went missing. In **Sweden**, about 7-10 children are reported missing each week and more than 800 children have gone missing in the last five years. In 2015, the coastal town of Trelleborg reported that 1 000 children out of 1 900

⁶ Most of the figures given in this chapter concern EU member states, as main sources of centralised data collection cover the 28 EU member states.

⁷ EASO: Latest asylum trends, update at May 2016:

<https://www.easo.europa.eu/sites/default/files/public/Latest%20Asylum%20Trends%20May.pdf>.

⁸ Eurostat Press release 87/2016 – 2 may 2016.

⁹ Data provided to UNHCR by the Ministry of the Interior.

¹⁰ European Agenda on Migration. Fourth report on relocation and resettlement from the Commission to the European Parliament, the European Council and the Council (reporting period: 13 May – 14 June 2016).

unaccompanied children who arrived in September had disappeared.¹¹ In **Italy**, according to OXFAM,¹² by 31 July 2016 13 705 unaccompanied minors had arrived in Italy since the beginning of the year (4 800 of whom were located in Sicily) more than double the numbers for 2015. The Ministry of Internal Affairs reported that in 2014, 3 707 unaccompanied children of the 14 243 who were registered after arriving via boat went missing from reception centres. The Ministry of Welfare reported that in 2015, 62% of all unaccompanied children who had arrived between January and May went missing, and that in the first 6 months of 2016 the number of missing children stood at 5 222 (of whom 23.2% Egyptians, 23.1% Somalian and 21.1% Eritreans).

20. The figures, however underestimated, do serve to demonstrate that this is a real, widespread and long-lasting problem, that unaccompanied minors are often just as determined as adults to find a better life and escape life-threatening home situations, whether in the country of origin or in transit, that the problem often has its roots in the very systems designed to care for minors (lack of appropriate information, protracted procedures, refusal - or fear of refusal - of refugee status) and finally, that children are the among the most vulnerable victims of traffickers and other criminals.

3. International regulatory frameworks

21. The United Nations (Article 3 of the UN Convention on the Rights of the Child on the best interests of the child as a primary consideration and, in particular, Article 20 on children temporarily or permanently deprived of their family environment), the European Union (EU Charter of Fundamental Rights) and the Council of Europe have a considerable *acquis* in the area of protection for unaccompanied minors, of which the main elements are described below.

22. The specific problem of missing migrant minors has emerged relatively recently and has only been indirectly addressed in international legislation, through provisions aimed to prevent and protect children against trafficking, prostitution and other crimes, or as a sub-group of children who go missing from their families in sedentary situations non-related to migration (absconding, abduction, kidnapping). The European Court of Human Rights has also established case-law in relation to the rights and protection of unaccompanied minors, in particular with respect to the provision of guardianship.

3.1. *The United Nations framework*

23. Article 22 of The United Nations Convention on the Rights of the Child (UNCRC) sets out the rights of children seeking refugee status. Articles 19 and 20 provide assurances of special protection and assistance from the State for unaccompanied and separated children and protection from violence and abuse while in such care. General Comment No 6 (2005) on the "Treatment of Unaccompanied and Separated Children outside their country of origin" describes how these rights are to be ensured by the states in the context of unaccompanied children, including provisions on age assessment, avoidance of deprivation of liberty and family reunification, with particular reference to the principles of non-discrimination (Article 2), the best interests of the child (Article 3), the right to life, survival and development (Article 6), the right of the child to express her or his views freely (Article 12) and respect for the principle of non-refoulement.

24. Other relevant articles concern the appointment of guardians or advisers and legal representatives, care and accommodations arrangements (Articles 18-22) and the prevention of trafficking and of sexual and other forms of exploitation, abuse and violence (Articles 34, 35 and 36).

25. The UNCRC serves as the reference and basis for most relevant secondary regulations, guidelines and policies in Europe, especially taking into account the approach of humanitarian NGOs, based on the principle that a child migrant is to be considered first and foremost as a child, then as a migrant. This is a key factor in improving and harmonising the protection of unaccompanied minors, as many of the shortcomings observed in national reception facilities, asylum application processes and integration frameworks stem from their non-differentiated treatment of minors and adults, often due to lack of funds, infrastructure and administrative resources to put in place the required specific protection.

