

THE RECEPTION AND CARE OF UNACCOMPANIED MINORS IN EIGHT COUNTRIES OF THE EUROPEAN UNION



COMPARATIVE STUDY AND HARMONISATION PROSPECTS

Spain - France- Great Britain - Greece – Hungary - Italy – Romania - Sweden

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Main abbreviations

ANAR	Ayuda a niños y adolescentes en riesgo (Spain)
ANCI	Associazione Nazionale Comuni Italiani (Italy)
CAOMIDA	Centre d'accueil et d'orientation des mineurs isolés demandeurs d'asile (France)
CESEDA	Code de l'Entrée et du Séjour des Etrangers et de la Demande d'Asile (France)
CNDA	Cour Nationale du Droit d'Asile (France)
DPCM	Decreto del Presidente del Consiglio dei Ministri (Italy)
DPR	Decreto del Presidente della Repubblica (Italy)
ECPAT	End child prostitution, child pornography and the trafficking of children for sexual purposes
EMN	European migration network
HCR	United Nations High Commissioner for Refugees (or UNHCR)
HHC	Hungarian Helsinki Committee (Hungary)
NAPCR	National authority for the protection of children's rights (Romania)
OCRETH	Office central pour la répression de la traite des êtres humains (France)
OFII	Office français de l'immigration et de l'intégration (France)
OFPRA	Office français de protection des réfugiés et des apatrides (France)
IOM	International Organisation for Migration
ILO	International Labour Organisation
OIN	Office of Immigration and Nationality (Romania)
NGO	Non-governmental organisation
OUR	Ordonanta de urgenta a guvernului (Romania)
SP	Subsidiary protection
DRC	Democratic Republic of the Congo
RIO	Romanian immigration office (Romania)
SCEP	Separated children in Europe programme
SPRAR	Sistema di Protezione per richiedenti asilo e rifugiati (Italy)
RS	Refugee status
ISS	International social service
TU	Testo Unico (Italy)
EU	European Union
UKBA	United Kingdom border agency (Great Britain)
UNHCR	United Nations high commissioner for refugees

Introduction

Context

For many years, all European countries have been faced with the arrival on their territory of migrants of a particular type: unaccompanied minors. Even though this designation varies according to each State¹, the term will be used throughout this study to refer to those children under 18 years of age, nationals of a country outside the European Union and unaccompanied by a legal representative.

This migratory phenomenon was identified as early as the 1970's in several Member States, it increased during the 1990's and has finally expanded considerably in recent years. Children from sub-Saharan Africa, the Maghreb, the Middle East or Asia, arrive in Europe this way every year in search of protection, of a better life, or to join a family member.

While this problem concerns all 27 Member States of the European Union, these young people will receive a very different reception and be taken care of rather differently by each individual country. This great disparity in laws and national practices is explained by the failure to deal with this issue on a European level. Many international or Community standards related to this subject matter are applicable within the countries of the European Union², but this legislative context has not really helped to reduce the protection gap between the member States.

Aware of the need to act on a supranational level, the European Commission therefore published an action plan for unaccompanied minors on 5 May 2010³. This communication addressed to the Council⁴ and the Parliament presents the outlines that should be followed as part of the future preparation of a Community policy in this area, in view of 'increased protection'⁵. It is in this particular context that this report has been drafted.

Through an analysis of the laws and practices in eight Member States (Spain, France, Great Britain, Greece, Hungary, Italy, Romania, Sweden), the aim is to identify the best practices and prescriptive needs on a European scale, in order to improve the reception and care of unaccompanied minors in the Union. Regarding its purpose and its methodology, this report is complementary to other comparative studies recently published on the subject⁶.

¹ See *below* Part I.

² See Appendix 1 42.

³ European Commission, Action plan for unaccompanied minors (2010-2014), SEC (2010)534.
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:FR:PDF> (accessed on 15.07.2010).

⁴ The Council issued its conclusions regarding this action plan on 3 June 2010.
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/fr/jha/114888.pdf (accessed on 15.07.2010).

⁵ « "The European Commission calls for increased protection of unaccompanied minors entering the EU", Press Release, 6 May 2010.
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/534&format=HTML&aged=0&language=FR&guiLanguage=en> (accessed on 15.07.2010).

⁶ See for example: EUROPEAN MIGRATION NETWORK, *Policies on reception, return and integration arrangement for, and numbers of, unaccompanied children*, May 2010, 163 p.; FUNDAMENTAL RIGHTS AGENCY, *Separated asylum-seeking children in European Union Member States*, April 2010, 52 p.; NIDOS, *Towards a European Network of Guardianship institutions*, February 2010, 80 p.

Methodology

This project, which is co-funded by the European Union's Fundamental Rights and Citizenship programme, was coordinated by France terre d'asile (France)⁷ and carried out in partnership with two non-governmental organisations: the Institute for Rights, Equality and Diversity (Greece)⁸, and the Consiglio Italiano per i Rifugiati (Italy).⁹

Following the first conference on unaccompanied foreign minors that was held in Lille (France) in December 2009¹⁰, a questionnaire was developed jointly. Researchers from the three organisations then worked between January and July 2010 in order to answer all of the questions for each of the eight target countries. The research was carried out on the basis of documents that refer to the situation of unaccompanied minors in the studied countries, of legal provisions that govern this problem, and through the practical experience reported by front-line professionals and institutions that operate in this field.

The lack of information resources in certain countries, especially in Romania, reveals itself in this report in which the degree of analysis is therefore variable. Furthermore, the study of the situation of isolated foreign minors in the overseas countries and territories¹¹ could not be included within the framework of this project in view of the confusion that would have entailed from a comparative point of view.

On the basis of some 250 pages of answers to national surveys, this study sets out to analyse the results and to make recommendations about the principal subjects at stake in this area. A summary of this report is available on the website of France terre d'asile¹². It is our hope that this research will provide an appropriate source for everyone involved and more precisely the European Union's institutions, with a view to harmonised protection based on respecting the rights of children.

⁷ <http://www.france-terre-asile.org>

⁸ <http://www.i-red.eu/>

⁹ <http://www.cir-onlus.org/>

¹⁰ FRANCE TERRE D'ASILE, DEPARTEMENT DU PAS-DE-CALAIS, CONSEIL GENERAL DU NORD, *Mineurs isolés étrangers: des enfants en quête de protection – 1ères assises européennes, jeudi 17 décembre 2009 – Synthèse des débats*, March 2010, 50 p.

¹¹ For a definition of overseas countries and territories see:

http://europa.eu/legislation_summaries/development/overseas_countries_territories/index_fr.htm

¹² <http://www.france-terre-asile.org/childrenstudies>

I. Knowledge of the phenomenon

To study and provide the best possible response to the various concerns raised by the phenomenon of unaccompanied foreign minors, it is necessary to know its scope and its definition. It follows nonetheless from the eight studied countries that the definition varies from one State to another, while on the other hand the statistics continue to be altogether unclear.

A. Definitions

As far as the definition is concerned, several Community legal standards define the notion of “unaccompanied minor”¹³. With regard to these texts, an unaccompanied minor is defined by several characteristics:

1. Minor under the age of 18 years
2. National of a country outside of the European Union (or stateless)
3. Arrived in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom OR left unaccompanied within the territory of the Member States
4. Not effectively taken into the care of such a person.

This definition contained in the European texts has only been accepted by the legislation of three countries, namely **Greece**, **Hungary** and **Romania**.

In **Italian** legislation, the definition excludes minors who have requested exile, who have been the subject of a census and of special treatment, whereas inversely, the definition used in **Great Britain** only recognises “unaccompanied minors requesting asylum”. This results from a characteristic facet of the reception of isolated minors in Great Britain: they can only be looked after if they have requested asylum. The situation is similar in Hungary and in Sweden, where a distinction is still made between unaccompanied minors requesting asylum and others who are considered to be illegal residents.

In **Spain** and in **France**, several legal texts mention these foreign minors, but without defining them. With the exception of France and Italy, all of the countries use the expression “unaccompanied minor” (while sometimes adding “foreign” or “asylum applicant”).

¹³ See for example: Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries; Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection (...), Art. 2f; Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Art. 2h; Council Regulation (EC) n° 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application (...), Art. 2h. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals (...), art. 2i.

In most of the studied countries, acceptance of the notion of European citizenship established by community law¹⁴ consequently means that European unaccompanied minors are not included within the framework of this issue. As their situation is different from that of minors coming from countries from outside the Union, notably due to the application of many standards that only target Community nationals, this report aligns with this European approach and therefore does not deal with the care of children who are nationals of one of the 27 Member States.

Table 1 – Overview of the definitions of unaccompanied minors

	Designation	Definition in national law	Source
Spain	Unaccompanied foreign minor	No	
France	Isolated foreign minor	No	
Greece	Unaccompanied minor	<i>Belonging to a country outside the European Union or stateless person who has not reached 18 years of age and who enters Greek territory without being accompanied by a person responsible for this child by law or by custom (...) or who has been found alone after entry in the country.</i>	Law 3386/2005, art. 1
Hungary	Unaccompanied minor	<i>A foreign national under the age of 18 years, who enters the territory of the Republic of Hungary without the company of an adult responsible for this child by law or by custom, or who is left without supervision following entry; as long as she/he is not transferred to the care of such a person.</i>	Law II of 2007 on entry and stay of nationals from third countries, §2e Law LXXX of 2007 on asylum, §2f
Italy	Isolated foreign minor	<i>Isolated foreign minor present on the national territory (...) is understood as every minor who does not possess Italian citizenship or the nationality of other States of the European Union, who has not presented an application for asylum, and who finds himself, for whatever reasons, on national territory without assistance or a legal representative or without other adults legally responsible for him/her according to the law in force in the Italian juridical system.</i>	Regulation concerning the missions of the Committee for foreign minors, D.P.C.M. 9.12.1999, n.535
Romania	Unaccompanied minor	<i>Minor, foreign citizen or Stateless person, who has arrived in Romania unaccompanied by either a parent or legal representative, or who is not in the care of another person by law or by custom, or a minor left unaccompanied after entering Romanian territory.</i>	Law n° 122/2006 on asylum in Romania, art. 2.k
Great Britain	Unaccompanied asylum seeking child	<i>A child who is applying for asylum in his own right and is separated from both parents and is not being cared for by an adult who by law has responsibility to do so.</i>	UKBA, Asylum Process guidance for special cases, processing application from a child, §4-2
Sweden	Unaccompanied minor	<i>A child with no custodial parent in Sweden.</i>	Aliens Act 2005-716, chapter 10 §3, chapter 18 §3 Law 2005:429 on temporary representatives of unaccompanied minors

Thus, differences in the definitions render every attempt at harmony difficult with regard to this problem. The implementation of a consistent European policy certainly implies coming to an agreement beforehand about the extent of the subject area and the terms employed.

¹⁴ Consolidated version of the Treaty on European Union, Official Journal of the European Union, C 83/13, art. 9: "Every national of a Member State shall be a citizen of the Union."

Recommendation n°1 - DEFINITION

- ▶ Harmonise the definition of ‘unaccompanied minors’ in all European Union countries on the basis of the definition contained in the current Community standards.

B. Statistical data

However crucial for assessing the scope of the phenomenon, it would appear to be very difficult to estimate the number of unaccompanied minors present within the territory of the States making up the European Union.

The discrepancies regarding the notion’s definition are also felt in the statistics. As such, **Great Britain, Hungary and Sweden**, that primarily direct minors towards an asylum application, can provide data on the applications submitted just like all of the other countries¹⁵, but other minors are not specifically taken into account.

Inversely, minors requesting asylum and who have been victims of trafficking are not included in the data collection system set up in **Italy**, and are the subject of separate statistics. It is nevertheless in this country that we have official statistics that seem to provide the most thorough information on the situation. Indeed, in 1999, the Italian government created a national reference institution in this area, specifically the Italian Committee for Foreign Minors, one of the missions of which is to carry out a census of the unaccompanied minors present within Italy¹⁶. Public officials and authorities who have a mission to provide care and assistance are therefore required to inform the Committee of the presence of any unaccompanied minors of whom they may learn. A detection form, created by the Committee and made available to all such people and institutions likely to come across minors, must be filled out for this purpose. In particular, this form contains data relative to the youth’s identification (age, nationality, presence of relatives in Italy, location where the youth was found...), the social services provided to him (place of residence, residence permit, legal representative...) and the search for his family (telephone number of parents, etc.). Though imperfect, notably with regard to the scope of the minors included in the census that excludes asylum applicants, victims of trafficking and EU citizens, as well as difficulties inherent to any census of this type (often declarative data, possibility that a given child may be listed more than once, etc.), this data collection system is still the most complete within the eight studied countries.

Underage citizens of the European Union, including the Romanian minors present in certain countries included in the study, are never included in these official statistics, whether in countries that only list asylum applicants¹⁷ or in the Italian system.

¹⁵ See below Part III

¹⁶ DPCM 535/99 art. 2, § 2

¹⁷ As part of the Protocol on asylum for nationals of Member States of the European Union, known as the Aznar Protocol, “any application for asylum made by a national of a Member State may [only] be taken into consideration or declared admissible for processing by another Member State” (Treaty of Amsterdam, Official Journal n° C 340 of 10 November 1997)

In **Romania**, the very low number of listed minors (50 in 2008) seems to indicate that this number relates only to minors that have been put in the care of a public institution.

In **France, Spain** and **Greece**, there are no reliable official data that can be used to assess the situation nationwide. As the public child protection services are managed by local authorities in France and Spain, data on youths that have been the subject of a protective measure in these countries are not centralised and the data research on the local level by NGOs or national institutions is characterized by imperfections and sometimes differing calculations according to the regions. Moreover, these statistics do not provide for an understanding of the scope of the phenomenon since they provide no estimate of the youths who are wandering around or ones turned back before accessing the territory.

Adding up the available statistics leads to an estimate of around 30,000 unaccompanied minors arriving in these eight countries in 2008, but this number is unreliable in view of all of the previously mentioned imperfections in the various data collections. The comparison of the national data is all the more uncertain given that in certain countries, the number of minors taken in care at a given moment is considered, while others focus on the number of arrivals within a finite period.

Table 2 –Statistical data on unaccompanied minors

	Estimate of the total number of unaccompanied minors present (P) or entered (E) on the territory				Source of the estimate	Comments
	2006	2007	2008	2009		
Spain	3064 (P) on 31/12	4467 (P) on 31/12	5158 (P) on 31/12		→ EMN Synthesis report on unaccompanied minors ¹⁸	Partial data that exclude unaccompanied minors placed in Rioja and Madrid.
		6475 (E)			→ General Council of the Spanish bar ¹⁹	- Data for certain years and for certain autonomous regions are not available. - The criteria for including minors on the statistical lists are not the same in all of the autonomous regions.
France			1092 (E)		→ Police at the borders	This refers only to the number of minors apprehended at Roissy airport, a non-representative share of the minors arriving on the territory each year.
			6000 (P)	6000 (P)	→ Estimate by the départements and by NGOs	The absence of centralised statistics on the national level makes any precise estimate impossible. For several years, the generally accepted estimate is that there would be between 4000 and 8000 unaccompanied minors in France.
Greece			2648 (E)		→ Greek coastguards ²⁰	The absence of centralised statistics on the national level makes any precise estimate impossible.
			6000 (E)		→ UNHCR ²¹	
Hungary		159 (E)	271 (E)		→ EMN Synthesis report on unaccompanied minors / SCEP Newsletter ²²	Number of unaccompanied minors applying for asylum during one year.
Italy			7797 (E) on 31/12/2008	7042 (E) on 30/06/2009	→ Italian Committee for foreign minors	These statistics do not consider asylum-seeking minors or victims of trafficking, who are not counted by the Italian Committee for foreign minors.
				4791 (E) on 31/05/2010		
Romania				50 (P)	→ Romanian Office for immigration	
Great Britain			5500 (E)	4200 (E)	→ Home Office ²³	These statistics relate to the United Kingdom (Great Britain and Northern Ireland).
Sweden			1510 (E)	2250 (E)	→ Eurostat ²⁴ → UNHCR ²⁵	This is the number of unaccompanied minors applying for asylum during one year.

¹⁸ EUROPEAN MIGRATION NETWORK, *op. cit.*, note 6.

<http://emn.sarenet.es/Downloads/download.do?sessionId=7E751C48A6C5DDB03F386117613319E4?fileID=1020> (accessed on 15.07.2010)

¹⁹ GENERAL COUNCIL OF THE SPANISH BAR (CGAE), "Ni ilegales ni invisibles. Realidad jurídica y social de los Menores Extranjeros en España" [*"Neither illegal nor invisible. Legal and social reality of foreign minors in Spain"*], 2009, p. P 27.

http://www.unicef.es/contenidos/1002/informe_informacion_inmigrante_UNICEF_CGAE_2009.pdf (accessed on 17.10.2010).

²⁰ Quoted in "UNHCR alarmed by detention of unaccompanied children in Lesbos, Greece", 28 August 2009

<http://www.unhcr.org/print/4a97cb719.html> (accessed on 20.07.2010).

²¹ UNHCR, *Observations on Greece as a country of asylum*, December 2009, p. 12.

<http://www.unhcr.org/refworld/docid/4b4b3fc82.html> (accessed on 20.10.2010).

²² EUROPEAN MIGRATION NETWORK, *Policies on reception, return and integration, arrangements for, and number of unaccompanied minors in Hungary*, 2009, p. 14, and SEPARATED CHILDREN IN EUROPE PROGRAMME, *Newsletter n°33*, April 2010.

²³ Quoted on the site of the Children's Legal Centre for 2008, and for 2009 in "Where do the children seeking asylum to the UK come from?", *The Guardian*, 8 June 2010, <http://www.guardian.co.uk/news/datablog/2010/jun/08/child-asylum-seekers-data-uk> (accessed on 20.07.2010).

²⁴ <http://epp.eurostat.ec.europa.eu/portal/page/portal/population/data/database>

²⁵ UNHCR, *Baltic and Nordic Headlines, A summary of asylum and refugee-related stories in regional media*, February 2010.

Recommendation n°2 – STATISTICAL DATA

- ▶ Set up a coordinated information collection method by implementing a statistical collection tool that can be used in each country, thereby allowing for a relevant comparison across Europe.
- ▶ In this statistical tool, include and differentiate all categories of unaccompanied minors, whether asylum-seekers, victims of trafficking or even children taken into care by supervision and protection services. This tool should, moreover, at least contain data regarding the age, nationality, language and gender of the minor.
- ▶ Ensure that personal data is necessarily protected while using this statistical tool, in accordance with the European rules in force and with the cooperation of the organisations and institutions qualified in this domain.

C. Profiles

The problem of the absence of reliable statistics appears once again when considering the profiles of unaccompanied minors in the various countries. As such, only the data collection set up in **Italy** within the framework of the Committee for foreign minors²⁶ allows for a true analysis by nationality, age and gender in this country. The previously mentioned shortcomings of this database (exclusion of European citizens, asylum applicants, minors that have been the victim of trafficking) can nevertheless lead to a vision that is out of line with reality.

The detailed data available for the countries that only recognise unaccompanied minors seeking asylum, such as **Hungary, Great Britain and Sweden**, will be studied at a later time²⁷. They do not allow for an exhaustive overview of the situation within the country, since young people who migrate for economic reasons may well be excluded from the protection systems in these countries, and therefore do not appear in the statistics.

The hands-on experience of non-governmental organisations and the sparse data available from local or national institutions nevertheless allow for certain trends to be uncovered regarding the nature of unaccompanied minors present in the eight studied countries.

A very large majority (between 80 and 95%) of the young people found in these countries are male and between 15 and 17 years of age. Although in the minority, young people under the age of 15 and girls are also present: for example, more than 600 minors under the age of 14 were found in Italy in the first half of 2010²⁸, nearly 200 children under the age of 13 arrived just at the Paris-Roissy (France) airport in 2008²⁹ and more than 300 girls requested asylum in the United Kingdom in 2009³⁰. These categories of minors, who are more likely to be victims of exploitation, are particularly vulnerable.

²⁶ Data relating to the first half of 2010, provided by the Committee for foreign minors, June 2010. The complete data updated on 30 June 2009 are visible on http://www.ismu.org/ISMU_new/upload/files/20090703104920.xls (accessed on 21.07.2010)

²⁷ See below Part III

²⁸ Committee for foreign minors, *Op.cit.* note 26

²⁹ Interministerial working group on unaccompanied minors, *Project report, Conclusions and summary*, October 2009, 189 p.

³⁰ Eurostat database - <http://epp.eurostat.ec.europa.eu/portal/page/portal/population/data/database> (accessed on 21.07.2010)

Unlike the age and gender, the nationalities of unaccompanied minors vary considerably according to the countries. As with adults, whose migratory trends are generally similar, Afghanistan is a country of origin that is widely represented in several countries. As such, many minors of Afghan origin arrive in **Greece**, the EU's eastern gateway, where we also find many children from Pakistan, Iraq and even Bangladesh. Most of these young people continue their migration in Europe, and Afghan nationality is therefore strongly represented in Italy (15% of the minors identified in 2010³¹) in France (24% of the unaccompanied minors taken into care in Paris³², and nearly 70% in the Pas-de-Calais in 2009³³), in Great Britain (51% of the unaccompanied minors requesting asylum in the United Kingdom in 2009³⁴) and in Sweden (35% of the unaccompanied minors requesting asylum in 2009³⁵). Hungary has also recorded many asylum applications made by Afghan minors (72% in 2009). This nationality's prevalence can be explained by the situation of war in this country, in which these young people can lose their lives and see no prospects for the future³⁶. These young people can generally claim refugee status or the allocation of subsidiary protection. This is also the case of young people coming from Somalia, Eritrea, Iraq or Iran, who also show up in all of the studied countries.

Spain receives young people with less diversified nationalities, given its proximity with Africa. Young Moroccans represent nearly 70% of all unaccompanied minors taken into care in this country. The range of nationalities is completed by nationals from other North African countries (primarily Algeria), and from sub-Saharan Africa (Mali, Senegal, Mauritania...). As provided by the Spanish authorities, the statistics for 2008 further indicate that all unaccompanied minors in Spain come from only 8 African countries (Algeria, Gambia, Guinea, Guinea Bissau, Mali, Mauritania, Morocco, Senegal)³⁷, though it is likely that other nationalities are also present (particularly from Asia and Eastern Europe), as indicated in the study carried out in 2007 by the General Council of the Spanish bar³⁸.

Young Moroccans are also present in other countries at Europe's southern frontier, namely in **Italy** (16% of the identified minors in 2010, i.e. the leading country of origin³⁹) and in **France**, particularly in Marseille but also in Lille, which is home to a significant Moroccan community. Children coming from countries in sub-Saharan Africa, particularly the French-speaking ones (Democratic Republic of the Congo, Republic of Guinea...), also arrive in France where, for example, they represented 50% of the young people taken into care in Paris at the end of 2009.

Finally, geographical proximity naturally means that quite a number of minors from Eastern Europe are found in Italy (11% of minors from Albania in 2010⁴⁰) and in Hungary (Kosovo, Serbia and Moldavia are some of the leading home countries of the unaccompanied minors seeking asylum).

³¹ Committee for foreign minors, *Op.cit.* note 26

³² Paris *département*, Conference on "What protection for isolated foreign minors?", 19 November 2009

³³ FRANCE TERRE D'ASILE, *L'accueil et la prise en charge des mineurs isolés étrangers dans le département du Pas de Calais*, April 2010, p. 5.

³⁴ Eurostat database, *Op. cit.* note 30

³⁵ *Ibid.*

³⁶ On the migration of Afghan youths in Europe, see UNICEF, "Children on the move – a report on children of Afghan origin moving to western countries", Kerry BOLAND, February 2010, 70 pages; UNHCR, "Trees only move in the wind – a study of unaccompanied Afghan children in Europe", June 2010, 49 pages

³⁷ European Migration Network, *Op. cit.* note 6

³⁸ General Council of the Spanish bar (CGAE), 2009, *Op. cit.* note 19

³⁹ Committee for foreign minors, *Op.cit.* note 26

⁴⁰ Committee for foreign minors, *Op.cit.* note 26

Young Romanians, now European citizens, are fewer in number than at the start of the 2000s, but are nevertheless still present in France, Hungary and Italy.

As such, it presently seems to be very difficult to define the phenomenon of unaccompanied minors in each of the countries and *all the more so* across the European Union. Faced with the dispersal of sources and contacts, it therefore appears necessary to set up reference institutions in this field in every country and to ensure Europe-wide coordination.

Recommendation n°3 – NATIONAL COORDINATION

- ▶ Entrust the coordination and follow-up of the issue of unaccompanied minors in every State to an independent national institution, capable of collecting the data and creating a relevant resource regarding all areas touching upon the situation of unaccompanied minors.

Recommendation n°4 – EUROPEAN COORDINATION

- ▶ Appoint a single Europe-wide contact person in order to ensure the coordination and follow-up of the issue of unaccompanied minors in the European Union.

II. Application of migration policies to unaccompanied minors

As the European Commission recalls in its action plan for unaccompanied minors, *“It is fundamental to ensure that (...), regardless of their immigration status, citizenship or background, all children are treated as children first and foremost”*⁴¹.

The status as a foreigner, however, continues to figure prominently in the areas of access to territory, the right of residence and removal, where the migratory policies of the States can sometimes undermine the imperative of the overriding consideration of the best interests of the child.

A. Access to territory

The issue of access to territory is not subject to the same attention according to the countries. The different approaches are not solely due to the geographical location of the States, as all of the studied countries are confronted with migratory movements coming from third countries to the European Union.

In **Sweden**, local people involved in the care and protection of unaccompanied minors do not identify access to the territory as a source of concern that requires a specific analysis or treatment. Minors are generally found within the territory, or are authorised to enter it in order for the same procedures to be applied to them as would be the case in the event of arrest at the border.

In **Great Britain**, when UKBA officials discover an unaccompanied minor who has illegally entered the territory, they interview this child in order to determine his identity, background and situation, before referring him to a local authority that will be responsible for taking care of him⁴². These interviews are carried out with no legal counsel or responsible adult in attendance, under difficult material conditions (lack of understanding of the situation by the minor, absence of medical care, rest or food after the trip), and to the detriment of immediate protection. Though the official objectives of this interview remain vague, between protecting the child and determining the conditions behind the illegal entry⁴³, minors are not detained nor turned away at the borders of Great Britain if their minority is proven⁴⁴.

⁴¹European Commission Action Plan on Unaccompanied Minors (2010-2014), *op.cit.* note 3, p. 3

⁴² With regard to being taken into care within the territory, see *below* Part VI.A.

⁴³ During their exchanges with members of the NGO Refugee and Migrant Justice, UKBA officials have given contradictory versions of the main objective of this interview: it sometimes involved *“maintaining effective control of the borders”* and at other times *“determining the protection needs of the child before his transfer to the social services”*. Correspondence from July 2009, quoted in REFUGEE AND MIGRANT JUSTICE, *Safe at last? Children on the front line of UK border control*, March 2010.

⁴⁴ On the age determination, see *below* part V.

In **Spain**, the issue of access to the territory most notably arises in the Canary Islands, which is the gateway for the vast majority of migrant minors arriving in this country. A study published in June 2010 indicated that more than 250 children have been placed in centres in the Canary Islands that do not meet the minimum reception standards and that have no occupancy limits⁴⁵. Though these reception conditions are subject to criticism, no special refoulement procedure at the border seems to be implemented: it is a matter of being taken into care subject to ordinary law within Spanish territory⁴⁶.

On the other hand, Spain refuses access to its territory for foreign adults and children who are stopped at airport borders, land borders (in particular in the enclave of Ceuta and Melilla) or ports, when they cannot present the necessary documents for entry. The Spanish authorities consequently send them back to their country of origin by applying a legal provision intended for adults⁴⁷. No precise data could be collected about these practices.

In **France**, the law allows for foreigners who are not permitted to enter the territory, or who are waiting to enter, to be detained in ‘the waiting area’, a transition area between the international zone and French territory⁴⁸. In practice, just the waiting area at Paris-Charles de Gaulle airport accounts for 95% of the detained foreigners. There is also a smaller waiting area at Paris-Orly airport. In the train stations and ports, these areas do not always exist or are not always active. For people arriving by land, which involves the bulk of the minors arriving in France, no specific questions arise with regard to access to the territory, given that ordinary law applies when a minor is identified. It is therefore in the event of arrivals by air, and more specifically at Roissy airport, that access to the territory for unaccompanied minors, as well as for other foreigners, creates a specific problem⁴⁹.

Certain unaccompanied minors are turned back when getting off the plane, during gateway controls, in application of the principle of the responsibility of the carrier that is notably enshrined in European law⁵⁰. No figures are available regarding this practise, which is problematic given that such a quick refoulement does not allow the minor to avail himself of his rights, namely to be informed with regard to his situation, or to express a desire to request asylum, or to be assisted and represented by an adult.

⁴⁵ Human Rights Watch, *Eternal emergency, No End to Unaccompanied Migrant Children’s Institutionalisation in Canary Islands Emergency Centres*, June 2010, 45 pages - <http://www.hrw.org/sites/default/files/reports/spain0610webwcover.pdf> (accessed on 22.07.2010)

⁴⁶ With regard to being taken into care within the territory, see *below* Part VI.A

⁴⁷ Article 60 of the Organic Act relative to the status of foreigners indicates that foreigners who, at the border, are not authorised to enter the country’s territory will be returned to their point of origin as soon as possible. If the return has been delayed for more than seventy-two hours, the authority making the decision will turn to the examining magistrate for a ruling on the place where they will be held until their return. Available at: http://noticias.juridicas.com/base_datos/Admin/lo4-2000.t2.html (accessed on 10.05.2010)

⁴⁸ CESEDA, article L221-1

⁴⁹ A draft immigration law, scheduled to be examined by Parliament in September 2010, nevertheless provides for the possibility of creating waiting areas at other points within the territory, “when it is clear that one or more foreigners have arrived at the border outside of a border crossing point”. These waiting areas would extend “from the place of discovery of the parties in question, to the closest border crossing point where the controls can be carried out”. *Draft law for the transposition of directives relative to the entry and residence of foreigners, and simplification of the removal procedures*, 5 February 2010, article 1.

⁵⁰ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, Official Journal n° L 239 of 22/09/2000 p. 0019 – 0062, art.26

A second form of removal exists, this time under French law. Indeed, a minor can be redirected from the waiting area in case of non-admission to the territory. This provision is the only exception to the French measures that prevent the removal of a minor. Though under French administrative and jurisdictional control, the waiting area is considered as an extraterritorial situation. The law therefore allows for a minor, just like any other foreign person, to be removed from this area⁵¹. Around 30% of unaccompanied minors arriving within the territory are turned back⁵². No data are available on the refoulement countries, but it is known that minors are sent back either to their country of origin or to their country of provenance, i.e. the last country through which they transited, or to the destination country, i.e. the flight's intended destination after the stopover in France.

The French Police's International Technical Cooperation Delegation, referred to by the border police, indicates that in all cases and for all countries, the conditions for redirection are met, which elicits doubts amongst the associations with regard to the reliability of the "guarantees" provided to children at the time of their arrival. This absence of prior verification is all the more worrisome given that the precautions on the level of the reception afforded to children in the destination country also appear to be insufficient⁵³.

The border police indicate that minors are systematically given the benefit of one clear day⁵⁴, so that they can obtain all useful information relative to their situation. However, given that this measure is not contained in the official instructions, its application can be subject to fluctuations.

While waiting to be redirected or admitted to the territory, minors are detained in an area in which they are deprived of their liberty, situated in buildings in the airport zone. Within this area, minors are housed together with adults, with the exception of children under the age of 13 years who are put up in a hotel near the airport, under the supervision of specialised personnel from the airline companies. Up to now, children from 13 to 18 years have been housed in the same premises as adults⁵⁵. In theory, detention in the waiting area can be for up to 20 days⁵⁶, but the average duration of deprivation of liberty of minors varies between 2 and 3 days. French law provides for a person, referred to as the *ad hoc* administrator, to be appointed in order to represent and assist the minor in all procedures relative to his entry into the territory⁵⁷. This representation arrangement is the only legal provision specifically relating to unaccompanied minors at the border⁵⁸. The conditions of this deprivation of liberty in the waiting area, in particular the absence of psychological support and the

⁵¹ CESEDA, art. L221-1.

⁵² In 2008, this applied to 341 minors, i.e. 31.2% of the minors placed in the waiting area. In the first half of 2009, 101 minors were "picked up", i.e. 28%. INTERMINISTERIAL WORKING GROUP ON ISOLATED FOREIGN MINORS, *op.cit.* note 29, p. 35.

⁵³ Human Rights Watch, *Lost in Transit, Insufficient Protection for Unaccompanied Minor Children at Roissy Charles de Gaulle airport*, October 2009, p. 56

⁵⁴ A foreign adult must request this by checking a specific box in the notification of refused entry that is provided to him, which thereby renders removal impossible on the first day.

⁵⁵ At Roissy-Charles de Gaulle airport, minors and adults are kept in the same premises, day and night. However, a redevelopment plan is in progress and, in 2010, should lead to a clear separation of the areas intended for adults and minors. At Orly airport, the second leading point of arrival for isolated foreign minors, these minors spend the night in a building that is separate from the one for adults, though the same premises are shared during the day.

⁵⁶ This duration can exceptionally be up to 30 days if the minor files an asylum application in the final days of his detention

⁵⁷ CESEDA, art. L 221-5

⁵⁸ On legal representation, see *below* part V.B

risks of exploitation, have recently been criticized by the Committee on the rights of the child⁵⁹ and by the United Nations Committee against Torture⁶⁰.

In **Hungary**, the law contains certain guarantees governing the refoulement of unaccompanied minors, but without prohibiting this practice. As a supplement to the application of the classical principle of non-refoulement, section 45-5 of law II of 2007 on the entry and residence of foreigners stipulates that “*an unaccompanied minor can only be expelled if adequate protection can be ensured, whether in his country of origin or in a third country, for reunification with family members or access to institutional protection.*” This provision applies within the framework of access to territory and with regard to removal measures⁶¹. The refoulement of an unaccompanied minor is therefore possible but is subject to rules. No exhaustive quantified data are available in order to assess the extent of this practice, as the official Hungarian police statistics make no distinction with regard to minors amongst all of the foreigners turned back at the border. Members of Ukrainian associations have apparently indicated an approximate number of 20 unaccompanied minors turned back to the Ukraine by Hungarian authorities in 2009⁶², a country in which the protective possibilities are limited⁶³. An observation report on the practices of border police described the case of the refoulement to Ukraine of an unaccompanied minor of Bangladeshi origin, as part of a readmission agreement⁶⁴. It is nevertheless difficult to draw general conclusions from this, given the few directly observed cases⁶⁵.

While Hungarian law forbids the detention of foreign unaccompanied minors on the basis of entry or illegal stays⁶⁶, every foreign minor who has to be turned back is temporarily taken into care by the child protection services within the territory, while waiting for the measures relative to the return to be implemented. A provisional legal representative is appointed for each minor, but this person’s role is limited to a formal supervision of the procedures, that does not in reality allow for any challenge of the refoulement⁶⁷.

In **Italy**, while the legislation forbids the forced removal of a minor⁶⁸, there is no corresponding provision with regard to refoulement at the border. Like adults, children can in theory benefit from the principle of non-refoulement due to risks of persecution resulting from the return, but this

⁵⁹ COMMITTEE ON THE RIGHTS OF THE CHILD, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations - France*, 51st session, 22 June 2009, CRC/C/FRA/CO/4, §86b.

⁶⁰ UNITED NATIONS COMMITTEE AGAINST TORTURE, *Concluding observations - France*, 44th session, CAT/C/FRA/CO/4-6, 14 May 2010, §25.

⁶¹ On removal in Hungary, see *below* part II.C.

⁶² Contact with Hungarian Helsinki Committee, 03/05/2010.

⁶³ The UNHCR has already expressed its reservations with regard to the actual possibilities of requesting asylum and obtaining international protection in Ukraine. UNHCR, *UNHCR position on the situation of asylum in Ukraine in the context of return of asylum-seekers*, October 2007, 16 p.

⁶⁴ HUNGARIAN HELSINKI COMMITTEE, *Asylum seekers’ access to territory and to the asylum procedure in the Republic of Hungary, Report on the border monitoring program’s first year in 2007*, 2008, p. 37.

⁶⁵ Contact with Hungarian Helsinki Committee, 03/05/2010.

⁶⁶ Law II of 2007, §56-1.

⁶⁷ HUNGARIAN HELSINKI COMMITTEE, *Asylum seekers’ access to territory and to the asylum procedure in the Republic of Hungary*, *op.cit* note 64., p. 37.

⁶⁸ art.19 of T.U 286/98 Point 2 sub-paragraph a: “*The expulsion of foreign minors aged 18 years is forbidden except in the event that this minor is obliged to follow his parent or the adult to whom he has been entrusted and who is the subject of an expulsion, or with the authorisation of the Juvenile Court for reasons of public order or State security.*”

principle is not always put into practice since a youth is not always able to express his desire to seek asylum and can encounter difficulties with regard to the recognition of his status as a minor.

Since May 2009, it has in fact become virtually impossible for thousands of people to arrive in Europe and to access protection through the Straits of Sicily as a result of the interceptions and refoulements towards Libya of boats loaded with migrants, adults as well as unaccompanied children. In 2009, the Ministry for the Interior indicated having delivered nine boats to the Libyan authorities for a total of 834 people, including minors. Despite the assertions of the authorities, it is unlikely that none of these people asked to be provided with international protection even though approximately 65% of the migrants intercepted at sea in 2008 had made such a request⁶⁹. In August 2010, the Italian press agency ANSA reported that 822 migrants had disembarked on the shores of Salento (Puglia region, southern Italy) since 1 January 2010, of which 281 (29%) were minors⁷⁰.

In 2009, information was disseminated on refoulements to Greece of Afghan minors requesting asylum, from Italian ports on the Adriatic Sea⁷¹. This serious violation of the right to asylum has been denounced by the United Nations High Commissioner for Refugees (UNHCR). On 29 April 2009, the European Court of Human Rights declared the admissibility of 35 appeals presented by Afghan and Sudanese asylum applicants⁷², still minors at the time, against the Italian and Greek governments for violation of the fundamental rights of these persons⁷³. The Council of Europe anti-torture committee also indicated in April 2010 that *“Italy’s policy of intercepting migrants at sea and obliging them to return to Libya or other non-European countries, violates the principle of non-refoulement”*⁷⁴.

Art. 11 paragraph 6 of TU 286/98 amended by law n. 189/02 provides, at the official borders, for services providing legal and social services, interpretation and information services for people seeking international protection and foreigners who plan to submit a request for asylum or to enter Italy with a residence permit valid for more than three months. These services are primarily intended for vulnerable persons, notably unaccompanied minors, as well as victims of violence and torture⁷⁵.

In **Romania**, the only legal provisions regarding access to territory for unaccompanied minors relate to asylum and are protective. Indeed, unaccompanied minors are exempt from the application of the asylum procedure at the border and are guaranteed immediate access to the territory⁷⁶. However, no provision protects all minors against refoulement at the border to safe third countries.

⁶⁹ Rifugiati: vent’anni di storia del diritto d’asilo in Italia, pag. F46, Christopher HEIN, Donzelli Editori

⁷⁰ ANSA, “Immigrazione: Salento, sbarchi triplicati”, 12 August 2010 -

http://www.ansa.it/web/notizie/rubriche/cronaca/2010/08/12/visualizza_new.html_1880667697.html (accessed on 26.08.2010)

⁷¹ We point out the article by the Corriere della sera that includes the testimonial of a 12-year-old boy, on

www.meltingpot.org/articolo14259.html; and an analysis of the situation by Prof. Vassallo Paleologo, *Respingimenti ai porti - Smentite e corpi di reato*, on www.meltingpot.org/articolo14287.html.

⁷² Admissibility decision of 29 April 2009, n° 16643/09 (Sharifi case)

⁷³ Working group for the Convention on the Rights of the Child, 2nd supplementary report to the United Nations on the follow-up of the Convention on the Rights of Children and Adolescents in Italy, September 2009, p. 150-151.

⁷⁴ Council of Europe press release “The Council of Europe anti-torture committee publishes 2009 report on Italy”, 28 April 2010 - <http://www.cpt.coe.int/documents/ita/2010-04-28-fra.htm>

⁷⁵ S:A:B: Project – Services at Borders: a Practical co-operation . Final report. P. 21

⁷⁶ Law n° 122/2006 on asylum, art. 84

In **Greece**, no special provisions are made for the issue of access to territory, as the forced removal of minors at the border is carried out under the same conditions as within the territory. This situation will therefore be further developed in the part of the report dedicated to removal⁷⁷. It should be noted, however, that specialised NGOs report immediate expulsions without procedures, nor registration in the region of Evros, at the border with Turkey⁷⁸.

Recommendation n°5 – REFOULEMENT AT THE BORDER

- ▶ Forbid refoulement of unaccompanied minors at the time of their access to territory

Recommendation n°6 - DETENTION

- ▶ Forbid any detention of unaccompanied minors linked to their status as foreigners, including when accessing the territory.

Recommendation n°7 – LEGAL REPRESENTATION AT THE BORDER

- ▶ Immediately appoint a legal representative in order to accompany the minor upon arrival within the territory.

Recommendation n°8 – ACCESS TO PROTECTION

- ▶ Set up services at the border to provide legal and social orientation, cultural mediation and interpretation for unaccompanied minors.
- ▶ Ensure unconditional access to ordinary social protection for unaccompanied minors upon their arrival at the border, in order to assess their situation and to make a decision that respects the rights of the child.

B. Right of residence

In all of the studied countries and in accordance with the international and community standards governing the right to asylum, all minors who have expressed a wish for asylum are authorised to remain on the territory of the Member State during the processing of their applications⁷⁹. For the others, certain States systematically recognise the right to stay of all unaccompanied children, whereas the legislation in other countries makes it possible for the residence of these children to be declared illegal and for them to be arrested on this basis.

⁷⁷ See *below* part II.C.

⁷⁸ Report by Thomas Hammarberg, Council of Europe Commissioner for human rights, following his visit to Greece from 8 to 10 December 2008. February 2009. § 16
<https://wcd.coe.int/ViewDoc.jsp?id=1412853&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679> (accessed on 03.08.2010)

⁷⁹ Council directive 2005/85/EC of 1 December 2005 on minimum standards regarding the procedure for granting and withdrawing refugee status within the Member States, art. 7; United Nations Convention relating to the status of refugees, adopted on 28 July 1951 in Geneva, article 33

The administrative situation of children when they reach adulthood equally constitutes an important issue, because the educational follow-up during minority cannot be limited to a short-term perspective. It is for that reason that the Council of Europe recommends that *“Where a minor involved in the implementation of his or her life project attains the age of majority and where he or she shows a serious commitment to their educational or vocational career and a determination to integrate in the host country, he or she should be issued with a temporary residence permit in order to complete the life project and for the time necessary to do so”*⁸⁰.

⁸⁰ Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors, § 26

Table 3 – The right of residence for unaccompanied minors

	Right of residence	Possibility of illegality of stay
Spain	Minors can ask for a residence permit by applying to the establishment that exercises guardianship, nine months after having been taken into care by the protection services and once it has been recognised that repatriation is impossible.	NO. The fact of being taken into care by the protection services automatically legalizes the residency of unaccompanied minors.
France	Unaccompanied minors are necessarily in a legal situation on French territory and the obligation to obtain a residence permit does not apply to them.	NO.
Greece	Only the few minors who have applied for asylum or who have been taken into care by a social protection service are in a legal situation within the territory.	YES. The vast majority of unaccompanied minors do not have access to an asylum application or to social protection and are therefore in an illegal situation on Greek territory.
Hungary	The asylum application of minors can result in the granting of refugee status (identity card for 10 years) or the allocation of subsidiary protection benefits (re-examination of the situation every 5 years). A humanitarian residence permit for one year can also be issued in certain cases to those who cannot benefit from refugee status or from subsidiary protection. Minors who do not ask for asylum can also obtain this residence permit.	YES. A minor who has not applied for asylum or has not obtained any status following this application can be in an illegal situation.
Italy	Every unaccompanied minor found by the authorities is awarded a residence permit as a minor for the necessary time to research his family ties. When the Committee for foreign minors decides not to go ahead with repatriation, the minor is granted a residence permit for placement. Finally, minors who have been within the territory for three years and who were included in an integration project can be issued with an integration permit.	NO. All minors benefit from the right of residence on Italian territory. An exception, which is marginal in practice, applies, however, in case of a threat to public order or State security.
Romania	Minors can be awarded a right to remain following their application for protection with regard to asylum.	NO. Minors who do not apply for asylum or those who have been refused status following this procedure are tolerated on Romanian territory.
Great Britain	Various residence permits can be granted to minors following the asylum application procedure (towards which they are systematically directed): refugee status (residence permit for 5 years), subsidiary protection (residence permit for 5 years), temporary residence authorisation if return is not possible (residence permit for 3 years or until 17 ½ years old).	YES. Minors who are refused status after the asylum procedure are considered to be illegal migrants.
Sweden	Minors can be granted several types of residence permits following the asylum procedure: refugee status (residence card for 5 years), permanent residence permit based on the need for protection, temporary (2 years) or permanent residence permit based on humanitarian considerations. A permit based on family ties in Sweden can also be issued.	YES. Minors who do not apply for asylum or who have been refused status following this procedure or an application for a permit based on family ties are considered to be illegal migrants.