¹¹ EU Fundamental Rights Agency (FRA) Monthly data collection 3: 1-29 February 2016 - thematic focus on children, and Missing Children Europe: Missing unaccompanied migrant children:

<http://missingchildreneurope.eu/Missingunaccompaniedmigrantchildren>

¹² Oxfam Media Briefing, 8 September 2016.

26. The UNHCR's "Guidelines on Policies and Procedures in dealing with Unaccompanied Minors Seeking Asylum and on Determining the Best Interests of the Child"¹³ also provide guidance on dealing with unaccompanied children. Three of the UNHCR's six proposals on stabilising the situation of refugees and migrants in Europe, made at the meeting of EU Heads of State or Government and Turkey on 7 March 2016, address directly the situation of migrant children: these are the development of protection for individuals at risk including systems to protect unaccompanied and separated children, the establishment of specialist child protection services and the improvement of age assessment, family tracing, inter-state collaboration and reunion with parents in countries of asylum.

3.2. The European Union

27. The Dublin III Regulation, when enumerating the responsibilities of the member state responsible for the examination of asylum applications, provides in its Article 8(4) that "in the absence of a family member, a sibling or a relative, the Member State responsible shall be that where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interest of the minor".

28. The Asylum Procedure Directive provides for guarantees to unaccompanied children regarding legal representation, tracing of family members, and placement in appropriate accommodation. Article 31 of the Qualification Directive (Directive 2011/95/EU) sets up common grounds for the members states to grant international protection and encompasses specific provisions for unaccompanied children (right to be heard, right to a guardian, living conditions).

29. The Family Reunification Directive provides for the entry and residence of first degree relatives in the direct ascending line for unaccompanied minors recognised as refugees, and may authorise the entry and residence of his/her legal guardian or any other member of the family if the refugee has no traceable relatives in the direct ascending line. The Reception Conditions Directive carries an obligation to conduct an individual assessment to identify the special reception needs of vulnerable persons, with particular attention to unaccompanied minors, providing for psychological support for vulnerable asylum seekers. It also includes rules on the qualifications of the representatives for unaccompanied minors and states that the deprivation of liberty of unaccompanied minors must be a last resort.

30. The Returns Directive obliges a member state, before deciding to issue a return decision, to grant unaccompanied minors assistance by appropriate bodies other than the authorities enforcing return. Before removing an unaccompanied minor from the territory of a member state, the authorities of that state must be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the country of return. In September 2015, the European Commission set up an Action Plan on Return for the implementation of the Returns Directive, which was followed by the publication of a Return Handbook with a specific section on the return of unaccompanied children. It focuses on ensuring a sustainable solution in the home country for the child, and also on establishing the best interest of the child as a key consideration.

31. The European Commission's Action Plan on Unaccompanied Minors 2011-2014 also promotes the explicit recognition of the best interests of the child as the guiding principle. The plan sets priorities for common standards on reception and assistance for all unaccompanied minors relating to guardianship, legal representation, access to accommodation and care and education. The three main strands for action to tackle the issues of unaccompanied minors developed in the plan are the prevention of unsafe migration and trafficking, reception and procedural guarantees in the EU and identification of durable solutions.

32. The European Parliament, in its work to review the Dublin Regulation, has already voted on a provision aimed to improve the situation of unaccompanied minor migrants whereby their asylum applications will be processed in the country "where the minor is present" rather than in the country through which they entered the EU, following a European Court of Justice ruling on the issue.

3.3. The Council of Europe's instruments and action

¹³ <http://www.unhcr.org/publications/legal/3d4f91cf4/guidelines-policies-procedures-dealing-unaccompanied-children-seeking-asylum.html>

33. The European Court of Human Rights has repeatedly condemned the serious gaps in asylum protection systems and lack of adequate care for children. It has established case-law in relation to the rights and protection of unaccompanied minors, in particular with respect to the provision of guardianship. The *Mubilanzila Mayeka and Kaniki Mitunga v Belgium* case dealt with multiple violations of the Convention by the Belgian Government by detaining an unaccompanied five-year-old child at a transit centre for adult foreigners. In *Rahimi vs. Greece*, the Court denounced inadequate care and unlawful detention of an unaccompanied minor seeking asylum in the case of a minor from Afghanistan who had entered Greece illegally and was held in the Pagani adult detention center on the island of Lesbos. The case of *Housein vs. Greece* exposed the detention of an unaccompanied minor for two months, mostly in an adult detention centre, and without effective administrative review.