1. Systematic recognition of a right of residence while still a minor: Spain, France, Italy, Romania

Certain of the studied countries systematically provide foreign children with a right of residence until they reach the age of 18 years.

In **Spain**, the residency of unaccompanied minors looked after by a public administration⁸¹ is always considered to be legal. Once it has been proven that return is impossible and after a period of nine months of care, the minor can ask to be provided with a residence permit that will apply retroactively to the date when he or she was taken into care by the administration.

Upon reaching adulthood, youths can renew or modify the residence authorisation that they held as minors. The protection establishment can also recommend the granting a residence card for exceptional circumstances to those minors who have fully participated in the training and activities proposed in order to assist with their integration⁸². This residence card can also be provided to foreigners who can provide proof of a continuous stay in Spain for at least three years, who demonstrate their social and family integration within the country and who have held an employment contract for at least one year. In practice, however, a number of unaccompanied minors leave the reception centres at 18 years of age with no residence permit in Spain.

In **Italy**, various types of residence permits can be provided to minors on the basis of their situation. An “under age” residence permit is provided for the period that is strictly necessary to carry out family inquiries and while pending a repatriation measure or the possible delivery of a final residence permit for placement. This residence card is also provided to minors who apply for asylum. This “under age” permit can be converted into another residence permit once the minor comes of age.

A residence permit “for placement” is provided on the basis of the procedure set down in the Law 184 / 83, when the Committee for foreign minors decides not to carry out a repatriation. This residence permit allows one to exercise professional activities, to obtain training and is convertible, upon coming of age, into another residence permit for studies or work. If the minor under the age of 14 years is entrusted to a foreign citizen who is a legal resident and with whom he lives on a stable basis, he will be listed on this person’s residence permit, but upon coming of age, he will be provided with his own residence permit for family reasons. This same possibility is available to a minor over the age of 14 years, living with his own parents who are legal residents⁸³.

A residence permit “for integration”⁸⁴ can also be provided following an opinion from the Committee for foreign minors, to any unaccompanied minor who has entered Italian territory in the previous

⁸¹ On the social protection provided by the authorities, see *below* Part VI.A

⁸² Royal decree 2393/2004, art. 92.5

⁸³ Circular from the Ministry for the Interior of 13.11.2000

⁸⁴ Implementation regulation for D.P.R 394/99 (amended by D.P.R 334/2004, published in the OJ of 10.02.05), art. 11; art. 22 sub-paragraph 1.b

three years and taken part in a social and civil integration project for at least two years⁸⁵. A person with this permit has the right to work⁸⁶.

A “social protection” permit can be granted to minors who have been victims of exploitation⁸⁷. The case of minors who have committed offences remains problematic: the existing legislation does not explicitly prohibit the regularisation of these minors but, in practice, it is extremely difficult for them to obtain any kind of residence permit.

Amongst the minors received within a second reception structure⁸⁸ in 2008, 42% had a residence card: 86.7% had a residence card for minors, 8.3% an international protection permit and only 0.8% a social protection permit⁸⁹.

A particular question arises with regard to the delivery of a residence permit when the minor comes of age, given the diversity of the existing practices for the delivery of such permits within the national territory. Though the law reserves this residence permit for minors who have been “placed” according to the law 184/1983 or those who have been on the national territory for at least three years and who take part in a social integration project for a minimum period of two years⁹⁰, various prefectures require that all of these conditions be met.

The Constitutional Court and the State Council recently confirmed the possibility of providing a minor “in placement” or under guardianship with a residence permit “*independently of the duration of his presence on the national territory, of his participation in an integration project or the declaration of non-suit regarding the repatriation procedure*”⁹¹. However, in recent years, preference has been given to a more restrictive interpretation as confirmed by the law 94/2009 (“Pacchetto Sicurezza”), that makes it even more difficult for foreign minors to secure legal status upon coming of age⁹². It is now required that a minor placed into guardianship or who has received a placement must be participating in an integration project for at least two years, must have accommodations and must be registered in a study programme or involved in a professional activity. These provisions could prevent minors who enter Italy after their 16th birthday from taking part in social integration projects⁹³, thereby exposing them to exploitation, trafficking or illegal activities⁹⁴.

Another obstacle for obtaining a residence permit is the non-regularisation of the isolated foreign minor’s situation before coming of age, as a result of guardianship implementation delays for minors accommodated within host communities⁹⁵.

⁸⁵ Art. A2, sub-paragraph 1-bis and 1-ter

⁸⁶ Implementation regulation of D.P.R 394/99, *Op. cit.* note 84, art. 14, sub-p. 1, c

⁸⁷ Art. 18, sub-paragraph 1 of the T.U D.L 286/98. See CIR UNIVERSO RIFIUGIATI: from persecution to protection. Isolated foreign minors requesting asylum, 2008, p. 18-20.

⁸⁸ On social protection in Italy, see *below* part VI.A.

⁸⁹ ANCI, Isolated Foreign Minors. Third Report Anci, 2009, p.83.

⁹⁰ Art.32 T.U. Immigration

⁹¹ Constitutional Court sent. 198/2003; Council State, sent. 1681/2005 and 564/2006.

⁹² Art.1 sub-paragraph 22 law 94/2009 cd. Security Law.

⁹³ The number of which corresponds with 80% of the minors present in Italy, see Giovannetti M., Isolated foreign minors in Italy. Second ANCI report, www.anci.it/Contenuti/Allegati/Secondo%20Rapporto.pdf.

⁹⁴ Working group for the Convention on the Rights of Children and Adolescents, *Op. cit.* note 73, p. 145.

⁹⁵ Save the Children, Isolated foreign minors in Italy: reception and integration prospects, February 2009, p.6

In **France**, the right of residence of minors is guaranteed even though the latter are not provided with any residence card. Indeed, article L311-1 of the Entrance and Residents of Foreigners and Asylum Right Code stipulates that the obligation to obtain a residence card applies to “*any foreigner above the age of 18 years*”. This obligation therefore does not apply to minors. They can remain within the territory without undertaking steps with the administrative authorities.

The fact of having resided in France as an isolated foreign minor does not automatically entail a right of residence upon reaching adulthood. A youth will therefore be obliged to undertake steps in order to secure his regularisation.

If a minor is entrusted to the protection services before the age of 15 years, the Civil Code stipulates that he can claim French citizenship⁹⁶. A youth entrusted to the Childhood Social Aid (ASE) services before his 16th birthday can be ipso jure provided with a temporary residence card bearing the indication “private and family life”, valid for one year and renewable. While the law stipulates that the delivery of this document is subject to certain criteria⁹⁷, proof of ASE guardianship before the age of 16 years is in practice enough to obtain a “family and private life” card⁹⁸.

On the other hand, if a youth is entrusted to the Childhood Social Aid after the age of 16 years, no provision is made for obtaining a residence card. His situation falls under the provisions of ordinary law. Obtaining a card bearing the “private and family life” indication, the solution that is most worthwhile (for example, it allows one to carry out any kind of salaried professional activity or to obtain training) and often the most relevant in view of the youth’s situation, can prove to be very random. Indeed, the prefectures examine the files on a case-by-case basis in view of article L313-11-7° of the CESEDA, which makes the delivery of this residence card subject to criteria such as the youth’s integration into French society and the nature of his links with the family still in the home country.

However, the circular of 2 May 2005⁹⁹ authorises prefects to exceptionally authorise the residence of a youth entrusted to Childhood Social Aid after the age of 16 years, taking part in an integration and training programme, if the training corresponds with a list of professions said to be “under tension”. However, this circular is applied differently by the prefects and in no way constitutes a guarantee for young adults. A draft law submitted to Parliament in September 2010 calls for extending the possibilities for regularisation upon coming of age for minors taken into care after the age of 16 years, but in practice, this extension should involve very few minors¹⁰⁰.

The issue of the right to residence is easier to resolve for children who have filed an asylum application and who have been granted international protection, refugee status or subsidiary protection. Indeed, refugees are provided with a resident’s card upon coming of age. For their parts, beneficiaries of subsidiary protection obtain a residence card bearing the “private and family life”

⁹⁶ Civil Code, Article 21-12

⁹⁷ Article L313-11 2°bis of the CESEDA makes the delivery of a “private family life” residence card to a young person taken into care by the ASE before the age of 16 years conditional upon 3 criteria: the “real and serious nature” of the training that he has undertaken, the “nature of his links with his family still in the country of origin”, which in practice means the absence of any effective link with the family, and the “host structure’s opinion on this foreigner’s integration into French society”.

⁹⁸ According to provisional statistics for 2009, 215 “private and family life” residence documents were provided to youths taken into care by the Childhood Social Aid before the age of 16 years. NATIONAL ASSEMBLY, *Draft law relative to immigration, integration and nationality, Impact study*, March 2010, p. 186.

⁹⁹ Circular NOR/INT/D/05/00053/C of 2 May 2005.

¹⁰⁰ See INFOMIE, “Séjour des jeunes majeurs isolés: une mesure en trompe l’œil”, *Press release*, 19/03/2010, www.infomie.org

indication, which can be renewed every year provided that the conditions that justified the granting of the protection have not disappeared.

As such, all of the potential solutions remain insufficient to provide a young person with true security regarding his future. The criteria for the recognition of a right of residence remain relatively unclear and lacking consistency. Published in January 2005, a report from the Inspection générale des affaires sociales (IGAS) had already indicated that *“the weight of the legal uncertainty regarding their future is a burden on the integration efforts of minors, it undermines them and harms the motivation of social workers. The random nature of the regularisations after 18 years of age leads to clandestine residency for young people undergoing integration”*¹⁰¹.

In **Romania**, minors not granted refugee status or the benefit of subsidiary protection obtain the status of a “tolerated” foreigner within Romanian territory. There is no provision to facilitate their regularisation upon coming of age.

2. Possible illegal residency while underage: Greece, Hungary, Sweden, Great Britain

The legislation in certain countries can result in certain minors being considered as illegal migrants, thereby depriving them of many rights.

In **Greece**, minors who do not request asylum or who are not granted legal or social protection are considered to be illegal migrants within Greek territory. They are therefore left to their own devices, with no access to the normally recognised rights of legal migrants. Upon coming of age, young minors previously taken into care by a public protection institution can obtain a residence card for humanitarian reasons¹⁰².

In **Hungary**, three statuses covering all situations allow an unaccompanied foreign minor to legally remain within Hungarian territory and to access his or her rights. Even without status and unaccompanied minor is nevertheless protected against removal measures. However, in order to be legal, the young person must undertake steps with the Office of Immigration and Nationality (OIN), the authority in charge of immigration.

Before obtaining status, it must be recalled that Hungarian legislation distinguishes between two categories of unaccompanied minors: minors requesting asylum or minors considered to have entered illegally (*irregular migrant*) or to be illegally residing (*illegally staying*) within the territory.

¹⁰¹ Inspection Générale des Affaires Sociales, *Analysis mission and proposals on the reception conditions for isolated foreign minors in France*, report n°2005 010, January 2005, p. 4.

¹⁰² Law n° 3386/2005

Minors not requesting asylum can only obtain the third type of status, which falls under the law for foreigners and not the right to asylum. In case of refusal, they will be in an irregular situation within Hungarian territory.

Refugee status can be recognised for any minor according to the criteria defined by the Geneva Convention (section 6 of the 2007 law LXXX on asylum). This status allows an identity card, valid for 10 years, to be provided to foreigners.

The benefit of subsidiary protection can be granted to a minor *“who does not meet the criteria for recognition of refugee status but for whom there is a risk of being exposed, in the event of return to his country, to serious threats or who, as result of the fear of such threat, does not wish to claim the protection of his country”*, according to section 12-1 of the 2007 law LXXX on asylum. The eligibility criteria for such protection must be reviewed by the authorities at least every five years¹⁰³.

The status of a *“person authorised to reside”* can be provided by the refugee protection authority to an asylum applicant who does not meet the criteria to be granted refugee status or subsidiary protection, but to whom the principle of non-refoulement applies because this person is at risk of torture or inhuman or degrading treatment in his country or, in the case of an unaccompanied minor, *“if family reunification or access to institutional protection is not possible in his country or in another country”*¹⁰⁴. Over and above the law on asylum, the law on the entry and residence of foreigners explicitly mentions unaccompanied foreign minors amongst the potential beneficiaries of this residence permit for humanitarian reasons¹⁰⁵. A minor authorised to stay no longer falls within the remit of the law on asylum, but within that of the law on the entry and residence of foreign nationals. His residence permit is valid for one year, sometimes less, and can be renewed after a review of the reasons for protection.

When a youth comes of age, his legal status does not change if, as a minor, he held refugee status or had the benefit of subsidiary protection. If he has the status of a person authorised to reside, reaching adulthood will not call his residence permit into question, as long as it remains valid. On the other hand, upon the renewal of this permit (which is valid for only one year), the young foreigner newly of age will no longer benefit from the favourable provisions granted to unaccompanied minors pursuant to section 29-1 of the law on the entry and residence of foreigners, with regard to the delivery of a residence permit for humanitarian reasons. This permit may be renewed, but according to the conditions applicable to adult foreigners.

In **Great Britain**, an unaccompanied minor must have an administrative status and must undertake the steps for this purpose before reaching the age of 18 years. The initiative into which he is almost automatically directed, when accessing the territory, is the asylum application. His status is therefore linked to the progress and outcome of the asylum procedure.

When a child is presented to the authorities, he is considered to be an asylum applicant until a decision has been made regarding his file by the immigration official in charge of his case. During this

¹⁰³ 2007 law LXXX on asylum, §14.

¹⁰⁴ 2007 law LXXX on asylum, §45-2.

¹⁰⁵ 2007 law II on the entry and residence of foreign nationals, §29-1-d.

time, he has a temporary residence card (*temporary leave to remain*) and an asylum applicant's card (*application registration card, ARC*).

If the authorities in charge of examining the request consider that the child meets the criteria of the Geneva Convention or of the 1967 Protocol, the child's refugee status is recognised. Initially granted for a period of 5 years, the residence card linked to this status can be reviewed in the event of a change of the situation in the country of origin. Otherwise, it is renewed and the refugee can request permanent resident status (*indefinite leave to remain*), that provides an unlimited right of residence. Subsidiary protection (*humanitarian protection*) can also be granted for five years. Its renewal requires an "active review" of the reasons for the protection. After five years, the beneficiary can request permanent resident status (*indefinite leave to remain*).

If the child is not eligible for international protection, a temporary residence authorisation (*discretionary leave*) can be granted. The immigration official must first consider if the minor is entitled to *discretionary leave* subsequent to the general policy - for example with regard to his private and family life, or if returning to his country would expose the child to serious danger but he is not entitled to subsidiary protection, or furthermore for health reasons or serious humanitarian reasons. If the minor does not enter into one of these categories, he can be provided with a temporary residence authorisation specific to unaccompanied minors (*discretionary leave under UASC policy*). This status is directly linked to the commitment by Great Britain not to return a child if safe and adequate reception provisions cannot be guaranteed in the country of return¹⁰⁶. If a minor cannot benefit from international protection nor be removed from British territory, this residence authorisation is provided to him for three years *or* until the age of 17½, whichever option is shorter. At the end of this time limit, the minor's right of residence is reviewed. Most often, the status granted to unaccompanied minors seeking asylum in Great Britain is the *discretionary leave*: it was provided in 55% of the cases in 2009. This rate climbs to 73% for minors aged 17 years or less at the time of the decision¹⁰⁷.

Should a young person's asylum request be refused, and if all avenues of appeal have been exhausted (*end of line case*), he will have no legal status within the territory. Other unaccompanied minors reside in Great Britain with no administrative status: ones who arrived as short-term visitors and who remained within the territory once their visa expired, ones who have been the victims of trafficking and have not been identified, or ones not pointed out to the authorities.

Often, the status granted before the age of 18 years does not change when the young person comes of age: either he receives a long-term right of residence (if a statutory refugee or beneficiary of subsidiary protection), or he receives a residence card that is periodically renewed but independent of his age. The only exception relates to minors with a temporary residence authorisation specific to unaccompanied minors (*discretionary leave under UASC policy*). Indeed, this document is granted to minors because they cannot be returned to their countries under adequate conditions, in view of their age. This decision can be reviewed while the youth is a minor, in order to ensure that its criteria are still being met, but in any event, it is reviewed when the young person reaches the age of 17½ years. He must then fill out a form in order to request a renewal of his right of residence. This "review" of the youth's situation can result in the delivery of a temporary residence authorisation

¹⁰⁶ See below part II.C.

¹⁰⁷ Home Office statistics, 2009.

pursuant to the general policy (*discretionary leave*), as well as the granting of international protection - refugee status or subsidiary protection, even if the youth's asylum request had failed while he was still a minor¹⁰⁸. The application review can also result in a refusal, in which case the young person has no right of residence within the territory.

In **Sweden**, the fact of being a minor does not dispense a foreigner from the need for a residence card. If he does not have one, he can be subject to the same measures as any other person found to be an illegal migrant within the territory¹⁰⁹. It is therefore essential for an unaccompanied minor to undertake steps with the authorities in charge of immigration, so as to put his administrative situation into order. The asylum application constitutes the main avenue for accessing a status and rights. For unaccompanied minors, most of the rights, such as the right to go to school or to use the health system, depend on the steps undertaken in order to request asylum¹¹⁰.

For unaccompanied minors requesting asylum, several statuses are possible.

While their applications are being processed, they are "asylum applicants", which is a status in its own right in Sweden and provides access to a certain number of rights, such as the rights to accommodations, schooling and healthcare. Asylum applicants are provided with a special identity card known as the LMA (*Lagen om mottagande av asylsökande kort*) card, that includes personal information and their photograph.

With a successful outcome to the asylum application, three types of protection can be granted to the applicant:

Refugee status if the applicant meets the criteria determined by the Geneva Convention. To the list of reasons for persecution, Sweden has added the person's gender and sexual orientation¹¹¹. A statutory refugee receives a permanent residence permit (*PUT, Permanent uppehållstillstånd*), which authorises definitive residence in Sweden.

The applicant can be recognised as a "*person otherwise in need of protection*" if he does not meet the criteria for obtaining refugee status but has a well-founded fear of being subjected to the death penalty, torture or other inhuman or degrading treatment, or requires protection due to an internal or international armed conflict, or has a well-founded fear of suffering serious abuse as a result of a significant conflict¹¹², or cannot return to his country of origin due to a natural catastrophe¹¹³. This is a form of subsidiary protection as introduced by the European law known as "qualification", but this

¹⁰⁸ UK BORDER AGENCY, *Asylum process guidance on special cases – Considering applications for further leave at age 17½ following grants of discretionary leave under the policy on UASC (active review)*, www.ukba.homeoffice.gov.uk, consulted in May 2010.

¹⁰⁹ See below part II.C.

¹¹⁰ See below part III.

¹¹¹ Aliens Act, chapter 4, section 1.

¹¹² It should be noted that, unlike the European definition of subsidiary protection, "*the scope of Swedish protection is not limited to civilians and does not require the violation to be individual (...). However, the requirement of an individual threat [is now required] when there is a risk of serious abuse in case of a serious conflict, that does not reach the threshold of an internal armed conflict. It is on this basis that the Court of Appeal for migrations considered, in July 2007, that the situation in Iraq could not be considered as an armed conflict, but rather as a serious conflict, and that Iraqi asylum applicants therefore had to prove the individual nature of the resulting risk of serious abuse. (...) Since that time, this reasoning has been used in other cases, notably for asylum applicants coming from Somalia and Afghanistan*". FRANCE TERRE D'ASILE, *La protection subsidiaire en Europe: une mosaïque de droits*, Les cahiers du social n°18, September 2008, p. 41.

¹¹³ Aliens Act, chapter 4, section 2.

notion has not been formally transposed into Swedish law, given the pre-existing status of “person otherwise in need of protection”. A person otherwise in need of protection is provided with a permanent residence permit, just like a conventional refugee.

A third protection possibility, humanitarian in nature, exists for people considered to be in “*particularly distressing circumstances*”. This notion allows the consideration of personal elements such as a state of health requiring care that cannot be provided in the country of origin, adaptation to life in Sweden and the situation in the country of origin. The law stipulates that children can claim this designation “even if the established circumstances are not of the same severity or weight” as the ones required for adults¹¹⁴. The granting of protection due to particularly distressing circumstances can result in the right to a permanent or temporary residence permit (*TUT, tillfälligt uppehållstillstånd*), which is valid for a maximum of two years.

If the asylum application is rejected, the minor is effectively an illegal migrant, and can be the subject of removal measures. If he chooses to remain clandestinely in Sweden in order to avoid being returned to his country, he is referred to as a child *in hiding*. The most vulnerable are children who have never submitted an asylum application and who reside in Sweden with no residence permit. They are commonly referred to as “*undocumented*”. The fact of previously having been an asylum applicant provides certain additional possibilities in terms of rights, compared with the situation of an “undocumented” child.

Finally, it should be noted that a residence card can be provided to a minor for reasons other than protection. An unaccompanied child can request a residence permit on the basis of his or her family ties in Sweden¹¹⁵. The request will then be handled by the Division for migration and citizenship of the Migrations Board. The Division provides specific instructions for unaccompanied minors who submit a request for a residence permit: their file must be given priority handling, normally within three months, and a legal representative must be appointed for children. *Settlement* possibilities therefore exist in Sweden for unaccompanied minors outside of the asylum framework, even though less mention is made of them. On the other hand, in the event of refusal by the authorities, the minor will become an “undocumented” child, who is more vulnerable as a result of never having applied for asylum.

The conditions for legal residency in Sweden apply both to minors and to adults. A youth’s legal status will therefore not change strictly on the basis of coming of age. There is some continuity between this person’s situation before and after the age of 18 years, whether an asylum applicant, the holder of a temporary or permanent residence permit, or an illegal migrant.

¹¹⁴ *Ibid.*, chapter 5, section 6.

¹¹⁵ *Ibid.*, chapter 5, section 3.

Recommendation n°9 – RIGHT OF RESIDENCE

- ▶ Grant a systematic right of residence within the territory for all unaccompanied minors until adulthood
- ▶ Promote the granting of a residence card at adulthood for young people registered in a life project that has to be conducted in the host country.

C. *Removal from the territory*

Terminological clarification:

The term 'removal' will be employed herein to designate all measures intended to lead the foreigner to a third country. It covers various designations according to the countries. 'Forced removal' differs from 'voluntary return' which designates herein all of the measures and procedures that permit the implementation of a return desired by the minor.

Unaccompanied minors can be subject to forced removal from the territory of certain States. This is prohibited in other countries, which nevertheless permit voluntary return of these children to a third country. The distinction between these notions of forced removal and voluntary return nevertheless seems to be slim in certain cases, in which the best interests of the child appear to pale before the desire to regulate migratory flows. As such, forced removal and voluntary return will be studied at the same time.

The eight studied countries can be grouped according to several models based on an analysis of the practices and laws regarding removal

Removal generally based on the conditions in the country of return	Removal generally based on the minor's desire	Cohabitation of several forms of removal	Removal on the same basis as for adults
Italy Sweden	Spain France	Great Britain Romania Hungary	Greece

1. Removal generally based on the conditions in the country of return: Italy, Sweden

In **Italy**, an unaccompanied minor who enters and is found within Italian territory cannot be expelled¹¹⁶ except for reasons related to public order or State security. In this case, it is up to the youth court to carry out the expulsion measure¹¹⁷. The expulsion ban relative to unaccompanied minors therefore implies that they cannot be detained in the centres for immigrants¹¹⁸. It should also be noted that the introduction of the offence of illegal entry and stay into the Italian legal system in 2009¹¹⁹ provides no exception for minors.

Italian legislation provides for the establishment of assisted repatriation of an unaccompanied minor. It defines this repatriation as *“all of the measures adopted in an effort to guarantee that the minor in question will receive the necessary assistance until such time as he finds his parents or is handed over to the responsible authorities in his country of origin in compliance with international conventions, the law, the provisions of the judicial authority and the present regulation”*¹²⁰. It further stipulates that *“assisted repatriation must be designed such as to guarantee the minor’s right to family unity, and to adopt the resulting protective measures”*¹²¹.

This assisted repatriation procedure is implemented by the Committee for foreign minors. Its feasibility is systematically studied: as soon as the child is taken into care, a search is undertaken for the purpose of identifying the minor and his family ties in a third country. When the Committee considers that a repatriation measure must be adopted, it must first ask the youth court for authorisation in order to ensure that no ongoing legal procedure could hinder the minor’s repatriation¹²². On the other hand, the judicial authority is not required to give a ruling on the best interests of the child in this repatriation initiative. In practice, the cases of minors close to the age of majority are handled as a priority.

The assisted return of unaccompanied minors follows a procedure that is notably based on agreements between the Italian administration and a few organisations such as the IOM. The repatriation must be carried out under conditions that will guarantee respect for the rights provided to minors by international conventions. Only identified minors, who represented fewer than one third of all minors declared to the Committee in the first half of 2010¹²³, can be the subject of a repatriation procedure.

¹¹⁶ Art. 19 T.U. Immigration, sub-paragraph 1 prohibits any return to a country in which the party in question is faced with the risk of persecution

¹¹⁷ Art. 13, sub-paragraph 1, T.U. Immigration

¹¹⁸ They can also not be held in the Identification Centres for Asylum Applicants (CARA), the Identification and Expulsion Centres (CIE, ex-CPT), or the Reception Centres (CDA). As such, the law dictates that isolated foreign minors must be placed in accommodations for minors or in centres of the SPRAR - in quarters reserved for minors - in the event that they are applying for asylum.

¹¹⁹ L. 94/2009 introduced in article 10bis of the TU 286

¹²⁰ Art. 1, sub-paragraph 2 of the D.P.C.M of 9 December 1999, n°535

¹²¹ *Ibid.*

¹²² Art.33, sub-paragraph 2-bis, T.U. Immigration: *“the repatriation measure for the unaccompanied foreign minor for the purposes of which in sub-paragraph 2, is adopted by the Committee to which reference is made in sub-paragraph 1. Should legal proceedings against the minor be in progress, the legal authority will deliver the nulla osta declaration, except in the event of mandatory legal proceedings.”*

¹²³ Committee for foreign minors, *Op. cit.* (note 26): 1167 minors out of 3624 were considered to have been identified

In practice, the local social services generally send a report to the Committee after an interview with the minor. After examining the situation, the Committee then turns to the IOM, if necessary. In this domain, the mission of the IOM, which has taken over from the International social service since 2008, is to follow-up the indications coming from the Committee and to perform inquiries on the family of origin, to organise the technical aspects of the assisted repatriation of minors, to monitor them after their return and to launch on-site re-integration projects. In substance, the inquiries regarding the family include interviews with the original family, the purpose of which is to obtain precise information on its socio-economic situation, on the risk of being a victim of social exclusion, on the quality of its relations with the minor, and on its desire and ability to accommodate and look after the minor in an inappropriate manner¹²⁴. The inquiries represent a very significant aspect since they allow the social services to implement an appropriate socio-educational project. Should the return include risks for the minor, i.e. in the event that his family could not be found, that the family is behaving in a manner such that it would not seem appropriate to continue with a family reunification or that the protection of the minor's rights cannot be guaranteed, a "non-suit to continue with the procedure" is then declared.

This repatriation procedure has many difficulties. It has notably been brought to light that the inquiries and communication of the decisions taken by the Committee for foreign minors are often late, and that the Committee does not provide the Italian social services looking after the minor with the decisions provided to the IOM. However, this is a very significant aspect since it allows the social services to implement an appropriate socio-educational project.

Also, this repatriation procedure does not necessarily rely on the notion of the best interests of the child, and little consideration is given to the minor's safety and well-being. As such, according to certain NGOs, the child's right to be heard, while considering his choice and his age, is not necessarily applied as a result of the absence of legal controls regarding these procedures.

Between April 2008 and May 2010, 936 investigations were carried out for the purposes of repatriations¹²⁵. Though these initiatives involve some 30 countries, four of them represent more than 80% of the investigations (Kosovo, 324 investigations; Albania, 304; Bangladesh, 86; Senegal, 61). These investigations nevertheless rarely result in a repatriation: though these repatriations represented 25% of the cases of identified minors in 2003, this figure fell to only 0.4% in 2006 (8 repatriations for 2180 identified minors)¹²⁶.

It should be emphasized that Italian legislation provides no arrangements for follow-up on the local level after the minor's return to his country of origin.

In **Sweden**, in the event of a final decision to reject a foreigner's right of residence, the minor must leave Swedish territory. When the authorities feel that a child no longer needs protection, they consider that the best option is to reunite him with his family or put him into the care of an

¹²⁴ EMN European Migration Network, National point of contact in Italy, EMN Italy Report, Isolated foreign minors, Assisted return, international protection, Editions Idos, March 2010, p.34-35.

¹²⁵ Committee for foreign minors, *Op. cit* (note 26)

¹²⁶ EMN European Migration Network, National point of contact in Italy, *Op.cit.* (note 124)

institution in the country of origin as quickly as possible. The search for the families of unaccompanied minors is therefore a priority for the Swedish Migrations Board¹²⁷.

The authorities encourage individuals to “voluntarily” leave the country. The distinction between voluntary and forced return is not linked to the minor’s desire, but is based solely on whether or not an enforcement mechanism is used: voluntary returns are carried out by the Migrations Board, while forced returns are the responsibility of the police. In practice, when a non-admission or removal decision is made and takes effect, the Migrations Board calls in the unaccompanied minor and the temporary representative assigned to him¹²⁸ for an initial interview regarding the return. An official from the Migrations Board explains the two available options to the minor, namely voluntary return or transfer of his case to the police authorities, resulting in the implementation of a forced return. After this interview, inquiries are initiated in order to identify and contact the minor’s parents as quickly as possible¹²⁹. In this context, and though the Migrations Board emphasizes that no initiative can be undertaken without the approval of the child who has “personally expressed his preference”¹³⁰, one can understand that the term “voluntary” does not necessarily represent the child’s willingness to return, but rather a choice made with the encouragement of the authorities¹³¹.

For unaccompanied minors, and unlike for adults, the return can only take place in the presence of assurances that, in the country to which the child is returning, he will be taken into the care of either his family or an institution. This can include the child’s distant family or an orphanage that can accommodate him. The mere identification of the family, without any true assessment of the adequate conditions for care in the best interests of the child, generally constitutes a sufficient condition for the Migrations Board to consider that a return is possible. At the end of 2008, the Migrations Board implemented a pilot project intended to improve the identification of the families of minors with the help of lawyers in the country of origin or in the surrounding countries, in relation with the Swedish embassies. In June 2010, the Swedish media announced that, during the summer, the authorities would begin sending the names of the relevant Iraqi and Afghan children, as well as of their parents, to the authorities in Iraq and Afghanistan in order to obtain help from the latter for their “family reunification” efforts¹³².

If return is not possible, the minor is not normally sent back before reaching 18 years of age¹³³. Also, the return of minors to certain regions is sometimes formally excluded by the Migrations Board, as was the case for the Gaza Strip in a decision in April 2010¹³⁴. However, certain cases have made it clear that removal is sometimes carried out without any effective care being ensured in the country of origin. In July 2008, association members mentioned the case of an unaccompanied Iraqi minor who was returned to his country without any on-site reception being ensured. In his regard, the

¹²⁷ EUROPEAN MIGRATION NETWORK, *op.cit.* (note 6), p. 35.

¹²⁸ See *below* part V.B.

¹²⁹ European Migration Network, *op.cit.* (note 6), p. 35

¹³⁰ Quoted in EUROPEAN MIGRATION NETWORK, *op.cit.*, p. 35.

¹³¹ Nearly all of the re-admissions within the framework of the Dublin II regulation (52 of the 53 transfers in 2009) were therefore considered to be “voluntary” Contact with the Migrations Board, 22.06.2010. See *below* part III.D. on this topic

¹³² UNHCR, *Baltic and Nordic Headlines*, *op.cit.* (note 25), quoting a report from Sveriges Radio on 11/06/2010.

¹³³ <http://www.utanpapper.nu/en/FAQ/>, Internet site dedicated to children illegally staying within Swedish territory.

¹³⁴ « Asylum-seeking children should not normally be sent back to Gaza », Press release of the Migrations Board, 15 April 2010, http://www.migrationsverket.se/info/2050_en.html

authorities decided that it was up to the child and to his legal representative designated in Sweden to find him a place in a protective institution¹³⁵.

In March 2010, the Swedish government announced a measure intended to encourage the return of unaccompanied minors to Afghanistan while remaining compliant with the national legal provisions that require on-site reception by an institution¹³⁶. Sweden would finance on-site childhood protective centres or orphanages, so that children present on Swedish territory could be sent there. In May 2010, the construction of these centres was confirmed and an opening date in the summer of 2010 was mentioned. Moreover, the Immigration minister has apparently requested the creation of centres of this same type in Iraq through the Migrations Board¹³⁷.

In the case of a forced return, the child can be deprived of liberty “for exceptional reasons¹³⁸” This detention cannot be for more than three days, with one exceptional renewal. In practice it would seem that unaccompanied minors are only very exceptionally deprived of their freedom. One case was pointed out in 2008, and five in 2009. An official escorts the minor during the trip. With voluntary returns, two representatives of the Swedish Migrations Board accompany the child and hand him directly into the care of the person or institution in charge of his protection.

2. Removal generally based on the minor’s desire: Spain, France

In **Spain**, the residency of unaccompanied minors within the territory is considered to be legal provided that they have been taken into care¹³⁹ and the removal measures applicable to adults can therefore not be applied to them. Repatriation consists of a family reunion or handover to the child protection services in the country of return.

The procedure intended to determine if the conditions for repatriation have been met are set down in Spanish law¹⁴⁰. The repatriation decision is made by the central government on the basis of a proposal from the regional protection services, or on its own initiative after reports from these services. Repatriation can only be undertaken if the “adequate conditions for the protection” of the minor have been met and in view of the “principle of the best interests of the child”¹⁴¹.

To examine the content of these guarantees, initiatives are then undertaken with the country’s embassies and consulates within Spanish territory¹⁴² in order to locate the family or to identify protection services that could look after the minor. A hearing is also provided for the child. This repatriation process, supervised by the prosecutor, is generally implemented shortly after the

¹³⁵ Separated children in Europe, *Newsletter n°30*, July 2008.

¹³⁶ « Sweden plans Afghanistan orphanages”, *The Local*, 25 March 2010, <http://www.thelocal.se/25722/20100325/>

¹³⁷ UNHCR, *Baltic and Nordic Headlines*, *op.cit.* (note 25), quoting an article from the *Dagens Nyheter* of 06/05/2010.

¹³⁸ Aliens Act, chapter 10, §3.

¹³⁹ Article 35.7 of the organic law relative to the status of foreigners. Available at: http://noticias.juridicas.com/base_datos/Admin/lo4-2000.t2.html (10.05.2010)

¹⁴⁰ Royal decree 2393/2004 of 30 December 2004, establishing approval of the regulation contained within organic law 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration, art. 92 §4

¹⁴¹ Article 35.5 of the organic law relative to the status of foreigners, *Op. cit.* (note 139)

¹⁴² In the absence of diplomatic representation in Spain, these initiatives are undertaken through the Spanish Ministry for foreign affairs.

minor's arrival, but it can also be carried out later on, when the minor has a residence permit in order to stay in Spain¹⁴³.

Bilateral agreements have been signed with Senegal¹⁴⁴ and Morocco¹⁴⁵ in order to facilitate these initiatives, but also to exchange information in this regard. In Morocco, with the support of the European Commission, Spain finances reception centres in order to fulfil the requirement to guarantee protection in the country of origin, such as to facilitate repatriation¹⁴⁶. These agreements have been widely criticized, based on the absence of a true case-by-case assessment of the best interests of the child¹⁴⁷.

In 2008, the Spanish constitutional court recognised the minor's possibility to legally oppose his repatriation¹⁴⁸. Until this decision that indicated that a Moroccan minor had the "*capacity and sufficient maturity*" to disregard the contrary opinion of his guardian, unaccompanied minors were deprived of the procedural ability to dispute decisions contrary to their interests without the approval of their guardians. Spanish courts frequently cancelled illegal repatriations, but few cases were referred to them¹⁴⁹. Though this decision in principle from the Constitutional court relates primarily to children close to the age of majority and able to clearly express their points of view, the law also stipulated that the fact of minors under the age of 16 expressing a desire contrary to that of their guardian was sufficient to suspend the procedure until the appointment of a lawyer to represent them¹⁵⁰. By ending the conflict of interest within the administration, previously in charge of both protecting unaccompanied minors and determining the interests of the children in view of their possible repatriation, this change allows the desires of the children themselves to be taken into account. While many observers had previously considered these repatriations to be "camouflaged expulsions"¹⁵¹, it would now seem that the minor's ability to dispute will serve to ensure that the return is indeed in the child's interests, and to prevent it if the latter expresses any disagreement. Approximately 260 repatriations were carried out between 2004 and 2008¹⁵², but since that date, returns of unaccompanied minors in Spain seem to have been virtually paralysed¹⁵³. However, in theory, the mere fact of the minor's opposition is not a guarantee that the court will cancel the repatriation.

¹⁴³ Article 35.8 of the organic law relative to the status of foreigners, *Op. cit.* (note 139)

¹⁴⁴ Agreement between the Republic of Senegal and the Kingdom of Spain "relative to cooperation in the area of preventing the immigration of Senegalese minors, their protection, repatriation and social rehabilitation". Available at: http://noticias.juridicas.com/base_datos/Admin/a051206-aec.html (17.05.2010)

¹⁴⁵ Agreement between the Kingdom of Spain and the Kingdom of Morocco "relative to the cooperation in the area of preventing the illegal immigration of unaccompanied minors, their protection and their planned return". Available at: http://www.renteriaabogados.com/images/stories/acuerdo_menas_cg_a429.pdf (17.05.2010)

¹⁴⁶ Human Rights Watch, *Returns at Any Cost: Spain's Push to Repatriate Unaccompanied Children in the Absence of Safeguards*, October 2008, 28 pages, p.6
<http://www.hrw.org/sites/default/files/reports/spain1008frwebwcover.pdf> (accessed on 05.08.2010)

¹⁴⁷ *Ibid.*

¹⁴⁸ Spanish constitutional court, decision 183/2008, 22 December 2008.

<http://www.tribunalconstitucional.es/fr/jurisprudencia/Pages/Sentencia.aspx?cod=9611> (accessed on 05.08.2010)

¹⁴⁹ Human Rights Watch, *Op. Bit.* (note 146), p. 11 - <http://www.hrw.org/sites/default/files/reports/spain1008frwebwcover.pdf> (accessed on 05.08.2010)

¹⁵⁰ Royal decree 2393/2004 of 30 December 2004, *Op. cit.* (note 140), art. 92 §6

¹⁵¹ Asociación Pro Derechos Humanos de Andalucía, Press release of 22.01.2009

http://www.apdha.org/index.php?option=com_content&task=view&id=562&Itemid=32 (accessed on 05.08.2010)

¹⁵² General Council of the Spanish bar (CGAE), *Op. cit.* (note 19), pp. 45.

¹⁵³ EUROPEAN MIGRATION NETWORK, *op.cit.* (note 6), p. 35.

In **France**, unaccompanied minors cannot be the subject of a forced removal measure once they are within the territory¹⁵⁴. Consequently, unlike adults, they cannot be deprived of their freedom for the purposes of their removal.

Children taken into the care of the child protective services can nevertheless express a desire to return to their families residing in a third country. This voluntary return possibility still requires a decision from the juvenile court judge who can terminate the protective measure within French territory for the purposes of a return, if he feels that the conditions for this return have been met.

The assessment of these conditions begins with the social workers who examine the minor's actual desire, and then that of his family, in order to ensure that it is willing to accommodate the youth. In the absence of a clear procedural framework applicable to the entire territory, this contact can be made in several forms. At this stage, obstacles such as the language and an understanding of the stakes can be problematic. The social workers must also ensure that the family's administrative and financial situation will objectively allow for the minor's reception: this notably involves checking that the family has a right to residence in the country in question, and that it has parental authority.

The judge generally relies on this educational assessment, but without truly completing it. He nevertheless has the option to request a social inquiry, notably by calling on foreign authorities. Indeed, several international provisions provide for cooperation between States in the area of protecting minors¹⁵⁵: within this framework, the judge can forward his query to the appropriate services within the Justice ministry, which then contacts the competent foreign authorities in order to request investigation efforts in the country in question. In practice, however, judges rarely use these tools.

In many regards, the assessment of the return conditions seems insufficient to many observers¹⁵⁶. They emphasize the limited scope of the assessed criteria and the many shortcomings of this preparation for the child's departure. Contact with the family at a distance can indeed not replace a true assessment carried out on-site, such as the one carried out for any return to his family of a French minor placed with the Childhood social aide services. For unaccompanied minors, the assessment of the return conditions does not include any work with local actors, in the vast majority of cases. Some initiatives exist, but they are very isolated¹⁵⁷. Also, the follow-up of the isolated minor who has returned to his country of origin is not provided. There is therefore no way to ensure that the return to his family has gone according to plan, whereas a minor whose family is in France is truly followed up after leaving the child protective services. No possibility of returning to France is provided if the isolated minor's return to his country of origin does not go well.

¹⁵⁴ On refolement in the waiting area, see Part II.A.

¹⁵⁵ Notably the Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, that organises the legal cooperation between 14 countries in order to ensure the follow-up of protective measures taken for a minor in one of these States, but also regulation EC n°1206/2001 of the Council of the European Union of 28 May 2001, or, quite simply, the cooperation between authorities on the basis of "international courtesy"; cf. ALLONSIUS D., "Le juge des enfants et les mécanismes de protection internationale des mineurs", *The Journal of the European Judges and Prosecutors Association*, n°21, April 2009, pp. 1-4.

¹⁵⁶ DELBOS L., "Le retour volontaire, conforme à l'intérêt supérieur de l'enfant?", *FRANCE TERRE D'ASILE*, *op.cit.*

¹⁵⁷ Some institutions or associations have attempted to work directly with the countries of origin. Others call on the International social service, a network that provides links between social service institutions in 140 countries; but the resources and competences of this organisation are limited.

As such, while the prohibition of any forced return is a favourable fact for unaccompanied minors in France, the implementation of voluntary returns is characterized by a very incomplete assessment of the best interests of the child.

The Office français de l'immigration et de l'intégration (OFII), which in reality organises a significant share of the returns¹⁵⁸ recorded 40 returns outside of the EU between 2003 and 2009¹⁵⁹ to 22 countries, including China (3 returns), Armenia (4), Afghanistan (4), Bulgaria (4) or Guinea Conakry (1).

3. Cohabitation of several forms of returns: Great Britain, Hungary, Romania

In **Great Britain**, the 1971 immigration law authorises the authorities to remove migrants illegally residing within the territory, including unaccompanied minors. However, up to now, the policy of the British authorities has been not to remove an isolated child if adequate conditions for his care cannot be assured in the country of return. In practice, the difficulty guaranteeing these conditions prevents the forced removal of unaccompanied minors. In procedural terms, unlike adults, they cannot be deprived of their freedom for the purposes of their removal.

In June 2010, a policy change was drafted. A project by the United Kingdom Border Agency (UKBA), calling for the set-up of a "re-integration centre" in Afghanistan, was unveiled¹⁶⁰. The existence of such a structure would allow the British authorities to remove unaccompanied minors to this centre, without having to otherwise ensure the existence of protection guarantees. The stated objective of the UKBA is to return 12 Afghan minors each month once the centre becomes operational. The structure will offer "re-integration assistance" and supervision of the minors by adults.

This British project elicits questions regarding the consideration of the best interest of the child, a fundamental principle of the Convention on the rights of the child¹⁶¹. Though the authorities impose an examination of the guarantees in the country of origin and do not return minors as they do adults, the assessment of the best interests of the child seem to be incomplete¹⁶².

Should the minor express a desire to return to his country of origin, the office of the London-based International Organisation for Migration (IOM) has set up a procedure in order to adapt its two

¹⁵⁸ It is not within the remit of the OFII to look after returns to a third country that is not the minor's country of origin (for example, a country in which the child's family is legally residing).

¹⁵⁹ INTERMINISTERIAL WORKING GROUP ON ISOLATED FOREIGN MINORS, *Op. cit.* (note 29), appendix 6: OFII, Aide au retour des MEI, September 2009.

¹⁶⁰ "UK to deport child asylum seekers to Afghanistan", *The Guardian*, 7 June 2010.

¹⁶¹ Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entry into force 2 September 1990 - Article 3: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

¹⁶² On this topic, see *below* part III.C.6

return assistance programmes relative to asylum applicants during or at the end of the application and illegal migrant foreigners, to the situation of unaccompanied minors.

The voluntary return decision is based on an assessment of the best interests of the child that involves the child's assigned social worker, the minor himself and the immigration official in charge of the child's case. According to the IOM, any assessment undertaken for the purpose of a return must consider the desires of the child, those of his family, the "child's emotional and psychological needs" and his story¹⁶³. A voluntary return request form is filled out and signed by the social worker and the child, then returned to the IOM that sends it to the Ministry of the Interior for validation. After approval by the authorities, the IOM undertakes an inquiry regarding the return conditions in the child's country of origin. It is important to note that the inquiry results are presented to the assigned social worker for a final discussion before the return is carried out. A written confirmation from the social worker, confirming that the return solution is compliant with the best interests of the child, is required.

During the return trip, the youth can be accompanied by an IOM official, if necessary. Upon arriving at the airport, this official ensures that the child is properly received by his family or by the person in charge of taking him into care. A "declaration of family reunification" must be signed by the family or by the person in charge of providing the child's care in order to confirm the child's arrival in the country of return¹⁶⁴. The IOM has assessment and follow-up procedures for every person who has taken advantage of a voluntary return programme, but there are no provisions for the minor to return to Great Britain if the return does not go well.

In **Hungary**, the law on the entry and residence of foreigners only allows the expulsion of minors if "*adequate protection is ensured*" in the country of return, "*through reunification with family members or access to institutional protection*"¹⁶⁵. If the Hungarian childhood protection authorities consider that the child cannot be taken into care, the return option is not pursued. In practice, it would nevertheless seem that the Hungarian authorities are often content to verify the existence of a child protection system in the country of return, without investigating any further with regard to its efficiency and the level of guaranteed protection¹⁶⁶.

Should the minor express a desire to return to his country, it is the responsibility of the minor's temporary legal representative to coordinate the decision and to assess the relevance of a voluntary return in view of the same guarantees as applied in the case of forced removal¹⁶⁷. The Office of Immigration and Nationality provides the minor with all information relative to the voluntary return. The legal representative must make a decision on the basis of the best interests of the child. The IOM categorically indicates that no return can take place without a prior and strict examination of the "environment" and situation in the country in question¹⁶⁸. Through their diplomatic representation,

¹⁶³ INTERNATIONAL ORGANISATION FOR MIGRATION, *Voluntary assisted return and reintegration programme, Guidelines for unaccompanied minors*, www.iomlondon.org, consulted in June 2010.

¹⁶⁴ *Ibid.*

¹⁶⁵ 2007 law II on the entry and residence of nationals from third countries, section 45-5

¹⁶⁶ Contact with the Menedek association, 16/04/2010

¹⁶⁷ 2007 law II on the entry and residence of foreign nationals, §45-5. In the texts, this provision relates to removal measures. The fact that it prevails within the framework of voluntary returns was indicated by a representative of the International Organisation for Migration (IOM) contacted on 01/04/2010.

¹⁶⁸ Contact with a representative of the International Organisation for Migration (IOM) in Hungary, on 01/04/2010.

Hungarian childhood protection authorities contact the protective services in the country of return in order to identify the child's family and to determine if the reception conditions are "acceptable and safe"¹⁶⁹. Provisions are made to contact the family or, if relevant, the country's childhood protection institutions. The content of this contact and the criteria used to define "acceptable and safe" conditions are not known.

According to the IOM, "depending on the child's age, the legal representative will consult with him and take the child's preferences into account"¹⁷⁰: the child's opinion is therefore considered, but the decision apparently does not rest with him. There is therefore no real distinction between a voluntary return and a forced return. Once the authorities have assessed that the return is possible, it can be carried out with no real consideration of the minor's desire, which can simply serve to initiate the assessment but does not constitute an element that determines whether or not the return will be carried out. After the verifications have been made, the return is organised in cooperation with the authorities in the home country and with material support from the IOM. The minor is accompanied to his final destination by an IOM official. Upon arrival, the youth is directly handed over to his family. In case of return imposed on a minor, the latter can be detained. Pending the implementation of the removal, the minor therefore continues to be accommodated in a childhood protection centre.

According to the IOM¹⁷¹, there are no precise statistics on the voluntary returns of unaccompanied minors, but their number is surely very limited. According to a 2007 research report, a single unaccompanied minor returned to his country of origin in order to join his family between 2004 and 2007¹⁷². A case of return implemented by the IOM is also indicated in 2008. One association indicates two returns of Kosovar minors to their country of origin in 2009¹⁷³.

In **Romania**, the immigration law indicates that if the parents are identified, the child must be sent to their country of residence for the purposes of family reunification¹⁷⁴. The same provision applies if other family members are found and agree to accommodate the child¹⁷⁵. With the exception of minors who have been the victims of trafficking, who must agree to their return¹⁷⁶, this event involves a removal without the approval of the minor himself, but with a guarantee that the latter will be received in his country of origin. However, the assessment of the best interests of the child is also lacking in this procedure: the mere presence of the parents (or family members), whose social situation or behaviour relative to the child may have prompted the migration, is not sufficient to guarantee the child's well-being after his return. As in the case of Great Britain, the fact of requiring *minimum* guarantees in the country of origin cannot conceal the prevalence of migratory policies over the fundamental consideration of the best interests of the child.

¹⁶⁹ *Ibid.*

¹⁷⁰ Contact with a representative of the International Organisation for Migration (IOM) in Hungary, on 16/04/2010.

¹⁷¹ Contact with a representative of the International Organisation for Migration (IOM) in Hungary, on 01/04/2010.

¹⁷² KOPITAR A., *The risk group of unaccompanied minors: protection measures in an enlarged European union, Hungary country report*, University of Primorska, 2007, p.17.

¹⁷³ Contact with the Menedek association, 16/04/2010.

¹⁷⁴ OUG nr. 194/2002, ordonanta de urgenta privind regimul strainilor in Romania, republicata in 2008, art. 131

¹⁷⁵ *Ibid.*

¹⁷⁶ Response from the Romanian Office for immigration n° 2211634/04.06.2008, in collaboration with an expert from the Fundamental rights agency. See *below* Part IV. Trafficking

In case of a return decision, it is the ordinary law applicable to foreigners that applies to unaccompanied minors: the latter can therefore be detained for up to six months in order to carry out the removal¹⁷⁷.

In practice, it would seem that no unaccompanied minor has been forcibly removed, most likely due to the complexity of the initiatives intended to identify the parents.

Voluntary return is also a possibility, but in this regard, the legislation regarding foreigners makes no specific provisions with regard to unaccompanied minors. It is therefore the very incomplete ordinary law that applies¹⁷⁸. No information was uncovered on the implementation of voluntary returns involving unaccompanied minors.

The Committee on the rights of the child, in its concluding observations on Romania, recommended that the State should *“ensure that when return of children occurs, this happens with adequate safeguards, including an independent assessment of the conditions upon return, including the family environment”*¹⁷⁹.

4. Removal on the same basis as for adults: Greece

In **Greece**, there is no procedure for the voluntary return of unaccompanied minors. Forced removal is the only option for these youths, under the same conditions as for adults¹⁸⁰. Collective expulsions are possible, as Greece has not adopted protocol n° 4 of the European Convention for the protection of human rights, which prohibits this practice. Turkey is often the preferred country for removal, even though it is not the country of origin of the minors and despite the absence of guarantees regarding asylum in that country¹⁸¹.

Foreigners, both adults and children, are detained pending their removal if they do not have a document that authorises them to stay in Greece. Once a removal order has been signed, detention can be for up to three more months¹⁸². In practice, migrants can be deprived of their freedom for up to 18 months. When the legal detention period is exceeded, minors are released and left to fend for themselves, with a written order to leave the country within 30 days¹⁸³.

¹⁷⁷ OUG nr. T94/2002, *op.cit.* (note 174). Chapitre 4 - section 4 “Expulzarea strainilor”; Chapitre 4 - section 5 “Luarea in custodie publica a strainilor. Centre de cazare”

¹⁷⁸ OUG nr. T94/2002 2, *op.cit.* (note 174). Article 93 – “Repatrierea voluntara umanitara asistata”

¹⁷⁹ United Nations Committee on the Rights of the Child, 51st session, Consideration of reports submitted by the States parties under article 44 of the Convention, Concluding observations: Romania, CRC/C/ROM/CO/4, 30 June 2009, §80. §81

¹⁸⁰ “Report by Thomas Hammarberg, Council of Europe Commissioner for human rights, following his visit to Greece from 8 to 10 December 2008”. February 2009. CommDH(2009)6. Appendix V. Observations of the Greek authorities, p 9

<https://wcd.coe.int/ViewDoc.jsp?id=1412853&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679> (accessed on 03.08.2010)

¹⁸¹ Turkey still applies the geographical limitations of the 1951 Geneva Convention relating to the status of refugees, thereby excluding refugee status for anyone not originally from Europe.

¹⁸² L.3386/2005, art.76 §3

¹⁸³ Human Rights Watch, *Left to Survive*, 2008. <http://www.hrw.org/en/reports/2008/12/22/left-survive> (accessed on 09.09.2010)

In 2005, a report by the Greek Rights ombudsman indicated cases of the expulsion of children from Afghanistan, Iraq and Somalia, who were sometimes not older than 12 years of age¹⁸⁴. He further emphasized the need to prohibit forced removal and the detention of unaccompanied minors¹⁸⁵. In a 2009 report, the United Nations Committee against Torture described the detention conditions for foreigners in Greece as “unacceptable”¹⁸⁶. The special case of the detention of unaccompanied minors had already been mentioned by the United Nations Committee on the rights of the child in its concluding observations regarding Greece in 2002¹⁸⁷. The detention conditions for foreigners have also earned Greece several convictions by the European Court of Human Rights, most notably for violation of articles 3 (prohibition on inhuman and degrading treatment) and 5 (right to liberty and security of person) of the European Convention on Human rights¹⁸⁸. During a visit to the Pagani detention centre for foreigners on the island of Lesbos in August 2009, the UNHCR indicated the presence of approximately 200 unaccompanied minors amongst the 850 people held in this overcrowded location¹⁸⁹ (an area reserved for minors contains 96 places¹⁹⁰). After this visit, the Minister for health and social solidarity gave assurances that all unaccompanied minors held in the centre would be transferred to an appropriate centre before the end of August 2009¹⁹¹. Despite this isolated commitment, Greek authorities indicated in 2009 that any prohibition on the detention of unaccompanied minors would serve to increase the problem of child trafficking and labour¹⁹². Published in July 2010, an Amnesty International report indicates that the detention conditions continue to be so terrible that minors resort to hunger strikes in order to bring their detention to an end, and others even attempt suicide¹⁹³.

Upon arriving, a minor is normally handed over to the police authorities present at the airport, with no search being made with regard to the presence of family ties. In a few marginal cases, however, it can happen that the return of minors, particularly ones known to be victims of trafficking, will be implemented with the cooperation of local NGOs and of the International social service in order to bring about a secure reintegration into the country of origin.

¹⁸⁴ The Greek Ombudsman, Administrative detention and expulsion of foreign minors, October 2005. <http://www.synigoros.gr/reports/SR-detention-expulsionOCTOBER-2005.pdf> (accessed on 03.08.2010)

¹⁸⁵ *Ibid.*

¹⁸⁶ Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 to 29 September 2008. 30 June 2009. 33p. §53 <http://www.cpt.coe.int/documents/grc/2009-20-inf-eng.pdf> (accessed on 03.08.2010)

¹⁸⁷ Committee on the Rights of the Child, Concluding observations: Greece, CRC/C/15/Add.170, 2 April 2002, p. 19 § 69 e) <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CRC/C/15/Add.170&Lang=E> (accessed on 03.08.2010)

¹⁸⁸ See for example ECHR, 1st Sect. 11 June 2009, *S.D. c. Greece*, req. n° 53541/07; ECHR, 1st Sect. 26 November 2009, *Tabesh versus Greece*, req.n° 8256/07;

¹⁸⁹ UNHCR, “UNHCR alarmed by detention of unaccompanied children in Lesbos, Greece”, Briefing notes, 28.08.2009. <http://www.unhcr.org/4a97cb719.html> (accessed on 04.08.2010)

¹⁹⁰ UNHCR, “Greece’s infrastructures struggles to cope with mixed migration flow”, News stories, 19.01.2009. <http://www.unhcr.org/497495174.html> (accessed on 04.08.2010)

¹⁹¹ *Ibid.*

¹⁹² Report by Thomas Hammarberg, *Op. cit.* (note 180)

¹⁹³ Amnesty International, *Greece: irregular migrants and asylum-seekers routinely detained in substandard conditions*, July 2010, 60p. http://www.amnestyinternational.be/doc/IMG/pdf/grece_refugies_2010.pdf (accessed on 26.08.2010)

5. Summary and statistics on the return of unaccompanied minors

Table 4 – Overview of the removal of unaccompanied minors

	Forced removal	Voluntary return
Spain	No expulsion is applicable to unaccompanied minors, but they can be subject of “repatriation”. This possibility, considered as a family reunion, is given priority study as soon as the minor has been taken into care. A precise procedure must be implemented, including a hearing of the minor, in order to determine if the guarantees for return are in place. In practice, since the end of 2008, the minor’s possibility of disputing his repatriation before a court (decision of the Constitutional court of 22 December 2008) has led to a halt of returns.	
France	No forced removal measure can be applied against an unaccompanied minor.	Voluntary return can be decided by the juvenile court judge, who makes his decision based on the educational evaluation that has been presented to him, as well as on a hearing of the minor.
Greece	Minors can be subjected to forced removals under the same conditions as adults.	There is no voluntary return procedure.
Hungary	Unaccompanied minors can be expelled if “adequate protection is ensured” in the country of return.	The minor’s legal representative can coordinate and assess the suitability of a return on the same basis as forced removal. Voluntary return is organised in cooperation with the country of origin and with material support from the IOM.
Italy	An unaccompanied minor can only be expelled for reasons of public order or State security, with a decision from the juvenile court. The Committee for foreign minors can nevertheless decide to carry out an “assisted repatriation” after a complete assessment procedure that does not necessarily consider the minor’s wishes.	
Romania	The forced removal of a minor is possible, subject to the identification of the parents or family members who have given their consent. In practice, however, no forced removal has been undertaken.	Voluntary return is possible as for adults, but no specific procedure applies to minors.
Great Britain	The law authorises the authorities to remove unaccompanied minors. However, the authorities always attempt to ensure adequate care conditions in the country of origin, and in practice, the difficulty of guaranteeing these conditions prevents forced removals of unaccompanied minors.	Voluntary return procedures are implemented through IOM programmes.
Sweden	When a removal decision takes effect, a Migrations Board official presents the minor with the two options open to him, namely voluntary or forced return. In both cases, it is the assessment of the return conditions (identification of the family) and not the minor’s desire that is the decisive factor.	

Table 5 – Statistical data on the forced removal of unaccompanied minors

	Number of removals (outside EU)			Country of return	Source	Type of removal
	2007	2008	2009			
Spain	27	10		Morocco, Romania	General Council of the Spanish bar	Forced removals and voluntary returns
France	36 from 2003 to 2009			Armenia, Afghanistan,, China...	Office français de l'immigration et de l'intégration (OFII)	Voluntary returns
Greece						
Hungary	1 (From 2007 to 2009)	1	2	2009: Kosovo	University report (2007); IOM (2008); Menedek (2009)	Voluntary returns
Italy	1	2 (Nov. 2008)			Italian Committee for foreign minors ¹⁹⁴	Forced removals and voluntary returns
Romania						
Great Britain			8		IOM	Voluntary returns
Sweden	32	46	49	2009: Iraq (17), Somalia (16)	Swedish Migration Board	Voluntary returns
		30	10	Burundi, Ghana, Iraq, Mongolia, Togo, Turkey, Belarus, Uzbekistan	Swedish Migration Board	Forced removals

6. The consideration of the best interests of the child in removal procedures

The removal procedures are extremely variable from one country to the next, and are sometimes unclear even within a given country. While European Union institutions plan to encourage the return of unaccompanied minors to their countries of origin¹⁹⁵, this policy runs up against several obstacles that partly explain the low number of returns carried out. In addition to the material and financial difficulties of organising a return, such a procedure is incompatible with international law and more precisely with the United Nations Convention on the rights of the Child¹⁹⁶. This text enshrines the right to live with one's parents¹⁹⁷, but it imposes above all the fundamental principle that all decisions must be taken in the best interests of the child¹⁹⁸. The Convention further indicates that the right of children to maintain relations with their parents does not apply "if this is contrary to the best interests of the child"¹⁹⁹. The Charter of Fundamental Rights of the European Union also stipulates

¹⁹⁴ EUROPEAN MIGRATION NETWORK, National point of contact in Italy, *Op. cit.* (note 124)

¹⁹⁵ Action plan, *Op. Cit.* (note 3), p. 13, "5.1. Return and reintegration in the country of origin"; Conclusions of the Council on unaccompanied minors, 3018th Council meeting JUSTICE and HOME AFFAIRS Luxembourg, 3 June 2010, §27s.

¹⁹⁶ United Nations convention on the rights of the child, *Op. cit.* (note 161)

¹⁹⁷ *Ibid.*, article 9

¹⁹⁸ *Ibid.*, article 3

¹⁹⁹ *Ibid.*, article 9.3

that “in all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration”²⁰⁰.

Although this notion of the best interests of the child is subject to interpretation, the implementation of removals in most of the countries in the study shows an absence of consideration of this requirement, which is nevertheless imposed on all of the States.

Firstly, these return policies do not consider the opinion of the child himself, however, even though this criterion is usually mentioned in the analysis of the content of this notion of the best interests of the child²⁰¹, including sometimes in national law²⁰². The Committee on the rights of the Child further lists “the opinion expressed” by the child amongst the criteria for assessing the best interests of the child in the event of a return²⁰³.

Secondly, the protection in a reception centre in the country of origin is generally limited in time and space, with the guarantees of the child’s security and well-being only being ensured within the establishment and during the time of placement. However, the best interests of the child must apply over the long term, applying to the child’s situation while “looking ahead to his future”²⁰⁴. The placing of unaccompanied minors in reception centres, while secure and offering ongoing education, is part of a political and social context that does not offer any prospects for the future, and is also contrary to the notion of life projects defined by the Council of Europe²⁰⁵. The situation in terms of safety, security and other factors, notably socio-economic, awaiting the child on his return, is also identified as a condition by the Committee on the rights of the Child²⁰⁶.

Finally, the mere identification of a family cannot replace a true assessment of best interests of the child, which should be subject to an examination on the basis of a set of criteria and not only on the mere presumption that family life is in the interests of the child. The fact of returning a child to his family as soon as it has been found can also prompt the minor to conceal family ties, an element which is nevertheless essential for the construction of a coherent life project.

Thus, the return policies recently implemented in the studied countries should be reviewed, and the encouragement of such an orientation on the European scale expressed by the Commission²⁰⁷ and

²⁰⁰ Charter of Fundamental Rights of the European Union, (2000/C 364/01), art. 24.2

²⁰¹ It is frequently acknowledged that article 3 of the Convention and article 12 – the child’s right to freely express his opinion – are complementary and should consequently be applied at the same time. See for example UNHCR, “Guidelines on Determining the Best Interests of the Child”, May 2008 - <http://www.unhcr.fr/4b151b9f2d.pdf> (accessed on 27.07.2010)

²⁰² In the British *Children Act* of 1989 for example, it is indicated that the child’s well-being and the definition of his best interests by every jurisdiction must rely on several elements including “the wishes and opinions of the child in question”. http://www.opsi.gov.uk/acts/acts1989/ukpga_19890041_en_2 (accessed on 27.07.2010)

²⁰³ Committee on the rights of the child, “Treatment of unaccompanied and separated children outside their country of origin”, General comment N°6, CRC/GC/2005/6 (2005), §84. See also Council of Europe, “Warning over sending children back to unsafe areas”, 18 June 2010. http://assembly.coe.int/ASP/NewsManager/FMB_NewsManagerView.asp?ID=5676&L=1 (accessed on 06.08.2010)

²⁰⁴ ZERMATTEN J., “L’intérêt supérieur de l’enfant”, International Institute for Children’s Rights, 2005, p. 22 - http://www.dei-france.org/lettres_divers/2009/interet_superieur_enfant.pdf (accessed on 27.07.2010). With regard to this notion of long-term interests, also see the UNHCR Guidelines on Determining the Best Interests of the Child, *op. cit.* (note 201) that mentions a “lasting solution”.

²⁰⁵ Recommendation CM/Rec (2007)9, *Op. cit.* (note 80). §8.vii. “Every life project should take account of (...) the situation in the host country: the political, legislative and socio-cultural context; availability of opportunities for the minor, including level and degree of support available; possibility of remaining in the host country; opportunities in terms of integration in the host country”

²⁰⁶ Committee on the rights of the child, General comment N°6, *Op. cit.* (note 203). §84. See also Council of Europe, “Warning over sending children back to unsafe areas”, *Op. cit.* (note 203)

²⁰⁷ Action plan, *op. cit.* note 3, p. 13, “5.1. Return and reintegration in the country of origin”.

the Council ²⁰⁸ should be made clear in order not to infringe on the fundamental principle of respect for the best interests of the child.

Recommendation n°10 – FORCED REMOVAL

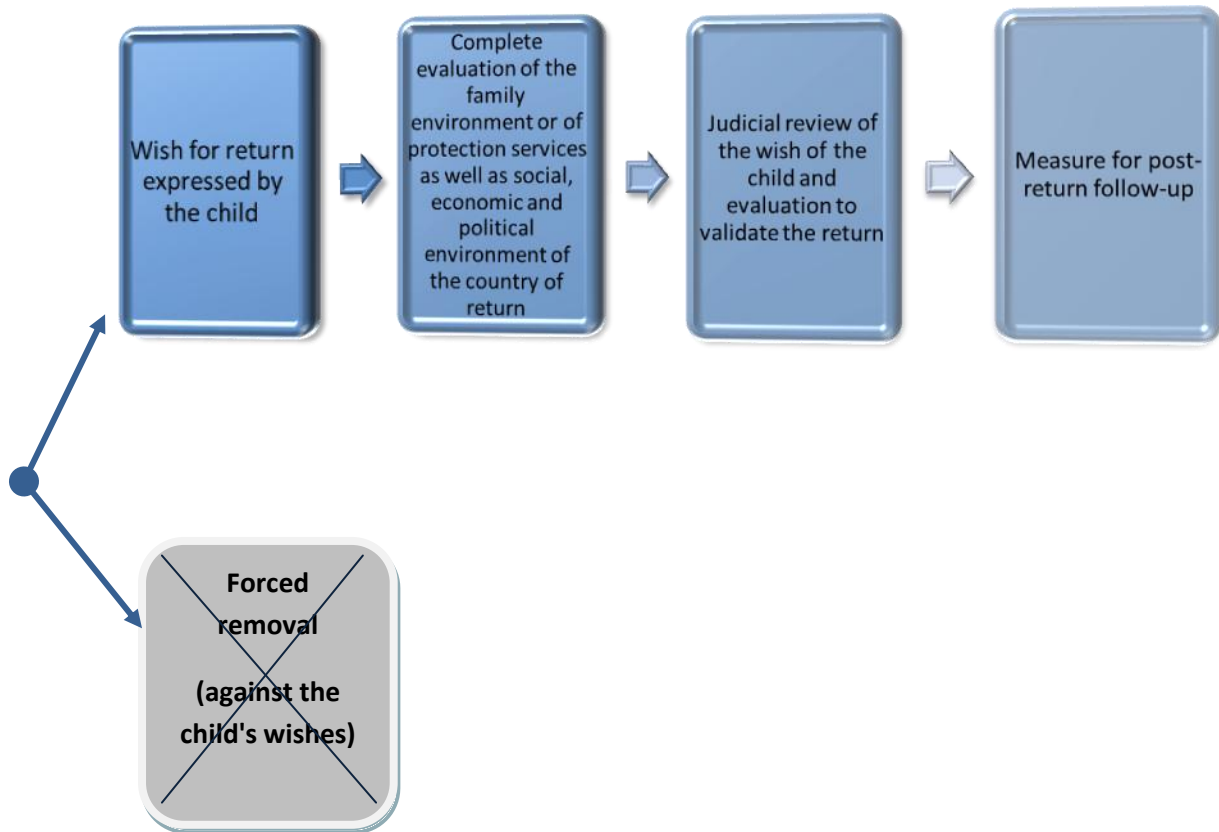
- ▶ Prohibit forced removal of all unaccompanied minors, as any status as a foreigner must not prevail over the status as a child, which requires a detailed analysis of the solution that takes the child's best interest into account. As this notion implies taking the child's own opinion into account, only voluntary returns should be possible. The hypothesis of a family reunification within the European Union should be examined on a systematic basis. The child's wishes should be recognised by a court, to which an automatic application could be made. An appeal by the child himself should also be possible.

Recommendation n°11 – VOLUNTARY RETURN

- ▶ Establish a clear and common voluntary return procedure across the European Union, with a complete assessment that serves to determine the best interests of each child, in particular with regard to guarantees of well-being as a result of the return. This assessment should simultaneously focus on the family setting or the child protection services, as well as on the country's social, economic and political environment, in addition to the risks of social exclusion to which the minor could fall victim. It could rely on the diplomatic representations of the countries and of the Union in the third countries, as well as on a network of approved NGOs. The child's desire to leave should be a primary consideration at the start of the return procedure. Finally, a follow-up plan should be set up in order to ascertain that the protection of the child has been guaranteed by the return. If not, the possibility of returning to the protection services of the country of departure should be left open.

²⁰⁸ Conclusions of the Council, *op. cit.*, note 4, §27s.

Removal procedure respecting the rights of the child



III. Asylum and international protection

Like adults, children who are victims of persecution are protected in all Member States of the European Union pursuant to the Geneva Convention on refugees that targets “*every person having a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion*”²⁰⁹. Community standards adopted in order to implement this asylum right across Europe have provided clarifications with regard to unaccompanied minors in the directives referred to as “reception”²¹⁰, “qualification”²¹¹ and “procedure”²¹² which require the States to implement certain standards concerning the appointment of a legal representative and the set-up of specific reception procedures and conditions.

Statistical clarifications

As an introduction to this chapter that proposes to study the laws and practices in the target countries relative to this topic, and to analyse the treatment differences, the status of the transposition of Community law and the effective compliance with the asylum right both at the border and within the territory, some statistical clarifications are needed.

In all eight of the studied countries, asylum requests by unaccompanied minors are counted separately for statistical purposes. As such, we see that 6477 applications were made in 2009. However, it should be noted that Sweden and Great Britain account for more than 80% of these applications: indeed, unaccompanied minors are automatically directed towards an asylum application in these countries, as only this framework will provide them with social protection²¹³. The situation is similar in Hungary, but this has little impact on the analysis as a result of the less significant presence of unaccompanied minors in that country. This differing treatment between the countries necessarily means a view of the asylum requests by minors that does not align with reality.

Moreover, statistics regarding the granting of a protective status (refugee status, subsidiary protection) are not available in all countries, as Spain, Greece and Romania do not distinguish children from adults in the decisions that are handed down.

A few major trends can nevertheless be brought to light. Between 2008 and 2009, the total number of applications dropped by 11% in the studied countries. This decline is primarily due to the situation in Great Britain, which has seen a spectacular drop in the number of applications (indeed, the statistical data bring to light a 30% decline in the number of applications). Nevertheless, the trend has been rising steadily since 2006 in Hungary and Sweden, while the number of applications has remained relatively stable in Spain (only some 20 applications per year), France and Italy (400 to 600 applications per year). After a sudden increase in the number of applications in 2008, Greece is maintaining a rate of some 40 applications per year. The vast majority of applications are submitted by boys (85% on average), which corresponds with the profile of the unaccompanied minors present

²⁰⁹ United Nations Convention relating to the status of refugees, adopted on 28 July 1951 in Geneva, art. 1st.A.2.

²¹⁰ Council Directive 2003/9/EC of 27 January 2003, *op. cit.*, note 13, art. 2h.

²¹¹ Council Directive 2004/83/EC of 29 April 2004, *op. cit.*, note 13, art. 30.

²¹² Council Directive 2005/85/EC of 1 December 2005, *op. cit.*, note 79. See in particular art. 17.

²¹³ On social protection, see *below* part VI.A.

in these countries. Except in Spain, Afghan nationals are the leading applicants in all of the countries. As with adults, the underage applicants also come from Iraq, Somalia, Ivory Coast as well as from the Republic of Guinea.

Finally, the approval rate for protection applications appears to be relatively high in all of the countries: 48% of minors are granted refugee status or subsidiary protection, while 20% are provided with a residence card that does not correspond with an application for protection, but that allows them to reside legally within the territory of the State in question. These high rates have to be qualified, however, and it would be hasty to conclude that unaccompanied minors have access to a very protective asylum system. Indeed, the countries that make no distinction with regard to the statuses recognised for unaccompanied minors include Spain and Greece, in which the rates of positive decisions (all ages taken together) are amongst the lowest in Europe (4.6% for Spain and 1.3% for Greece in 2008²¹⁴).

²¹⁴ Eurostat, "75000 asylum seekers granted protection status in the EU in 2008", November 2009. http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-09-092/EN/KS-SF-09-092-EN.PDF (accessed on 10.08.2010)

Table 6 – Statistical data on asylum applications for unaccompanied minors

	2006 Applications (total)	2007 Applications (total)	2008 Applications (total)	2009								Comments
				Applications				Positive decisions				
				% M	% F	Nationalities	TOTAL	% RS	% SP	% TOTAL	Other protection	
Spain	17 ⁱ	15 ⁱⁱ	25 ⁱⁱⁱ	89	11	Ivory Coast (16%); Guinea (11%); Niger (11%); Morocco (11%); DRC (11%)	19 ^{iv}					No data is available regarding positive decisions
France	571 ^v	459 ^{vi}	410 ^{vii}	67	33	DRC (26%); Afgh. (10%); Guinea (7%); Angola (6%); Sri Lank. (6%)	447 ^{viii}	40 ^{ix}	3	43 ^x		
Greece	165 ^{xi}	44	295 ^{xii}	75	25	Afgh. (25%); Iraq (12.5%); Paki. (12,5%); Bangladesh (12,5%)	40 ^{xiii}					No data is available regarding positive decisions
Hungary	61 ^{xiv}	46 ^{xv}	159 ^{xvi}	96	4	Afgh. (72%); Somalia (6%); Kosovo (5%); Molda. (3%); Serbia (3%)	271 ^{xvii}	16	50	66 ^{xviii}	13	Of 202 cases processed, only 38 files were examined in detail
Italy			575 ^{xix}	89	11	Afgh (21%); Somal. (10%); Eryth. (10%); Iv. Coast (10%); Ghana (5%)	420 ^{xx}	30	31	61 ^{xxi}	19	The data on protection agreements date are from 2008
Romania				100	0	Afgh. (50%); Mold. (12%); Paki. (12%)	40 ^{xxii}					
Great Britain	3450 ^{xxiii}	3645 ^{xxiv}	4285 ^{xxv}	88	12	Afgh. (51%); Eryth. (8%); Iran (6%); Iraq (5%); Somalia (4%)	2990 ^{xxvi}	10	1	11 ^{xxvii}	55	Minors whose age is disputed are not included in these statistics (for example, there were 1000 in 2009)
Sweden	820 ^{xxviii}	1264 ^{xxix}	1510 ^{xxx}	78	22	Somal. (41%); Afgh. (35%); Iraq (5%)	2250 ^{xxxii}	5	55	60 ^{xxxiii}	15	The approval % does not include suspended decisions (Dublin II etc.)
TOTAL			7259	85	15	Afgh. (41%) ^{xxxiii}	6477	20	28	48	20	

The sources of the statistics contained in this table are shown on the next page.

Table 6 - Sources

ⁱ UNHCR, quoted by the General Council of the Spanish bar (CGAE), *Ni ilegales ni invisibles. Realidad Jurídica y social de los Menores Extranjeros en España* ["Neither illegal nor invisible. Legal and social reality of foreign minors in Spain"], 2009, 154 pages, pp. 47.

ⁱⁱ *Idem*.

ⁱⁱⁱ *Ibid.* For 2008, the Ministry of the Interior only counted 13 applications (see: http://www.mir.es/MIR/PublicacionesArchivo/publicaciones/catalogo/Asilo/Asilo_en_cifras_2008.pdf - accessed on 09.08.2010) whereas the Eurostat database listed 15 (see: <http://www.ec.europa.eu/eurostat> - accessed on 09.08.2010).

^{iv} Spanish Ministry of the Interior http://www.mir.es/MIR/PublicacionesArchivo/publicaciones/catalogo/Asilo/Asilo_en_cifras_2009.pdf (accessed on 09.08.2010). The Eurostat database lists 20 applications (see: <http://www.ec.europa.eu/eurostat> - accessed on 09.08.2010).

^v OFPRA, *2009 Activity report*, April 2010, p. 27 - http://www.ofpra.gouv.fr/documents/Rapport_Ofpra_2009_complet_BD.pdf (accessed on 09.08.2010).

^{vi} *Ibid.*

^{vii} *Ibid.*

^{viii} *V Ibid.* p. 27.

^{ix} This percentage corresponds with a projection of the first instance decisions made by OFPRA, which are the only available detailed statistics, applied to the global agreement rate including the CNDA.

^x Overall rate of first instance decisions (OFPRA) and appeals (CNDA). The rate of positive first instance judgments was only 22.9% in 2009.

^{xi} UNHCR, *Unaccompanied Minors Seeking Asylum in Greece*, April 2008, p. 21.

<http://www.unhcr.org/refworld/docid/48abd557d.html> (accessed on 10.08.2010).

^{xii} Eurostat database (see: <http://www.ec.europa.eu/eurostat> - accessed on 09.08.2010).

^{xiii} Eurostat database (see: <http://www.ec.europa.eu/eurostat> - accessed on 09.08.2010).

^{xiv} *Id.*, and EUROPEAN MIGRATION NETWORK, *op. cit.*, p. 14.

^{xv} *Ibid.*

^{xvi} *Ibid.*

^{xvii} UNHCR, *Annual statistical report [for Hungary], Individual asylum application and refugee status determination*, 2009.

^{xviii} Office of Nationality and Immigration statistics 2009. Contact with the director of department for refugees at the ONI, 03.06.2010.

^{xix} Eurostat database (see: <http://www.ec.europa.eu/eurostat> - accessed on 09.08.2010).

^{xx} Eurostat database (see: <http://www.ec.europa.eu/eurostat> - accessed on 09.08.2010).

^{xxi} CIR Notizie, "The actions of CIR for foreign asylum-seeking minors". Anno XVIII n° 11, November 2009, p.1-2.

^{xxii} Eurostat database (see: <http://www.ec.europa.eu/eurostat> - accessed on 09.08.2010).

^{xxiii} HOME OFFICE, *Control of Immigration: Quarterly Statistical Summary, United Kingdom - Fourth Quarter 2009*, supplementary tables: *Unaccompanied asylum seeking children, applications received for asylum in the UK, and initial decisions by age at initial decision and country of nationality*, 2009.

^{xxiv} *Ibid.*

^{xxv} *Ibid.*

^{xxvi} *Ibid.*

^{xxvii} *Ibid.*

^{xxviii} Eurostat database (see: <http://www.ec.europa.eu/eurostat> - accessed on 09.08.2010) and contact with the association Save the Children Sweden, 03/05/2010.

^{xxix} *Ibid.*

^{xxx} *Ibid.*

^{xxxi} Data supplied by the NGO Save the Children Sweden, contacted on 05.05.2010.

^{xxxii} Data supplied by Save the Children, contacted on 05.05.2010.

^{xxxiii} Eurostat database (see: <http://www.ec.europa.eu/eurostat> - accessed on 09.08.2010)

A. Legal representation of the asylum-seeking minor

Terminological clarification:

The term 'legal representative' will be employed here to designate any person whose role is to accompany the minor throughout the various procedures. His role, duties and competences will be detailed for every country in which the terms of *guardian*, *custodian*, representative or even administrator intermingle without it being possible to associate a common definition.

The primary demand of Community law relative to the asylum application of unaccompanied minors relates to the minor's representation during the procedure: a legal representative must be named as soon as possible, to provide information to the minor and to assist during the interview²¹⁵. This requirement is mentioned in all three directives²¹⁶. His appointment is not mandatory in some cases (decision that will be taken only after coming of age, minor with a lawyer, minor more than 16 years old capable of presenting his application, or a married minor)²¹⁷.

In **Spain**, a minor who asks for asylum is first taken into the care of the regional protection services for minors. These services are assigned as the youth's guardians and ensure his representation during all procedures, including the asylum application²¹⁸.

In **France**, the law provides for the appointment of legal representatives known "*ad hoc* administrators", who are in charge of representing and assisting unaccompanied minors during their asylum applications²¹⁹. This involves minors for whom the issue of parental authority has not yet been settled²²⁰, which is the case in practice for nearly all minors who apply for asylum, given that this initiative is generally started shortly after arrival or having been taken into care. The *ad hoc* administrator's assignment ends "as soon as a guardianship measure has been declared"²²¹ or at the end of the asylum procedure.

The *ad hoc* administrator must be appointed by the Prosecutor's office, from a list of persons updated every four years and approved by the judicial authority. The referral to the Prosecutor's office is normally made by the prefecture, i.e. the institution that the youth must inform of his desire to seek asylum, and from which he can obtain the application documents. In practice, we note several malfunctions in this system's application: it can happen that the prefecture in question does

²¹⁵ Directive 2005/85/EC, *Op. cit.* (note 79), art. 17.1

²¹⁶ Directive 2003/9/EC, *Op. cit.* (note 13), art. 19.1; Directive 2004/83/EC, *Op. cit.* (note 13), art. 30.1; Directive 2005/85/EC, *Op. cit.* (note 79), art. 17.1

²¹⁷ Directive 2005/85/EC, *Op. cit.* (note 79), art. 17.2, art. 17.3

²¹⁸ Royal decree 2393/2004, *Op. Cit* (note 140), art. 92.6

²¹⁹ CESEDA, Art. L751-1; Decree n°2003-841 of 2 September 2003 on the appointment and compensation provisions for *ad hoc* administrators.

²²⁰ See *below* part V.B.

²²¹ CESEDA, Art. A751-1

not make a referral to the Prosecutor's office²²², or the Prosecutor's office does not appoint an *ad hoc* administrator, for example if the youth is considered to be an adult. Also, certain prefectures that deal with few cases of unaccompanied minors are unaccustomed to this specific procedure and do not submit the application file because there is no designated legal representative (whereas it is actually up to the prefecture to appoint this legal representative)²²³. However, should the child turn to the OFPRA without an *ad hoc* administrator and without having been provided with the application form, a hypothesis considered "*residual in principle, but in practice relatively frequent*"²²⁴, the OFPRA can itself refer to the Prosecutor's office and possibly provide the child with the form.

The child's *ad hoc* administrator can be present during the interview relative to the asylum application²²⁵. He is also authorised to ask questions or to make observations. In practice, however, the OFPRA notes that "*the ad hoc administrator's role and presence are relatively modest*"²²⁶. The *ad hoc* administrator then receives the notification of the decision, which is also provided to the minor himself. The latter can then appeal to the CNDA.

In practice, the *ad hoc* administrator has significant responsibilities, and no training in the law applicable to foreigners is required of the latter. It can therefore happen that the administrator will make errors that are damaging to the minor as a result of a lack of knowledge of asylum law, for example by not sending the appeal to the right body, or not respecting the allotted timeframes. Current case law nevertheless indicates that inaction on the part of the *ad hoc* administrator must not penalize the minor²²⁷.

In **Greece**, minors over the age of 14 can submit an asylum application on their own if they are seen to be mature enough by the policemen who are dealing with their application²²⁸. Youths under the age of 14 must submit their application through their legal representative. A referral must therefore be made to the prosecutor for this purpose: it is he who will provide the temporary legal representation and appoint a legal representative²²⁹. In practice, very few unaccompanied minors submit an asylum application, which is partly explained by the fact of setting an age limit of 14 years despite the fact that this violates the "procedure" directive which authorises an exemption only for youths over the age of 16 and, more generally, by the inefficiency of the legal representation system²³⁰.

²²² FRANCE TERRE D'ASILE, *Alternative report to the Committee on the rights of the child*, October 2008. In this regard, also see question 24.

²²³ *Ibid.*

²²⁴ INTERMINISTERIAL WORKING GROUP ON ISOLATED FOREIGN MINORS, *op. cit.* (note 29), appendix 7: OFPRA, p. 59.

²²⁵ The child can also ask for a trusted third party to be present, but the latter is not authorised to intervene.

²²⁶ INTERMINISTERIAL WORKING GROUP ON UNACCOMPANIED MINORS, *Project report, Conclusions and summary, op. cit.* (note 29), appendix 7: OFPRA, p. 60.

²²⁷ CNDA, at the time called COMMISSION DE RECOURS DES REFUGIES (CRR), 2 May 2005, Da Cruz Fernandes, n°509972, and CRR, 28 March 2006, Ozturk, n°526746.

²²⁸ Presidential decree 61/1999, O.G. n° 63 (A), 6 April 1999, art. 1, §4

²²⁹ Presidential decree 220/2007, O.G. n° 251 (A), 13 November 2007. See also the part on legal representation, *below* part V.B.

²³⁰ UNHCR, *Unaccompanied Minors Seeking Asylum in Greece*, April 2008, p. 7

In **Hungary**, a **temporary legal representative** is appointed to represent the child during the specific procedures linked to his asylum application. The temporary legal representative's appointment falls under the remit of the national authorities who are in contact with the unaccompanied minor: this can be the Immigration Office, a court or the police. In practice, this appointment takes place several days after the beginning of the asylum procedure. The designated adult must represent the minor's interests throughout all official procedures linked to the asylum application. He must attend the child's interviews with the authorities in charge of examining his application and then sign the minutes of the interviews.

The legal representatives appointed as part of an asylum application or when accessing the territory are lawyers at the bar. However, they are not asked to be knowledgeable in asylum law and the law applicable to foreigners, nor to have experience in this area. This lack of specialisation is not dealt with by the authorities, who propose no training nor any code of conduct. Specialised lawyers from the Hungarian Helsinki Committee are sometimes appointed to legally represent minors. However, in the absence of criteria imposed by the law, other lawyers provide this function with no specific knowledge in this area. This situation has led the Hungarian Helsinki Committee to wonder about the compatibility of the legal representative's work with the best interests of the child²³¹.

In **Italy**, the appointment of a guardian is mandatory in order for an asylum application to be examined. The border police office or the *questura* (central police station) that receives the application immediately suspends the procedure and transfers the application to the specific competent juvenile court in order for it to appoint a guardian²³². Appointed by the guardianship judge, this guardian will thereafter "confirm" the asylum application and once again activate the procedure with the competent *questura*. The minor must then be accompanied by the guardian throughout the procedure, and the latter must be perfectly attentive to the needs of the minor. In particular, the guardian must be on hand for the hearing with the Territorial Commission. He alone will then have sole competence to submit an appeal in case of a negative decision, though he must obtain the authorisation of the guardianship judge in order to initiate such a procedure²³³.

In **Romania**, the Romanian Office for immigration must, as quickly as possible, appoint a legal representative who will assist the minor during the asylum procedure²³⁴ and protect his interests²³⁵. The procedure is suspended until the representative is appointed²³⁶. Minors above the age of 14 years can nevertheless submit an asylum application by themselves²³⁷, which violates the exception set at 16 years of age by the "procedure" directive.

²³¹ IVAN J., "The protection of foreign isolated minors in Hungary", in FRANCE TERRE D'ASILE, *ProAsile, foreign isolated minor special edition*, n°20, November 2009, pp. 32-33.

²³² Civil Code, article 343s. Following this notification, the juvenile court also arranges for the reception of minors by a protection centre.

²³³ Art. 374, n°5, civil code

²³⁴ Law n° 122/2006 on asylum, article 16.2

²³⁵ *Ibid.*, article 39.1

²³⁶ *Ibid.*, article 52.4

²³⁷ *Ibid.*, article 39.2

The legal representative informs the minor of the purpose and consequences of the interview relative to the asylum application, he prepares him for and attends this interview²³⁸. He alone can submit an appeal, with the exception of minors above the age of 16 years who can submit an appeal on their own²³⁹.

In **Great Britain**, minors have access to a lawyer at no cost, in order to assist them with the legal aspects of their application. A ‘responsible adult’ must necessarily be present during their hearing by the authorities; this person does not, however, have any power to legally represent the minor. He can be chosen on the basis of very broad criteria, with the only constraint being that this person is not a member of the authorities in charge of asylum and immigration. According to the instructions of the United Kingdom Border Association (UKBA), a responsible adult can be “*the legal representative [lawyer], the social worker, a guardian or a relative, a member of the host family*”²⁴⁰ of the unaccompanied minor. However “*other persons (...) who have responsibilities for this child could also assume this role, for example a physician, a priest, a vicar, a professor, a member of an association or a representative of the Refugee Council*”²⁴¹. This list does not attempt to stipulate the profile of the adult who is required to be “responsible” for the child during the meeting with the integration official.

The only requirement put forward by the UKBA is that the “*child must be asked prior to the interview to confirm whether he/she is happy with the person acting as their Responsible Adult*”²⁴². It would seem that this verification takes place in practice, but the associations know of no child who has expressed dissatisfaction with regard to the “responsible adult” in attendance, nor of the consequences that could result from such a refusal²⁴³.

The responsible adult is in charge of observing the proper conduct of the interview but cannot speak in the child’s name, nor make decisions for him. His appointment ends with the close of the interview.

This situation parallels the general shortcomings of the legal representation system for unaccompanied minors in Great Britain, which will be studied later in this report²⁴⁴.

In **Sweden**, a temporary representative is appointed to represent the child throughout the asylum procedure. He is in charge of assisting during the various initiatives related to asylum, but also, more generally, to look after the child’s interests during this period. In practice, an unaccompanied minor is identified upon arriving at the Migrations Board in order to request asylum. The Migrations Board is then responsible for requesting the appointment of a temporary representative but, if the request is not submitted at this point, the Social affairs committee of the community accommodating the

²³⁸ *Ibid.*, articles 47.1 and 47.2

²³⁹ *Ibid.*, articles 56.2 and 66.2

²⁴⁰ UK BORDER AGENCY, *Guidance for special cases – Processing an asylum application from a child*, § 4.3. www.ukba.homeoffice.gov.uk consulted in May 2010 (last update January 2010).