34. Committee of Ministers' Recommendation (2007)9 on life projects for unaccompanied migrant minors introduced the concept of "a plan, drawn up and negotiated between the minor and the authorities in the host country, represented by a designated official, with contributions from a variety of other professionals." Life projects aim to be "holistic, personalised, flexible tools".

35. The European Convention on the Exercise of Children's Rights (1996) provides measures to promote the rights of children, especially in family proceedings before judicial authorities. Among the types of family proceedings of special interest for migrant children are those concerning custody, residence, access, questions of parentage, legitimacy, adoption, legal guardianship, administration of property of children, care procedures, removal or restriction of parental responsibilities, protection from cruel or degrading treatment and medical treatment.

36. In March 2016, the Secretary General published proposals for priority actions to protect children affected by the refugee crisis, which highlights the findings of the Council of Europe Group of Experts on Trafficking in Human Beings (GRETA), pointing to inadequacy of child protection measures, insufficient appointment of guardians and lack of coordination between border officials, immigration officers, social services, law enforcement and child protection services. The proposals contain six priority areas, which are common to the priorities and guidelines promoted by other organisations: preventing migrant children from falling victim to violence and abuse, ending child immigration detention, improving age-assessment procedures, ensuring a gender dimension in all situations, ensuring access to education and preventing statelessness of children.¹⁴ The European Strategy for the Rights of the Child (2016-2012) will address migrant children as a priority.

37. The PACE Campaign to End Immigration Detention of Children¹⁵ focuses on the detention of migrant children. Despite improvements in legislation and practice in some European countries, tens of thousands of migrant children are still placed in detention every year, which is contrary to the best interests of the child and in clear and unequivocal violation of children's rights. The campaign has so far succeeded in raising awareness in Europe and encouraging parliamentarians to promote alternatives to detention that respect the best interests of the child and allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved. Its outcomes and further work will provide useful guidelines and standards for all the issues linked to child migrants and refugees, and should be supported and promoted by all member States.

4. The situation on the ground

38. Unaccompanied and separated asylum-seeking children present one of the greatest challenges facing governments concerning international protection, especially as many unaccompanied children arrive without identity documents, birth certificates or travel documents and cannot (or do not wish to) give satisfactory evidence of their age. The challenge is even greater in cases of children approaching the age of 18. Incorrect age assessment can deny vulnerable children of the protection and rights they are entitled to. The following examples, taken mainly from UNHCR updates from the first six months of 2016, are aimed to give an understanding and an overview of typical problems which arise concerning unaccompanied minors in the main areas of priority – the child's best interests, age assessment, guardianship, access to education and medical care and non-detention.

¹⁴ The latter issue was dealt with in a report for which I was rapporteur ("The need to eradicate statelessness of children"), see Doc. 13985 of 16 February 2016.

¹⁵ http://website-pace.net/en_GB/web/apce/children-in-detention

4.1. *The best interests of the child*

39. In **Latvia**, an Asylum Law adopted in December 2015 introduced a number of important changes and improvements, including references to the best interests of the child principle, the obligation to identify applicants in need of special procedural guarantees and vulnerable applicants with special reception needs. In **Hungary**, there is a lack of an established mechanism to assess specific needs of vulnerable applicants and there are delays in providing guardians for unaccompanied minors (the average waiting time of about five weeks).

40. The **Danish** asylum system still contains gaps regarding the handling of child asylum claims and in the application of the best interests of the child principle, for instance in the context of family reunification, Danish law also only considers persons under 15 years of age to be children.

41. In **Croatia**, it has been reported that applicants under 16 are accommodated in homes for children without any parental care. In **Greece**, since the evacuation of the informal site in Idomeni on 24 May, children are accommodated in inadequate facilities and conditions for weeks. Some of the facilities in northern Greece are in very poor condition although reports state that fewer children go missing from transit facilities in Greece. In **Hungary**, unaccompanied children are left outside the transit zone for days without any care or facilities.

42. As of July 2015, special provisions for unaccompanied children in the admission procedure came into force in **Austria**. All unaccompanied minor applicants are transferred to the initial reception centre in Traiskirchen and have their first interview there. Upon their arrival, the legal adviser becomes their legal representative and has to assist them in every interview. Also, special provisions regarding victims of torture were included in the provisions governing admissibility procedure.