²⁴¹ *Ibid*

²⁴² *Ibid*

²⁴³ Contact with the British Refugee Council, 25/06/2010.

²⁴⁴ See *below* part V.B.

youth can also submit this request. It is the person in charge of guardianships, employed by a community in order to supervise the work of legal representatives, who appoints the temporary representative. This same person can also look after the appointment of a legal representative for an unaccompanied minor accommodated within the community, should the community itself not submit this request²⁴⁵.

The question of the timeframe for appointing a temporary representative is one of the points of debate by the various people involved in childhood protection in Sweden. The Swedish law on the legal representation of unaccompanied minors indicates that this appointment should be made as quickly as possible, without indicating a precise limit. The United Nations Committee on the rights of the child had recommended, prior to this law, that Sweden should “*consider appointing a temporary guardian within 24 hours of arrival for each unaccompanied child*”²⁴⁶. Various people involved in the protection of childhood²⁴⁷ indicate that this recommendation has not been followed by concrete effects: the proposal was debated in Parliament, but no modification including this 24-hour timeframe was made to the text of the law. In practice, it seems that a temporary representative is appointed within 2 to 3 days of the child’s arrival.

The temporary representatives are chosen on a voluntary basis. There is no condition for becoming a temporary representative and, in principle, anyone can volunteer to take on this task. The social services perform a quick inquiry on each candidate, and the person’s police records and finances are examined. Various people would like to see selection criteria the set down for recruiting, and for assessments of their work to be carried out on the basis of national instructions (that are presently non-existent)²⁴⁸. In the absence of appointment conditions, it would indeed appear that the legal representatives do not necessarily have the required knowledge to advise and direct unaccompanied foreign minors as well as possible. These administrators are not tasked with specifically representing the population of unaccompanied minors, and they can be appointed for several children at once, whether Swedish or foreign. In his 2008 report to the Committee on the rights of the child, the Children’s ombudsman indicated that many temporary representatives “*lack basic knowledge on the needs of the children, the extent of their mission, on the asylum procedure and on the rights of the child*”²⁴⁹. Training is nevertheless available for the temporary representatives in order to give them the necessary elements to properly carry out their assignment, but they are optional. They are offered by various organisations and institutions such as the Göteborg municipal guardianship office, or associations such as Save the children or the Swedish Red Cross.

The overall appointment conditions are nevertheless probably still insufficient, since in its concluding observations of June 2009, the Committee on the rights of the child recommended to Sweden “*that efforts be strengthened to ensure the suitability and adequate qualifications of such guardians*”²⁵⁰.

With regard to the availability of temporary representatives, Swedish law contains measures in order to overcome any possible malfunction of the legal representation systems during the period in which

²⁴⁵ EUROPEAN MIGRATION NETWORK, *op.cit.* (note 6), p. 25.

²⁴⁶ COMMITTEE ON THE RIGHTS OF THE CHILD, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations - Sweden*, 38th session, 30 March 2005, CRC/C/15/Add.248, §40c.

²⁴⁷ CHILDREN’S OMBUDSMAN, *Comments concerning the Swedish Government’s fourth periodic report to the UN Committee on the rights of the child*, January 2009, p.5, SAVE THE CHILDREN SWEDEN, *Supplementary report from Save The Children Sweden, in response to the Swedish Government’s fourth periodic report to the UNCRC*, 8 June 2008, p. 24.

²⁴⁸ NIDOS, *op.cit.* (note 6), p.68.

²⁴⁹ CHILDREN’S OMBUDSMAN, *op. cit.* (note 247), p. 25.

²⁵⁰ COMMITTEE ON THE RIGHTS OF THE CHILD, *Op. cit.* (note 246))

a child can apply for asylum. Indeed, the aliens act indicates that the lawyer who is in charge of helping the minor with his asylum application (and who must be present during this stage) can act as the minor's legal representative if the youth does not have a temporary representative, or if the temporary representative delegates part of his powers to the said lawyer²⁵¹.

As such, the implementation of legal representation is assured in very different ways, depending on the countries. Despite the Community requirement in this regard, great diversity is seen regarding the role, competences and expertise of the representatives. More broadly, it is often the overall effectiveness of the legal representation system as part of the asylum application that is problematic.

Recommendation n°12 – ASYLUM / Legal representation

- ▶ For every asylum application submitted by an unaccompanied minor, immediately appoint a legal representative having the necessary legal competences in order to provide accompaniment, and whose work can be assessed by an independent national authority.

B. Processing of the application

The foreword of the “procedure” directive indicates for the States that “*specific procedural guarantees for unaccompanied minors should be laid down on account of their vulnerability*”²⁵². The second requirement of the ‘procedure’ directive relates to protection officials: they must have “knowledge of the special needs of minors” for the interview and for the ultimate decision²⁵³. The provisions relative to the age determination²⁵⁴, which have a certain influence on the processing of asylum applicants, will be studied below in the part of the report dedicated to this issue²⁵⁵.

During the application’s examination, the ‘qualification’ directive requires that “*child-specific forms of persecution*” must be taken into account²⁵⁶. This can include, for example, forced marriage, the recruiting of child soldiers or even the sexual mutilation of young girls.

In **Spain**, the law includes an urgent procedure for unaccompanied minors, that will ensure the application being processed within three months²⁵⁷, instead of the six months anticipated for adults. In practice, however, there is more of a delay with these applications than with other applications.

²⁵¹ Aliens Act 2005: 716, chapter 18 §3.

²⁵² Directive 2005/85/EC, *Op. cit.* (note 79), §(14)

²⁵³ *Ibid.*, art.17.4

²⁵⁴ *Ibid.*, art.17.5

²⁵⁵ See below part V.A.

²⁵⁶ Directive 2004/83/EC, *Op. cit.* (note 13), §(20)

²⁵⁷ Law 12/2009 of 30 October, regulating the right to asylum and subsidiary protection. Available at: http://noticias.juridicas.com/base_datos/Admin/l12-2009.html (10.05.2010)

One of the difficulties has to do with the status of asylum applicants in case of delayed processing of their request. Indeed, if the application's processing continues after the child comes of age, it is possible that the applicant may not have received a residency authorisation, since this question is considered as being tied to the asylum application. They therefore reach adulthood without having any resident status in Spain.

In **France**, the minor applicant must fill out the asylum application form while notably indicating the reasons for his application, and send it, signed by his legal representative, to the French bureau for the protection of refugees and stateless persons (OFPRA), within 21 days. In the case of minors, an interview in the presence of the legal representative is systematic. Within one month, an appeal can be submitted to the CNDA, which gives a second ruling on the application within the framework of a full appeal.

The OFPRA does not have officials specialising in the examination of the cases of unaccompanied minors, as the specialisation of the officials is established by geographical divisions. Under these conditions, the officials therefore do not always have the necessary competences to adapt their assessment and their readiness to listen to the specific case of minors. Even though the OFPRA claims that the decision-making is guided by the notion of "benefit of the doubt"²⁵⁸, many organisations looking after child protection worry about the lack of attention paid to the child's vulnerability and his potential difficulty in fulfilling the requirements of a procedure prepared for adults. The same concern can be found raised regarding the judges at the CNDA.

Finally, French case law regarding asylum has never recognised forms of persecution specific to minors.

It should also be noted that French law allows for foreigners placed in the waiting area²⁵⁹ to be admitted to the territory "with regard to asylum". This procedure, similar for both adults and children²⁶⁰, requires the persecution reasons to be briefly explained in order for the protection officials to decide if the request is not "clearly unfounded"²⁶¹. If this is the case, admission to the territory will make it possible to submit an asylum application under the previously described conditions. This exceptional procedure has been the subject of criticism, notably concerning the fact that a precise line of argument is generally required even though the applicants do not have sufficient time or material conditions to fulfil this requirement²⁶².

²⁵⁸ Interministerial working group on isolated foreign minors, *op. cit.* (note 29), appendix 7: OFPRA, p. 59.

²⁵⁹ On the waiting area, see *above* part II.

²⁶⁰ Nevertheless, children have access to a legal representative who is competent for all procedures relative to remaining in the waiting area (art. L 221-5 CESEDA). C See *below* part V.B. on legal representation

²⁶¹ CESEDA, art. L 221-1

²⁶² This point was recognised in a decision by the Paris Administrative Court of Appeal on 8 July 2010, that criticized the Minister of Immigration for having exceeded his competence by carrying out an examination that went beyond the 'obviously unfounded' character of the application (CAA Paris, 8 July 2010, n° 09PA05719)

In **Greece**, in the few cases in which an interview is carried out, it takes about 10 to 15 minutes during which the police ask very general questions, intended to make the applicant say that he has migrated for economic reasons.

On the whole, the failures of the Greek asylum system, denounced many times by international authorities²⁶³, have repercussions on the children. This therefore leads to an incredibly low number (40 in 2009) of applications relative to the number of minors on hand, and a virtual absence of the recognition of protection: Greek statistics do not distinguish adults from children, but the overall rate for the recognition of a protective status (refugee, subsidiary protection, humanitarian grounds) for 2008 was 1.3%, including only 0.17% recognised during the first instance²⁶⁴. In 2009, the overall rate for all ages was 1.1% during the first instance²⁶⁵. If this rate is related to the 40 applications submitted by minors, not one minor would have been awarded protection in 2009 during the first instance.

In **Hungary**, unaccompanied minors belong to the category of ‘vulnerable people requiring special treatment’, defined by the law on asylum²⁶⁶. By virtue of the provisions made for these people, asylum applications from minors should be dealt with as a priority. The law on asylum also anticipates that a sympathetic procedure is to be applied to an unaccompanied minor seeking asylum. This same law states in section 4-1 that “the best interests of the child shall be a primary consideration”. Finally, in section 60-2c, it requires that attention should be given to “acts committed in relation with the status as a child of the person concerned”, which suggests a sensitivity to the reasons for the specific persecution of children.

In practice, the asylum application for unaccompanied minors in Hungary can be described in three steps.

First, the application undergoes a preliminary examination in order to determine its admissibility. The preliminary examination must be carried out within 15 days. During this step, the authorities appoint a legal representative and possibly arrange for an expert opinion regarding the age determination. It is during this step that the Dublin II regulation can be applied to the applicant, if Hungary does not consider itself to be responsible for examining the application request²⁶⁷.

Thereafter, if the asylum application is considered admissible, the in-depth investigation of the application can begin. Its duration must not be longer than 60 days, but the unavailability of legal representatives can result in the timeframe imposed by law being exceeded. The file’s investigation notably includes an interview with the minor, his representative and the authorities in charge of

²⁶³ See for example UNHCR, *Information note on asylum in Greece*, 18 April 2008 - <http://www.unhcr.fr/4acf41fbf.html> (accessed on 26.08.2010)

²⁶⁴ Eurostat, “75000 asylum seekers granted protection status in the EU in 2008”, November 2009. http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-09-092/EN/KS-SF-09-092-EN.PDF (accessed on 10.08.2010)

²⁶⁵ Eurostat, ‘Around 260,000 applicants registered in 2009’, Press release, 4 May 2010. http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-04052010-BP/FR/3-04052010-BP-FR.PDF (accessed on 10.08.2010)

²⁶⁶ section 2k of the law LXXX of 2007 on asylum defines a ‘person requiring special treatment’ as “a vulnerable person, in particular a minor, an unaccompanied minor, an elderly or disabled person, a pregnant woman, a single parent raising a minor child and a person who has undergone torture, rape or any other serious form of psychological, physical or sexual violence, who has special needs because of his/her individual situation”.

²⁶⁷ See below part II.D.

asylum. An interpreter and a psychologist can also attend. The interview follows the same course for minors as for adults, with no special methods or precautions.

Finally, like an adult, the minor can be granted refugee status for the benefit of subsidiary protection. If he does not meet the criteria to obtain such protection, the authority in charge of examining the application may decide to grant status as a “person authorised to stay” for a maximum of one year. In case of a negative decision by the authority, an asylum applicant can appeal to the Budapest Metropolitan Court, but this purely judicial procedure does not include any new hearing of the minor. It is also quite long as a result of the significant number of files having to be processed. The Office of Immigration and Nationality can also be asked to re-examine an asylum application. In practice, it seems that unaccompanied minors seldom use the appeal and re-examination procedures.

In **Italy**, a precise legal framework has been adopted for processing asylum applications by unaccompanied minors, with the adoption of a directive followed by a circular in 2007²⁶⁸ and by two decrees intended to transpose European legislation: the “qualification” decree on minimum standards relative to the conditions that must be met by third country nationals or stateless persons in order to claim refugee status, or by persons who otherwise need international protection²⁶⁹ and the “procedure” decree relative to minimum standards on the procedure for granting and withdrawing refugee status in the Member States²⁷⁰.

Firstly, upon arriving in Italy, the minor must obtain all necessary information regarding his rights and the existing legal possibilities, in particular regarding the asylum application. A minor who has expressed a desire to apply for asylum must be immediately declared to the *questura* (central police station) which, in turn, informs the juvenile court and the guardianship judge in order for the legal representation and social protection measures to be undertaken. The latter then declare him to the Protection System for Asylum Applicants, which will undertake the steps needed for his admission to an appropriate centre²⁷¹. According to art.3 sub-paragraph 1 of the Directive, the social services of the community in which the minor has been placed will help him to submit the asylum application in collaboration with the United Nations High Commissioner for Refugees and with other institutions active in the field of protecting asylum applicants.

The minor is identified by means of photo and fingerprints, that are then entered in the Eurodac file in order to check if the Dublin II regulation may apply²⁷². A form is then filled out at the competent *questura* (central police station) after the minor’s opinion has been heard and taken into account, if he is of an age to present one²⁷³. The interview is carried out before the Territorial committees for international protection, located in 10 Italian cities²⁷⁴. Within two days of the asylum application

²⁶⁸ Directive of the Ministry of the Interior and the Ministry of Justice, signed on 7/12/2006 and registered by the Court of Auditors on 07/03/2007; Explanatory circular from the Department of Civil Liberties and Immigration (prot. 1157) 11/04/2007

²⁶⁹ D.Lgs. 251/2007

²⁷⁰ D.Lgs. n. 25/2008 amended by D. Lgs.159/2008

²⁷¹ See below part III.C. on the reception of asylum applicants

²⁷² On this topic, see below III.D.

²⁷³ D.P.R. 303/04, art. 2, sub-paragraph 5

²⁷⁴ The 10 committees are coordinated and directed by the National Asylum Commission that looks after, amongst other things, gathering data, updating and training members of the local committees. These territorial committees are chaired by a career prefecture civil servant,

being submitted, the *questore (police chief)* sends the application to the Territorial committee that then organises a hearing within 30 days. The “procedure” decree²⁷⁵ makes provisions for the minor to be interviewed by the Territorial committee as a priority. The minor applying for asylum is provided with a residence permit for an asylum application, which can be renewed until the procedure is final.

To ensure the minor’s peace of mind and tranquillity as needed for this step of the procedure, the hearing takes place in a sympathetic environment relative to the minor, with breaks whenever necessary. In all cases, when making its decision, the Territorial committee considers the minor’s age and maturity, family situation, specific forms of persecution with which minors may be faced in the country of origin, the possibility that the minor may be unaware of the situation in his country of origin and, above all, the fact that the minor may express his fears differently than would be the case with an adult. The law provides that the hearing will not take place should the Committee consider that it has acquired sufficient elements for a positive decision. Finally, it is possible that a minor may be recognised as a refugee without a hearing, in the event that the Committee has already made a favourable decision in his regard, on the basis of proof provided by documents, testimony, etc.

The Territorial committee can then decide to grant refugee status or subsidiary protection, or to refuse this request, but it can also recommend that the applicant should remain in the territory in the event that his repatriation would result in a risk to his safety. In this last case, the refusal measure initiates a legal provision that allows the applicant to obtain a residence permit for humanitarian reasons, valid for one year and renewable²⁷⁶.

In the event of a “clear-cut” refusal decision, the minor, if still a minor, can remain within the territory given that his status prevents any expulsion. He can submit an appeal but, for this purpose, he will require the approval of his guardian, who cannot act in this regard without the authorisation of the guardianship judge²⁷⁷.

In **Romania**, the asylum law adopted in 2006 states, in its initial articles, that all decisions taken in the application of this text and concerning minors must be made in the best interests of the child²⁷⁸. Applications involving minors are processed with “the highest priority”²⁷⁹ and an accelerated process cannot be used for their processing²⁸⁰. The asylum procedure at the border also does not apply to them and they must be admitted to the territory in order to apply for asylum²⁸¹.

An interview is carried out “in all cases whenever possible” and in view of the minor’s mental development²⁸². The minor’s maturity and intellectual development must be taken into account

and are made up of a police official, a representative of the local institutions, of the community or of the province, and a representative of the UNHCR who has decision-making power or more simply consultative powers.

²⁷⁵ D.Lgs. n. 25/2008 amended by D. Lgs.159/2008

²⁷⁶ Art. 19 sub-paragraph 1 and art. 5 sub-paragraph 6 of the T.U

²⁷⁷ Art. 374, n°5, Civil Code

²⁷⁸ Law n° 122/2006 on asylum, article 8

²⁷⁹ *Ibid.*, article 16.1

²⁸⁰ *Ibid.*, article 75.2

²⁸¹ *Ibid.*, article 84

²⁸² *Ibid.*, article 47.3

when the interview is carried out²⁸³ and when the decision is made²⁸⁴. Despite these provisions, the Committee on the rights of the child expressed its concern, in its concluding observations relative to Romania in 2009, “*that (...) persons with responsibilities for unaccompanied children, including those processing asylum applications, have not been equally exposed to the same training*”²⁸⁵. It is therefore recommended that the State of Romania should “*expand the training throughout the country on child-friendly interview techniques to all decision makers involved in the refugees status determination*”²⁸⁶.

Except for these provisions specific to minors, the procedure is the same as for adult asylum applicants. The decision is taken by the authorities within 30 days, which can be extended for another 30 days in the event of an additional need for documentation. An interpreter can be made available.

At the end of this procedure, minors can be granted refugee status or “temporary humanitarian protection”. An appeal to an independent jurisdiction can be submitted in the 10 days that follow the notification of the decision. Once again, the application will be processed within 30 days. Finally, a second and final appeal is possible within 5 days of the notification of the appeal decision.

In **Great Britain**, the asylum procedure for unaccompanied minors has a few specific features when compared with the applicable procedure for adults. The cases of children are examined by immigration officials specially trained on issues relating to children. The examination of the basis of the application does not only rely on, as for adults, an interview with a responsible official, but also on a written application form.

The UK Border Agency (UKBA) has set up guidelines on the procedure for examining asylum applications submitted by minors, notably in order to comply with the requirements of section 55 of the 2009 immigration law that introduces the obligation for the UKBA to “*safeguard and promote the welfare of children who are in United Kingdom*”²⁸⁷. The UKBA instructions indicate that “*account should be taken of the applicant’s maturity and in assessing the application of a child, more weight should be given to objective indications of risk than to the child’s state of mind and understanding of their situation. An asylum application made on behalf of a child should not be refused solely because the child is too young to understand his situation or to have formed a well-founded fear of persecution. Close attention should be given to the welfare of the child at all times*”²⁸⁸. Moreover, in view of their vulnerability, asylum applications from unaccompanied minors must be examined as a priority. Over and above these principles, the instructions recall the concrete provisions that must be applied to children requesting asylum.

²⁸³ *Ibid.*, article 47.4

²⁸⁴ *Ibid.*, article 50.2

²⁸⁵ United Nations Committee on the rights of the child, Concluding observations: Romania, *Op. Mit.* (note 179), §80

²⁸⁶ *Ibid.*, §81

²⁸⁷ *Borders, citizen and immigration Act*, 2009, §55. This section introduces into the law the demands of article 22 of the Convention on the Rights of the child, following the clearing of the United Kingdom’s reservation in November 2008

²⁸⁸ UK BORDER AGENCY, *Guidance for special cases – Processing an asylum application from a child*, § 2 www.ukba.homeoffice.gov.uk consulted in May 2010 (last update January 2010).

Throughout the procedure, unaccompanied minors recognised as such are considered to be children, as are young people whose age is subject to dispute but for which the case has not yet been resolved (*age-disputed cases*).

In concrete terms, minors are subject to an asylum application procedure that consists of several steps that are similar for adults.

As soon as an individual is identified as an asylum applicant, a preliminary interview is held with a UKBA official, in the port, airport or territorial office in question. At the end of this interview, the young asylum applicant must be provided with an asylum application attestation and, if he is considered to be a minor, an asylum application form that is to be filled out within 20 days. If he is over the age of 12 years, an initial meeting will be arranged with the immigration official in charge of his case. It is also at the end of this preliminary interview that the applicant, if a minor, is transferred to the social services of the community considered to be competent for taking him into care. At the same time, the authorities must declare any unaccompanied minor to the Children's Panel: this service, attached to the NGO Refugee Council, strives to help the minor to obtain access to a legal adviser.

The first appointment with the immigration official in charge of the young asylum applicant's case normally occurs within ten days of the preliminary interview. During this first meeting, the responsible official must make contact with the child, explain the asylum procedure to him and ensure that he has a lawyer.

Every asylum applicant of 12 years of age or more must be heard during an asylum application interview²⁸⁹. It is during this interview, which is a supplement to the written form, that the basis of the request must be examined. For an unaccompanied minor, two adults take part in this interview: his lawyer, for questions of a legal nature, and a "responsible adult" (whose presence is mandatory), who does not legally represent the child, but who must see to the respect for his well-being during the interview. Finally, if necessary, an interpreter can be present. The immigration official responsible for the child's file must have been trained in carrying out interviews with minors. The interview to examine the asylum application is mandatory; if the applicant does not attend, the application will be rejected due to non-compliance with the procedure.

According to the UKBA, the decision of the authorities regarding the asylum application must be made within 35 days²⁹⁰. It must be indicated to the applicant, his lawyer and to the community that is accommodating the child. Several outcomes are possible. International protection may be provided through the recognition of refugee status or, failing that, through the application of subsidiary protection. If this international protection is refused, the applicant can still be provided with a temporary residence authorisation (*discretionary leave*). Finally, the asylum application can be rejected either on the merits (*outright refusal*) or because the applicant has not complied with the procedure (*non-compliance refusal*).

²⁸⁹ For an asylum applicant under 12 years of age, the authorities decide on his asylum application merely on the basis of his written application and without the need for an interview.

²⁹⁰ CHILDREN'S LEGAL CENTRE, *Seeking support, A guide to the rights and entitlements of separated refugee and asylum seeking children*, third edition 2009, p. 9.

The applicant has 10 days in which to appeal the decision to the Asylum and immigration court. Some minors are not authorised to appeal: This includes ones that have filed an asylum application in another European Union Member State (and that fall within the framework of the Dublin II regulation) and ones who have been provided with a temporary residence authorisation for a period of less than 12 months.

While the asylum procedure theoretically takes into account the specific situation of unaccompanied minors, many institutional, university and association observers emphasize the insufficiency of the practical measures intended to implement an appropriate procedure for minors, and the many difficulties faced by youths during their application. During a quality audit on the asylum-related decisions performed by the United Nations High Commissioner for Refugees in the United Kingdom, concerns were raised regarding the lack of preparation for the interviews, the lack of consideration of the applicant's age and maturity during the interviews, inappropriate judgments concerning the credibility of the application, and the lack of consideration of the reasons for persecution specific to children²⁹¹. NGOs and researchers also deplore the many failings of the precautionary measures that should be applied to children²⁹². For example, the preliminary interview is generally carried out without the presence of a lawyer or responsible adult, whereas the content of this interview frequently seems to be used in order to question the bases for the child's asylum application, with the reasoning being that his initial declarations are contradictory with the facts mentioned in the asylum application form or during the interview to examine the application.

Also, the low rate of recognition for refugee status for unaccompanied minors (less significant than that of adults) is considered by some observers to be the consequence of a "culture of suspicion"²⁹³ that applies to these young applicants. Moreover, regarding the frequent delivery of temporary residence authorisations that only protect the child for a limited period and at the latest until the age of 17½ years, one NGO considers that this is a "substitute" for a true decision that would take into account the child's international protection needs²⁹⁴.

In **Sweden**, the Aliens Act, amended in 2005, lists principles that are favourable to children while indicating that their best interests must be respected, and that the children must be heard during procedures involving them²⁹⁵.

The law indicates that any procedure involving a child must be handled as a priority. The objective is that the application should be processed within three months, whereas the procedural timeframe is theoretically six months. In practice, this timeframe was still more than three months in 2008, and as long as 174 days²⁹⁶. The third provision specific to minors is that the application must be investigated by an official from the Migrations Board who has been specially sensitized to deal with this audience and with its needs.

²⁹¹ UNHCR's Quality Assurance programme auditing the UK's asylum decision making (2008), quoted in SEPARATED CHILDREN IN EUROPE PROGRAMME, Newsletter n°32, November 2009.

²⁹² BHABHA J., FINCH N., *Seeking asylum alone, Unaccompanied and separated children and refugee protection in the United Kingdom*, November 2006; REFUGEE AND MIGRANT JUSTICE, *Does every child matter? Children seeking asylum in Britain*, March 2009.

²⁹³ REFUGEE AND MIGRANT JUSTICE, *Op. Rit* (note 292), p.9

²⁹⁴ REFUGEE AND MIGRANT JUSTICE, *Does every child matter? Ap.cit* (note 292), p. 18.

²⁹⁵ Aliens act, Chapter 1, sections 10 and 11.

²⁹⁶ EUROPEAN MIGRATION NETWORK, *op.cit* (note 6), p. 28. However, reducing the application processing time for all asylum applicants is one of the priorities of the Migrations Board, which already claimed progress in this area in April 2010.

The asylum application of an accompanied minor is part of a multi-step procedure. Firstly, the Migrations Board organises an initial interview with the applicant, in the presence of an interpreter, which is intended to determine the asylum applicant's identity and to verify that Sweden is actually responsible for examining his request. During the interview, the applicant must briefly present the reasons prompting him to seek asylum. He is asked to give his full name; he can also be asked about any relatives in Sweden, his ethnic or religious affiliation, and his state of health. In the event of an apparently unaccompanied minor, the interview is also intended to find out the names of his parents, to determine if some of the child's relatives reside in Sweden, and to determine whether he travelled alone or accompanied by a third party.

In the *strict sense*, the asylum procedure begins, for an unaccompanied minor, as soon as a temporary representative has been appointed to represent him. If it has been established that an in-depth examination of the asylum application is needed, the Migrations Board assigns a lawyer for the minor, in order to legally assist with his application. An asylum application file is prepared during the first meeting between the lawyer and the applicant, in the presence of an interpreter. The file must be sent to the Migrations Board within three weeks.

The next step is calling the applicant into the Migrations Board for an in-depth examination interview. An unaccompanied minor's case is normally given priority treatment. He is called in with his lawyer, who is required to be present, and his temporary representative who is invited to accompany him. Depending on the child's age and maturity, the interview may involve one or more sessions. It is intended to establish his identity, to gather information on his family in the home country or elsewhere, or on other adult relatives, to hear the story of the circumstances behind the minor's separation from his parents, and the details of his life before and after this separation; it also gathers elements on the minor's state of health; it is intended to clarify the minor's need for protection through asylum; it also includes the story of his travel to Sweden, as well as an examination of the minor's current social situation, his emotional and psychological state, and his projects for the future²⁹⁷.

The diversity of the elements examined during the interview shows that the latter is intended to serve as a more in-depth investigation, but it also reveals that the examination of an unaccompanied minor's application focuses equally on the fears of persecution presented by the minor and on his social situation. This process can prove to be favourable to the minor but also to give way to ambiguities. If the minor's family is found, the implementation of the family reunification measure can take precedence over the assessment of the child's need for protection. As such, one association reports a decision in which an isolated minor originally from Burundi had her asylum application rejected by the Migrations Board and then by the appeal bodies, for the reason that "*it is presumed that X may get satisfactory care by reunification with a relative or at least by an organisation or institution in Burundi*"; the young girl did not know if her parents were still alive²⁹⁸. The consideration of the child's family situation can therefore be detrimental to the examination of the reasons behind the asylum application.

The officials in charge of examining asylum applications from minors and of carrying out these interviews must theoretically have expertise in the specific features of applications by children. To

²⁹⁷ EUROPEAN MIGRATION NETWORK, *op.cit.*(note 6), p. 22.

²⁹⁸ SEPARATED CHILDREN IN EUROPE PROGRAMME, *Newsletter n°31*, May 2009, p. 34.

this end, the Migrations Board offers them two training courses on carrying out interviews and on the needs of minors. An interview guide has been prepared for these officials, based primarily on open-ended questions to ask the child.

At the end of the investigation of the asylum application, the Migrations Board's decision can result in recognition of protection in three forms: refugee status, that of a person requiring protection (which corresponds with subsidiary protection, even though this notion has not been formally transposed into Swedish law²⁹⁹), or that of a person who is in "particularly distressing circumstances", corresponding with humanitarian protection. Inversely, the application's rejection can leave a decision to refuse entry or to a measure for removal from the territory.

If an applicant decides to appeal, the Migrations Board is so informed and begins by re-examining its decision in order to possibly modify it; if the decision is maintained, it defends its position before the competent Migrations court during an adversarial procedure. The Court can cancel or maintain the Migrations Board's decision. If the decision is maintained, the applicant can appeal to a second jurisdiction: the Migrations appeal court. To appeal to this court, however, authorisation must be obtained from the Stockholm Court of administrative appeal³⁰⁰. Only cases considered as "important" and that may result in case law are selected.

In its concluding observations on Sweden in 2005, the Committee on the rights of the child recommended "(...) *conduct refugee status determination procedures for children in a child-sensitive manner, in particular by giving priority to applications of children and by considering child-specific forms of persecution (...)*"³⁰¹.

The 2005 aliens act introduced the notion of the best interests of the child and another measure favourable to minors by stipulating that, in order to be granted protection on the basis of particularly distressing circumstances, a child was not required to provide reasons with the same degree of severity and weight as the ones required for an adult. In 2007, the Save the Children association carried out a study in order to assess the impact of this new law on the handling of asylum applications involving children. The concluding report, entitled *Nytt system gamla brister?*³⁰², emphasized the deficiencies in terms of how the authorities consider the protection needs of the child. It indicated that the reasons for which the child was seeking asylum were only fully examined in less than half of the cases. It also directed attention to the fact that information on the country of origin, and notably on the status of the rights of the child in that country, was very seldom used even though it could have contributed to a more precise assessment of the minor's needs.

Several institutional and association members insist on the need to better take into account the particular needs of minors in terms of protection. An alternative report to the Committee on the rights of the child, published in 2008, considers that "*it is necessary with a specific provision in the legislation (the Aliens Act) concerning child specific forms of persecution in order to assure that children's own asylum claims are considered properly. We believe that the different types of child specific forms of persecution must be clarified, e.g. the risk of being victim of forced labour, child*

²⁹⁹ FRANCE TERRE D'ASILE, *La protection subsidiaire en Europe: une mosaïque de droits*, Les cahiers du social n°18, September 2008, p. 41.

³⁰⁰ GINBOT ABRAHA, *A handbook for asylum seekers in Sweden*, National thematic network Asylum and integration series n°5, 2007, p. 17.

³⁰¹ COMMITTEE ON THE RIGHTS OF THE CHILD, *Op. cit.* (note 246), §40 e.

³⁰² SAVE THE CHILDREN SWEDEN, *Nytt system gamla brister? Barns egna asylskäl efter ett år med den nya instans – och processordningen*, (New system old flaws? Children's own reasons for asylum after one year with the new court and process order), 2008.

*marriage, trafficking, female genital mutilation or recruited as a child soldier*³⁰³. The Children's ombudsman also indicates the need to *"considerably improve the competences of the Migration Board and the Migration courts relative to the rights of children"*³⁰⁴. Though the situation has evolved little since 2005, the Committee makes no further reference to this matter in its concluding observations for 2009.

As such, the study on the processing of asylum applications in the eight target countries brings to light a very disparate transposition of Community requirements in this regard. In any event, the studied laws and practices never take into account all of the specific needs of unaccompanied minors.

Recommendation n°13 – ASYLUM / Information

- ▶ Individually inform each unaccompanied minor, in a language he understands, about the procedure and implications of the asylum application, upon arrival at the border or upon being found within the territory.

Recommendation n°14 – ASYLUM / Access to the application

- ▶ Guarantee unconditional access to the asylum application process for all unaccompanied minors, while doing away with all steps linked to the admissibility of the application and enacting, in their favour, exemptions to all special procedures that are less favourable than ordinary law.

Recommendation n°15 – ASYLUM / Personal interview

- ▶ Guarantee that no decision to reject the application can be made without an interview by specially trained protection officials.

Recommendation n°16 – ASYLUM / Specific persecution

- ▶ Recognise child-specific forms of persecution during the processing of the application.

³⁰³ UNICEF SWEDEN, *Comments on the Swedish Government's fourth report to the UN Committee on the rights of the child*, 2008, p.3.

³⁰⁴ CHILDREN'S OMBUDSMAN, *op.cit.*(note 247), p. 14.

C. Reception of unaccompanied asylum-seeking minors

The “reception” directive requires the States to place asylum-seeking minors “*with adult relatives, with a foster-family, in accommodation centres with special provisions for minors, [or] in other accommodations suitable for minors*”³⁰⁵.

In **Italy**, unaccompanied asylum-seeking minors are integrated into the protection system for asylum-seekers (SPRAR) and are therefore subject to a separate reception from other unaccompanied minors³⁰⁶. Taken into care within the ordinary framework for the reception of asylum-seekers, they are therefore accommodated in centres that also accommodate adults, while nevertheless receiving specific care. However, the SPRAR centres are not sufficient to handle the number of reception requests by asylum-seeking minors who are consequently received in other centres for unaccompanied minors, where the available services are not always adequate.

Until 9 March 2007, the entry into force date of the Ministry of the Interior directive passed in agreement with the Justice Ministry on 7 December 2006, there were only 31 foreign assignment-seeking minors accommodated by the SPDAR. At the end of 2007, the number of minors had climbed to 197, prior to doubling in 2008 with 409 minors. Once entrusted to the social services of the community in the territory in which they are located, minors are accommodated in emergency reception centres for the period of time considered necessary for them to join a project promoted by the SPRAR. It is often the local authorities who point out their presence to the central service so that it will then be possible to have them join reception and protection projects that are specifically intended for them. These centres include specially trained personnel, such as psychologists or linguistic and cultural mediators, who are indispensable in order to make it easier to move beyond the difficulties and violence that have been suffered.

In **Romania**, the reception of asylum-seekers over the age of 16 years is possible in adult reception shelters where the reception conditions have been adapted to receive minors (separate rooms from the adults etc.). The authorities must also take into account the specific needs of minors when allocating public benefits to asylum-seekers³⁰⁷.

In **Greece**, a few places are reserved for asylum-seekers, but their numbers are clearly insufficient³⁰⁸. No places are available for girls in the reception centres for asylum-seeking minors, the latter are always directed to the ordinary protection structures.

³⁰⁵ Directive 2003/9/EC, *Op. Cit* (note 13) art. 19.2

³⁰⁶ On the ordinary social protection system for isolated foreign minors, see *below* part VI.

³⁰⁷ NEWSLETTER, ISSUE n. 33, Spring 2010 ROMANIA, pg. 19.

³⁰⁸ Human Rights Watch, *Greece: create open centres for migrant children*, 23 August 2009. <http://www.hrw.org/en/news/2009/08/23/greece-create-open-centers-migrant-children>

In the other countries, the reception is identical for all unaccompanied minors taken into care³⁰⁹ and only a few exceptional arrangements have been brought to light. For example, **France** finances a Centre d'accueil et d'orientation des mineurs non accompagnés demandeurs d'asile (CAOMIDA), a unique structure managed by the organisation France terre d'asile that provides young people with specific assistance (most particularly in terms of legal and psychological aspects), but that can only accommodate 33 children across the entire country.

The issue of accommodating and looking after asylum-seeking minors is therefore grouped in with the broader issue of accommodating unaccompanied minors. All aspects related to this issue will therefore be analysed in greater detail in the part devoted to social protection³¹⁰.

Recommendation n°17 – ASYLUM / Reception

- ▶ Provide reception for unaccompanied asylum-seeking minors that will serve to provide specific psychological and legal support on the basis of a personal identification of their needs, notably by setting up specialised centres intended to look after these children.

D. Implementation of the Dublin II regulation

The so-called “Dublin II regulation”³¹¹ has established criteria for determining which European State is responsible for each application, and can be summarized as follows: the first State entered by the applicant is required to process the asylum application. The implementation of this regulation implies a common identification of applicants across Europe, in the Eurodac file³¹², and procedures for transferring asylum-seekers between the States.

The Eurodac regulation prohibits the fingerprinting of minor asylum-seekers under the age of 14 years³¹³, which consequently means that the Dublin II regulation can only be applied to minors above the age of 14 years. For the latter, the only exception available to the Dublin II regulation involves the case in which a family member is legally residing in another Member State: in this situation, it is this other State that is considered to be responsible and not the one in which the minor submitted his initial application, provided that this is in the best interests of the minor³¹⁴.

However, the regulation permits the States to apply more protective provisions for minors and to process their applications, thus avoiding their transfer to another country. Indeed, a general provision allows that “*each Member State may examine an application for asylum lodged with it by a*

³⁰⁹ In practice, countries such as Sweden or Great Britain that systematically direct minors towards asylum applications therefore only receive asylum-seeking minors, but under the same conditions as national minors.

³¹⁰ See *below* part VI.A.

³¹¹ Council Regulation (EC) n° 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national

³¹² Council Regulation (EC) n° 2725/2000 of 11 December 2000 concerning the establishment of “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention

³¹³ *Ibid.*, Art. 4.1 “Each Member State shall promptly take the fingerprints of all fingers of every applicant for asylum of at least 14 years of age”

³¹⁴ Regulation (EC) n° 343/2003 *Op. Cit.* (note 311), Art. 6; Art 15.3.

*third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation”*³¹⁵.

The Dublin II regulation therefore offers the States various options with regard to its implementation. Of the studied countries, only **France** does not apply the Dublin II regulation to minors at all³¹⁶, while the others strictly apply the regulation to minors as well as adults.

In these countries, we nevertheless note cases of transfers of minors that have been disputed, though this has not resulted in lasting changes to the practices or laws.

As such, in February 2009, the transfer of an Afghan youth from **Hungary** to Greece was cancelled by the Office of Immigration and Nationality after intervention by the UNHCR and the NGO Hungarian Helsinki Committee (HHC). In another case, the Budapest Metropolitan Court established Hungary’s responsibility for examining an Afghan youth’s asylum application, on the basis of a risk that article 3 of the European Convention on Human rights could be violated in the event of a transfer³¹⁷. Finally, in February 2010, the European Court of Human Rights, appealed to by the HHC in the case of a seriously ill Afghan youth scheduled to be transferred to Greece, asked the Hungarian authorities to delay this transfer by one month. Hungary finally decided to examine this asylum application according to the normal procedure³¹⁸.

In **Great Britain**, the administrative court considered, in the case of a transfer of a minor to Greece, that the United Kingdom “should not return asylum-seekers to this country, as a result of the lack of access to a fair asylum determination process”³¹⁹. The Ministry for the Interior appealed this decision and won the case before the Court of Appeal, which concluded that asylum applicants returned to Greece could have their application reviewed in that country³²⁰. An authorisation to appeal to the House of Lords was granted; the outcome of this third decision is not yet known.

In 2010, the High Court expressed strong criticism regarding a young girl’s transfer to Italy within the framework of the Dublin II regulation. The judge ordered the young girl’s return to the United Kingdom, as she had already been transferred to Italy; she is now once again in the care of the British social services. The judge also determined that, henceforth, children had to be given 72 hours of advance notice before their transfer or removal³²¹.

Sweden suspended the transfer of minors to Greece in May 2008, after a call from the United Nations High Commissioner for Refugees for Member States to discontinue transfers to that State, a call that was taken up by the national associations, but primarily after a study visit to Greece by the Migrations Board. In 2010, it was the transfer of unaccompanied minors to Malta that resulted in

³¹⁵ *Ibid.*, Art 3.2

³¹⁶ This is the result of an informal practice, recognised by the Minister of Immigration, who declared in a press statement in 2010 that “when not so required by Community legislation, France will refrain from delivering, to other Member States of the Union, asylum-seeking minors that had submitted their application therein before arriving in France”. MINISTRY FOR IMMIGRATION, INTEGRATION, NATIONAL IDENTITY AND COOPERATIVE DEVELOPMENT, “Visit to a reception centre for unaccompanied minors detained in Calais: Eric Besson hails the success of the established system”, 01.10.2009.

³¹⁷ IVAN J., “The protection of isolated foreign minors in Hungary”, *Op.cit* (note 231).

³¹⁸ HUNGARIAN HELSINKI COMMITTEE, “The European court of human rights suspends return of seriously ill minor asylum seeker from Hungary to Greece under the Dublin regulation”, press release, Budapest, 3 March 2010.

³¹⁹ *Nasseri v Secretary of State for the Home Department* [2007], EWHC 1548 (Admin).

³²⁰ *R (on the application of Nasseri) v Secretary of State for the Home Department* [2008] EWCA Civ 464.

³²¹ SEPARATED CHILDREN IN EUROPE PROGRAMME, *Newsletter n°33*, April 2010.

significant public debate, involving political parties, researchers, non-governmental organisations and the media. Several parties claim that the basic human rights of children are flouted in Malta; they denounce the absence of a legal representative and wonder about the compliance with the best interests of the child under such conditions³²². A project for the Migrations Board to visit Malta in order to observe the reception conditions of unaccompanied minors was reported by the press in June 2010³²³.

Finally, the issue of age determination³²⁴ is of particular importance in view of the application of the Dublin II regulation. Indeed, many cases are reported in which minors are considered as adults in one State and as minors in another, depending on the consideration given to the youth's statements or the usage of various age determination methods. They are then transferred as adults and handled as such in the country responsible for the application, or vice versa³²⁵. This question is of particular importance since its consequence can be to render the transfer possible or not in general (as is the case in France) or in certain countries (transfer to Greece for Sweden, for example³²⁶).

³²² UNHCR, *Baltic and Nordic Headlines*, *op.cit.*, quoting reports by Sveriges Radio, 08 and 09/06/2010.

³²³ UNHCR, *Baltic and Nordic Headlines*, *op.cit.*, quoting an article from the Dagens Nyheter of 16/06/2010.

³²⁴ See below part V.A.

³²⁵ CIR, Dublin Project, final report "DUBLINERS - Recherche et échange d'expérience et de pratique en matière de mise en œuvre du Règlement de Dublin II établissant les critères et le mécanisme permettant de déterminer l'Etat membre responsable de l'examen de la demande d'asile formulée dans un des Etats membres par un citoyen d'un pays tiers", 2010, p.51.

³²⁶ As such, in 2008, the NGO Save the Children alerted the authorities on the risk of sending youths to Greece, given that, on the basis of documents or age assessments produced in other European countries, they were being incorrectly identified as adults. Letter from Lars Carlsson to the Migrations Board, 30 May 2008, quoted in SAVE THE CHILDREN SWEDEN, *Undocumented children – All I want is to land!*, report from the project *utanpapper.nu* a helpline for undocumented children, 2008, p. 88.

Table 7 – Overview of the application of the Dublin II regulation for unaccompanied minors

	Dublin II application	Dublin II transfers in 2009	Comments
Spain	YES		
France	NO	0	Fingerprints of minors over 14 years of age are taken, but in practice no transfer decision is made relative to minors.
Greece	YES		Greece is above all a country of first application, to which applicants are transferred pursuant to the Dublin regulation.
Hungary	YES		According to official statistics from the Office of Nationality and Immigration, 63 Dublin transfers were carried out in 2008 (all ages taken together). We note several disputes regarding the transfer of minors to Greece.
Italy	YES		The Italian authorities always consider the minor's statements regarding his age as well as in an application to return to his family.
Romania	YES		A Constitutional Court decision on 25 November 2008 provides supplementary guarantees that can be applied to minors as part of the application of the Dublin II regulation.
Great Britain	YES	36 ³²⁷	Between 2004 and 2009, 334 Dublin II transfers were carried out involving unaccompanied minors ³²⁸ . The transfer of unaccompanied minors to Greece has been judged valid by the British appeal courts.
Sweden	YES	53 ³²⁹	Transfers of minors to Greece have been suspended since 2008. Transfers of minors to Malta are now in question.

Recommendation n°18 – ASYLUM / Dublin II Regulation

- ▶ Eliminate the application of the Dublin II regulation for all unaccompanied minors, with the exception of transfers aimed at reuniting families.

³²⁷ Quoted in "Anger as hundreds of children deported alone under EU rules", Children and Young people Now, 22 June 2010, www.cypnow.co.uk

³²⁸ *Ibid.*

³²⁹ Contact with the Migrations Board, 23.06.2010. These returns principally involved young Somalis (17 cases, or 32%), Afghans (11 cases, 21%) and Iraqis (10 cases, 19%). It should be noted that 52 of them were registered as "voluntary" returns.

IV. Trafficking and exploitation

Given their vulnerability, unaccompanied minors are particularly subject to offences involving trafficking and exploitation³³⁰. This can include forced labour, servitude or slavery, or even sexual exploitation. The consideration of this problem first of all requires an identification of the victims, followed by protection by means of specific measures.

A. The identification of unaccompanied minors who are the victims of trafficking

In most of the studied countries, the problem of the trafficking of minors is very extensively underestimated. Despite the set-up of police services or specialised location measures, the procedures initiated in order to identify both the perpetrators and the child victims of these offences are rare.

In **Spain**, cooperation has been set up between the Ministry of the Interior and the foundation Ayuda a Niños y Adolescentes en Riesgo (ANAR), for prevention and intervention relative to high risk situations involving minors³³¹. Cooperation agreements have also been initiated between certain autonomous communities and regional NGOs³³². The 2004 directive relative to the residence permit provided to third-country nationals who have been the victim of trafficking has not yet been transposed by Spain³³³, but the national legal framework includes many provisions that provide for the investigation of the perpetrators and the protection of the minor victims³³⁴. However, only 27 people were convicted for trafficking in minors between 2000 and 2007³³⁵, which demonstrates the absence of practical consideration of this phenomenon.

In **France**, three services can intervene as part of the fight against the trafficking of human beings, and identify the unaccompanied minors who are its victims. These are the Office central pour la répression de la traite des êtres humains (OCRETH), the Office central pour la répression de l'immigration irrégulière et de l'emploi des étrangers sans titre (OCRIEST), and the Brigade de protection des mineurs (BPM). While it can happen that these services will encounter

³³⁰ On the definition of trafficking and exploitation, see the Palermo Protocol, 15 November 2000, art. 3.a

³³¹ European Union Agency for Fundamental Rights (FRA), *Child Trafficking in the European Union - Challenges, perspectives and good practices*, Country reports, Spain, July 2009, p. 4
<http://fra.europa.eu/fraWebsite/attachments/Child-trafficking-09-country-es.pdf> (accessed on 17.08.2010)

³³² *Ibid.*

³³³ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, adopted on 29 April 2004 and applicable to all European Union Member States

³³⁴ European Union Agency for Fundamental Rights, "Child Trafficking in the European Union (...)", *op. cit.* (note 331), p. 6

³³⁵ *Ibid.* p. 7

unaccompanied minors during their duties, none of them has been specifically tasked with this issue, nor considers these youths as a separate population.

The appraisal of these three services with regard to unaccompanied minors was presented during the meetings of an interministerial working group on the situation of unaccompanied minors in 2009³³⁶. All three concur that there are no specific channels exploiting foreign minors, and put the number of victims amongst this population into perspective, estimating that foreign minors represent only a very slight part of the victims of trafficking. As such, the OCRETH puts forward the figure of 8 unaccompanied minors out of 822 identified victims in 2008³³⁷.

However, associations as well as institutions working in the field have very different findings. Many of them express alarm at the extent of such exploitation phenomena of which the victim's are foreign minors within the country, and suspect the existence of organised networks. As such, they report many cases of prostitution, involving both young girls and young boys, exploitation involving work or exploitation involving illegal activities. These differences and even contradictions in the presented appraisals bring to light the insufficiency and inadequacy of the systems for identifying unaccompanied minors who are the victims of trafficking.

The identification of minors who are victims of trafficking is also a problem at the border, when kept in the waiting area prior to entry into the territory³³⁸. No procedure for the identification or protection of trafficking victims has been implemented by the air and border police. As such, the minors involved can be sent back or, while being held in the waiting area, be visited by members of networks seeking to intimidate them. The lack of coordination between the actors, their lack of training in this regard and the absence of identification procedures set up by the authorities therefore constitute genuine hindrances to identifying foreign minor victims of trafficking before they enter the territory. In its concluding observations for France in June 2009, the Committee on the rights of the child highlighted the trafficking-related risks faced by minors placed in the waiting area³³⁹. The Commission nationale consultative des droits de l'homme, in an opinion dated 18 December 2009, indicated the same concerns³⁴⁰.

In **Greece**, the legal framework consists of several texts that refer to the trafficking of human beings, but the national legislation includes no follow-up mechanism to provide an understanding of the phenomenon of the trafficking of minors³⁴¹.

The related procedures on forced return and detention³⁴² are equally sources of concern with regard to child victims of trafficking but who are not recognised as such.

³³⁶ In particular during the meeting on 28/08/2009 of the interministerial working group on isolated foreign minors. Cf. INTERMINISTERIAL WORKING GROUP ON ISOLATED FOREIGN MINORS, *op. cit.* (note 29)

³³⁷ *Ibid.*

³³⁸ On the question of access to the territory in France, see above) part II.A.

³³⁹ COMMITTEE ON THE RIGHTS OF THE CHILD, *Op. cit.* (note 59), §86.

³⁴⁰ COMMISSION NATIONALE CONSULTATIVE DES DROITS DE L'HOMME, *Avis sur la traite et l'exploitation des êtres humains en France*, 18 December 2009, §69 and §88, pp. 21 and 27.

³⁴¹ European Union Agency for Fundamental Rights, "Child Trafficking in the European Union - Challenges, perspectives and good practices", Country reports, Greece, July 2009, p. 3 - <http://fra.europa.eu/fraWebsite/attachments/Child-trafficking-09-country-gr.pdf> (accessed on 17.08.2010)

³⁴² On retours carried out by Greece, see *above* part II.C.4.

In **Hungary**, a database used to identify victims of trafficking has been set-up, as has a free telephone hotline service that victims can contact at any time. The identification of victims of trafficking can also be made by the police, officials of the immigration services or foreign diplomatic services. This identification system is common to all victims, while no specific programme exists in order to identify unaccompanied minors who could be exploited. According to the American Department of State, these measures are in reality insufficient for the identification of persons involved in trafficking³⁴³.

No quantified data on the number of children identified as victims of trafficking in Hungary is available³⁴⁴. This makes it even more difficult to estimate the number of unaccompanied minors that could be involved.

In **Italy**, the assistance for victims of trafficking is coordinated by an interministerial commission (*Segretaria tecnica Commissione Interministeriale per il sostegno alle vittime di tratta, violenza e grave sfruttamento*). From 2001 to 2007, 938 minors were recognised as being victims of trafficking. Amongst these minors, most were girls (69.1%) between 16 and 17 years of age (51.1%), and primarily coming from Nigeria (26.6%), Romania (19.1%), Morocco (16%) and Croatia (14.3%). Amongst the types of exploitation for which minors have been recognised as victims of trafficking, we find sexual exploitation in 61.8% of cases, exploitation through work and micro-criminality both at 8.8%, and begging in 5.9% of the cases³⁴⁵.

Some of the investigations involving the trafficking of human beings are carried out by the anti-mafia service, which defines the offences in this domain. The number of unaccompanied minors recognised as victims of trafficking and that results from the trials included amongst the investigations by this service is 328 minors between September 2003 and December 2008³⁴⁶. However, this only represents the visible part of the phenomenon³⁴⁷.

In **Romania**, a legislative framework was adopted back in 2001, in order to prevent and punish the trafficking of human beings, and children in particular³⁴⁸, in agreement with the above national

³⁴³ US DEPARTMENT OF STATE, *Trafficking in persons report 2009*, p. 153.

³⁴⁴ Contact with the Hungarian office of the Terre des Hommes foundation, a NGO involved in the field of children's aid, 31 March 2010.

³⁴⁵ ANCI, *Isolated Foreign Minors*, Third Report, 2009, p.118-119.

³⁴⁶ By analysing the data in greater detail, it appears that between September 2003 and 31 December 2005, on the basis of the trials included amongst the investigations by the National Anti-mafia Service, there were 81 (including 17 certified in 2003, 36 in 2004 and 28 in 2005) minor victims of trafficking (art. 600, 601, 602, 416, sub-paragraph 6 of the Criminal Code). In 2008, there were 10 minor victims of trafficking. To complete this review, we quote from the data provided by the Ministry of the Interior during the recent hearing of the Parliamentary Commission on childhood, on 25 February 2009: minor victims of offences relating to the trafficking of human beings, after the reduction of slavery and of exploitation through prostitution, amounted to 155 in 2007 and 82 in 2008.

³⁴⁷ European Commission, *Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings*, Working document, 17 October 2008. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0657:EN:NOT> (accessed on 10.12.2010)

³⁴⁸ Law n° 678/2001 on the prevention and fight against the trafficking of human beings

standards on this subject. Several amendments have been made since then³⁴⁹. These legislative provisions have been accompanied by prevention campaigns. The government adopted a national strategy against the trafficking of persons for the 2006-2010 period, which stipulates that particular attention must be paid to children as a result of their particular vulnerability. We also note the set-up of targeted training by NGOs as well as by organisations such as the IOM or the ILO as of 2005. The National authority for the protection of children's rights (NAPCR) has also set up a national training strategy on the rights of children, including the trafficking of minors. Finally, the national judiciary institute trains judges with regard to this issue.

However, the absence of separate statistical data regarding the trafficking of children does not allow for an assessment of the efficiency of the fight against this phenomenon in Romania.

In **Great Britain**, the identification of minor victims of trafficking can theoretically occur either upon their arrival within British territory, or they can be identified by immigration authority officials, or by the social services in their community of residence, or during police or immigration checks, or even during the asylum application procedure.

Immigration agents have precise instructions from the United Kingdom Border Agency (UKBA) in order to identify children who are potentially victims of trafficking³⁵⁰. These instructions notably include a list of hints that could suggest that a child is a victim of trafficking. While relying on these indications, officials are required to point out any suspicions to the competent authorities - normally to the *United Kingdom Human trafficking centre* (UKHTC), a coordination organisation managed by the police authorities and that takes in various agencies involved in the fight against trafficking³⁵¹.

Social workers can also access a certain number of tools that will help them to identify cases of trafficking. The NSPCC organisation has a telephone hotline service intended to help professionals faced with issues of trafficking. The British office of the ECPAT organisation offers many training programmes and publications in this regard.

In April 2009, a national tool dedicated to identifying and listing victims of trafficking was set up, namely the *National Referral Mechanism* (NRM). The initial statistical data published by the NRM indicate that between April and December 2009, 143 minor victims of trafficking were identified, i.e. 27% of all identified victims³⁵². However, this tool is the subject of criticism that disputes- amongst other things - its relevance for unaccompanied minors³⁵³.

³⁴⁹ Romania / OUG 143/2002(24.10.2002); Romania / Lege 39/2003 *privind prevenirea si combaterea criminalitatii organizate* [Law on preventing and combating organised crime] (21.01.2003); Romania / OUG 79/2005 (14.07.2005); Romania / Lege 287/2005.

³⁵⁰ UK BORDER AGENCY, *Asylum process guidance, Special cases – Victims of trafficking*, www.ukba.homeoffice.gov.uk, consulted in May 2010.

³⁵¹ However, this organisation lacks a unit that specialises in the trafficking of children, and the protection measures that it had been assigned to develop in their regard have still not taken concrete shape.

³⁵² UNITED KINGDOM HUMAN TRAFFICKING CENTRE, *National referral mechanism statistical data, April to December 2009*, 2010. Minor victims of trafficking are not necessarily unaccompanied minors. However, the latter have been recognised as a particularly vulnerable group relative to the trafficking phenomenon.

³⁵³ BEDDOE C., "A long way to go: the trafficking of children into the UK and the new European Convention to protect them", *Seen and Heard*, Vol. 19, Issue 3, September 2009, quoted in CHILDREN'S LEGAL CENTRE, *op.cit.*, p. 23.; See also SEPARATED CHILDREN IN EUROPE PROGRAMME, *Newsletter n°32*, November 2009. According to the British Refugee Council, the conclusion of the *National Referral Mechanism* on the child's case (i.e. for deciding whether or not he is a victim of trafficking) influences the outcome of his asylum

According to ECPAT UK, the identification of victims is still very insufficient relative to the extent of the problem. It even mentions a “failure” of the authorities in this regard³⁵⁴. The identification difficulties are inherent to the issue of trafficking (silence or inconsistency of the stories of victims), but are also linked to the lack of training of the professionals.

In **Sweden**, a national action plan against the trafficking of human beings was adopted in 2008. Despite substantial legislation in the area of the fight against trafficking, the identification of victims remains very difficult. In particular, the identification of the child victims of trafficking, and consequently of unaccompanied minors, still seems to be insufficiently developed³⁵⁵.

With regard to unaccompanied minors, no specific system exists for assessing a potential trafficking situation. The main actor in the detection of trafficking cases is, in this case, the Migrations Board that is in contact with the child as part of the latter’s application for a residence card. If the Migrations Board official in charge of the child’s case suspects a case of trafficking, he must so inform the social services of the municipality responsible for providing care, which will then undertake the necessary provisions. In practice, this cooperation between the immigration services and the municipalities is operational, according to the Migrations Board³⁵⁶. According to one NGO, the coordination between the various actors (Migrations Board, municipalities, but also police authorities) does indeed exist, but still needs strengthening³⁵⁷.

No statistics exist with regard to the number of child victims of trafficking in Sweden. No specific data pertain to unaccompanied minors. The rare indicated figures suggest an insufficiency of the identification mechanisms. In 2006 and 2007, the Swedish Justice Ministry experimented with a system to identify victims of trafficking (*referral system*). Only a few cases of children (three in 2006-2007) were identified thanks to this mechanism; its impact has therefore been very limited³⁵⁸.

In its 2008 alternative report to the Committee on the rights of the child, Unicef Sweden emphasized the need to improve the measures for identifying child victims of trafficking³⁵⁹. It also called for better cooperation between the police, the social services and the Migrations Board, but also for a specific provision on child victims of trafficking to be included in the Criminal Code so that the latter can be recognised as “victims” without the necessity to prove the “control” exercised over them by an adult.

application. However, in the eyes of the NGO, the *National Referral Mechanism* decision is not documented with sufficient solidity to serve as a support for a decision on the child’s international protection needs. Contact with the British Refugee Council, 25/06/2010.

³⁵⁴ ECPAT UK, *Connect to protect, Newsletter*, winter 2009.

³⁵⁵ EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA), ECPAT SWEDEN, *Thematic study on child trafficking, Sweden national report*, 2009, p. 4.

³⁵⁶ *Ibid.* p. 29.

³⁵⁷ *Ibid.* p. 7.

³⁵⁸ *Ibid.*, p. 23.

³⁵⁹ UNICEF SWEDEN, *op. cit.*(note 303), p. 3.

Recommendation n°19 – TRAFFICKING / Identification of victims

- ▶ Set up specific measures and means for identifying unaccompanied minors who are victims of trafficking.

B. The protection of unaccompanied minors who are the victims of trafficking

Once identified, unaccompanied minors who are victims of trafficking are generally taken into care or directed towards classical structures for looking after unaccompanied minors, without taking their particular victim status into account³⁶⁰. However, two of the studied countries (Italy, Romania) have applied specific measures for looking after these victims.

Concerning the administrative situation of victims of trafficking, a 2004 European directive defines the conditions for granting residence permits for a limited period to third-country nationals who cooperate in the fight against the trafficking of human beings³⁶¹. This text, destined to protect adults, can exceptionally be applied to minors³⁶², but this possibility is rarely exploited in the studied countries.

1. Taking into care under ordinary law (Spain, France, Greece, Great Britain, Hungary, Sweden)

In **Spain**, child victims of trafficking receive the same protection as other unaccompanied minors placed under the care of institutions, with no specific system for looking after them. The overall procedure is similar³⁶³. This is also the case in **Greece**, where no legislation or practice provides for special protection. In this country, however, children taken into care after a decision by the prosecutor can be granted a humanitarian residence card on the basis of their cooperation with the police services within the framework of trafficking. Despite the set-up of cooperation between the authorities, the IOM and several NGOs, as well as the preparation of training programmes intended for the police or judges³⁶⁴, the practical impact of Greek legislation is extremely limited since only 3 residence permits of this type were delivered between 2001 and 2007³⁶⁵, while one can also deplore the absence of statistics on the number of procedures involving unaccompanied minors who are victims of trafficking.

³⁶⁰ On the social protection provided for all isolated foreign minors in the 8 countries, see part VI.A.

³⁶¹ Directive 2004/81/EC, *Op. cit.* (note 333)

³⁶² *Ibid.*, art. 3.3

³⁶³ European Union agency for fundamental rights (FRA), “*Child Trafficking in the EU - Challenges, perspectives and good practices*” (2009). Available at: <http://fra.europa.eu/fraWebsite/attachments/Child-trafficking-09-country-es.pdf> (10.05.2010)

³⁶⁴ United States Department of State, *Trafficking in Persons Report 2009 - Greece*, 16 June 2009 - <http://www.unhcr.org/refworld/docid/4a4214b832.html> (accessed on 17.08.2010)

³⁶⁵ European Union Agency for Fundamental Rights, “*Child Trafficking in the European Union (...)*”, *Op. cit.* (note 331), Country reports, Greece, p. 7

In **France**, specific systems exist for adults, but minors have no access to them. The law on the protection of children stipulates that *“if the child’s interests so require or in case of danger, the judge decides on the anonymity of the reception location”*³⁶⁶, but this provision intended to protect children from their parents is not used in practice for children who are victims of traffickers. In the ordinary centres in which unaccompanied minors who are victims of trafficking are placed, many runaways are recorded. As such, an OCRETH official acknowledges *“there are unfortunately very many runaways [from the reception centres], because of the threats directed at these minors”*³⁶⁷.

In **Great Britain**, this ordinary system for taking children into care is very insufficient in the eyes of associations. It does not protect minors from the traffickers who are exploiting them. Research carried out by the ECPAT organisation has shown that previously exploited children were particularly likely to “disappear” from the care centres operated by local authorities; the figure of 55% disappearances amongst these victims has been suggested³⁶⁸. Moreover, it seems that certain children, while still residing in the care centres, continue to be exploited: the example of four young girls accommodated by a municipality and still forced to prostitute themselves by day has notably been quoted by the media³⁶⁹. The NGO calls for all child victims of trafficking to be placed with a foster family, the option that it considers to be safest for these youths³⁷⁰. The possibility of creating specific and safe centres for child victims of trafficking does not seem to be on the agenda in Great Britain. In January 2010, the minister responsible for children within the immigration system stated that she was working with the local authorities to find the best possible protection solutions, while feeling that the confinement of young victims in “secure accommodations” would send a “negative signal” to the children³⁷¹.

In **Hungary**, the only centre specifically set aside to receive trafficking victims is reserved for adults. The only specific initiative that can be identified for the purposes of minors was implemented in 2009 in the Bicske reception centre, which was specially set aside in order to accommodate unaccompanied minors³⁷². This involved a preventive action in order to inform minors of the risks of exploitation if they decided to continue their migration to other European countries, but also to sensitize the centre’s personnel relative to the risks related to trafficking. One of the managers of the organisation looking after the reception centre confirms that the public with whom he works “is

³⁶⁶ Civil Code, art. 375.7 al. 6

³⁶⁷ INTERMINISTERIAL WORKING GROUP ON ISOLATED FOREIGN MINORS, *op. cit.* (note 29). It should also be added that while exploitation is a factor in running away, it can also become a consequence of it. Cf. TERRE DES HOMMES, *Disparitions, départs volontaires, fugues, Des enfants de trop en Europe?*, January 2010, p.43.

³⁶⁸ ECPAT UK, *Safeguarding children: top ten questions on child trafficking*, August 2009, p. 16.

³⁶⁹ « Asylum-seeking children are going missing from care », *BBC*, 21 January 2010.

³⁷⁰ ECPAT UK, *Safeguarding children, op.cit.*(note 368), p. 16.

³⁷¹ « Asylum-seeking children are going missing from care », *BBC*, 21 January 2010.

³⁷² On the care of minors in this centre in Hungary, see part IV.A.

maybe one of the most vulnerable with regard to trafficking". According to an observer, the number of "disappearances" of children from the centre dropped by half after this effort³⁷³.

In **Sweden**, no centre specifically dedicated to protecting child victims of trafficking has been identified³⁷⁴. According to Swedish law and in compliance with the relevant Community directive³⁷⁵, victims of trafficking can be provided with a 6-month residency permit, if, after a 30-day cooling off period, they accept to cooperate with the police authorities. Nevertheless, according to the Migrations Board, up to 2009, no child had been provided with an authorisation to stay solely on the basis of having been a victim of trafficking³⁷⁶.

2. Specific care provisions (Italy, Romania)

In **Italy**, a renewable 6-month residence permit is granted to all foreigners, irrespective of their age, who are presumed victims of exploitation or violence and who are in danger due to their desire to escape the trafficker and their cooperation with the police and the justice system³⁷⁷. Children are covered by this provision independently of their cooperation with the police. Upon coming of age, they can be provided with a permanent residence permit in Italy³⁷⁸. We nevertheless note a limited usage of this instrument, either because it is still exclusively reserved for situations of sexual exploitation, or because it is the subject of restrictive interpretation by many prefectures that, despite the clarity of the law and the explanatory circulars from the Ministry of the Interior, continue to want the victim to file a complaint against the exploiters. A care programme instituted by a law in 2003³⁷⁹ indicates that trafficking victims can be provided with social support and protection in locations that will be kept secret. An IOM programme targeting the voluntary return and re-integration of trafficking victims within their country of origin also applies to minors³⁸⁰. Child victims of trafficking can also be directed, just like other unaccompanied minors, to the social services of towns.

³⁷³ Contact with the Hungarian office of the Terre des Hommes foundation, 31 March 2010. Contact with a manager from the Hungarian Interchurch Aid organisation in May 2010 nevertheless indicated that the impact of the implemented preventive action had been very significant, but only for a limited time.

³⁷⁴ EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA), ECPAT SWEDEN, *op.cit.*(note 355), p. 40.

³⁷⁵ Directive 2004/81/EC *Op. cit.* (note 333)

³⁷⁶ EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA), ECPAT SWEDEN, *op.cit.*(note 355), p. 38. This does not prevent unaccompanied minors who have been victims of trafficking from otherwise requesting asylum and from obtaining international protection if they meet the relevant criteria.

³⁷⁷ Legislative decree n° 286/98 of 26 July 1998, art. 18

³⁷⁸ European Union Agency for Fundamental Rights, "Child Trafficking in the European Union - Challenges, perspectives and good practices", Country reports, Italy, July 2009, p. 6 - <http://fra.europa.eu/fraWebsite/attachments/Child-trafficking-09-country-it.pdf> (accessed on 18.08.2010)

³⁷⁹ Law n° 228/2003, art. 13

³⁸⁰ European Union Agency for Fundamental Rights, "Child Trafficking in the European Union", *Op. cit.* (note 378), p. 7 - <http://fra.europa.eu/fraWebsite/attachments/Child-trafficking-09-country-it.pdf> (accessed on 18.08.2010)

In **Romania**, a child victim of trafficking who submits an asylum application can reside in one of the centres specialising in the reception of child victims of trafficking, under the same conditions as a Romanian national³⁸¹. If the minor is over 16 years of age, he can ask to be taken into the care of a centre managed by the Romanian migrations office.

A minor who does not submit an asylum application or whose application has been rejected can be provided with a residence card if he cooperates with the authorities³⁸². If the parents cannot be identified or if the minor is not accepted in his country of origin, he can be provided with a residence permit without being required to cooperate with the authorities, and he can have access to the same protection as Romanian minors who are deprived of their family environment³⁸³.

Recommendation n°20 – TRAFFICKING / Protection of victims

- ▶ Anticipate specific measures to ensure the unconditional care of unaccompanied minors who are victims of trafficking, adapted to their needs and that ensure their protection.

³⁸¹ Art. 17 (4) Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (04.05.2006). Detailed at par. [51] 2. above.

³⁸² Art. 130 Romania/*Ordonanta de Urgenta privind regimul strainilor* [Government Emergency Ordinance 194/2002 on the status of aliens in Romania] (05.06.2008).

³⁸³ FRA, Thematic Study on Child Trafficking Romania 2009, pg. 26.

V. The recognition of minority and the need for legal representation

Many unaccompanied minors arrive in Europe without identity documents or with false documents. It also happens that the papers in their possession are not taken into consideration by the authorities even if they are authentic. Every country has therefore made provision for methods to determine the age of these youths and, more broadly, to re-establish their civil status. Once their minority has been recognised, the issue of legal representation arises: for minors lacking legal capacity, a representative must be appointed for them.

A. Age determination

Minors whose civil status is non-existent or disputed can be required to undergo procedures aimed at determining their age. This issue is important because the recognition of minority will condition the whole of the care afforded to them and will determine the applicable legal framework. Some minors needing protection can become foreigners without status. They will therefore not have access to any guarantees provided under the various laws and will often be threatened with a forced removal measure. Moreover, the questioning of their age can result in the undermining of the legitimacy of all of their other statements regarding their relations, their name and even their nationality.

Table 8 – Overview of the age determination methods for unaccompanied minors

	Age determination method	Comments
Spain	Medical expertise, with bone examination based on the Greulich and Pyle method.	The personnel performing the examination has no knowledge of its consequences. The margin of error is indicated in the report but is not necessarily taken into account in the young person's favour.
France	Medical expertise, with bone examination based on the Greulich and Pyle method.	Very variable practices according to the place where the young person is taken into care. Method criticised by many national and international authorities due to its inaccuracy, but still used.
Greece	The national law does not define any official method; however it allows for the possibility of a medical examination.	There is generally no examination, but youths whose appearance makes them look like they are under 16 years of age are considered children, while the others are declared to be adults by the police despite their statements.
Hungary	Medical expertise based on a bone examination and a paediatric examination.	While the medical procedure is rarely carried out due to its inaccuracy and cost, the statements of young people are often taken into account in order to grant protection.
Italy	Medical expertise, with bone examination based on the Greulich and Pyle method.	Examination generally carried out by not always qualified medical personnel, with no basis on any other consideration. The margin of error is practically never indicated.
Romania	Medical expertise.	The written agreement of the child and his representative is compulsory, but the young person is considered to be an adult in case of refusal. The margin of error is not taken into consideration.
Great Britain	Assessment based on the youth's situation and his story, following criteria determined in a judgement from 2003 (Merton). A medical examination can be carried out, but it only constitutes an information element within the overall assessment. The assessment is prepared by the social worker in charge of the child.	The benefit of the doubt is given, but the authorities can consider that a young person is an adult without having him undergo any age determination procedure. Thereafter, the determination procedure is based entirely on the opinion of the social workers, which can create conflicts of interest. The age assessment can be disputed before the courts.
Sweden	Assessment by the Migrations Board, based on an interview that can be completed by a medical examination.	Benefit of the doubt given to the youth in case of a medical examination. Decision made by a Migrations Board official with no possibility of appeal, which can create a conflict of interest.

Most of the countries determine the age by primarily relying on a medical expertise (Spain, France, Italy, Romania), while others have established procedures that also consider the youth's story and situation (Great Britain, Sweden). Finally, certain countries do not in practice rely on a medical examination, despite being allowed by the law, whether this is beneficial (Hungary) or detrimental (Greece) to the youth.

1. Age determination primarily based on a medical assessment: Spain, France, Italy, Romania

In the countries that primarily base the age determination on a medical examination, the so-called Greulich and Pyle method is used. A brief presentation of this method is therefore in order.

Age determination according to the Greulich & Pyle atlas

William Walter Greulich and Sarah Idell Pyle are two American scientists who have prepared a reference atlas consisting of x-rays of the left hand and wrist of several boys and girls in various age brackets³⁸⁴. This reference atlas was prepared between 1931 and 1942, using American children of Caucasian origin³⁸⁵. The so-called "Greulich & Pyle method" therefore involves comparing the x-rays of the hands or wrists of children with this atlas in order to assess their age.

It is clear that a comparison of the bone development of a North American child from the 1930s and that of a youth of today who is of African or Asian origin would appear to have little relevance³⁸⁶. Independently of geographical origin, it is also accepted that this method provides for a good approximation of a child before the age of 16 years, but it provides for no clear distinction for minors above the age of 16 years³⁸⁷.

In **Spain**, minors whose ages are disputed are taken to public hospitals where an x-ray of their wrist is taken. The results, based on the Greulich & Pyle method, are provided by medical personnel who have no knowledge of the usage that will be made of them and of their potential impact. Though the Prosecutor's office has been advised to consider the lowest value of the age bracket indicated by the medical service, in practice, the maximum age is often used.

In **France**, an expert age determination is ordered by the Prosecutor's office in case of doubts regarding a minor's age. The prosecutor's office can also be contacted at any time, upon arrival at the borders or as the child is being taken into care.

A wrist x-ray is generally taken and is interpreted according to the Greulich and Pyle method. It is sometimes completed by a clinical examination, during which a physician records the child's measurements, pubertal maturity and dental development. According to article L371-1 of the Civil Code, the minor's consent is essential for this assessment. In practice, however, it is rarely requested.

³⁸⁴ GREULICH W.W., PYLE S.I., *Radiographic atlas of skeletal development of the hand and wrist*, Stanford University Press, 1959.

³⁸⁵ RODRIGUEZ Caroline, *Validation externe des modèles estimatifs de l'âge utilisant les 3^{ème} molaires*, Université Henri Poincaré Nancy 1, Thesis, 2009, p. 19. http://www.scd.uhp-nancy.fr/docnum/SCDPHA_TD_2009_RODRIGUEZ_CAROLINE.pdf (accessed on 15.09.2010)

³⁸⁶ See for example CHAUMOITRE, LAMTALI, BAALI, DUTOIR, BOETSCH, GAREL, PANUEL, "Estimation de l'âge osseux par l'atlas de Greulich et Pyle: comparaison de 3 échantillons contemporains d'origine géographique différente", *Journal de Radiologie*, Volume 88, Issue 10, October 2007, Page 1376; LEWIS, LAVY, HARRISON, "Delay in skeletal maturity in Malawian children", *The journal of bones & joint surgery* p. 732 - <http://web.jbjs.org.uk/cgi/reprint/84-B/5/732.pdf> (accessed on 19.08.2010)

³⁸⁷ See for example ACADEMIE NATIONALE DE MEDECINE, "La fiabilité des examens médicaux visant à déterminer l'âge à des fins judiciaires et la possibilité d'amélioration en la matière pour les mineurs étrangers isolés", *Bulletin de l'Académie Nationale de Médecine*, 2007, n°1, 139-142. France.

The problem of the minor's consent is complex, however, since in the event that the child's health is at stake, it falls under the prerogatives of parental authority.

In practice, the Prosecutor's office bases its decision on the results of this examination, without considering the civil status documents that are in doubt, or the child's statements. People involved in child protection most particularly deplore the fact that this assessment is performed for minors who have a document that proves their identity, despite texts that recognise the value of foreign civil status documents³⁸⁸.

The recourse to this age determination method is extremely heterogeneous, depending on the *départements* and the courts. Some systematically request a medical examination, others have almost abandoned this practice, and finally others make "reasoned" usage of it. Similarly, the medical practices are not standardised, and no national ethical protocol defines rules for the conduct and interpretation of the examinations.

On several occasions, national institutions had denounced the recourse to the medical age determination method, most notably in view of the inaccuracies of the Greulich and Pyle method³⁸⁹. The usage of the bone examination in France is also a reason for concerns pointed out by the Committee on the rights of the child in its 2009 Concluding observations³⁹⁰.

In **Italy**, the situation is very similar to what is seen in France. Given that approximately 75% of minors have no identification papers³⁹¹, the age determination is based solely on the bone examination, with the Greulich and Pyle method as reference. At the border or within the territory, the authorities accompany the young person to the closest hospital centre in order to have the medical examination carried out. A 2007 circular from the Ministry of the Interior³⁹² indicated that the young person must be presumed to be under age, which implies taking into account, in the youth's favour, the margin of error of approximately 2 years inherent to the Greulich and Pyle method. This text also stipulates that the young person must be taken into care as a minor while waiting for the results of the medical examination. Italian law further stipulates that refusal to submit to this medical examination does not constitute a reason preventing the acceptance of the asylum application or the adoption of the decision.³⁹³

In practice, the minor is often left alone during this age determination procedure, without the benefit of an interpreter or of any other person who could stand up for his personal interests. The age verification is performed by generally unqualified medical personnel who has no knowledge of the minor's cultural environment and situation. Organisations working in this sector find that the verification is often based only on the medical examination, that the margin of error is practically never indicated, that no copy of the certificate is generally provided to the minor and that the youth is not treated as a minor while awaiting the results. Also, the minor is not informed of his possible

³⁸⁸ Civil Code, article 47

³⁸⁹ CONSEIL CONSULTATIF NATIONAL D'ETHIQUE, *Avis n°88, Sur les méthodes de détermination de l'âge à des fins juridiques*, 23 June 2005. ACADEMIE NATIONALE DE MEDECINE, *Op. cit.* (note 387)

³⁹⁰ COMMITTEE ON THE RIGHTS OF THE CHILD, *Op. cit.* (note 59)

³⁹¹ Data relating to the first half of 2010, provided by the Committee in June 2010, *op. cit.* (note 26)

³⁹² Prot. Circular 17272/7 of 9 July 2007

³⁹³ Art. 19 point 2 of decree n° 25

avenues for recourse in order to dispute the examination results. People involved in this field also observe that certain *questure (central police stations), considering that a perfunctory verification by means of an x-ray is not very respectful of the minor's rights, are content with a visit to a generalist physician in order to determine the youth's age*³⁹⁴. Adolescents, particularly after 17 years of age, do not undergo this verification and are generally considered to be adults.

Italian law contains no provision that controls this age determination process for foreign minors, which is only anticipated within the framework of a criminal procedure³⁹⁵.

In **Romania**, the age determination process is mentioned in the law on asylum³⁹⁶. In case of doubt regarding a minor's age, the Romanian immigration office can request a medical / legal examination for the purposes of age determination. The written approval of the minor and his legal representative is required for this examination, but the youth will be considered as an adult in case of refusal. In 2009, the Committee on the rights of the child expressed concern in its concluding observations regarding Romania, relative to the fact that *"the authority responsible for age assessment of unaccompanied children operates without consideration to possible margins of error"*³⁹⁷. The Committee therefore recommended that the Romanian authorities should *"apply the benefit of doubt concerning age assessment"*³⁹⁸.

2. Age determination that considers the youth's story and situation: Great Britain, Sweden

In **Great Britain**, the policy of the authorities regarding age determination is that a youth whose identity is disputed should be given the benefit of the doubt, except if *"physical appearance / demeanour (...) strongly suggests that they are (...) over 18 years of age"*³⁹⁹. In this case, the youth becomes an *age-disputed case*, meaning that his minority is disputed. He enters into a process intended to determine his age. Youths whose ages are disputed constitute a very significant share of the migrants who declare themselves as minors to the authorities. In 2009, of 3990 young asylum applicants claiming to be minors, 1000 were suspected to be adults and became *"age-disputed cases"*, i.e. a 25% proportion.

However, with regard to a youth claiming to be a minor, the authorities can directly consider that the youth is an adult if *"their physical appearance and/or demeanour very strongly suggests that they are significantly over 18 years of age"*⁴⁰⁰. The initial age estimation is therefore left to the sole assessment of the UKBA officials during their first meeting with the youth, whether at the border or

³⁹⁴ CIR, UNIVERSO RIFUGIATI: from persecution to protection. Isolated foreign minors requesting asylum, 2008, p. 16 et seq.

³⁹⁵ D.P.R. 488/88, article 41

³⁹⁶ Law n° 122/2006 on asylum, article 8

³⁹⁷ United Nations Committee on the rights of the child, Concluding observations: Romania, *op. cit.* (note 179), §80

³⁹⁸ *Ibid.*

³⁹⁹ UK BORDER AGENCY, *Asylum process guidance – Special cases: Assessing age*, www.ukba.homeoffice.gov.uk, consulted in May 2010. These directives also indicate under what conditions a foreign civil status document can be considered as proving a youth's age.

⁴⁰⁰ *Ibid.*

in a centre dedicated to asylum applications within the territory. According to certain reports published by researchers or associations, immigration officials have a tendency to strongly rely on the youth's physical appearance when assessing his minority⁴⁰¹. While certain adults do in fact have a tendency to claim that they are younger than they really are, it would seem that a large part of the persons initially considered to be adults finally prove to be children⁴⁰².

In the event that the minority is disputed, the young person must be referred to a local authority in order for a complete age assessment to be carried out⁴⁰³. The assessment is performed by a social worker from the local authority. The results of this assessment are generally viewed as authoritative by the Home Office, except in case of non-compliance with minimum instructions, for example if documents indicating that the youth is an adult are not taken into account. It can happen that a youth declared to be an adult by one local authority will turn to a second municipality in order to request a new age assessment; the latter can carry out the assessment but must in theory consider the conclusions of the first local authority.

The authorities have no statistical data on the results of the age assessments. However, the experience of people working in the field allows for estimates. Over a three-month period, of the 396 youths monitored by a NGO and whose minority was disputed, 42% were recognised as minors after the age assessment, and 32% were still awaiting a result at the end of the period in consideration⁴⁰⁴.

A judgment involving the community of Merton served to establish, in 2003, criteria in order for an age assessment to be considered as reliable⁴⁰⁵. A decision is therefore "compliant with the Merton criteria" when it is made by the social services on the basis of their own assessment and not that of the Border agency; it cannot be determined solely on the basis of the youth's physical appearance, but must be based on a complete assessment that includes an individual interview and that considers the applicant's experiences and past (family history, schooling, recent activities). The assessment must be carried out by experienced social workers, under conditions that guarantee a fair decision; in the event that the minority is rejected, their decision must be justified.

In practice, local authorities use different methods. In addition to an individual interview, some rely on the documents provided by the youth, and others have recourse to a medical examination (a dental x-ray interpreted by a specialist or a clinical examination). In the past, medical examinations were used in order to dispute the assessments of social workers. But a judgment in May 2009⁴⁰⁶ determined that these examinations could not have more weight than an estimate by an experienced social worker. They solely constitute an information element that must be taken into account in the overall age assessment.

While recognising that they constitute a true advance, a study on the application of the Merton criteria indicated that this fact "*has encouraged some local authorities to focus disproportionately on*

⁴⁰¹ CRAWLEY H., LESTER T., *No place for a child, Children in Immigration Detention in the UK – Impacts, Alternatives and Safeguards*, Save The Children, 2005.

⁴⁰² *Ibid.*. The author quotes an inquiry at the Oakington detention centre, in which 60% of the youths whose age was disputed were finally proven to be children.

⁴⁰³ In practice, it seems that some young people are not directed towards a local authority and therefore have no possibility of having their age assessed. They then continue to be considered as adults, with no means to prove their minority.

⁴⁰⁴ Contact avec le British Refugee Council, 25/05/2010, regarding an estimate by the London Children's Panel between September and November 2008.

⁴⁰⁵ *R&B v London borough of Merton*, 2003, EWHC 1689 (Admin), 4 All ER 280.

⁴⁰⁶ *A v London borough of Croydon, WK v Kent borough Council 2009*, EWHC 939 (Admin), 8 May 2009.

the credibility of an asylum seeker's account"⁴⁰⁷, which means concentrating on the story's consistency, namely its steps and dates, which can be harmful to the youths if they are poorly informed or traumatised. Moreover, the main difficulty with the age determination process resides in the fact that it is based entirely on the social worker's assessment. To begin with, the social workers are cruelly lacking in training and support in this area. Several proposals have been formulated in the direction of a decision that would be applied in a collective and multi-disciplinary manner⁴⁰⁸. Also, the social workers responsible for considering whether or not a youth is a minor are employed by a municipality that will become responsible for caring for him if the youth proves to be a child. This is a potential conflict of interest, since caring for the child represents a financial burden that certain municipalities may seek to avoid.

Two developments are currently in progress. Firstly, the objective of the authorities is to increase the number of age assessments carried out *on site*, directly on the locations where the youths come into contact with the authorities (ports, airports or asylum application units), at the moment of their arrival, on the basis of an assessment by dedicated social workers. This measure has been criticized; for many observers, it is inappropriate to decide so quickly on the age of youths who often arrive in precarious physical and psychological condition⁴⁰⁹. Secondly, since a Supreme Court decision in November 2009, the final decision regarding a youth's age is the responsibility of the judicial authorities. Until then, if an assessment had been considered illegal or inappropriate, the court asked the local authority to review its decision. The November 2009 judgment indicates that if a complaint is filed against the assessment carried out by the local authority, the courts will examine the elements of the case and make a decision on the youth's age⁴¹⁰. However, the practical effects of this decision are still poorly known⁴¹¹.

In **Sweden**, the Migrations Board can perform an age assessment in the event of doubts⁴¹². This determination is first of all based on a so-called "orientation" interview, during which the Migrations Board official in charge of investigating the file meets with the youth who claims to be a minor. This involves an overall estimate based on various elements such as the youth's story, his level of schooling, the age of his brothers, sisters and parents but, more generally, on his appearance and demeanour. Indeed, this age assessment is often described as a "visual assessment"⁴¹³. If additional information proves to be necessary, it can be gathered from other actors such as the municipalities that, in the Swedish system, are in charge of accommodating unaccompanied minors who are seeking asylum. By gathering these various elements, the official in charge of the file can decide on the minor's age.

⁴⁰⁷ CRAWLEY H., *op.cit.*(note 401)

⁴⁰⁸ *Ibid.* The Children's ombudsman also calls for a "holistic" approach to the age determination, involving the social workers, paediatricians and other professionals in contact with the youth. Contact with a member of the office of the Children's ombudsman, 28/05/2010.

⁴⁰⁹ CRAWLEY H., *op.cit.*(note 401)

⁴¹⁰ *R v London Borough of Croydon and R v London Borough of Lambeth*, [2008] EWCA Civ 1445.

⁴¹¹ SEPARATED CHILDREN IN EUROPE PROGRAMME, *Newsletter n°33*, April 2010.

⁴¹² Only the passport is considered a sufficient proof that will serve to establish the identity with certainty, with any other documents being at best considered as "possibly making probable" the identity claimed by the foreigner.

⁴¹³ SEPARATED CHILDREN IN EUROPE PROGRAMME, *Newsletter n°32*, November 2009, and *Newsletter n°31*, June 2009.

However, if doubts remain at the end of this procedure, the official can ask for a medical age determination. In theory, this examination requires the minor's approval⁴¹⁴. This involves an x-ray of the wrist and a dental x-ray, interpreted by specialist physicians. No paediatric examination (height, weight, pubertal development) is anticipated, despite the contrary recommendations of the Swedish National health office. The Migrations Board nevertheless officially acknowledges that the margin of error is three years for the bone examination for youths aged 17 to 18 years. It therefore asks that this margin should always be interpreted for the benefit of the youth, meaning that a youth will only be declared as an adult if both x-rays indicate an age of 21 years or more⁴¹⁵.

The age finally attributed to the youth is indicated in a memorandum from the Migrations Board. This cannot be disputed by the youth. This absence of recourse has been criticized⁴¹⁶, as has the arbitrary nature of the age determination procedure.

3. The texts provide for a medical assessment for age determination, but this is rarely used: Greece, Hungary

In **Greece**, the national law provides for no precise age determination procedure, though it does provide the possibility of turning to a medical examination, but without giving any further explanations regarding its nature or provisions⁴¹⁷. In practice, no age determination procedure is carried out, and only minors who clearly appear to be below the age of 16 years are considered as children requiring protection. The others are considered to be adults, with no possibility of appealing this arbitrary assessment by government officials.

In **Hungary**, the national law also provides for the performance of a medical assessment in the event the doubts surrounding the minority of an asylum-seeking youth, but with no further details⁴¹⁸. In practice, however, it seems that the recourse to a medical examination for age determination is infrequent, as in Greece. Its lack of reliability for youths aged 16 to 20 years and its high cost tend to limit its usage. However, unlike in Greece, the absence of a medical examination is replaced by the benefit of the doubt: the youth is taken into care on the basis of his declaration.

A few applications of the age determination procedures from a medical viewpoint nevertheless serve to describe the Hungarian practice in this regard. In reality, this involves a twofold examination: firstly a bone examination by means of a dental x-ray, and secondly a paediatric examination that notably considers the pubertal development. The examination can be carried out in the reception centre where unaccompanied minors are accommodated, at the request of the Office of Immigration and Nationality or of the centre's personnel, but also in the event of doubts surrounding a migrant's minority when accessing the territory, directly at the border at the request of the police. The youth's

⁴¹⁴ Instructions of the Migrations Board, quoted in SEPARATED CHILDREN IN EUROPE PROGRAMME, *Sweden country assessment*, 2003, p. 10.

⁴¹⁵ SEPARATED CHILDREN IN EUROPE PROGRAMME, *Newsletter n°24*, March 2006.

⁴¹⁶ UNHCR, *Baltic and Nordic Headlines*, *op.cit.* (note 25), regarding a report from Sveriges Radio on 16/11/2009.

⁴¹⁷ Presidential decree 90/2008

⁴¹⁸ 2007 law LXXX on asylum, §44.

approval or, if he does not have the capacity to give it, that of the adult designated to represent him is a necessary prerequisite for the performance of the age assessment. Should a youth not accept to undergo this procedure, he will be assigned a temporary legal representative but will be disqualified from all other special provisions - generally favourable - that apply to young people as part of the procedures related to an asylum request.