43. In **Germany** the government and local authorities are discussing a reduction of child welfare services for unaccompanied children.

44. Lack of interpreters (for instance in **Croatia, Germany, Slovenia** and **Sweden**) makes it difficult to inform children about their situation. Children still continue to try to be registered as adults after receiving misleading information on possible returns and sign papers without understanding them.

4.2. *Age assessment*

45. Age assessment is crucial in determining the relevant legal framework to apply to ensure specific rights and protection for children. Age assessment is organised by public bodies to determine the chronological age of an individual, and should be carried out only in the case of missing identity documents, in a timely fashion before asylum processes begin. General Comment No. 6 states that “identification measures should not only take into account the physical appearance of the individual but also his or her psychological maturity” and that “the assessment must be conducted in a scientific, safe, child and gender-sensitive, fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity and, in the event of remaining uncertainly, should accord the benefit of the doubt”.

46. As medical procedures for age assessment are considered as sometimes unreliable and disproportionately intrusive by the UN, the institutions of the Council of Europe, healthcare providers, as well as by EU institutions such as FRA or EASO, they should be optional and use only with rigorous safeguards in the case they could help the genuine children to entitle their rights according to the principle of best interest of the child.

47. A majority of European Union member states such as **France, Italy** and **Greece** imposes medical examinations such as dental examinations and x-rays to determine bone maturity. The most common are wrist/carpal x-rays, followed by dental examinations and dental x-rays. National authorities use medical tests completed with interviews to ascertain the age of the child. These medical examinations are criticized for a variety of reasons, such as the lack of privacy of the child, potential hazards (in particular with the use of X rays) and margin of error that can be about 2 years for x ray examinations).

48. Non-medical methods are recommended and used, such as research of documentary evidence. Although informal assessments are not as harmful to children, they are often very inaccurate. In the **United Kingdom**, the use of x ray examinations is prohibited, and age assessment is made on the basis of a preliminary assessment based on physical appearance and demeanour and an interview by a social worker according to guidelines

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which include the general background of the applicant, family circumstances, ethnic and cultural considerations, education and history.

49. There is an urgent need for harmonisation of age-assessment procedures to ensure that all countries use methods which are respectful of the dignity and physical integrity of children. The PACE Migration Committee could devote a future report to this subject.

4.3. Guardianship and legal representation

50. Some states do not have a system for legal guardianship, in others the appointment of legal guardians is slow and/or appropriate training is not provided, which means that unaccompanied minors are often treated as adults with no special measures of assistance. Proper guardianship systems are essential to assist in finding a durable solution for separated children, whether this means integration into the host country, transfer to another country or return to the country of origin. Systems also vary as regards the possibility of guardians and/or legal representatives to intervene and assist in asylum application procedures, which can run counter to the processing of unaccompanied minors claims for protection.

51. The Core Standards for guardians of separated children in Europe developed by the Netherlands-based NGO Defence for Children¹⁶ are a good example of a workable model for guardianship. Based on the views expressed by 127 separated and former separated children, 68 guardians and 39 other experts (foster parents, lawyers, social workers...), they take into account the Convention on the Rights of the Child and General Comments Nos. 6 and 12 (right of the child to be heard).

52. In **Poland** the Bill of 10 September 2015 amended the legislation with regard to guardianship, indicating that the respective court is obliged to make an order to appoint a legal guardian for a minor within three days. In parallel, the scope of responsibility of legal guardians was extended so that it encompasses not only proceedings for granting international protection but also issues of voluntary return, Dublin transfers and matters of social assistance. UNHCR also welcomed the newly introduced possibility to file the application for asylum on behalf of UACs by a non-governmental or an international organisation involved in the asylum field.

53. In **Germany**, concerns were raised by UNHCR about access to guardianship for unaccompanied minors. Guardians are generally not systematically appointed, there are significant delays (up to eight months) in their appointment due to excessive workload affecting the youth welfare offices and family courts, and guardians are responsible for very high numbers of unaccompanied child migrants (up to 150), which causes delays in school enrolment, health care appointments and asylum applications.

54. In **Slovakia**, several significant changes in legislation were made in 2015 relating to procedural guarantees for vulnerable groups, especially for unaccompanied children. Unaccompanied children during the asylum procedure remain in facilities of the institution responsible for social protection of children and social guardianship rather than asylum facilities. An unaccompanied child who during the asylum procedure becomes an adult, may remain in the institution, particularly in case of young adults still in education. In addition, the guardian of the unaccompanied minor may ask questions or make comments during the interview with the unaccompanied minor (not just before its completion as is the case for adult applicants).