Experts from the Hungarian Helsinki Committee emphasized several problematic aspects of the performance of this examination. In particular, they wonder about the independence of the physicians used by the police or by the Office of Immigration and Nationality. They also worry that these physicians consider the assessment from a strictly medical viewpoint, without involving social workers or teachers, thereby failing to consider cultural data or differences related to the origin of minors coming from non-European countries. In this regard, the organisation agrees with the viewpoint of the Hungarian Rights ombudsman, who expresses regret that cultural and ethnic factors are not considered as part of the age assessment procedures, while severely criticizing the methods that are employed⁴¹⁹. Finally, it seems that the authorities do not recognise the margin of error related to the age determination examination, thereby depriving the youth of the benefit of the doubt.

In 2009, the case of five young Somalis declared as adults at the end of an age assessment, only to be subsequently recognised as probably minors, demonstrated the limits of the reliability of this examination⁴²⁰. Inversely, several observers have mentioned cases of minors claiming to be adults in order to more easily access employment and to exercise their rights without the required presence of a responsible adult⁴²¹.

As such, though the recognition of the minority is a major consideration for the care provided to unaccompanied minors, this issue is only considered from a medical viewpoint in most the countries. However, the inaccuracies of the currently known methods should prompt the national authorities and European institutions to implement a protocol on another basis.

⁴¹⁹ HARASZTI K., *Report by the Parliamentary Commissioner for civil rights in case number A/B 7120/2009*, (unofficial English translation), January 2010, p. 10.

⁴²⁰ SEPARATED CHILDREN IN EUROPE PROGRAMME, *Newsletter n°33*, *op. cit.*

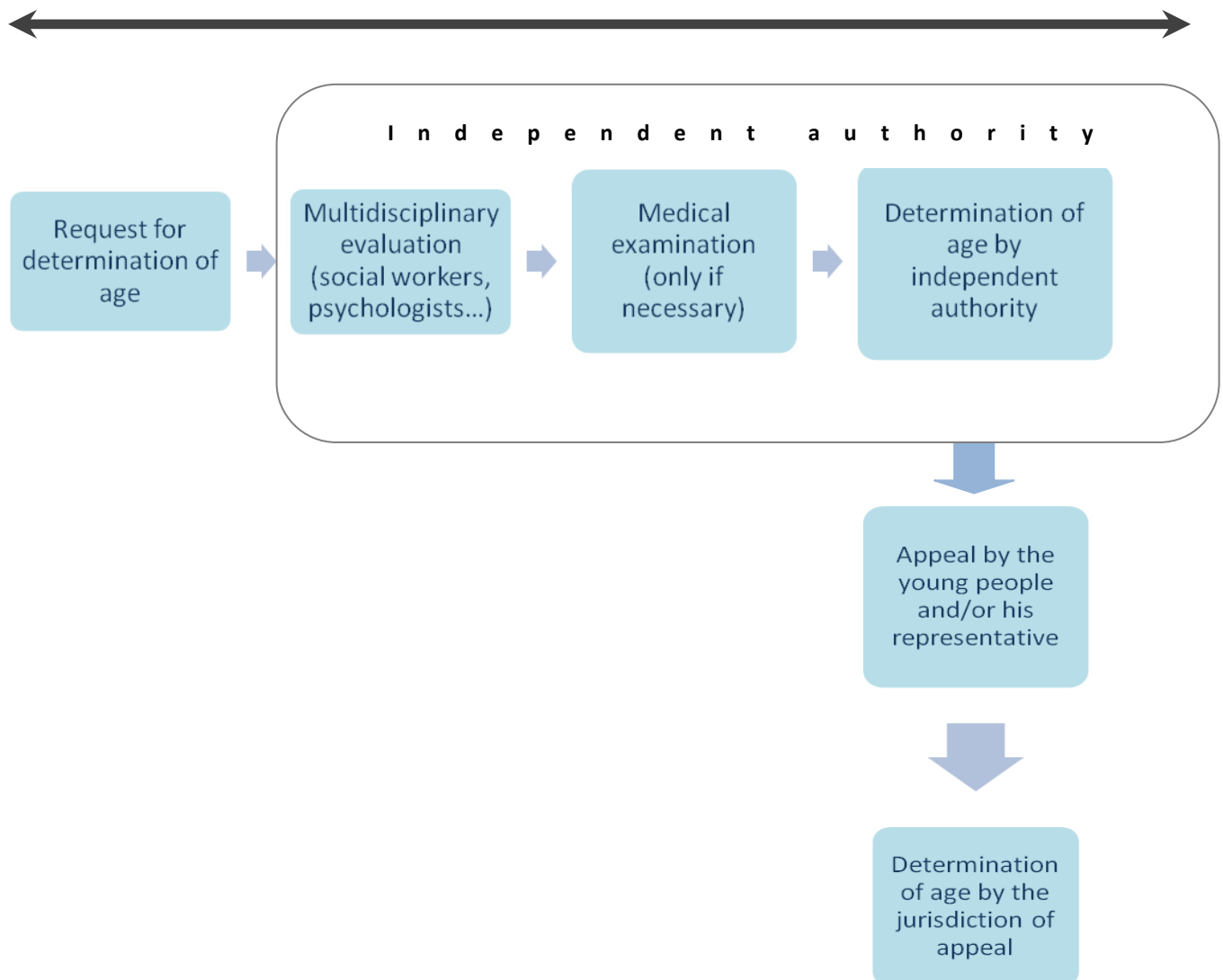
⁴²¹ Contact with the Menedek association, 16/04/2010.

Recommendation n°21 – AGE DETERMINATION

- ▶ Establish a common protocol for age determination in all European Union States. This protocol should include a multi-disciplinary assessment performed by authorities that are independent of the government and of the local authorities, involving several complementary persons who are trained in this subject. These authorities could ask to proceed with a medical examination, only with the minor's consent, but this examination would only be one of several elements within the age assessment process. A possibility of administrative and legal appeal, with dispute settlement by the judge himself as a last resort, should be open to the youth on his own and to his representative in case of a dispute regarding the age assigned after the implementation of the protocol. In any event, the principles of presumed minority and of the benefit of the doubt must be applied throughout the age determination procedure.

Age determination procedure respecting the child's rights

P r e s u m p t i o n o f m i n o r i t y – B e n e f i t o f t h e d o u b t



B. The implementation of legal representation

Terminological clarification:

See page 55 on legal representation during the asylum application

The recognition of a youth's minority generally implies that he does not have legal capacity and is therefore unfit to exercise certain rights and obligations. In the absence of parents who can exercise parental authority, it is therefore imperative to implement a legal representation system in order to allow the performance of various actions in the child's name as well as the participation of the latter in legal procedures. Indeed, the Convention on the rights of the child stipulates that the States must provide the child with a guarantee of an *"opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law"*⁴²².

Certain States have provided for the appointment of a single legal representative to accompany the unaccompanied minor (Spain, Italy), while there are several successive types of representatives in other countries (France, Hungary, Italy). Finally, legal representation is lacking in two of the studied countries (Great Britain, Greece).

1. A single legal representative: Spain, Italy, Romania

In **Spain**, the regions that look after the minors also automatically look after the guardianship of these youths. In concrete terms, the manager of the minor's reception centre assumes legal responsibility. The representative's role can be summed up as performing the day-to-day actions that the minor cannot perform alone. The representative's role is not to see to the child's long-term well-being.

During legal proceedings, the minor can receive specialised legal assistance from a lawyer. During repatriation procedures, the minor himself has the right to be heard and can oppose the wishes of the people providing his legal representation⁴²³.

In **Italy**, the Committee for foreign minors that is informed of a minor's presence can provide this information to the guardianship judge for the appointment of a guardian. This request can also be submitted by the minor's reception centre, within 30 days of his arrival at the centre. The guardianship judge then takes the measures needed to establish a guardianship⁴²⁴. A guardian must be appointed as quickly as possible, and the minor over the age of 16 years can be heard in this

⁴²² United Nations convention on the rights of the child, *Op. Cit.* (note 161), art. 12

⁴²³ On repatriation, see *above* part II.C.

⁴²⁴ See art.28, point 1 of the qualification decree 25172007

regard⁴²⁵. The legal conditions for the application of guardianship are met since the Civil Code requires that it be established when the exercise of parental authority is non-existent or impossible.

The request can also be submitted as part of an asylum application: the police authorities suspend the procedure and refer to the guardianship judge who then appoints a guardian within 48 hours. Only the latter is competent for reactivating a suspended asylum procedure.

In case of a conflict between the minor and his guardian, the “protutore” (acting guardian) will look after his interests⁴²⁶. Should the latter also find himself in opposition with the interests of the minor, the guardianship judge will appoint a “special trustee”

Differing practices persist in cases in which the minor is waiting for a guardian to be appointed. In Sicily, for example, certain *questure* will not provide a residence permit to minors who are lacking or waiting for guardianship, which prevents them from exercising a certain number of their rights⁴²⁷.

In **Romania**, a legal representative is generally appointed in 2-3 days after the request, by the Representation authority, in collaboration with the Romanian office for migrations and NGOs. This appointment is generally requested after an asylum application has been submitted. This application is suspended until the representative has been appointed. The law indicates that this representative must come from the General childhood protection department, and that he therefore works for the government⁴²⁸.

The representative helps the minor throughout the asylum application, as well as during the age determination process. The limitation of this mandate has been subject to criticism; the children regularly indicate they need to be helped by someone who will defend all of their rights (and not only as part of the asylum application), while the legal representatives indicate that they are doing their work in compliance with the legislative framework, which lacks clarity as to the precise extent of the mandate that seems to be limited to the asylum application.

⁴²⁵ Art. 346 and 348 of the civil code

⁴²⁶ According to art. 360 of the Civil Code “the protutore represents the minor in cases in which the interests of the latter are in opposition with those of the guardian. Should the protutore also find himself in opposition with the interests of the minor, then the guardianship judge will appoint a special trustee”.

⁴²⁷ Save The Children, The reception of minors arriving by sea. Final monitoring report by the accommodations community for minors in Sicily. “Praesidium III” project, April 2009, p.18.

⁴²⁸ Law 227/2004; law 122/2006

2. Several successive legal representatives: France, Hungary, Sweden

In **France**, the Civil Code indicates that the absence of the parents can be circumvented by setting up legal representation. Two types of measures allow for this representation: guardianship and the delegation of parental authority. Guardianship applies when the parents “*are deprived of the exercise of parental authority*”⁴²⁹. The delegation of parental authority applies “*if the parents are unable to exercise all or part of the parental authority*”⁴³⁰. The guardianship judge has competence for both of these procedures. A referral can be made to him by the juvenile court judge, by the Prosecutor’s office or by the Childhood social aid services. When the minor has no family referent in France, the judge assigns guardianship to the departmental child protection services to which the youth has been entrusted⁴³¹. In the opposite case, the judge convenes and chairs a Family Council that brings together 4 to 6 family members or friends / relatives of the minor (“*friends, neighbours or any other persons who may have an interest in the child*”)⁴³². The Family Council designates a guardian, who will carry out all day-to-day actions on the minor’s behalf. The delegation of parental authority can also be provided to a “*trusted third party*”.

The guardian appointed to circumvent the inability of the minor’s parents to exercise their authority holds the parental authority. He therefore has sufficient competences so that all necessary measures can be taken for the child’s future, for example with regard to his asylum application, the acquisition of French nationality, and the preparation of a life project. This mandate serves to provide the minor with true protection. This also applies in the event that the delegation of parental authority measure is used.

In practice, it can occur that judges will refuse to set up a guardianship measure if the child’s civil status has not been clearly established, or if the child can make contact with his parents, which means that they are not dead or have not disappeared. In this case, either the judge orders a delegation of parental authority or he simply refuses to act, and the minor can remain without legal representation for several months, even until coming of age. Though established by law, the procedure for the appointment of a legal representative can therefore fluctuate in its implementation relative to the specific case of unaccompanied minors. As a result of backlogged courts, it also requires a very long time.

Moreover, a law from 2002⁴³³ included two provisions intended to overcome the absence of a legal representative for two precise situations: an asylum application⁴³⁴ and the procedures related to access to territory. These representatives are both referred to as “*ad hoc administrators*”, but their roles are limited and distinct: one only helps the minor during the asylum application procedure, while the other only helps during the minor’s placement in the waiting area upon arriving on the territory. Their appointment therefore does not resolve the broader problem of the assignment of parental authority. They are appointed from separate lists at the disposal of the court, but the

⁴²⁹ Civil Code, art. 390

⁴³⁰ *Ibid.*

⁴³¹ We then refer to a State guardianship. Article 433 of the Civil Code.

⁴³² Articles 407, 408 and 409 of the Civil Code.

⁴³³ Law n° 2002-305 of 4 March 2002 relative to parental authority, (NOR: JUSX0104902L), art. 17

⁴³⁴ On legal representation excluding an asylum application, see *above* part III.A.

conditions for being included in these lists are the same⁴³⁵: between a minimum of 30 and a maximum of 70 years of age and have demonstrated “for a sufficient time” one’s interest and competence with regard to questions regarding childhood. Other criteria relate to the residence (which must be within the competent court’s sector) and morality (must never have been the subject of a penal conviction or sanction), but no competence in terms of the law applicable to foreigners is required, whereas the tasks assigned to this person require a certain understanding of the procedures that are applied. The obstacles to the full and effective performance of this mandate also relate to material difficulties, in particular the low level of allocated compensation. Indeed, this can discourage or prevent the *ad hoc* administrator from intervening when a procedure is long and complex, given that the allocated sum is insufficient to cover his expenses. As such, representation by an *ad hoc* administrator is precarious and characterized by many shortcomings⁴³⁶.

In **Hungary**, the legal representation of unaccompanied minors is a two-part procedure: initially, a temporary legal representative is appointed to represent the child during the specific procedures linked to his application for asylum; thereafter, a permanent guardian is appointed in order to look after the representation and well-being of the youth allowed to stay until coming of age.

After the legal representation process during the asylum application⁴³⁷, a guardian must be appointed by the child protection services for any unaccompanied minor who has obtained refugee status or subsidiary protection. While waiting for a permanent guardian, the director of the centre dedicated to receiving unaccompanied minors can fulfil this role for a few months. A professional guardian then takes over. In practice, all children receiving special protection are indeed assigned a guardian⁴³⁸.

The guardians appointed for the legal representation of children during their stay in Hungary are not recruited on the basis of special conditions; they are attached to the ordinary child protection services and can be appointed for either a Hungarian child or a foreign isolated minor. They therefore do not necessarily have expertise or experience in the law pertaining to foreigners, and these shortcomings can be harmful to the performance of their mandate. Also, they can be responsible for a high number of youths at the same time, up to 48. They are furthermore geographically distant from the living site of the unaccompanied minors (most often accommodated at the centre in Bickse⁴³⁹): in practice, this means that their interaction with the youths is limited and that the trusted contacts of the youths tend more often to be members of the reception centre’s personnel.

In **Sweden**, the legal representation system also revolves around two facets. An initial representative is assigned to the asylum-seeking minor for the duration of the asylum procedure, but

⁴³⁵ Decree n°2003-841 of 2 September 2003 on the appointment and compensation provisions for ad hoc administrators.

⁴³⁶ HUMAN RIGHTS WATCH, *Lost in Transit, Insufficient Protection for Unaccompanied Minor Children at Roissy Charles de Gaulle airport*, October 2009, p. 28. On the *ad hoc* administrator appointed for an asylum application, see above part III.A.

⁴³⁷ See above, part III.A.

⁴³⁸ Contact with the Menedek association, 16 April 2010. The few reported exceptions date back to 2007: KOPITAR A., *op.cit.*, p. 12.

⁴³⁹ See below, part VI.A

his role involves an overall monitoring of the minor's interests during this period⁴⁴⁰. If the youth is then granted residency, a second representative, referred to as the guardian, may then take over.

Indeed, if at the end of an asylum application, an unaccompanied minor is provided with a permanent or temporary residence permit, the Social affairs committee of the community in which he resides is tasked with initiating the steps for a guardian to be assigned to him. The municipality must inform the locally competent court so that a guardian will be appointed in order to assist the minor in his day-to-day life and longer term projects. In practice, a second legal representative holding parental authority takes over from the first. However, should the minor obtain a residence permit only a few months before coming of age, it is possible that the initially appointed temporary representative may remain his legal representative until coming of age, and that no guardian will therefore be appointed.

3. Absence of a true legal representative: Great Britain, Greece

In **Great Britain**, no legal representation system has been established for unaccompanied minors. The local authorities in the communities accommodating the minors are responsible for their protection but do not have parental authority. This is a significant shortcoming in the day-to-day life of the unaccompanied minors, and in all of the administrative and legal procedures with which they will be confronted. They will indeed have various contacts, but no true referent who will be able to ensure their well-being and the respect of their rights.

At the end of the asylum procedure, which provides for an accompaniment system rather than any true legal representation⁴⁴¹, if the child is granted refugee status or any other status allowing him to remain within the territory, there is no provision for any guardian to be assigned to him. In concrete terms, until coming of age, the child will be deprived of legal representation and of anyone able to exercise parental authority over him. The children act contains an article that will allow the social services to exercise parental authority over the minor⁴⁴², but as a general rule, it is not applicable to unaccompanied minors⁴⁴³, which leaves the latter deprived of legal representation.

The absence of a legal representation system for unaccompanied minors was a subject of concern for the Committee on the rights of the child in its 2008 observations. It recommended that the State party "*consider the appointment of guardians for unaccompanied asylum-seekers and migrants children*"⁴⁴⁴. A network of non-governmental organisations, the Consortium for refugee children, demands that the government should set up a legal representation system for all unaccompanied children. The Children's ombudsman has also come out in favour of this proposal⁴⁴⁵. In 2009, nevertheless, the government of the United Kingdom indicated that it "*was not considering the*

⁴⁴⁰ See above, part III.A.

⁴⁴¹ *Ibid.*

⁴⁴² *Children Act, 1989, §31.*

⁴⁴³ According to BHABHA J. and FINCH N., (*op.cit.*, note 292), it would seem that there could theoretically be an exception in favour of child victims of trafficking. In practice, however, no unaccompanied child has benefited from article 31 of the children act.

⁴⁴⁴ COMMITTEE ON THE RIGHTS OF THE CHILD, Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations - *United Kingdom of Great Britain and Northern Ireland*. §71f.

⁴⁴⁵ Contact with a member of the office of the Children's ombudsman, 28/05/2010.

creation of a legal representation system for unaccompanied children”, indicating that “the role of such a person is not clear”⁴⁴⁶.

It is nevertheless true that an initiative has seen the light of day in Scotland⁴⁴⁷ in order for legal representatives to be assigned to unaccompanied minors⁴⁴⁸.

In **Greece**, a 2007 law made provisions to extend the fragile system provided for asylum applications⁴⁴⁹ to periods preceding this request⁴⁵⁰. However, this provision is restrictively interpreted by prosecutors who consider that their sole obligation is to “take the necessary steps for the appointment of a permanent guardian”⁴⁵¹, as their workload does not allow them to assume the role of a representative. In practice, in the rare cases in which minors are placed with protection services, the service acts as an informal representative, but is not a legal representative.

Recommendation n°22 – LEGAL REPRESENTATION

- ▶ Without delay, appoint a single legal representative for every person claiming to be a minor or that is identified as such. This representative should be independent, specially trained regarding the issues of unaccompanied minors, and should have the material conditions needed to fully carry out this assignment.
- ▶ In every country, set up an independent authority in order to supervise and assess the missions of these representatives.

⁴⁴⁶ SEPARATED CHILDREN IN EUROPE PROGRAMME, *Newsletter n°31*, May 2009.

⁴⁴⁷ The legal framework of the United Kingdom is such that the overall immigration and asylum policy is common to Northern Ireland and Great Britain (England, Scotland and Wales), but that the social policy and notably the care afforded to unaccompanied minors is delegated to English, Scottish, Welsh and Irish decision-making bodies. This explains why the systems for taking minors into care can differ; in the present case, Scotland has its own system for the legal representation of unaccompanied minors.

⁴⁴⁸ SEPARATED CHILDREN IN EUROPE PROGRAMME, *Newsletter n°33*, April 2010, and “Help for child asylum seekers”, *Herald Scotland*, 09/06/2010. The project is being led by two associations, the Scottish Refugee Council and Aberlour Child Care Trust.

⁴⁴⁹ See *above*, part III.A.

⁴⁵⁰ UNHCR, *Unaccompanied Minors Seeking Asylum in Greece*, April 2008, p. 7

⁴⁵¹ *Ibid.*

VI. Taking into care and integration within the territory

Separated from their parents and therefore deprived of educational and material support, unaccompanied minors generally have access to social protection within the Member States. Like other children, they should also have the right to education and professional training, as well as to access to health care.

A. Social protection

1. The various reception models from unaccompanied minors

While the Convention on the Rights of the Child indicates that *“a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State”*⁴⁵², the implementation of this right by the States continues to be characterized by significant disparities that can sometimes affect its effectiveness.

⁴⁵² United Nations convention on the rights of the child, *op. cit.*, (note 161), art. 20

Table 9 – Overview of the social protection potentially available to unaccompanied minors

	Social protection offered	Comments
Spain	The autonomous communities (regions) have competence for protecting minors located within their territory.	The type of available reception depends on the number of accommodated minors. If the number is significant, the reception can be spread over three successive locations: initial reception centre, medium-term residential centre, long-term residential centre. There are centres specifically dedicated to unaccompanied minors, managed by NGOs.
France	Care is provided by the territorial childhood protection services, following a legal decision in relation to children in danger.	Minors arriving in the waiting area have trouble accessing the protection system. Within the territory, access to protection and the available services is very variable according to the counties.
Greece	Only the rare asylum-seeking minors can benefit from social protection.	The number of reception places for asylum-seeking minors is very limited.
Hungary	Upon arrival, unaccompanied minors are directed to a reception centre specific to them. They then have access to the Hungarian childhood protection system as a child “deprived of parental care or care by other members of their family”.	Two centres receive all of the unaccompanied minors, one of which is dedicated to asylum-seekers, and the other to refugee minors or beneficiaries of subsidiary protection.
Italy	Based on the ordinary childhood protection law, minors are initially placed in a secure site in case of particular protection emergency, before joining the reception system. The latter distinguishes the initial reception, which allows for an assessment and sets the initial care period, and the second reception in which an individual integration programme is set up.	The initial and second reception centres are managed by Italian municipalities.
Romania	After a temporary placement in order to assess the youth’s situation, the latter is placed, in accordance with the Romanian ordinary childhood protection system.	
Great Britain	Upon being located by the authorities, unaccompanied minors are referred to a municipality in order to receive ordinary social protection.	The protection level varies according to the legal bases for taking the child into care, which can be based on two articles of the children act.
Sweden	Unaccompanied minors are entitled to ordinary protection consisting of initial reception followed by lasting care.	The initial reception centres are specifically dedicated to unaccompanied minors. The responsibility for receiving unaccompanied minors rests with the municipalities.

While the legislative framework for taking unaccompanied minors into care is generally identical with the one that applies to national minors requiring social protection, several reception models have been identified in the eight studied countries. Some countries have provided for reception under the same conditions as the ordinary childhood protection (Italy, Greece, Romania, Great Britain), while others have set up social protection that includes specific measures that will accommodate all or some of unaccompanied minors (Spain, France, Hungary, Sweden).

a. Reception under ordinary law: Italy, Greece, Romania, Great Britain

In **Italy**, the reception of unaccompanied foreign minors breaks down into two phases, pursuant to the ordinary law applicable to childhood protection: initial reception or emergency reception, and second reception.

Initial reception is of fundamental importance as part of the protection of unaccompanied minors who, upon arrival, are particularly exposed to multiple risks such as rape, violence and exploitation, most notably as a result of the fact that they are deprived of their family environment and of any legal representation. They must therefore be placed in a secure location⁴⁵³.

The regulations make no distinction between the initial reception and second reception communities, in compliance with the principle whereby compliance with the minimum standards cannot be the subject of any dispensation or exception that can be justified by the degree of urgency of the reception or by its temporary nature. In both cases, these structures are managed by the Italian municipalities.

The placement duration in an emergency centre ranges from 30 days to a maximum of 120 days. This primarily involves male minors (87.1% of the total) close to the age of majority, coming from Afghanistan (19.6%)⁴⁵⁴. With regard to ages, most are between 16 and 17 years of age (around 73% in 2008)⁴⁵⁵

The structures in which unaccompanied foreign minors are placed fall into several groups: public centres created by the local authority, approved private centres with which the institution has a favoured arrangement regulated by an agreement, private centres that the institution uses when faced with situations that require special reception or in order to deal with specific instructions from the justice authorities responsible for minors. Most minors (79.45%) are initially accommodated in private centres. As has been noted, it is from centres of this type that the largest number of minors flee (9.7%), unlike what happens in public centres. During the reception procedure, it can happen that the minor has the possibility of being entrusted to parents or compatriots, naturally after a necessary phase of gathering information, documentation and an assessment provided by the social services⁴⁵⁶.

During this initial reception phase, unaccompanied minors are declared to the State prosecutor for juvenile court, to the guardianship judge and to the Committee for Foreign Minors⁴⁵⁷, that will undertake inquiries in the country of origin and assess whether or not it is in the greater interest of the minor to propose assisted repatriation or the “non-suit to continue with the procedure”. After the end of the initial reception period, should it have been impossible to identify parents, to have organised an assisted repatriation, and that no possibility of living together with compatriots or Italians has been decided upon, the minor will be placed in a second reception centre.

⁴⁵³ Art. 403 of the Civil Code

⁴⁵⁴ ANCI, *Isolated Foreign Minors*, third Report Anci, 2009, p. 51.

⁴⁵⁵ *Ibid.*, p.49 to 55

⁴⁵⁶ *Ibid.*, p. 60 to 64

⁴⁵⁷ With the exception of asylum-seeking isolated minors who are not declared to the Committee.

A long-term educational project will be prepared by the social services within this centre, that may accommodate the youth until he comes of age. The aim is to integrate minors into literacy, school or work programmes, or into training programmes, and into social / educational activities⁴⁵⁸. Over the course of the years, an increase has been noted in the second reception placements of minors coming primarily from Afghanistan (15.3%), Egypt (11.7%) and Albania (10.9%), and who are generally close to the age of majority, with a category of between 16 and 17 years of age comprising 76.7% of the minors received in 2008.

From 2006 to 2008, a decrease of 8.2% was noted in the numbers of minors taken into care, received and placed in emergency reception centres, while the number of minors who remained for a minimum period of one month increased by 4.2%. This last fact indicates the greater capacity of the services to “keep” minors, as well as the greater efficiency of the protection and integration actions.

However, the reception system for unaccompanied foreign minors still has significant points subject to criticism as a result of a lack of centres - thereby resulting in overcrowding of the available centres -, a lack of cultural mediation services, the insufficiency of legal information and even a shortage of recreational activities. It has also been noted that the officials active within the communities of minors rarely have appropriate training, whereas they should be familiar with and aware of the situation of unaccompanied foreign minors who arrive in Italy, of the rights available to the latter and of the regulations that are to be applied. They should also have language skills, appropriate communication techniques and be able to offer legal assistance. In many cases, all of these reasons contribute to minors suffering a violation of their right to protection, and thereby distancing themselves from the reception communities⁴⁵⁹.

In an effort to improve the care that is provided, a national programme for the protection of unaccompanied minors, managed by the National Association of Italian Communities (ANCI), was set up in 2008 in order to establish reception and protection procedures that would serve to guarantee adequate services on the basis of uniform standards.

In **Greece**, the issue of receiving unaccompanied minors is often mixed in with that of receiving asylum-seeking minors⁴⁶⁰, as very few children are the subject of social protection measures independently of an asylum application. In 2008, the Health Ministry identified only 300 spaces occupied by unaccompanied minors within the country’s protection services⁴⁶¹. For its part, the UNHCR listed 450 spaces available for these youths in 2009, including asylum-seeking minors⁴⁶², within 8 reception centres for asylum applicants. It also pointed out the lack of resources, coordination and personnel that would serve to accompany the minor from the detention centre to the reception centre, thereby prolonging the detention period. It nevertheless happens that unaccompanied minors not seeking asylum are exceptionally directed towards ordinary protection

⁴⁵⁸ EMN, European Migration Network, Italian National Contact Point, *Op. cit.* (note 124), p.22.

⁴⁵⁹ ANCI, *Isolated Foreign Minors*. Third Report Anci, 2009, p.83.

⁴⁶⁰ On the reception of asylum applicants, see *above* part III.C.

⁴⁶¹ Human Rights Watch, *Greece: create open centres for migrant children*, 23 August 2009.

<http://www.hrw.org/en/news/2009/08/23/greece-create-open-centers-migrant-children>

⁴⁶² UNHCR, *UNHCR alarmed by detention of unaccompanied children in Lesbos, Greece*, 28 August 2009

centres, as was the case during the widely publicized operation to dismantle the camps in the port of Patras in 2009.

In **Romania**, unaccompanied minors fall within the framework of law n° 272/2004 on the protection and promotion of the rights of the child, which provides a protection system intended for children with no consideration of their nationality. These youths are taken into care by ordinary childhood protection institutions. These institutions perform an initial assessment of the minor's situation and, after consulting with the latter, direct him towards a structure that will look after him. This can include the structure that had accommodated the youth during the assessment. The local authorities have competence for taking the youth in the care and carry out these measures through a "Children's protection committee" that is present in each regional authority, as part of the "public service for the well-being of the child". The law stipulates that the placement measures ensures the continuity of the minor's education, as well as of his religious, ethnic, cultural and linguistic environment⁴⁶³.

In **Great Britain**, unaccompanied minors are referred to a municipalities in order to receive ordinary social protection, as soon as they are located by the authorities.

The mechanisms for directing the youth towards the ordinary system are specific: the immigration authorities inform the local authorities of need to provide the child with protection. Moreover, the State provides the local authorities with financial compensation for looking after unaccompanied minors.

However, foreign minors are protected pursuant to the ordinary legislation: indeed, their care is regulated by two articles of the 1989 child protection law⁴⁶⁴, articles 17 and 20, that represent two separate degrees of protection.

When a child is referred to a local authority, his protection needs are assessed by social worker during an initial assessment interview. At this time, the social worker decides if the child will be taken into care pursuant to article 17 or article 20 of the Children Act, based on the estimated degree of the youth's autonomy.

Article 17 provides a minimum level of protection that most often involves financial support for young people considered to be close to autonomy⁴⁶⁵. In practice, the children supported pursuant to this article may receive financial aid only for their accommodations and food. They can be housed in hotels or in *bed-and-breakfast* rooms. The local authorities can also delegate the accommodation and feeding of these children to third parties. According to one NGO "*article 17 has been designed to support children who already have an adult that can look after them (carer), and should not be used to provide care to unaccompanied minors, who have greater needs*"⁴⁶⁶.

⁴⁶³ Emergency Ordinance of Romanian government n° 26/1997

⁴⁶⁴ *Children Act*, 1989. This law only applies in England and Wales, but similar legislation exists in Scotland

⁴⁶⁵ *Children Act*, 1989, §17-1.

⁴⁶⁶ CHILDREN'S LEGAL CENTRE, *op.cit.*, (note 290), p. 30.

Article 20 provides for a higher level of protection⁴⁶⁷. In fact, this article infers that the local authorities have a duty to provide care that goes beyond mere accommodations. The child protected pursuant to article 20 becomes a child “taken into care”, which provides him with additional rights, notably in terms of extending the social protection after he comes of age. The local authority must look after all aspects of his well-being, and the child must be followed up by a social worker on a regular basis. An individual care programme is prepared.

In terms of how they are taken into care, the protection level provided to unaccompanied minors constitutes one of the main concerns of the people involved in the defence of these children. For many of them, the content of article 17 appears to be unsuited to the situation of unaccompanied minors. The European Migration Network report published in 2010 emphasizes that “*the standard of accommodation [...] provided to these children may vary considerably between local authorities and placements*”⁴⁶⁸. In 2003, a circular from the Ministry of health sent to the local authorities⁴⁶⁹ stipulated that the care of unaccompanied minors should be decided at the conclusion of an assessment of their needs and that, for most of them, protection pursuant to article 20 was the most appropriate solution. That same year, several legal decisions contained rulings along the same lines, reminding the municipalities that unaccompanied minors met the criteria of article 20 and had to be cared for accordingly, unless they express an opposite desire. It nevertheless seems that many local authorities continue to apply article 17 to them, as they have little desire to get too heavily involved in the care of unaccompanied minors. This concern is often raised by academics⁴⁷⁰, but also by the Children’s commissioners in the United Kingdom, in their alternative report to the Committee on the rights of the child in 2008⁴⁷¹. It seems that local authorities have a tendency to offer minimum care when the child is over the age of 16 years, while notably claiming an excessive financial burden, given that the financing provided by the State decreases for youths over the age of 16 years. Certain local authorities have gone so far as to interrupt the care provided to unaccompanied minors who reach the age of 16 years, which violates the principle of protecting minors, as well as the law and the best interests of the child⁴⁷².

The local authority assigned to protect a child is generally the one in which the child was located; consequently, municipalities such as Croydon, the site of an asylum application office that receives 80% of the applications submitted within the territory, or Kent, which is near the port of Dover, are particularly concerned by the arrival and therefore the reception of unaccompanied minors.

The Refugee Council regrets that unaccompanied minors have a tendency to be considered as a “burden”⁴⁷³ by the local authorities assigned to look after them. It nevertheless points out the existence of good practices, giving examples of projects intended to provide accompaniment, access to psychological care or to better integration, and recalls that “*the political and legal framework (...) will allow, when the political will is there, good care to be provided*”. It is therefore on a practical level, and in particular based on the involvement of the local authorities, that the standard of care

⁴⁶⁷ *Children Act*, 1989, §20-1.

⁴⁶⁸ EUROPEAN MIGRATION NETWORK, *op.cit.*(note 6), p. 28.

⁴⁶⁹ DEPARTMENT OF HEALTH, *Local Authority Circular* (LAC) 13, 2 June 2003. www.doh.gov.uk/publications/

⁴⁷⁰ BHABHA J., FINCH N., *op.cit.*, p. 80, and UK CHILDREN’S COMMISSIONERS, *Report to the A Committee on the rights of the child*, June 2008, §158.

⁴⁷¹ UK CHILDREN’S COMMISSIONERS, *op.cit.* (note 470),

⁴⁷² *Ibid.*

⁴⁷³ DENNIS J., “The reception and care of foreign isolated asylum-seeking minors in the United Kingdom”, in FRANCE TERRE D’ASILE, *ProAsile, foreign isolated minor special edition*, n°20, November 2009, pp. 34-35.

provided to unaccompanied minors will be played out. Despite these shortcomings, the protection system for unaccompanied minors in Great Britain has often been described as exemplary, since it theoretically allows these children to access the same rights and protection systems as UK nationals.

b. Reception characterized by a few specific reception mechanisms: Spain, France, Sweden, Hungary

In certain countries, the provided care is based on the same legal framework as the protection of national children, but it is sometimes (France) or systematically (Spain) delivered through centres specifically dedicated to these youths.

In **Spain**, the autonomous communities are competent to declare the abandoned status of a minor who finds himself within their territory, and to adopt the measures needed to ensure the child's protection on the basis of ordinary law. Several types of reception centres are available, according to the number of minors accommodated within each autonomous community. If the number of minors is low, they will be looked after in a single medium-sized reception centre. If the number of unaccompanied foreign minors is high, the residential reception is generally provided by several centres that differ in terms of the objectives of the intervention carried out with the minors: initial reception centres, medium-term residential centres and long-term residential centres. If the number of unaccompanied foreign minors grows, the model of a single centre is transformed into a model with multiple centres, each with different intervention phases.

These centres exclusively accommodate unaccompanied minors. They are managed by NGOs within the framework of agreements signed with the authorities, with a multi-disciplinary and multi-cultural educational team⁴⁷⁴.

In **France**, unaccompanied foreign minors present within the territory can receive social protection just like French minors, on the basis of the provisions for children at risk. They therefore fall within the ordinary protection system. The notion of children at risk is defined by article 375 of the civil code: *"If the health, safety or morality of a non-emancipated minor are in danger, or if the conditions for his education or his physical, emotional, intellectual and social development are seriously compromised, educational assistance measures can be ordered by the courts at the request of the father and mother, or one of them, or by the person or service to whom the child has been entrusted or by the guardian, by the minor himself or by the public minister (...)"*⁴⁷⁵.

⁴⁷⁴ EUROPEAN MIGRATION NETWORK, *op.cit.*(note 6)

⁴⁷⁵ Its application to unaccompanied minors was confirmed by a 2007 law that indicated that the French childhood protection system was also intended for "minors temporarily or definitively deprived of their families". Article L112-3 of the Social action and families code, amended by article 1 of the law n°2007-293 of 5 March 2007.

The right to protection has therefore been clearly established by French law. As for French minors, the protection measures must be ordered by the legal authorities, then implemented by the departmental services that are competent for the protection of children through the services of the Childhood social aid (ASE). The Childhood social aid services can also temporarily accommodate a foreign isolated minor in the event of an emergency but must immediately inform the prosecutor of this measure, and must then apply to the prosecutor within 5 days so that the admission procedure can be brought into line with the rules of ordinary law (assessment of the situation by the prosecutor, then possible application to the juvenile court judge).

In general, just like a French minor, a foreign isolated minor can therefore have access to protective measures. It should be noted that for the minors prevented from entering the territory after their arrival at the airport⁴⁷⁶, the Court of Cassation indicated that the waiting area, which is under national administrative and jurisdictional control, is in fact within the national territory and that the educational assistance measures are therefore applicable to unaccompanied minors who have been detained, thereby allowing an application to the juvenile court judge⁴⁷⁷. However, this case law is seldom applied and, in reality, many children escape the child protection system, notably as a result of being redirected.

Unaccompanied minors are most often taken into care in the ordinary centres operated by the Childhood social aid, which are generally collective accommodation centres (managed by private individuals or by the *département* itself), and sometimes by foster families. They receive overall care, which includes housing, schooling or training, healthcare, and the procedures relative to their civil status or right of residence.

Only a few *départements* have set up systems specifically intended for the protection of unaccompanied minors, in order to deal with the specific challenges resulting from their situation.

The State has also become involved in some of the arrangements dedicated to unaccompanied minors. For example, in 2002, it became involved in a system intended to identify, shelter and assess the needs of unaccompanied minors in Paris. Other structures intended to meet the special needs of unaccompanied minors are supported by the State: for minors arriving through the Roissy-Charles de Gaulle airport after having been kept in the waiting area, the Lieu d'accueil et d'orientation (LAO) offers temporary reception, for the time needed to assess the minor's situation and to direct him to the appropriate structures. The Paris region is also home to the Centre d'accueil et d'orientation pour les mineurs isolés demandeurs d'asile (CAOMIDA), providing accompaniment to youths wishing to seek asylum in France. Another example of a specific structure can be found in the Nord *département*, where the General council manages, in partnership with the State, public actors and associations, a structure dedicated to unaccompanied minors.

Specific responses to the protection needs of foreign unaccompanied minors are nevertheless still not very current. Protection within the ordinary law framework, provided by the departmental Childhood social aid services, continues to be the norm. This situation results in a conflict between the State and the *départements*, which are financially responsible for the reception of minors. For the *départements* that receive a large number of foreign unaccompanied minors, this is a significant financial expense and many of them consider the State's involvement to be insufficient. As such,

⁴⁷⁶ On access to the territory, see *above* part II.A.

⁴⁷⁷ Court of Cassation, civil ch. 1, 25 March 2009, n°08-14125.

some of them have been reluctant to carry out their mission with regard to unaccompanied foreign minors.

In **Sweden**, responsibility for the reception of unaccompanied minors has rested with the municipalities since 1 June 2006. The Migrations Board had previously assumed this role. The reason for this transfer of responsibility was partly due to the fact that the authorities looking after asylum applications are also in charge of taking young applicants into care, which can result in conflicts of interest, but primarily because the municipalities, that have a certain amount of competence with regard to social affairs, were considered to be better able to respond to the needs of unaccompanied minors⁴⁷⁸.

Unaccompanied minors are taken into care in specific structures as soon as they are declared to the Migrations Board as asylum applicants. They are initially accommodated in a municipality of first reception, before a municipality is assigned to provide their lasting care.

Upon arrival, an unaccompanied minor is therefore temporarily accommodated in one of the four first reception centres, managed by four municipalities in Sweden until 2009. These centres are specifically intended for unaccompanied minors. However, as the number of available spaces was insufficient to deal with the quickly increasing arrivals of foreign minors since 2005, in 2009, the Swedish government indicated its intention to increase the number of first reception municipalities to 10⁴⁷⁹. In June 2010, there were nine reception municipalities. The question of the “pressure” applied on these communities in terms of reception continues to be discussed in the Swedish press on a regular basis⁴⁸⁰.

After the initial reception phase, the Migrations Board must as quickly as possible ensure that the child is referred to a municipality that will be assigned to provide his long-term care (*direction municipality*). In May 2010, of the 290 municipalities in Sweden, 127 of them had agreements with the Migrations Board in order to accommodate unaccompanied minors. Though a large number of municipalities is now involved in receiving young foreigners, the number of spaces continues to be very insufficient⁴⁸¹. This matter has been the subject of many official declarations, considerable media coverage and much argument, particularly at the end of 2009. In November, Immigration Minister Tobias Billström mentioned the risk of a “collapse” of the system for receiving unaccompanied minors⁴⁸². According to one association’s estimate, close to 800 minors were waiting to be directed towards a municipality⁴⁸³. During this time, they had no choice other than to remain in the temporary reception centres, that are ill-suited to their stay that could be as long as three or four months⁴⁸⁴.

⁴⁷⁸ NIDOS, *op.cit.* (note 6), p. 67 and EUROPEAN MIGRATION NETWORK, *op.cit.* (note 6), p. 23.

⁴⁷⁹ « 500 refugee children in urgent need of housing”, *The Local*, 16 November 2009.

⁴⁸⁰ UNHCR, *Baltic and Nordic Headlines, op.cit.*, press review between the months of September 2009 and June 2010.

⁴⁸¹ 1450 spaces were available in May 2010, including 452 reserved for asylum-seeking minors, with the others being used by unaccompanied minors who had been granted a residence card in Sweden. Over the course of 2010, the number of spaces rose to 1619. Contact with Save the Children, 22/06/2010.

⁴⁸² *Ibid.*, quoting various articles in the press on 14/11/2009.

⁴⁸³ Contact with Save the Children, 18/06/2010.

⁴⁸⁴ According to Save the Children, an unaccompanied minor should not be staying in the first reception centre for more than 7 days. Contact with the association, 18/06/2010.

When an unaccompanied minor is referred to the municipality in order to be taken into lasting care, the local Social affairs committee becomes responsible for the child's well-being, for the decisions regarding his housing, and for all specific needs that he may have. The Migrations Board reimburses the municipality for all expenses incurred. Two types of solutions can be offered to foreign minors: collective housing in a centre, or a foster family.

Many municipalities have opted for collective housing specially dedicated to unaccompanied minors. These centres generally employ eight or nine social workers and therapists for 10 to 15 accommodated minors. Though the level of care generally seems to be satisfactory, cases of poor treatment or lack of supervision have been reported in the press⁴⁸⁵.

Other unaccompanied minors are housed with foster families. According to a report published by a German organisation⁴⁸⁶, Sweden is one of the European countries in which the proportion of unaccompanied minors placed with a family is the highest⁴⁸⁷. In June 2010, UNICEF Sweden nevertheless expressed concerns regarding the lack of supervision of foster families by the social services, while mentioning risks of poor treatment or exploitation of the children⁴⁸⁸.

An unaccompanied minor remains in care for the time needed to examine his asylum application. If this results in a positive decision resulting in the issuing of a residence permit, a young foreigner will continue to be cared for until coming of age. His status change (from asylum applicant to refugee or beneficiary of protection) can affect how he is accommodated; as such, he may move to another structure where he will possibly have more autonomy.

In **Hungary**, unidentified foreign minors identified by the police authorities are all transferred to a reception centre dedicated to unaccompanied minors, immediately upon their arrival within the territory. As such, they all have quick access to protection that is specifically intended for them.

Hungarian law also provides for official protection for these minors. Indeed, they are included in the provisions of the 1997 law XXXI on childhood protection and the administration of guardianships (commonly referred to as the *child protection act*). According to this law, unaccompanied foreign minors can fall within the framework of ordinary social protection in the capacity of *children lacking the care of their parents or other relatives*.

Hungarian child protection is organised according to various degrees or levels. *Permanent care* is the highest degree of protection. When an unaccompanied minor enters permanent care, one can consider that he has fully entered into the Hungarian ordinary law child protection system. However, only unaccompanied minors who, after an asylum application, are granted refugee status or the benefit of subsidiary protection fall within the framework of this *permanent care* as anticipated by the child protection act.

⁴⁸⁵ UNHCR, *Baltic and Nordic Headlines*, *op.cit.*, regarding an article in the Dagens Samhälle on 23/02/2010.

⁴⁸⁶ EMZ BERLIN, MinMig project summary, *The risk group of unaccompanied minor migrants, transnational exchange of experiences and further development of protection mechanism*, 2003, p. 3.

⁴⁸⁷ Certain reports make a distinction between *kinship care* (minor cared for by relatives or acquaintances) and *foster care* (care provided by a "classical" foster family), while others have a single category for reception by the family. The figures in this regard must therefore be interpreted with care.

⁴⁸⁸ UNHCR, *Baltic and Nordic Headlines*, *op.cit.*, regarding articles in the Svenska Dagbladet and Dagens Nyheter newspapers, and on Swedish television and radio on 15/06/2010.

A form of *interim care* also exists in Hungary. This is “basic” protection that provides the child with temporary protection. This degree of care does not result in any replacement of the parental authority. Until recently, unaccompanied asylum-seeking minors (pending a decision by the authorities relative to granting protection) could have access to this interim care. An association manager indicates that this is no longer the case⁴⁸⁹.

Children who are granted the status of “person authorised to stay” also find themselves in a relatively unclear situation in terms of access to the ordinary protection system. In fact, they find themselves somewhat “in the middle”. Their permanent care, on the same footing as unaccompanied child refugees or beneficiaries of subsidiary protection, is not explicitly anticipated by the law. It seems that they can access this type of protection by undertaking a certain number of administrative steps. In practice, they are in any event taken into care in the same structure as other unaccompanied minors who are allowed to stay. However, their inclusion within the legal childhood protection framework remains complex.

With regard to accommodations, a reception centre for unaccompanied minors (or *shelter for unaccompanied minors*, *KNKO* in Hungarian) has been specifically dedicated to receiving such minors since 2003. After having been successively located in various cities, in 2008 this centre was moved into a structure belonging to the reception centre for adult asylum applicants operated by the city of Bicske; its management was entrusted to the Hungarian Interchurch Aid (HIA) organisation. It accommodated unaccompanied asylum-seeking minors or beneficiaries of protection (refugee status, subsidiary protection, person authorised to stay).

In 2009, a second centre was created alongside the Shelter for unaccompanied minors (KNKO), namely the Home for young refugees or FMO, initially intended to accommodate youths who had arrived in Hungary as children but who have already reached the age of 18 years upon obtaining refugee status or subsidiary protection. In 2010, at the request of the European fund for refugees that finances the project, the organisation of these two structures underwent a new change. The Shelter for unaccompanied minors now exclusively accommodates unaccompanied minors during the asylum application procedure. The Home for young refugees is dedicated to caring for young people whose asylum application has been successful, statutory refugees or beneficiaries of subsidiary protection, whether minors or young adults⁴⁹⁰. In some ways, the specific reception centre for unaccompanied minors has been doubled up.

Care can also be provided in ordinary childhood protection structures, for example for children under the age of 14 years, or in case of insufficient space in the specialised shelter. Child refugees or beneficiaries of subsidiary protection who have been integrated into the ordinary protection system should also theoretically have access to these non-specialised structures. In practice, they continue to be housed at the Bicske centre until coming of age⁴⁹¹.

⁴⁸⁹ Contact with a manager of the Hungarian Interchurch Aid organisation, 18/05/2010.

⁴⁹⁰ Contact with the director of Shelter for unaccompanied minors, Hungarian Interchurch Aid, 05/05/2010.

⁴⁹¹ This practice is first of all due to the argument of the specific needs of foreign children (integration, language courses...), but also to a financial conflict between the Office of Immigration and Nationality and the local child protection authorities.

In its concluding observations on Hungary in 2006, the creation of a reception centre specifically for unaccompanied minors was praised by the Committee on the rights of the child⁴⁹². The director of the Shelter for unaccompanied minors emphasizes that in only a few years, this specialised structure has led to the establishment of a certain number of “best practices” in this area⁴⁹³. Nevertheless, for certain association members, it is not ideal, in terms of integration and adaptation into Hungarian society, for the youths to remain outside of the ordinary institutions by continuing to be housed in a specific centre for the duration of their minority⁴⁹⁴.

In practice, in both the Shelter for unaccompanied minors and in the Home for young refugees, the children are supervised and individually looked after by social workers. The idea behind the Shelter is first of all to provide a calm atmosphere suited to the needs of newcomers just after their travel, while watching for possible signs of post-traumatic stress. They are progressively included within a day-to-day organisation that includes many group activities, as well as language courses. The objectives of the Home for young refugees more directly target integration by means of a variety of activities. Most of the accommodated young people go to school. In both structures, the premises, meals and pocket money of the children are provided by the reception centre for adult asylum applicants, which is attached to the Office of Immigration and Nationality. For its part, the Hungarian Interchurch Aid association looks after the coordination and personnel for the Shelter and the Home for young refugees, which respectively have 8 and 5 social workers on staff. Thanks to support from the Cordelia Foundation, the young people also have access to psychological support programmes. Both structures are open shelters and the young people are in principle free to circulate even though, in practice, they are accompanied by a social worker wherever they go.

In 2009, the average number of youths accommodated by the Shelter for unaccompanied minors was 70 (versus 30 in 2008), with a total of approximately 270 youths passing through the Shelter over the course of the year (159 in 2008)⁴⁹⁵.

⁴⁹² COMMITTEE ON THE RIGHTS OF THE CHILD, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations - Hungary*, 41st session, 17 March 2006, *op. cit.*, §56.

⁴⁹³ Contact with the director of Shelter for unaccompanied minors, Hungarian Interchurch Aid, 05/05/2010.

⁴⁹⁴ Contact with the Menedek association, 16/04/2010.

⁴⁹⁵ *Ibid.*

2. Runaways and the disappearance of minors taken into care

The question of runaways amongst the minors taken into care is of particular importance with regard to how it relates to trafficking: the presence of foreign minors in the reception centres is indeed likely to attract members of exploitation networks who could encourage or force these vulnerable youths to end their educational care and to leave the centre. An analysis of this issue, that has been the subject of specific studies⁴⁹⁶, cannot be limited to this sole aspect, however. Indeed, running away often has to do with the quality of the proposed care and the migratory projects of minors who intend to travel to a location other than the one where their care is provided. However, a study of this issue in the target countries indicates that it is difficult to progress beyond hypotheses, given the extent to which this issue is unknown and generally poorly taken into consideration by the authorities.

In **Spain**, no data exist regarding the rate of minors who flee from centres, but the number may well be quite high. Some minors flee to other autonomous communities in search of a better situation. This sometimes causes administrative confusion, since the guardianship of the minors is in one autonomous community, and their procedures are undertaken in another.

In **France**, the rate of unaccompanied foreign minors who run away is significant in all of the existing reception structures. According to the report by the Terre des Hommes foundation on the disappearances of foreign unaccompanied minors⁴⁹⁷, the disappearance rate is above 60% in some centres. In the Pas-de-Calais *département*, which is a point of passage for migrants heading to the United Kingdom, the rate of runaways is 99%: while 2219 temporary placement orders had been issued in 2009, only 21 youths were taken into long-term care by the Childhood social aid in the *département*⁴⁹⁸. The ratio between the number of identified youths and the number taken into long-term care is similar in Paris.

These disappearances can be interpreted in various ways. In certain *départements*, such as the Pas de Calais, minors have other migration objectives. Other youths are also most likely victims of exploitation networks. The disappearances are often considered as inevitable, however, while the associations that took part in the interministerial working group on the situation of unaccompanied foreign minors recalled that the rate of runaways could also be a consequence of the lack of prospects or guarantees that these youths have with regard to their futures. This hypothesis is based on the finding that when the youth is given secure prospects, the number of runaways drops appreciably or becomes almost nil.

Minors who have been the subject of protective measures and have been placed by the Childhood social aid are generally declared to the police in the event that they disappear. However, according

⁴⁹⁶ See for example: TERRE DES HOMMES, *Disparitions, départs volontaires, fugues (...)*, Op. cit. (note 367)

⁴⁹⁷ *Ibid.*

⁴⁹⁸ FRANCE TERRE D'ASILE, *L'accueil et la prise en charge des mineurs isolés étrangers dans le département du Pas de Calais*, April 2010, p. 5.

to the Terre des Hommes Foundation that quotes the comments of a juvenile court judge, even if a foreign isolated minor's disappearance is declared, this does not mean that there will be an active search for him⁴⁹⁹.

In **Greece**, very few children are taken into care by protection services but runaways are very frequent, given that the objective of the youths present in that country is generally to travel to another European country. Also, the lack of prospects in Greece, with limited access to rights and resulting integration difficulties, also prompts young people to leave.

In **Hungary**, the rate of disappearing unaccompanied minors is very high. 90 disappearances were reported in 2008, and 97 cases between January and September 2009⁵⁰⁰. Many of the missing minors had filed asylum applications, only to leave before the decision of the protection authorities. In 2009, the Office of Immigration and Nationality suspended 57% of the preliminary examinations of asylum requests by unaccompanied minors and 31% of the in-depth asylum applications, primarily due to the disappearance of the young applicants⁵⁰¹.

For many people involved in caring for unaccompanied minors, the disappearances indicate that the young people have chosen to continue their travels. Hungary continues to be considered as a transit country, crossed by migrants whose aim is to reach another Member States of the European Union. Migrants view the integration prospects in Hungary as limited, and this fear, according to a 2009 report by the UNHCR⁵⁰², is quite well-founded.

The personnel at the Shelter for unaccompanied minors indicates disappearances of young asylum-seekers to the Office of Immigration and Nationality. The only response from the authorities regarding these departures is often to interrupt the examination of their files⁵⁰³. In the case of youths receiving permanent care pursuant to the child protection, i.e. youths who have obtained refugee status or the benefit of subsidiary protection, the reception centre indicates disappearances to the police⁵⁰⁴. The measures taken thereafter are not known.

In **Great Britain**, the number of disappearances amongst unaccompanied minors taken into the care of the authorities in Great Britain is most likely high, though not precisely known.

In November 2009, *The Guardian* newspaper indicated a number of 145 asylum-seeking minors who had disappeared from the child protection services in one year⁵⁰⁵. This consisted of 90% of the unaccompanied minors. This figure was indicated after a survey of 200 municipalities over a period of

⁴⁹⁹ TERRE DES HOMMES, *Disparitions, départs volontaires, fugues (...)*, Op. cit. (note 367), p.52.

⁵⁰⁰ SEPARATED CHILDREN IN EUROPE PROGRAMME, *Newsletter n°32*, November 2009.

⁵⁰¹ Contact with the Office of Immigration and Nationality, 03/06/2010.

⁵⁰² UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *Note on refugee integration in Central Europe*, 2009.

⁵⁰³ Contact with the Menedek association, 16/04/2010.

⁵⁰⁴ Contact with the Hungarian Interchurch Aid organisation, 18/05/2010.

⁵⁰⁵ « Councils 'lost' 145 child asylum-seekers last year », *The Guardian*, 18 November 2009.

one year (September 2008 to September 2009). However, the number is probably underestimated since several municipalities did not respond, such as Kent which is nevertheless in the first line of reception for unaccompanied minors in Great Britain. In a report in January 2010, the BBC, for its part, indicated 330 disappeared asylum-seeking minors between April 2008 and August 2009⁵⁰⁶.

In Great Britain, the disappearances are always related to the issue of trafficking; as such, according to an association, *“the provisions of the disappearances suggest that [these children] have fallen victim to trafficking operations and finally became the victims of forced marriages, domestic servitude or sexual exploitation in Great Britain”*. In Great Britain, in fact, the issue of disappearance cannot be interpreted, as is the case in other European countries, as the child running away for the purposes of reaching another destination, given that this country is generally their final objective.

A follow-up tool has been set up via the National register for unaccompanied minors, a digital register through which the municipalities can share information on young people taken into care, including when they have fallen victim to trafficking or have disappeared.

3. The extension of protection after the age of 18 years

In some countries, unaccompanied minors have access to an extension of their social protection after coming of age. However, this extension is separate from the question of the right of residence, though it often has an influence on the delivery of a residence permit.

In **France**, the childhood protection system can be extended to young adults under 21 years of age who experience “social integration difficulties due to a lack of resources or of sufficient family support”⁵⁰⁷, which makes it possible to extend the protection to unaccompanied minors who reach the age of majority. The signing of such an agreement, known as the “young adult contract”, allows the user to extend his integration efforts, while still being protected for the time needed to reach autonomy. In practice, the measure can include financial aid, an educational intervention at home, and reception with accommodations. It applies for a period of one year and can be renewed until the youth reaches 21 years of age, provided that he is undergoing a training project.

However, the signing of a young adult contract is optional and requires an assessment from the chairman of the General council to which the Childhood social aid reports. The practices vary from one *département* to the next; some sign many young adult contracts, others implicitly refuse to extend their application to foreign isolated youths. The access to this protective measure for young adults is therefore very random. Moreover, while this contract constitutes a true support for the youth’s integration, it does not guarantee the regularisation of his administrative situation.

⁵⁰⁶ « Asylum-seeking children are going missing from care », BBC, 21 January 2010.

⁵⁰⁷ Social action and families code, article L 222-5

In **Great Britain**, after 18 years of age, an unaccompanied youth who had been taken into care by the authorities while underage can have access to an extension of his social protection: this consists of the *leaving care services*. The possibility of accessing these services depends on several factors, such as the type of care provided (pursuant to article 17 or article 20 of the 1989 children act, *cf.* question 28) and the duration of this care (in short, it must have covered a minimum of 13 consecutive weeks). The protection extension services are quite developed in Great Britain: they can include a personal adviser in charge of setting up a customised project with the young person, financial aid and support for accessing education or work, as well as accommodations if the youth continues with his studies. This extended support is provided until the youth reaches 21 years of age, or 24 years of age if continuing his studies.

The extension of the social protection has no incidence on the young adult's administrative status: it cannot constitute a reason for extending the right of residence. On the contrary, the youth being taken into care by the local authorities tends to be subject to his migratory status. In theory, a youth whose asylum application has been rejected can continue to receive protection services until his removal is organised; if he does not comply with the removal procedure, he loses any right to the care provided by the social services. Similarly, any youth considered to be "illegally residing in the United Kingdom" has no further access to social protection⁵⁰⁸.

In **Hungary**, young adults admitted to the ordinary social protection system while still a minor can have access to an extension of this protection until the age of 24 years, if they so request it. The "*after care support*" includes accommodations and support in the search for employment or the continuation of his studies. This extension is a consequence of obtaining protective status, but not a reason for providing a residence permit. In practice, the financial difficulties of the child protection services and the limited number of spaces make it difficult for unaccompanied youths to access this system⁵⁰⁹.

Youths who submitted an asylum application while still underage but who do not receive a positive response until after coming of age constitute a special case. They cannot claim extended protection as can be provided to youths who had been taken into care while younger. A special system has been set up in order to meet their needs: this is the Home for young refugees in Bicske. This structure was initially created in order to provide young adult refugees and beneficiaries of subsidiary protection with support intended to facilitate their integration; it is now open to minors as well, and with the same objectives.

⁵⁰⁸ *Nationality, immigration and asylum act*, 2002, appendix 3, §6 and 7.

⁵⁰⁹ Contact with the Hungarian Interchurch Aid organisation, 18/05/2010.

Recommendation n°23 – SOCIAL PROTECTION

- ▶ Permit all unaccompanied minors to benefit from social protection measures adapted to their needs. In this regard, provide for the set-up of systems specifically dedicated to the initial reception of these children in order to better assess their situation, to identify their protection needs, particularly for asylum-seekers or victims of trafficking, and to direct them into the ordinary childhood protection system under the best possible conditions and as quickly as possible.

B. Schooling and professional training

Unaccompanied minors often seek rapid integration within their countries of residence. In this regard, access to schooling constitutes a priority for them and practice has shown that they progress with great ease and are of considerable benefit for the progress of all of the groups that they join. Many of them also seek quick access to work and, by choice or by default, wish to register for a vocational training programme.

Though these schooling and professional training initiatives constitute a necessary prerequisite for every case of integration into the host society, the laws and practices of the States in these areas generally bring to light differences in the laws and practices when compared with national children.

1. Access to schooling

The signatory States of the Convention on the rights of the child recognise *“the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity”*⁵¹⁰. The Committee on the rights of the child has interpreted this obligation as a necessity to guarantee that *“every unaccompanied and separated child, irrespective of status, shall have full access to education in the country that they have entered”*⁵¹¹. The Council of Europe, but also the European Union, has reiterated this mandatory access to education for all children, including foreigners, in several texts⁵¹².

The implementation of this right appears to be globally satisfactory in all of the studied countries, as the access to education is generally guaranteed. However, an in-depth analysis brings to light considerable variety in the laws and practices in this regard, with significant obstacles for minors as they approach adulthood.

⁵¹⁰ United Nations convention on the rights of the Child, *op. cit.* (note 161), art. 28

⁵¹¹ Committee on the rights of the child, General comment N°6, *Op.cit.* (note 203), §41

⁵¹² See for example: Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries, art. 3.6; Recommendation CM/Rec (2007)9, *Op. cit.*, (note 80), art.17

Table 10 – Overview of the access to schooling for unaccompanied minors

	Access to the education system	Implementation of specific measures
Spain	Minors under 16 years of age are registered for compulsory education, often with adaptation difficulties. Minors over 16 years of age are directed into professional training programmes.	Certain autonomous communities provide foreign minors with language courses.
France	Minors under the age of 16 years have automatic access to the ordinary educational system. Those above the age of 16 years are only admitted to the establishments if spaces are available. In practice, many of these children are directed into pre-qualifying training programmes.	Access to schooling centres for new arrivals and Traveller children (CASNAV) operate throughout the territory in an effort to coordinate and facilitate the access of migrants to school.
Greece	The right to public school education is guaranteed for all foreign child refugees, asylum-seekers, children coming from a conflict zone, or whose status concerning the right of residence is under examination.	There are some language support courses for newly arriving foreign minors, but access to these courses is difficult.
Hungary	There is no legal obstacle preventing unaccompanied minors from accessing the ordinary education system. In practice, however, few schools accept migrant children and instead present them with several obstacles.	Hungarian language courses are provided at the Bicske reception centre for child refugees or beneficiaries of subsidiary protection. Isolated initiatives offering support classes also exists.
Italy	The national regulation guarantees the right to education for all minors, without consideration of their nationality, for all levels of education. In practice, integration difficulties have been noted for 15-18 year olds who do not have an Italian lower secondary school diploma.	Institutional structures have been set up in order to promote integration, dialogue and intercultural education. For minors from 15 to 18 years old, basic literacy courses are provided by permanent territorial centres.
Romania	The right to education is guaranteed by the aliens act that stipulates that all minors have access to all levels of education.	Unaccompanied minors can sign up for a one-year Romanian language course in order to prepare their integration into the ordinary educational system. Moreover, the NGO Save The Children has set up an assistance programme for asylum-seekers, particularly in terms of education.
Great Britain	Unaccompanied minors under the age of 16 years, despite sometimes problematic admission delays, have access to the ordinary educational system. For those older than 16, a significant difficulty involves access to secondary education as a result of its cost.	
Sweden	The access to education is linked to the unaccompanied minor's legal status. A child authorised to remain has total access to the educational system, just like a Swedish child. An asylum-seeking child can access it, but is not obliged to do so, and only has access to public schools. An illegally residing child does not have access to education even if some of them go to school since there is nothing that prevents an establishment's director from admitting them.	Many schools have classes that specialise in the reception of young asylum-seekers.

In **Spain**, education is mandatory and free between the ages of three years and 16 years⁵¹³. Unaccompanied minors under 16 years of age are registered in the mandatory educational system. For various reasons, such as arriving during a school year, lack of familiarity with the host language and lack of schooling in their own countries, they sometimes have adaptation difficulties. Some autonomous communities have set up special structures dedicated to these young people, with additional language courses or other subjects. Minors over 16 years of age are directed into a professional training programme.

In **France**, every child is required to be in school until the age of 16 years. This obligation applies equally to French nationals and to unaccompanied foreign minors. Indeed, a ministerial circular stipulates that *“for access to the education public service, no distinction can be made between students of French nationality or of foreign nationality”*⁵¹⁴. Foreign unaccompanied minors under the age of 16 years therefore automatically have access to the ordinary educational system. The difficulties that they can encounter relate to the timeframe for starting school, which can be long, and to access to structures that consider their specific needs.

On the other hand, unaccompanied foreign minors arriving in France between 16 and 18 years of age, i.e. most of them, encounter greater difficulties in their efforts to access education. As school attendance is no longer mandatory after age 16, unaccompanied foreign minors are only admitted to establishments if spaces are available, and it can happen that, as they approach the age of majority, no educational proposal will be made to them. In practice, many youths between 16 and 18 years of age are directed into short pre-qualifying training programmes, for the quick acquisition of professional competences.

In an effort to coordinate and facilitate the access of migrants to school, notably including reception classes dedicated to learning French or arrangements for upgrading, there are Centres d'accueil pour la scolarisation des nouveaux arrivants et des enfants du voyage (CASNAV, centres for new arrivals and Traveller children) that operate throughout the country. In practice, however, the number of available spaces is limited, and these structures are often saturated in the main host *départements*. Moreover, these measures remain insufficient for children who have never been to school and who are illiterate in their own language. Finally, specific measures for adapting to the school system primarily target youths for whom the principle of school attendance is automatic, i.e. minors under the age of 16 years. On the other hand, arriving minors between 16 and 18 years of age have trouble accessing measures suited to their needs, notably in the area of learning French. The only opportunities available to them are offered by the structures that have taken them into care, or professional training programmes that they have been able to join.

In **Greece**, the law indicates that public school education is guaranteed for all foreign child refugees, asylum-seekers, children coming from a conflict zone, or whose status concerning the right

⁵¹³ Article 27 of the 1978 Spanish Constitution. Available at: http://noticias.juridicas.com/base_datos/Admin/constitucion.html (10.05.2010)

⁵¹⁴ Circular n°2002-063 of 20 March 2002.

of residence is under examination⁵¹⁵. No specific provision exists with regard to these youths, very few of whom in reality attend school, which is indicative of the low number of minors who have access to social protection⁵¹⁶.

In **Hungary**, every child under 18 years of age present on Hungarian territory is required to attend school, independently of his residence status. In theory, there is nothing to prevent an unaccompanied foreign minor from accessing the ordinary educational system⁵¹⁷. In practice, of 57 youths residing at the Home for young refugees in May 2010, 41 were attending school⁵¹⁸.

However, there are many obstacles to attending school pursuant to ordinary law. Few schools accept migrant students. To join a class in the ordinary educational system, they must have a high level of Hungarian language skills, which requires time and suitable structures. Also, what they have been taught in the past must be transferable into the Hungarian school system. Given their age, they should in theory be able to attend secondary school but, in Hungary, access to secondary education requires a primary schooling certificate that confirms eight years of prior education. Producing such a certificate can be an obstacle for foreign minors. As such, they often join classes with younger students, on a lower level. This “downgrading” is often a negative experience, all the more so since without a specific structure, the Hungarian language is a difficulty; it is difficult for them to follow the schooling.

These obstacles underscore the strong need for specific adaptation structures for these children, structures that are still rare in Hungary. In order to join the ordinary educational system, unaccompanied minors can simply take advantage of Hungarian language courses within the Bicske reception centre, for 90 minutes each day. As of 2010, the Office of Immigration and Nationality is planning to limit access to these classes only to beneficiaries of refugee status or subsidiary protection⁵¹⁹. This decision has been widely criticized by several associations and by the Rights ombudsman, who is calling for all accommodated minors to be able, as of the age of 5 years, to be able to take language classes and prepare their integration into the Hungarian school system, in keeping with the provisions of decree n°301-2007 on the implementation of law LXXX on asylum⁵²⁰.

A few other initiatives exist. The Menedek offers scholastic support possibilities to unaccompanied minors. For its part, the Reformed Church has set up a programme dedicated to refugee children in two schools in Budapest, thanks to funding by the European fund for refugees; scholastic support, supplementary Hungarian language courses and psycho-social support are offered. Eight children from the Home for young refugees were attending this programme in May 2010⁵²¹. In the city of Bicske, another programme has been set up so that unaccompanied minors can be provided with individual support in order to acquire, in one year, the primary schooling certificate that will allow

⁵¹⁵ Law n° 3386/2005, art. 72

⁵¹⁶ See *above* part VI.A.

⁵¹⁷ Law LXXIX of 1993 on education, §110.

⁵¹⁸ Contact with the Hungarian Interchurch Aid organisation, 18/05/2010.

⁵¹⁹ HARASZTI K., *op.cit.* (note 419), p. 11.

⁵²⁰ *Ibid.*, regarding governmental decree n°301-2007 on the implementation of the 2007 law LXXX on asylum, §21-2.

⁵²¹ Contact with a manager of the Hungarian Interchurch Aid organisation, 18/05/2010.

them to continue their studies within the ordinary system. Eight youths out of 23 passed this exam in 2008/2009⁵²².

In **Italy**, the national regulations⁵²³ guarantee the right to education for all minors, Italian and foreigners, for the entire educational programme on all levels. Unaccompanied foreign minors have, according to Italian law⁵²⁴, the right to education and training even if they do not have a residence permit. A significant increase in the number of foreign students prompted, starting in 1999, the adoption of education policies intended to promote integration, dialogue and intercultural education through the creation of institutional structures dedicated to this issue, and through the promulgation of orientation documents: the National commission for intercultural education⁵²⁵ established in December 1999, the Office for the integration of foreign students, created in 2004, the Observatory for the integration of foreign students and intercultural education, established in 2006 and that, in 2007, produced an important orientation document for the integration of foreign students⁵²⁶. Also, Directives for the reception and integration of foreign students were approved in February 2006⁵²⁷. Circular n° 74/2006, that sets out coordinated actions, is intended to improve the integration mechanism in order to avoid excessive gaps between educational institutions with regard to their reception capacity.

However, integration difficulties exist, notably on the level of the reception in the upper secondary cycle for students between 15 and 18 years of age, especially if they do not have the *scuola media* (middle school) diploma⁵²⁸ and if the schooling programme that they followed in another country has not been recognised. On the national level, data indicate that foreign minors are often not registered in the classes that correspond with their age (often for reasons related to linguistic skills or the moment of their arrival), which has repercussions on the scholastic delay of these children. Also, the activation of host projects and support tools for the integration of foreign minors is left up to the discretion of the institutions themselves, which means that very different situations can be encountered. It must also be noted that various secondary schools have proven to be ill-equipped and poorly prepared to accommodate foreign minors, for example with Italian language courses, which does not make it easier for them to continue their education. Unfortunately, this problem is compounded by the fact that these programmes do not always correspond with the desires of unaccompanied foreign minors, who wish to quickly join the working world. In any event, in most cases, for youths aged 15 to 18 years, basic literacy courses are given by the Permanent territorial centres (CTP) within the territory or the communities, or in daytime care facilities where minors can have access to these courses even if they have no papers.

⁵²² *Ibid.*

⁵²³ 1998 TU, art. 38

⁵²⁴ *Equal Palms* project, Employment support programme for isolated foreign minors, reception practices I. Approach, integration, mediation and repatriation, 2006

⁵²⁵ Art. 38 T.U. Immigration, Law 40/1998 and DPR 394/1999, Ministerial circular 74/2006: they protect the right to education for all foreign minors present within Italian territory, independently of their legal standing and/or that of their parents.

⁵²⁶ Ministry for National Education _ General department for Studies, Programming and Information Systems, *The Italian way for intercultural schooling and integration of foreign students*, October 2007.

⁵²⁷ Ministerial circular 24/2006, Directives for the reception and integration of foreign students.

⁵²⁸ As required by legislative decree 226/2005, art.1, sub-paragraph 12 “the upper secondary cycle of the educational and training system can only be accessed after having passed the State exam at the end of the lower secondary education programme”.

In **Romania**, the aliens act stipulates that “foreign minors living in Romania must have access to the mandatory educational system under the same conditions as Romanian minor citizens”⁵²⁹. The law on asylum includes similar provisions⁵³⁰.

Unaccompanied minors can sign up for a one-year Romanian language course in order to prepare their integration into the ordinary educational system. Moreover, the NGO *Save The Children* has set up an assistance programme for asylum-seekers, that notably includes actions in favour of education⁵³¹.

In **Great Britain**, unaccompanied minors have access to the school system just like all other children living in Great Britain, up to the age of 16 years. It is the duty of the local authorities to provide for full-time schooling adapted to their needs, for all children whose age makes schooling mandatory (i.e. from 5 to 16 years) and who reside within their territory, irrespective of their migratory status. Within the framework of this mandatory schooling, the obstacles that can be faced by unaccompanied minors relate to admission timeframes. The law indicates an admission timeframe of 20 days, and stipulates that children taken into care by the social services must be given priority. However, if they arrive during a school year, schools sometimes force the children to wait until the start of the next school year.

After age 16, the authorities are no longer required to offer educational opportunities to unaccompanied minors. Their admission is discretionary, but must be compliant with the law on racial relations, i.e. non-discriminatory⁵³². A significant difficulty for youths over the age of 16 years wishing to access secondary education is the fact that there is a fee for this. For an unaccompanied minor, the challenge is to obtain bursaries and financial aid, most of which are provided by the local authorities. His eligibility for such aid depends primarily on recognition as a *home student*, i.e. a “national” student. This recognition depends on his administrative status: in general, the child must be a statutory refugee, beneficiary of subsidiary protection or the holder of a temporary residence authorisation. If he cannot be considered as a *home student*, he will have to pay the higher registration fees applicable to foreign students, and will not be eligible for aid from the local authorities. For an unaccompanied minor, this makes the financing of schooling practically impossible.

No adaptation system has been deployed nationally for unaccompanied minors accessing the educational system. The practices in this regard vary considerably on the basis of the local authorities.

⁵²⁹ Order n.194/2002 amended by law 357/2003, law 482/2004, law 113/2005, and law 306/2005. Art. 122

⁵³⁰ Law n° 122/2006, art. 17 p.; art. 18; art. 31g

⁵³¹ SCEP NEWSLETTER, ISSUE n. 31, Spring 2009 ROMANIA, pg. 27.; SCEP NEWSLETTER, ISSUE n. 32, Autumn 2009 ROMANIA, pg. 29.

⁵³² CHILDREN’S LEGAL CENTRE, *Seeking support, op.cit.* (note 290), p. 44.

In **Sweden**, the possibility for an unaccompanied minor to access the sweetest educational system very largely depends on his legal status⁵³³.

A minor whose asylum application has had a favourable outcome, resulting in the granting of protection or a residence permit, can access the ordinary educational system and, in general, has the same rights as a Swedish child. He is then subject to mandatory schooling until the age of 16 years, and can then continue his optional secondary school education.

An asylum-seeking minor can have access to the educational system; if he requests access, his municipality of residence is required to ensure his schooling in kindergarten, primary or lower secondary school. In this sense, he enjoys the right to schooling⁵³⁴. However, two provisions distinguish young asylum-seekers from other students in Swedish schools. Firstly, they are not subject to mandatory schooling, unlike other children under the age of 16 who reside in Sweden. Secondly, they only have access to public schools, and not to independent schools. These measures have been denounced by association members, who not *“believe there should be any differences in the kind of educational choice, or in the applicability of laws and regulations, unless such differences can be justified as being in the best interests of the child”*⁵³⁵.

Many schools have classes that specialise in receiving young asylum-seekers, accompanied or not, and that are primarily dedicated to learning Swedish. In the eyes of the Save the Children association, systematic recourse to these special classes is a double-edged sword. This results in the risk of *“permanently isolating these children”*, rather than fully integrating them into the school system. The NGO also regrets that the children are directed towards a single class for asylum applicants, independently of their education level⁵³⁶.

Finally, children who find themselves in an irregular situation after the rejection of their asylum application do not presently have any official access to education. In practice, some of them go to school because nothing prevents an establishment’s director from admitting them. As the law does not mention a right to education for these children, but also does not stipulate that admitting them to school is prohibited, some municipalities may decide to provide them with spaces. However, the schooling of these children is not covered by the State. In concrete terms, for *“undocumented”* children or *“children in hiding”*, access to public school is hindered by these uncertainties and is dependent on decisions by the directors of municipalities or establishments. The Committee on the rights of the child pointed out this difficulty in its concluding observations on Sweden in 2009, indicating that it was still *“concerned that children without residence permit, in particular “children in hiding” and undocumented children, do not enjoy the right to education”*.⁵³⁷

⁵³³ On the right of residence, see *above* part II.B.

⁵³⁴ Ordinance 2001:976 on the education of refugees.

⁵³⁵ SAVE THE CHILDREN SWEDEN, *Supplementary report from Save The Children Sweden, in response to the Swedish Government’s fourth periodic report to the UNCRC*, 8 June 2008, p. 22.

⁵³⁶ Contact with Save the Children, 18/06/2010.

⁵³⁷ COMMITTEE ON THE RIGHTS OF THE CHILD,, *op.cit.*, 51st session, 26 June 2009, §54.

Recommendation n°24 – SCHOOLING / Access to the ordinary educational system

- ▶ Guarantee an unconditional right to schooling for all unaccompanied minors, under the same conditions as national minors.

Recommendation n°25 – SCHOOLING / Educational adaptation measures

- ▶ Provide a sufficient quantity of educational adaptation measures, specifically dedicated to unaccompanied minors, allowing them to join the ordinary educational system through the acquisition of the necessary basics, in particular from a linguistic point of view.

2. Access to professional training

Many minors over the age of 16 years of age are directed into professional training that allows rapid access to the employment market and is generally considered to be a favoured means of integration. In practice, this orientation can also be explained by the obstacles in accessing the ordinary educational system. These obstacles, linked to the minor's foreign status, are sometimes found at this stage of the programme. They primarily relate to the delivery of a work permit, which is necessary in order to acquire work experience and to take the apprenticeship courses generally included in these programmes.

In **Spain**, professional training is the preferred if not the exclusive direction in which minors over the age of 16 years are oriented. These youths are registered in training courses in gardening, carpentry, welding, masonry, mechanical fields, the hotel business, IT, etc., which facilitate their integration into the labour market, since they acquire work experience within companies. They have the right to sign up for professional training courses set up by the public employment services.

Unaccompanied minors can work with the approval of their guardian⁵³⁸. In order to make it easier for unaccompanied foreign minors to access employment, article 40 of the organic law relative to the status of foreigners⁵³⁹ indicates that the national employment situation will not be considered when the employment contract or cooperation offer is provided to foreign minors who are old enough to work, who have a residence permit and who are supervised by an establishment that provides the protection of minors, upon confirmation that it is impossible for them to return to their family or country of origin.

In practice, though many unaccompanied minors sign up for a professional training programme, it is difficult for them to access the labour market because of difficulties obtaining a right of residence.

⁵³⁸ Articles 6 and 7 of the law relative to the status of workers

⁵³⁹ Organic law 4/2000, of 11 January, *Op. cit.* (note 139)

In **France**, professional training programmes require one to have a work permit provided by the Departmental labour service, with regard to work experience programmes or apprenticeship contracts. This constraint does not exist for French minors, such that foreign unaccompanied minors are subject to differing treatment on the basis of their national origin. Obtaining a work permit can be more or less difficult depending on the cases.

Minors entrusted to childhood protection services before 16 years of age and who are still in the care of these services at the time of application enjoy favourable conditions for obtaining a work permit. Indeed, the law of 18 January 2005 indicates that the employment situation cannot be applied to their disadvantage⁵⁴⁰. Inversely, youths not taken into care before 16 years of age or who are no longer in the care of the Childhood social aid service at the time of their application can see the employment situation being applied to the detriment of their application. In concrete terms, this means that if they want to be trained to work in a sector that is not encountering recruiting difficulties, their work permit may be refused. This provision encourages youths and the people accompanying them to favour training choices in sectors said to be “under tension”, i.e. that have recruiting difficulties. For the youth, not only is this a default choice, but this choice does not guarantee that the work permit will be provided to him. Indeed, the delivery of the authorisation is left up to the assessment of the administrative authority, on the basis of very flexible criteria that allow for considerable subjectivity⁵⁴¹, resulting in considerable disparity between the *départements*.

In **Greece**, unaccompanied minors have no access to professional training.

In **Hungary**, unaccompanied minors have access to professional training. They do not have this opportunity in the community of Bicske, where reception centre is located, but rather in Budapest. The April 2010 report by the Rights ombudsman mentioned approximately 10 unaccompanied minors registered for professional training: several of them are being trained in a school in Budapest that offers professional training opportunities; others are taking training as cooks or plumbers in ordinary establishments in the capital⁵⁴². No work permit is required in order to take such training. The young people must simply have the necessary level of competences.

In **Italy**, professional training courses are available for minors. The host communities themselves have set up programmes that include such courses. In general, the training centres promote courses lasting 2 or 3 years that result in a qualification, or one-year professional training courses with no qualification, but that provide a certificate of competence. Courses of this type elicit considerable interest, since unaccompanied minors close to the age of majority have a great desire to work. These courses can be accessed after a preliminary interview in order to examine the minor’s competences and motivation: indeed, this is sometimes a kind of selection interview that makes it possible, in the

⁵⁴⁰ Law n°2005-32 on programming for social cohesion, article 28, introducing a new sub-paragraph into article L341-4 of the Labour Code.

⁵⁴¹ Circular n°2005-452 of 5 October 2005 relative to the delivery of work permits to isolated foreign minors and young adults in order to sign an apprenticeship contract.

⁵⁴² HARASZTI K., *op.cit.* (note 419), p. 14.

event that the minor has little chance of success, of obtaining Italian language courses for the latter, and thereby delaying the professional training.

For access to professional training courses, it is necessary to have a residence permit or at least a receipt that certifies an application for one. The case of 17-year-old minors is particularly problematic. Upon arriving in Italy, they ask to be integrated into shorter programmes in order to more quickly join the working world, but the lack of resources objectively makes it difficult to set up new programmes⁵⁴³.

In **Great Britain**, a youth must be authorised to work in order to gain access to professional training. In fact, the Ministry of the Interior considers such training to be a type of work, even if not paid. However, for foreign nationals, the right to work depends on their migratory status. Young refugees, beneficiaries of subsidiary protection and holders of a temporary residence permit have the right to work. They can therefore apply for professional training⁵⁴⁴. On the other hand, young asylum-seekers are not authorised to work, unless their application has not been processed by the authorities within 12 months: in this case, they can request an authorisation. But few unaccompanied minors have had to seek this dispensation given that, in practice, their asylum application is often processed in under 12 months. Finally, young people with no right of residence within the territory, for example if they have exhausted all avenues of appeal, have no right to work whatsoever.

In **Sweden**, it seems that professional training is considered within the framework of the right to schooling, and that the children eligible for training of this type are the same ones as the children who can access the ordinary educational system.

Recommendation n°26 – PROFESSIONAL TRAINING

- ▶ Guarantee access to professional training programmes under the same conditions as for national minors, by systematically granting a work permit, valid *at least* for the duration of the programme, if such an authorisation is required under national law.

⁵⁴³ Save the Children, *On the way to what future?*, November 2006, p.5.

⁵⁴⁴ CHILDREN'S LEGAL CENTRE, *Seeking support*, *op.cit.*(note 290), p. 52.

C. Access to healthcare

The need to recognise a right to healthcare for all migrants, because of the significant incidences that this issue can have on the overall host society, takes on particular importance for children. The care that can be provided to these young people, who are especially vulnerable and therefore more subject to illnesses or accidents, can often bring about changes in the course of their lives and their future prospects.

This is why the signatory States of the Convention on the Rights of the Child have recognised “*the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health*”⁵⁴⁵, a right subsequently clarified by the Committee on the rights of the child with regard to unaccompanied minors⁵⁴⁶.

An analysis of the implementation of this right in the studied countries generally brings to light a distinction between minors whose status is confirmed (taken into care and/or obtaining of a right of residence), for whom access to care appears to be relatively easy, and others for whom only emergency medical care is generally guaranteed on an unconditional basis.

⁵⁴⁵ United Nations convention on the rights of the child, *op. cit.*, (note 161), art. 24

⁵⁴⁶ Committee on the rights of the child,, General comment N°6, *Op. cit.* (note 203) §46 to 49

Table 11 – Overview of the access to care for unaccompanied minors

	Access to emergency care	Access to the ordinary healthcare system
Spain	Unaccompanied minors benefit from universal illness coverage, whatever their status.	
France	All foreign minors should be able to access urgent care provided in hospitals, whatever their administrative situation.	All minors are considered to be fulfilling the condition of the legality of their stay, and can as such use the Social Security system. However, this Social Security access can be compromised or prevented in practice when the minor does not have a civil status document or has not been assigned a legal representative.
Greece	All unaccompanied minors have unconditional access to emergency care.	Only the rare minors placed in child protection centres can freely benefit from the national health system.
Hungary	All unaccompanied minors have unconditional access to emergency care.	Asylum-seeking children have access to care, financed by the Office of Nationality and Immigration. Child refugees or beneficiaries of subsidiary protection fall under the ordinary health insurance system. For these two categories of minors, the nature of the available services is identical.
Italy	All unaccompanied minors have unconditional access to emergency care at the hospital or in a doctor's surgery. They also have access to preventative medicine measures.	All unaccompanied minors legally residing within the territory and therefore in possession of a residence permit must be registered with the national health service, and thereby have full access to all services.
Romania	All unaccompanied minors have access to healthcare on the same basis as Romanian children.	
Great Britain	Minors who have not been taken into care by the authorities can receive urgent or "immediately necessary" treatments at no cost.	All unaccompanied minors taken into care by the authorities are covered by the ordinary healthcare system. They are also covered by special provisions offered by the host municipalities that are obliged to have them undergo regular medical examinations and to employ specialised medical personnel for this population.
Sweden	Minors not taken into care by the authorities have access to emergency care.	Only minors who have submitted an asylum application can access the ordinary healthcare system. For former asylum applicants, however, access to this system can be hindered by the fact that the costs will have to be covered by the regional authorities, that do not guarantee that all treatments will be free. Moreover, medicines are not reimbursed. Asylum-seekers receive subsidies in order to reduce these costs.

In **Spain**, foreign minors have access to universal illness coverage, irrespective of their status. The absence of a residence permit is no obstacle to accessing this national healthcare system⁵⁴⁷. In this regard, they therefore encounter no specific difficulties resulting from their status as a foreign minor.

In **France**, an unaccompanied minor can in principle take advantage of the ordinary healthcare system, namely the Social security system, in the same way as any other person residing in France on a legal and stable basis. Minors are considered to be meeting the condition relative to the legality of their stay⁵⁴⁸, and as such have access to the Social security illness coverage. They are considered to

⁵⁴⁷ Law 1/1996 relative to the legal protection of minors

⁵⁴⁸ See above part II.B.

be persons of reduced means, for which the applicable system is that of the universal medical coverage (or CMU in French).

In practice, however, access to this protection is complicated by various obstacles. Certain difficulties are related to the minor's foreign status: in the absence of a convincing civil status document or when the health insurance office in charge of recording the minor does not know what type of protection to apply to him, the child is initially considered to be an illegally residing foreigner. As such, he is excluded from the ordinary system and directed towards the specific State Medical Aid (AME) system, intended for persons residing in France without a residency authorisation. The AME provides care at no expense, but can prove to be considerably insufficient in areas that require so-called supplementary protection, for example optical or dental care.

Also, the minor's status results in difficulties as part of the procedures to register with a social security office, as it does with all other administrative procedures. To carry out these procedures, the child must have a legal representative, i.e. have been assigned a guardian⁵⁴⁹. Failing that, and notably when the child has not been taken into care by the child protection services, he will not have access to the universal medical coverage. This shortcoming in the minor's possibility of exercising his rights has been criticized by people involved in childhood protection, some of whom demand *"that the health insurance offices should register any illness protection request by a foreign isolated minor without waiting for the appointment of a legal representative"*⁵⁵⁰. In terms of care and independently of the issue of the coverage of the financial expense, the minor's isolation is not necessarily an obstacle. In accordance with article L1111-5 of law 2002-3 of 4 March 2002 relative to the rights of patients, a physician can intervene without the approval of the people holding parental authority, when required to do so in order to safeguard a minor's health. He must nevertheless strive to act with the minor's approval.

The administrative obstacles often result in significant treatment delays and periods during which the rights are interrupted (for example when a youth successively moves from the AME system to the CMU system), which is very harmful to the effective access to treatment and to its continuity.

Minors who do not manage to access the ordinary healthcare system still have access to emergency care. Indeed, national law stipulates that *"urgent care, the absence of which would undermine an essential prognosis or that could lead to a serious and lasting alteration of the person's state of health"*⁵⁵¹ must be provided at the expense of the Health insurance service. As minors, they are furthermore concerned by a [...] which stipulates that *"in view of the particular vulnerability of children and adolescents, all care and treatments provided at the hospital to minors residing in France (...) are considered to meet the emergency conditions indicated in article L. 254-one of the Social action and families code"*⁵⁵².

⁵⁴⁹ On this topic see *above* part V.B.

⁵⁵⁰ COORDINATION FRANÇAISE POUR LE DROIT D'ASILE, RESEAU EDUCATION SANS FRONTIERES, HORS LA RUE, ANAFE et DEFENSE DES ENFANTS INTERNATIONAL, *Pour une application du droit commun dans la prise en charge des mineurs isolés étrangers en quête d'asile et de protection, Propositions collectives pour le groupe de travail interministériel, op.cit.*

⁵⁵¹ Social action and families code, article L 254-1

⁵⁵² Circular n°141 of 16 March 2005

In **Greece**, only the few minors taken into care by protection institutions have full access to the national healthcare system. The others only have access to emergency care provided in a hospital or clinic, that is available to all unaccompanied minors⁵⁵³.

In **Hungary**, the law indicates that access to basic and emergency care is provided for all asylum seekers, particularly those considered to be vulnerable persons, such as unaccompanied minors⁵⁵⁴. Basic care is normally provided to asylum-seekers within the centres that are accommodating them.

For minors accommodated at the Bicske centre, complete care is provided to them within the centre, during twice-weekly visits by a physician. Should additional care be needed, the reception centre can call on local physicians or take the children to the hospital. Obstacles remain, such as the reticence of healthcare professionals or linguistic difficulties. Indeed, no interpreter is financed by the State for health-related questions.