55. The Ombudsman issued a report (No 41/2015, on 24 August 2015) on the gaps and deficiencies of the child protection system in **Cyprus**. NGO lawyers in Cyprus are able to legally represent an unaccompanied minor on the basis of the right afforded to all applicants to consult legal advisers on matters relating to their applications for international protection, but the identification of persons with specific needs remains slow methods for the identification of such applicants within a reasonable period after the application is made have not been introduced. As such, it was reported that some applicants may not have received the necessary medical care, social assistance, or counselling.

4.4. Child immigration detention

56. Accompanied or unaccompanied, all children travelling without official documents, whether seeking asylum or as refugees or irregular migrants, are at risk of being detained given that in many countries illegal entry and residence is considered a criminal offence. Despite the fact that detention of children is internationally

¹⁶ Defence for Children - ECPAT The Netherlands: <https://www.defenceforchildren.nl/images/69/1632.pdf>

recognised as a measure of last resort under the UNCRC, immigration detention of children has now reached unprecedented levels. Despite some improvements in legislation and practice in a number of European member States, hundreds of immigrant children still end up in detention. This is often due to a lack of resources enabling the provision of adequate open facilities, but is also a question of organisation within countries, which need to do more to provide foster families and other alternative short and medium-term accommodation and care structures.

57. Accurate statistics on the detention of migrant children are difficult to establish. In **Hungary**, UNHCR and partner organisations continue to identify age-disputed children in detention. Medical assistance provided at asylum detention facilities is limited and children are kept in asylum-detention facilities for long periods without age assessment. UNHCR has identified children in detention during its visits and is working on their transfer to children's home.

4.5. Health care

58. Respiratory diseases identified as a main health issue among migrant children. Gastrointestinal problems and colds detected among children in **Greece**. Cases of children with tuberculosis were reported in **Germany**. In **Hungary**, children in migration are at high risk of infections due to the poor hygienic conditions during their journeys and the lack of mandatory vaccinations. It is generally difficult to trace the level of received vaccinations and the vaccinations regimes differ from one country to another: In **Sweden** it is regulated at a national level and the vaccination calendar applies to all children. In **Austria** and **Germany**, vaccinations are not mandatory, thus not systematic. In **Hungary**, children receive vaccinations specific for their age. In **Bulgaria**, children in migration are vaccinated only if their medical file with information about previous vaccinations is available. In **Slovenia**, new born babies are now vaccinated as well as children staying in the asylum homes before they start school. In **Sweden**, children do not always have access to health, education and social services since they might not be accommodated in the municipality responsible for these services.

5. Conclusions and recommendations

59. On examination of the situation of unaccompanied minors in the context of the current migration crisis, it appears clear that there is no lack of appropriate international legislation, recommendations, guidelines, best practices and policies. There is, however, both very uneven transposition of international standards into national regulatory frameworks, ranging from border controls and reception facilities to police and judiciary procedures, through social work, medical care and education.

60. There is consequently an urgent need to harmonise procedures involving unaccompanied migrant children from their arrival in Europe to their integration or return, and to step up international cooperation at all levels. As in all aspects of the current migration crisis, countries on Europe's borders need additional international support to cope with new challenges resulting from the scale of arrivals.

61. On the other hand, the crisis reveals shortcomings in national policies which relate to the treatment of all children – guardianship issues, for instance, the way children's rights and aspirations are taken into account, child-friendly age-assessment procedures as well as the rights of children in vulnerable situations to social and medical services and education.

62. The disappearance of many unaccompanied migrant minors requires the introduction of legal and procedural regulations on missing migrant children. In some countries for instance, action is slowed down by a fixed no-action period before any investigation into the missing children is carried out or even considered. There is consequently a need to establish more precise and reliable information by sharing international databases and by the aggregation of data from different sources (national and international police, NGOs, social services), on the number of missing unaccompanied minors, where they are located and at what stages of migration they are likely to go missing, as well as on migration routes and on criminal networks. There is a need to address criminal networks that might abuse and exploit unaccompanied children, in particular ensuring proper information exchange between various national authorities and the involvement of Europol.