The access to healthcare is the same for all unaccompanied minors accommodated at Bicske. However, they do not all fall within the same administrative arrangements: the care for asylum-seeking children is financed by the Office of Immigration and Nationality; refugee children and beneficiaries of subsidiary protection are the only ones to fall into the ordinary healthcare system, i.e. the National insurance. Coverage under this Insurance requires one to obtain a registration number, after a long and complex procedure that must be repeated each year.

Minors with no legal status and who are accommodated in ordinary structures have their healthcare expenses financed by the child protection services.

For minors with no status and who have not been taken into care by an institution, the law stipulates that, like all children and irrespective of their status, they have free access to emergency healthcare. No exception to this principle has been uncovered by the associations⁵⁵⁵.

In **Italy**, all foreign minors with a residence permit⁵⁵⁶ must necessarily be registered with the National Health Service, and thereby have full access to all provided services. Minors residing illegally nevertheless are entitled to emergency care as well as care provided in a private surgery or at the hospital in the event of illness or accident. They also have access to preventative medicine programmes.

Particular problems can arise with regard to the medical assistance provided to unaccompanied minors who reside in reception centres within the territory: the local healthcare institutions sometimes refuse their registry within the national healthcare system, without considering the fact that a reference paediatrician is not always present within these centres⁵⁵⁷. It is for this reason that

⁵⁵³ For asylum applicants, this access is guaranteed by article 14 of law L.3386/2005

⁵⁵⁴ 2007 law LXXX on asylum, §29-2.

⁵⁵⁵ Contact with the Hungarian Interchurch Aid organisation, 18/05/2010.

⁵⁵⁶ On this topic, see *above* part II.B.

⁵⁵⁷ Working group for the Convention on the Rights of Children and Adolescents, *Op. cit.* (note 73), p.104.

Italian organisations have proposed that registration should be guaranteed as of the placement in a reception centre and before the legal guardianship is initiated⁵⁵⁸.

In **Romania**, unaccompanied minors have full access to the national healthcare system⁵⁵⁹. Asylum applicants can have access to emergency care services offered by the Romanian Office for immigration.

In **Great Britain**, all unaccompanied minors have access to care within the framework of the National Health service. As refugees, asylum applicants, beneficiaries of subsidiary protection or holders of a temporary residence permit, they have free access to medical consultations (with a generalist physician or at the hospital), as well as to dental care, ophthalmological tests, family planning services and mental health services. Moreover, unaccompanied minors under the age of 16 years, or ones between 16 and 19 years who are in school full-time, can be provided with a certificate that waives the expenses normally paid to the National Health service in order to finance prescribed medications, as well as the dental and ophthalmological expenses. Similar exemptions can be exceptionally granted to youths above the age of 16 years who are not in school full-time or asylum applicants.

In addition to the ordinary health care system, minors taken into care by the municipalities are covered by special provisions since the local child protection services are required to have them undergo regular medical examinations and to employ a nurse specifically for this population.

In practice, there are a certain number of obstacles to effective healthcare access. Unaccompanied minors sometimes encounter reticence on the part of generalist physicians who should be looking after them in the capacity of referring physicians. The lack of proficiency in English and the absence of interpreters can also work against young migrants who, in addition, are not always aware of their rights nor of how the British healthcare system operates. Finally, one NGO points out that certain physicians can demonstrate a lack of motivation and competence when it comes to dealing with the complex physical and mental problems of unaccompanied minors⁵⁶⁰.

Youths “not taken into care by the authorities” have no access to the National Health system, but do have access to minimum care: only “emergency” or “immediately necessary” treatments must be provided to them at no cost. However, certain treatments must be provided independently of the patient’s migratory status: treatments for contagious illnesses such as malaria or tuberculosis, certain treatments regarding sexually transmissible diseases such as AIDS, treatments in the event of accident or emergency, family-planning services and indispensable psychiatric care⁵⁶¹.

⁵⁵⁸ *Ibid.*, p.81 to 83

⁵⁵⁹ Law on the promotion and protection of the rights of the child n° 272/2004, art. 3

⁵⁶⁰ *Ibid.*

⁵⁶¹ CHILDREN’S LEGAL CENTRE, *op.cit.* (note 290), p. 54.

In **Sweden**, the law stipulates that asylum-seeking children and children “in hiding”, i.e. former asylum applicants, can receive healthcare and medical services under the same conditions as children residing legally in Sweden⁵⁶². The law says nothing about children whose asylum application has had a successful outcome, since in any event, they have access to healthcare on the same footing as any Swedish child.

An unaccompanied asylum-seeking minor, or one who sought asylum in the past, can therefore theoretically not be refused care. Hospitals and healthcare professionals must take their own measures in order to apply the law. The notion that the children in question must have access to care “under the same conditions” as children residing legally in Sweden first of all means that they can be provided with all types of care, but also that they must pay the same expenses for this care as other children. However, in Sweden, coverage of the healthcare costs depends on the regional authorities; in certain regions, minors have access to free care, while in others, their expenses are largely reimbursed. On the other hand, the purchase of medications is not covered by the law, which means that former asylum-seeking minors who are now “in hiding” will have to pay the full rate without receiving any assistance. For asylum-seeking minors, the situation is somewhat different because they are covered by the special provisions relating to all asylum applicants, and that provide subsidies for medication expenses and for consultation costs.

In general terms, the healthcare access for unaccompanied minors who are entitled to protection, who request asylum or would have requested asylum in the past is theoretically satisfactory. In practice, cases of “discrimination” are occasionally reported⁵⁶³. Unaccompanied minors apparently encounter difficulties arranging a medical appointment, being accepted into a clinic or having access to an interpreter’s services for their consultations.

The only minors who do not have access to the ordinary healthcare system are children residing illegally on Swedish territory, without having ever requested asylum. The laws intended to ensure healthcare access for asylum-seeking children do not include this category of minors. By default, like anyone in Sweden without access to the ordinary healthcare system, “undocumented” minors only have access to emergency care. As such, no text prevents “undocumented” children from receiving additional care, but there is also nothing that facilitates their access. The care provided to these children is therefore, to a certain degree, at the discretion of the healthcare professionals and of the regional authorities, who are responsible for medical care in Sweden. To receive treatment, “undocumented” minors must pay the same expenses as would be paid by a tourist visiting the country, and they receive no financial aid. “Undocumented” minors in specific situations, for example pregnant young girls, do not legally have access to supplementary care and must be satisfied with emergency care.

Organisations working to defend the rights of children unanimously denounce this situation. One of them comments that *“for children to be divided into groups with varying access to a fundamental right like healthcare is in apparent violation of the Convention of the rights of the child’s requirements of non-discrimination”*⁵⁶⁴. In the spring of 2008, an initiative comprising 27 organisations was created in order to seek equal healthcare access for all⁵⁶⁵; in particular, this was a response to the absence of

⁵⁶² Law 2008:344 on healthcare for asylum applicants.

⁵⁶³ UNHCR, *Baltic and Nordic Headlines*, op.cit., quoting an article from the SVT Östnytt on 17/02/2010.

⁵⁶⁴ Declaration of 17 May 2008, quoted in SAVE THE CHILDREN, *Undocumented children – All I want is to land!*, op.cit. (note 326), p. 81.

⁵⁶⁵ *Rätt till vård-initiativet*, initiative for healthcare access, launched in the spring of 2008.

provisions with regard to “undocumented” children. The Committee on the rights of the child echoed this concern in its concluding observations regarding Sweden: while it expresses satisfaction with the provisions regarding healthcare access by asylum-seeking minors or ones whose application has been rejected, it is nevertheless *“concerned that undocumented children only have a right to urgent medical care, with no subsidies”*, and recommends to the authorities that they should *“take the necessary steps to ensure that all children, including undocumented children, have a right to healthcare and medical services under the same conditions as children legally residing in the country”*⁵⁶⁶.

Recommendation n°27 – HEALTHCARE ACCESS

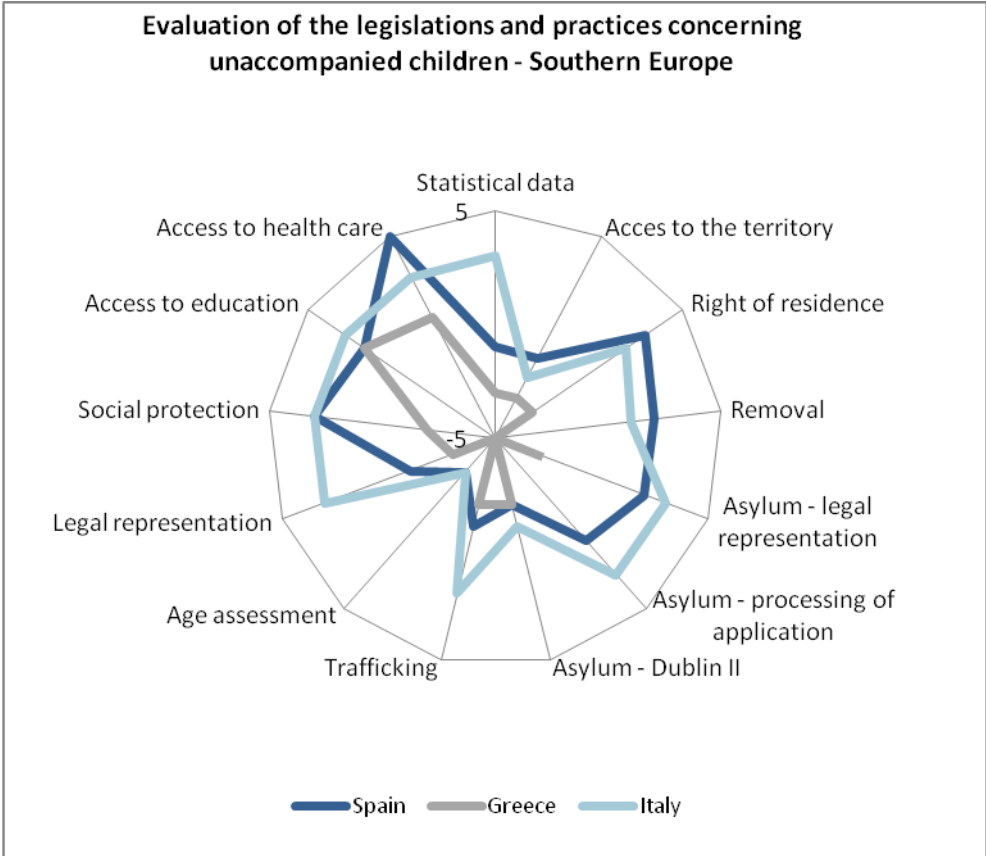
- ▶ Ensure unconditional access to the national healthcare system, not limited to emergency care, to all unaccompanied minors present within the territory.

⁵⁶⁶ COMMITTEE ON THE RIGHTS OF THE CHILD, *op.cit.*(note 246), §60 and 61.

Conclusion: widely ranging laws and practices

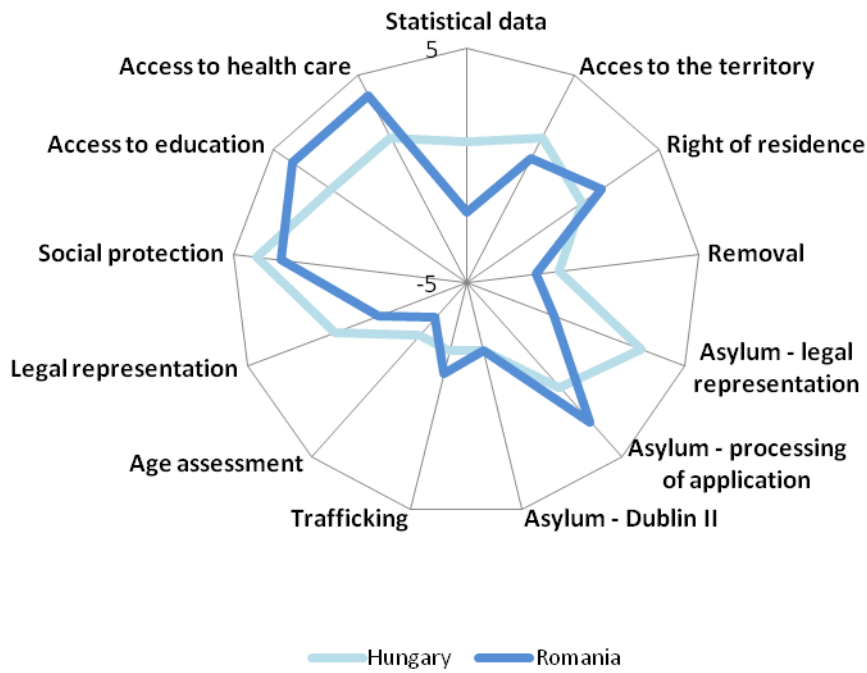
The comparative study thus presents widely ranging laws and practices concerning the reception and care of unaccompanied minors. All of the topics, including the right to asylum that has nevertheless been the subject of an EU harmonisation process, are approached differently and often separately in each of the eight countries.

The following charts put the result of this report into perspective with regard to a reception and care model based on the recommendations, that build on the Community and international standards that already exist in this matter. Divided into three large regions (Southern Europe, Eastern Europe and Northern Europe) and resulting from a subjective estimate by this report’s expert authors, this modelling serves to identify areas for improvement in each country as well as the need for harmonisation across Europe. The details of its preparation are contained in an appendix to this report⁵⁶⁷.

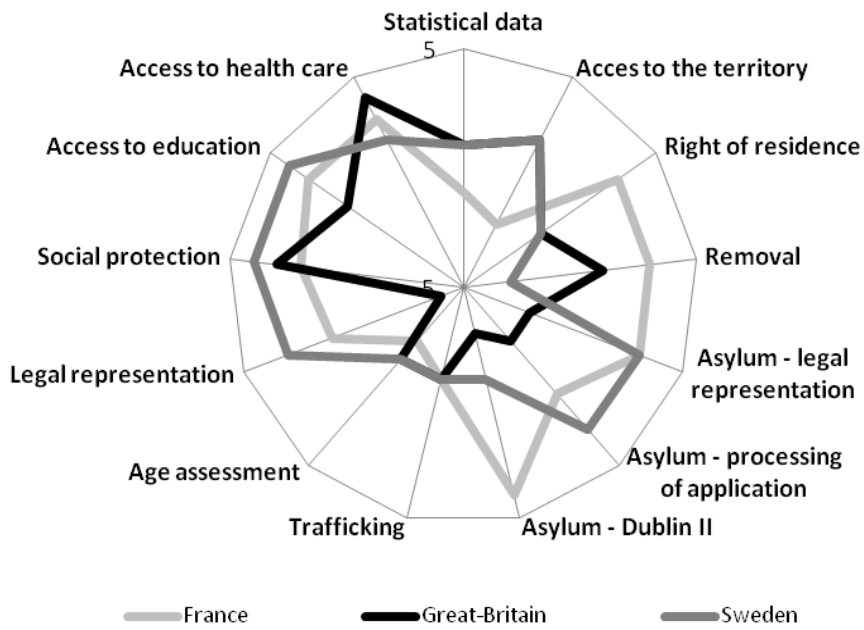


⁵⁶⁷ See below, Appendix 2

Evaluation of the legislations and practices concerning unaccompanied children - Eastern Europe



Evaluation of the legislations and practices concerning unaccompanied children - Northern and Western Europe



It therefore appears essential for the European Union to implement a framework of common standards in order to deal with the overall situation of the unaccompanied minors who arrive every year and who are part of the continent's future. Only a text of this type, based on a high standard of protection that considers the existing protection standards for fundamental rights and more specifically those intended to protect children, as well as the extension of these principles as expressed in this report's recommendations, will make it possible to reach the ideals of justice, liberty and security that underpin the creation of the European Union.

Appendix 1 - Summary of the recommendations for European institutions

This report includes recommendations related to each of the covered topics. They are in addition to the recommendations already formulated by international or non-governmental organisations in an effort to improve the protection of unaccompanied minors within the European Union⁵⁶⁸.

Recommendation n°1 - DEFINITION

- ▶ Harmonise the definition of ‘unaccompanied minors’ in all European Union countries on the basis of the definition contained in the current Community standards.

Recommendation n°2 – STATISTICAL DATA

- ▶ Set up a coordinated information collection method by implementing a statistical collection tool that can be used in each country, thereby allowing for a relevant comparison across Europe.
- ▶ In this statistical tool, include and differentiate all categories of unaccompanied minors, whether asylum-seekers, victims of trafficking or even children taken into care by supervision and protection services. This tool should, moreover, at least contain data regarding the age, nationality, language and gender of the minor.
- ▶ Ensure that personal data is necessarily protected while using this statistical tool, in accordance with the European rules in force and with the cooperation of the organisations and institutions qualified in this domain.

Recommendation n°3 – NATIONAL COORDINATION

- ▶ Entrust the coordination and follow-up of the issue of unaccompanied minors in every State to an independent national institution, capable of collecting the data and creating a relevant resource regarding all areas touching upon the situation of unaccompanied minors.

Recommendation n°4 – EUROPEAN COORDINATION

- ▶ Appoint a single Europe-wide contact person in order to ensure the coordination and follow-up of the issue of unaccompanied minors in the European Union.

Recommendation n°5 – REFOULEMENT AT THE BORDER

- ▶ Forbid refoulement of unaccompanied minors at the time of their access to territory

Recommendation n°6 - DETENTION

- ▶ Forbid any detention of unaccompanied minors linked to their status as foreigners, including when accessing the territory.

⁵⁶⁸ See for example: SEPARATED CHILDREN IN EUROPE PROGRAMME, *Statement of good practice – 4th revised edition*, March 2010, 80 pages; EUROPEAN NETWORK OF OMBUDSPERSON FOR CHILDREN, *State obligations for the treatment of unaccompanied children*, 28 September 2006; UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD, *Treatment of unaccompanied and separated children outside their country of origin*, General comment N°6, CRC/GC/2005/6 (2005)

Recommendation n°7 – LEGAL REPRESENTATION AT THE BORDER

- ▶ Immediately appoint a legal representative in order to accompany the minor upon arrival within the territory.

Recommendation n°8 – ACCESS TO PROTECTION

- ▶ Set up services at the border to provide legal and social orientation, cultural mediation and interpretation for unaccompanied minors.
- ▶ Ensure unconditional access to ordinary social protection for unaccompanied minors upon their arrival at the border, in order to assess their situation and to make a decision that respects the rights of the child.

Recommendation n°9 – RIGHT OF RESIDENCE

- ▶ Grant a systematic right of residence within the territory for all unaccompanied minors until adulthood
- ▶ Promote the granting of a residence card at adulthood for young people registered in a life project that has to be conducted in the host country.

Recommendation n°10 – FORCED REMOVAL

- ▶ Prohibit forced removal of all unaccompanied minors, as any status as a foreigner must not prevail over the status as a child, which requires a detailed analysis of the solution that takes the child's best interest into account. As this notion implies taking the child's own opinion into account, only voluntary returns should be possible. The hypothesis of a family reunification within the European Union should be examined on a systematic basis. The child's wishes should be recognised by a court, to which an automatic application could be made. An appeal by the child himself should also be possible.

Recommendation n°11 – VOLUNTARY RETURN

- ▶ Establish a clear and common voluntary return procedure across the European Union, with a complete assessment that serves to determine the best interests of each child, in particular with regard to guarantees of well-being as a result of the return. This assessment should simultaneously focus on the family setting or the child protection services, as well as on the country's social, economic and political environment, in addition to the risks of social exclusion to which the minor could fall victim. It could rely on the diplomatic representations of the countries and of the Union in the third countries, as well as on a network of approved NGOs. The child's desire to leave should be a primary consideration at the start of the return procedure. Finally, a follow-up plan should be set up in order to ascertain that the protection of the child has been guaranteed by the return. If not, the possibility of returning to the protection services of the country of departure should be left open.

Recommendation n°12 – ASYLUM / Legal representation

- ▶ For every asylum application submitted by an unaccompanied minor, immediately appoint a legal representative having the necessary legal competences in order to provide accompaniment, and whose work can be assessed by an independent national authority.

Recommendation n°13 – ASYLUM / Information

- ▶ Individually inform each unaccompanied minor, in a language he understands, about the procedure and implications of the asylum application, upon arrival at the border or upon being found within the territory.

Recommendation n°14 – ASYLUM / Access to the application

- ▶ Guarantee unconditional access to the asylum application process for all unaccompanied minors, while doing away with all steps linked to the admissibility of the application and enacting, in their favour, exemptions to all special procedures that are less favourable than ordinary law.

Recommendation n°15 – ASYLUM / Personal interview

- ▶ Guarantee that no decision to reject the application can be made without an interview by specially trained protection officials.

Recommendation n°16 – ASYLUM / Specific persecution

- ▶ Recognise child-specific forms of persecution during the processing of the application.

Recommendation n°17 – ASYLUM / Reception

- ▶ Provide reception for unaccompanied asylum-seeking minors that will serve to provide specific psychological and legal support on the basis of a personal identification of their needs, notably by setting up specialised centres intended to look after these children.

Recommendation n°18 – ASYLUM / Dublin II Regulation

- ▶ Eliminate the application of the Dublin II regulation for all unaccompanied minors, with the exception of transfers aimed at reuniting families.

Recommendation n°19 – TRAFFICKING / Identification of victims

- ▶ Set up specific measures and means for identifying unaccompanied minors who are victims of trafficking.

Recommendation n°20 – TRAFFICKING / Protection of victims

- ▶ Anticipate specific measures to ensure the unconditional care of unaccompanied minors who are victims of trafficking, adapted to their needs and that ensure their protection.

Recommendation n°21 – AGE DETERMINATION

- ▶ Establish a common protocol for age determination in all European Union States. This protocol should include a multi-disciplinary assessment performed by authorities that are independent of the government and of the local authorities, involving several complementary persons who are trained in this subject. These authorities could ask to proceed with a medical examination, only with the minor's consent, but this examination would only be one of several elements within the age assessment process. A possibility of administrative and legal appeal, with dispute settlement by the judge himself as a last resort, should be open to the youth on his own and to his representative in case of a dispute regarding the age assigned after the implementation of the protocol. In any event, the principles of presumed minority and of the benefit of the doubt must be applied throughout the age determination procedure.

Recommendation n°22 – LEGAL REPRESENTATION

- ▶ Without delay, appoint a single legal representative for every person claiming to be a minor or that is identified as such. This representative should be independent, specially trained regarding the issues of unaccompanied minors, and should have the material conditions needed to fully carry out this assignment.
- ▶ In every country, set up an independent authority in order to supervise and assess the missions of these representatives.

Recommendation n°23 – SOCIAL PROTECTION

- ▶ Permit all unaccompanied minors to benefit from social protection measures adapted to their needs. In this regard, provide for the set-up of systems specifically dedicated to the initial reception of these children in order to better assess their situation, to identify their protection needs, particularly for asylum-seekers or victims of trafficking, and to direct them into the ordinary childhood protection system under the best possible conditions and as quickly as possible.

Recommendation n°24 – SCHOOLING / Access to the ordinary educational system

- ▶ Guarantee an unconditional right to schooling for all unaccompanied minors, under the same conditions as national minors.

Recommendation n°25 – SCHOOLING / Educational adaptation measures

- ▶ Provide a sufficient quantity of educational adaptation measures, specifically dedicated to unaccompanied minors, allowing them to join the ordinary educational system through the acquisition of the necessary basics, in particular from a linguistic point of view.

Recommendation n°26 – PROFESSIONAL TRAINING

- ▶ Guarantee access to professional training programmes under the same conditions as for national minors, by systematically granting a work permit, valid at least for the duration of the programme, if such an authorisation is required under national law.

Recommendation n°27 – HEALTHCARE ACCESS

- ▶ Ensure unconditional access to the national healthcare system, not limited to emergency care, to all unaccompanied minors present within the territory.

Appendix 2 – Charts modelling the laws and practices in the 8 studied countries.

As part of the conclusion, the laws and practices in the 8 studied countries have been modelled while considering the criteria defined by this report’s expert authors, as well as an assessment of their implementation in the studied countries.

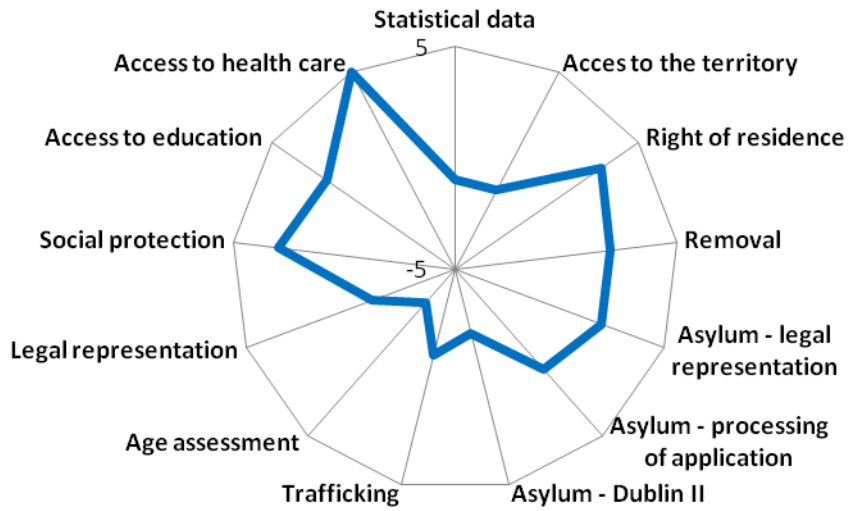
The following criteria have been considered and assessed by the authors:

Topics	Criteria
Data collection	<ul style="list-style-type: none"> - Existence of an information collection method or of a single statistical compendium on unaccompanied minors - Statistical tool including all categories of unaccompanied minors - Tool containing minimum data: age, gender, nationality, language
Access to the territory	<ul style="list-style-type: none"> - Prohibition of the refoulement of unaccompanied minors - Prohibition of detention when accessing the territory - Immediate taking into care of any minor arriving at the border alone - Appointment of a legal representative upon entering the territory
Right of residence	<ul style="list-style-type: none"> - Awarding of a systematic right of residence to unaccompanied minors - Provisions for obtaining a right of residence upon adulthood for youths involved in a life project.
Removal from the territory	<ul style="list-style-type: none"> - Prohibition of forced removal - Consideration of the child’s wishes as part of the voluntary return decision - Assessment of the protection guarantees in the country of return - Validation of the return procedure by a judge - Implementation of post-return follow-up measures - If return is not possible, possibility of legally remaining in the host country
Asylum - legal representation	<ul style="list-style-type: none"> - Presence of a competent legal representative in order to assist the minor during the asylum procedure
Asylum - application processing	<ul style="list-style-type: none"> - Unconditional access to the asylum application and dispensation from special procedures (at the border, priority...) - A true possibility of being granted asylum (recognition rate at least equal to that of adults) - Protection officials specially trained to handle applications from minors, and consideration of the vulnerability of children when processing the application - Consideration of the reasons pertaining to child-specific persecution
Asylum – Dublin II regulation	<ul style="list-style-type: none"> - Absence of transfers of unaccompanied minors within the framework of the Dublin II regulation, except for the purposes of reuniting families. - In the absence of a general dispensation, suspension of transfers to certain countries such as Greece
Trafficking	<ul style="list-style-type: none"> - Existence of tools and specialised services for the identification of child victims of trafficking - Statistical data distinguishing child victims of trafficking - Existence of specific and suitable arrangements for taking child victims of trafficking into care

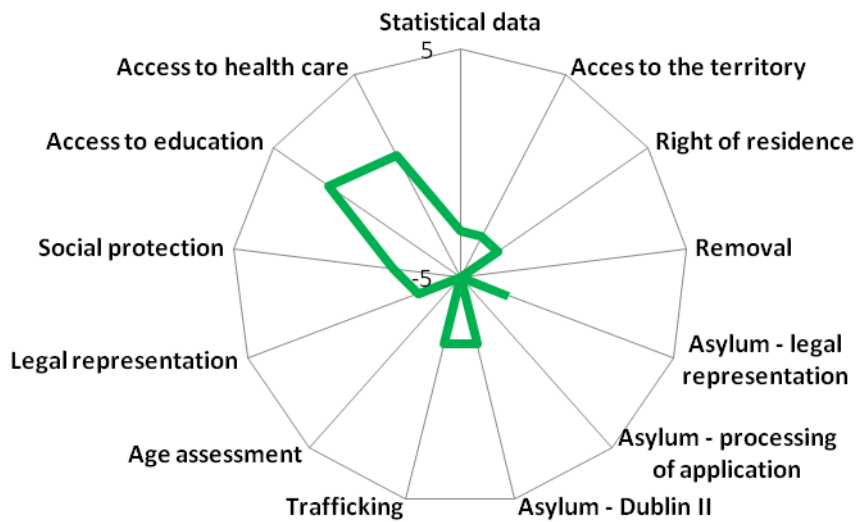
Age determination	<ul style="list-style-type: none"> - Multi-disciplinary age assessment including elements other than the medical assessment - Assessment carried out by independent authorities - Assessment carried out by trained persons - Possibility of recourse in case of dispute of the age assigned by the assessment - Application of the principles of presumed minority and benefit of the doubt
Legal representation	<ul style="list-style-type: none"> - Appointment of a legal representative (ideally, only one) for all unaccompanied minors - With an adequate mandate for looking after the child's well-being - Appointed as of the minor's identification - The legal representative is independent and trained - Presence of a body to supervise the work of the legal representatives
Social protection	<ul style="list-style-type: none"> - Access to social protection under the same conditions as national children - Social protection arrangements suited to the needs of unaccompanied minors
Schooling	<ul style="list-style-type: none"> - Right to schooling under the same conditions as national children - Sufficient number of educational adaptation measures - Access to professional training programmes
Access to healthcare	<ul style="list-style-type: none"> - Unconditional access to emergency care - Unconditional access to the national healthcare system

The detailed charts for each country, which are superimposed in the report's conclusion, are presented here

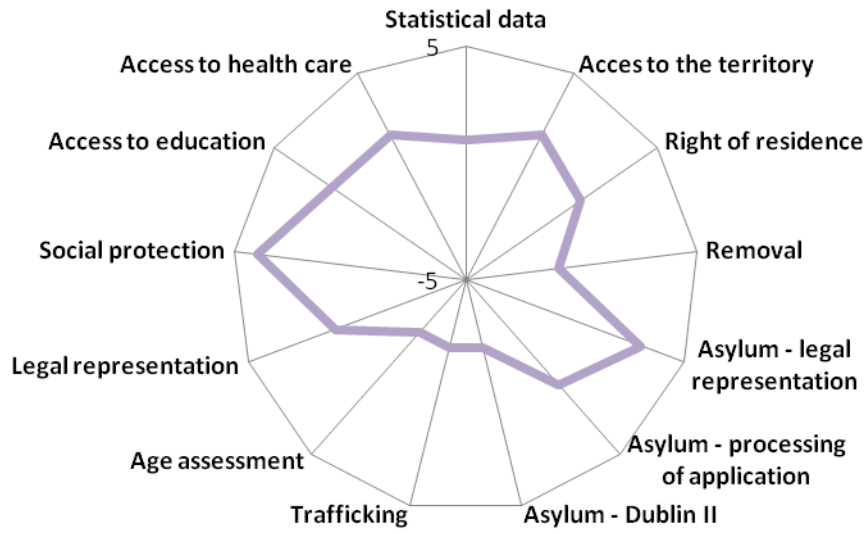
Spain



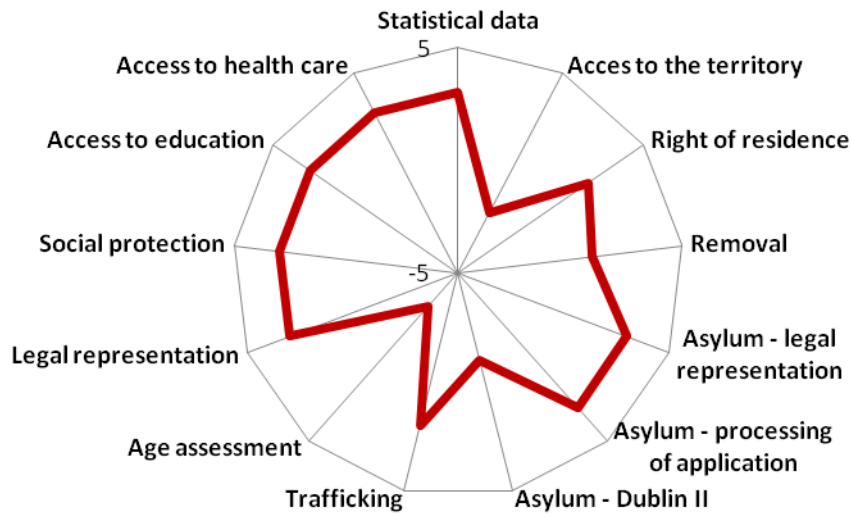
Greece



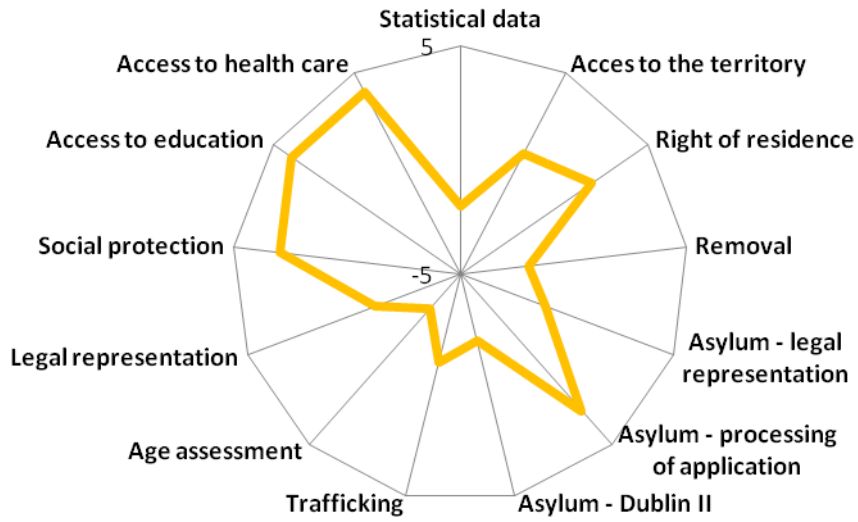
Hungary



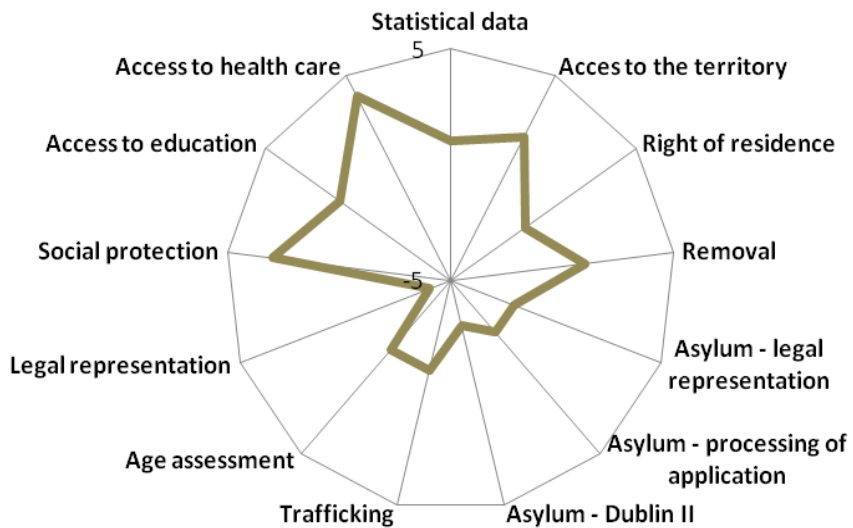
Italy



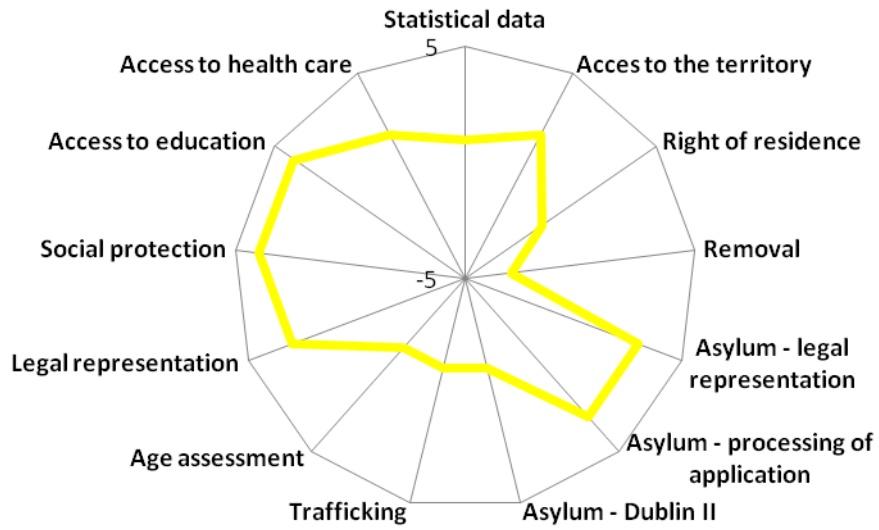
Romania



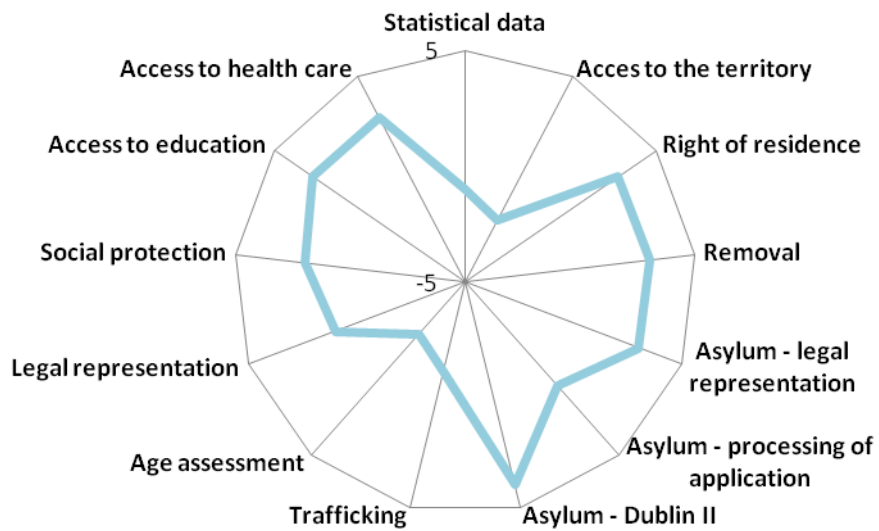
Great Britain



Sweden



France



Appendix 3 - Reference international and European standards

United Nations

- Convention relating to the Status of Refugees, adopted on 28 July 1951 in Geneva
<http://www2.ohchr.org/english/law/refugees.htm>
- Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entry into force 2 September 1990, in accordance with article 49.
<http://www2.ohchr.org/french/law/crc.htm>
- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational organised Crime Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.
<http://www2.ohchr.org/english/law/pdf/protocoltraffic.pdf>

European Union

- Consolidated version of the Treaty on European Union, Official Journal of the European Union, C 83/13
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:FR:PDF>
- Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries
[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y0719\(02\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y0719(02):EN:HTML)
- Charter of Fundamental Rights of the European Union, (2000/C 364/01)
http://www.europarl.europa.eu/charter/pdf/text_en.pdf
→ Art. 24
- Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R2725:EN:HTML>
- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0055:EN:HTML>
→ Art. 2f
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0009:EN:HTML>
→ Art. 2h, Art. 10, Art.19

- Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R0343:EN:HTML>
 → Art. 2h

- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>
 → §(21); art. 30

- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, adopted on 29 April 2004 and applicable to all Member States of the European Union
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML>
 → Art. 3.3; Art. 10

- Council directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>
 → §14, Art. 2h; Art. 2i; Art 12.1; Art. 17; Art. 35.3.f;

- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>
 → Art. 10; Art. 17

- European Commission Action Plan on Unaccompanied Minors (2010-2014) SEC(2010)534. 5 May 2010
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF>

- Conclusions of the Council on unaccompanied minors, 3018th Council meeting JUSTICE and HOME AFFAIRS Luxembourg, 3 June 2010
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/114887.pdf

Council of Europe

- Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16 May 2005
<http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>
 → Art. 5.5; 10; 12.7; 14.2; 163.7; 28.3 ...

- Recommendation 1703 (2005) of the Parliamentary Assembly of the Council of Europe on Protection and assistance for separated children seeking asylum
<http://assembly.coe.int/Documents/AdoptedText/ta05/FREC1703.htm>

- Recommendation CM/Rec (2007)9 of the Committee of Ministers to Member States on life projects for unaccompanied migrant minors
http://www.coe.int/t/dg3/migration/Source/Recommendations/Recommendation%20CM%20Rec_2007_9_en.pdf

Appendix 4 – National laws

Spain

Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, http://noticias.juridicas.com/base_datos/Admin/lo4-2000.html

Real Decreto 2393/2004, de 30 de diciembre, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, http://noticias.juridicas.com/base_datos/Admin/rd2393-2004.html

Acuerdo entre la República de Senegal y el Reino de España sobre cooperación en el ámbito de la prevención de la emigración de menores de edad senegaleses no acompañados, su protección, repatriación y reinserción, hecho “ad referendum” en Dakar el 5 de diciembre de 2006, http://noticias.juridicas.com/base_datos/Admin/a051206-aec.html

Acuerdo entre el Reino de España y el Reino de Marruecos sobre cooperación en el ámbito de la prevención de la emigración ilegal de menores no acompañados, su protección y su retorno concertado, hecho en Rabat el 6 de marzo de 2007. http://www.renteriaabogados.com/images/stories/acuerdo_menas_cg_a429.pdf

Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria. http://noticias.juridicas.com/base_datos/Admin/l12-2009.html

France

Civil Code

Code de l’action sociale et des familles

Code de l’entrée et du séjour des étrangers et du droit d’asile (CESEDA), <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158&dateTexte=20100831>

Agreement intended to establish cooperation for the purpose of protecting Romanian minors in difficulty within the territory of the French Republic and for their return to their country of origin, and for combating exploitation networks, signed on 4 October 2002 and published in the O.J. on 14 March 2003

Agreement between the Government of the French Republic and the Government of Romania relative to cooperation for the purpose of protecting isolated Romanian minors within the territory of the French Republic and for their return to their country of origin, and for combating exploitation networks involving minors, signed on 1 February 2007, ratified by France on 6 May 2010

Greece

Presidential decree 61/1999, O.G. n° 63 (A), 6 April 1999

L 3386-2005

Presidential decree 220/2007, O.G. n° 251 (A), 13 November 2007

Presidential decree 90/2008

Hungary

1997 law XXXI on child protection

2007 law LXXX on asylum

2007 law II on the entry and residence of nationals from third countries

Civil Code

Italy

Civil Code

Criminal Code

Law 184/83

D.P.R. 488/88

T.U 286/98

DPCM 535/99

D.P.R. 303/04

Directive of the Ministry of the Interior and the Justice Ministry, signed on 7 December 2006 and registered by the Court of Auditors on zero 7 March 2007

Explanatory circular of the Department for Civil Liberties and Immigration, 11 April 2007

Prot. Circular 17272/7 of 9 July 2007

Legislative decree n. 251/2007 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

Legislative decree n. 25/2008; amended by D. Lgs.159/2008 relative to minimum standards on the procedure for granting and withdrawing refugee status in the Member States

Romania

Law n°678/2001 on the fight against the trafficking of human beings

OUNG nr. 194/2002, ordonanta de urgenta privind regimul strainilor in Romania, republicata in 2008

OUNG 143/2002 Ordonanta de urgent nr. 143/2002 *din 24/10/2002* Publicat in Monitorul Oficial Partea I nr.804 din

05/11/2002 pentru modificarea si completarea unor dispozitii din Codul penal si unele legi special in vederea ocrotirii minorilor împotriva abuzurilor sexuale

Law n° 39/2003 for the prevention and fight against organised trafficking, 21 January 2003

Law 272/2004 on the protection and promotion of the rights of the child (23.06.2004)

OUG 79/2005 Ordonanta de urgenta nr. 79 din 14 iulie 2005 pentru modificarea si completarea Legii nr. 678/2001 privind prevenirea si combaterea traficului de persoane

Law n°287/2005 intended to approve, modify and complete Ordinance n°79/2005 amending and completing law n° 678/2001 of 21 November 2001 on the prevention and fight against the trafficking of human beings.

Law n° 122/2006 on asylum in Romania, 25 August 2006.

<http://www.unhcr.org/refworld/docid/44ace1424.html>

Great Britain

Immigration Act, 1971.

Children Act, 1989.

Children Leaving Care Act, 2000.

Nationality, immigration and asylum act, 2002.

Asylum and Immigration, Treatment of claimants etc., 2004.

Borders, Citizenship and Immigration Act, 2009.

Sweden

Law 1990:52 *Care of young persons Act*, including the amendments of law 2003:420.

Ordinance 2001:976 *on education, preschool and school-age childcare for refugees and others.*

Aliens Act 2005:716

Act 2005:429 on guardians ad litem for unaccompanied children

Law 2008:344 on healthcare for asylum applicants

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