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When Family Reunification is not in the best interest of the unaccompanied minor

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Orientadora: Prof. Benedita Menezes Queiroz

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Ao meu pai.

Disse-me o Godinho
ao ouvido:

"O desconhecido é o
irmão do futuro",

E eu tive-me em
arrepio.

Não recear o Cabo
das Tormentas

é ter na dobra,

a esperança!

Márcia Branco

Agradecimentos

À minha orientadora, Professora Benedita Menezes Queiroz que de modo cativante, de quem se debruça apaixonadamente ao que se dedica, me apoiou na elaboração de uma dissertação desafiante imprimindo confiança, endireitando a trajetória. As suas aulas a três vozes de *Arts, International Law and International Relations* reacenderam-me os olhos de esperança.

Aos meus pais, João e Carla, por serem escultores da vida e de forma tão firme e delicada, esboçarem os mistérios dos dias através do exemplo a viva carne. Sem vocês a observarem pelo parapeito da janela, não me valeria a existência.

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À Mara, por me talhar a ouro o amor e me ensinar a ter no abraço o mundo que importa.
Por fim, ao anjo que me guarda, por iluminar, ininterruptamente, o meu inquieto coração.

Resumo

Esta dissertação pretende examinar o direito à Reunificação Familiar por parte de menores desacompanhados na União Europeia e a sua íntima ligação ao princípio do superior interesse da criança, aquando dessa análise.

Embora este princípio se veja refletido amplamente em regulação internacional e europeia, a sua aplicação em casos de avaliação de pedidos para reunificação familiar, requer uma apreciação casuística e cuidadosa.

Com este estudo pretende-se destacar a inerente vulnerabilidade que acompanha especialmente os menores desacompanhados, o benefício associado a uma reunificação familiar célere e eficiente e, ainda, a hipótese de os pedidos de reunificação sofrerem uma avaliação errónea, acarretando consequências jurídicas, psíquicas e sociais, profundas.

Palavras-Chave: Menor Desacompanhado; Vulnerabilidade; Reunificação Familiar; Princípio do Superior Interesse da Criança.

Abstract

This dissertation aims to examine the right to family reunification for unaccompanied minors in the European Union and its intimate connection to the principle of the best interests of the child.

Although this principle is widely reflected in international and European regulations, its application in cases of assessment of requests for family reunification requires a careful case-by-case assessment.

The aim of this study is to highlight the inherent vulnerability that accompanies unaccompanied minors in particular, the benefits associated with swift and efficient family reunification, and the possibility that reunification applications may be wrongly assessed, with far-reaching legal, psychological and social consequences.

Keywords: Unaccompanied Minors; Vulnerability; Family Reunification; Principle of the Best Interest of the Child.

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1-Introduction

"To be or not to be"? This is more than a rhetorical question than once Shakespeare immortalized. This is the question behind the judicial reasoning. Does a particular situation resonate with both the letter and the spirit of the law? And, conversely, does the law contemplate all the potential scenarios for a matter, or does it allow room for the unforeseeable?

To be wrong can also mean to be right, and it is through this permanent dialectic tension between the Law and the reality which it applies to, that the juridical analyses should act as a bridge connecting the preview solution to the case at stake.

This dissertation examines the legal, social, and policy implications of the international protection of unaccompanied minors within the European Union.

Given the unique challenges faced by unaccompanied migrant minors in the European Union, it is crucial to address their heightened vulnerability and the need for enhanced protection.

Aligned with the principle of the "best interest" of the child, Member States are required to effectively process Family Reunification requests, provided no significant reasons suggest otherwise. Therefore, the State, the Asylum System, and International Regulations must work together to provide a smooth, efficient, and robust response to protect unaccompanied minors and mitigate the risks they face.

However, what if the system, despite its intentions, fails to serve the child's best interests? Sometimes, the threats may not be immediately visible, and the protection mechanisms may inadvertently contribute to the problem.

This dissertation will examine the rights and international protection mechanisms for Unaccompanied Minors, and will also address the critical question: "What if the system itself becomes a source of danger?"
If we are unable to prevent harm, we must, at least, be ready to react and respond accordingly.

Chapter 1-Who is an unaccompanied minor?

1.1 The definition of an unaccompanied minor according to EU Law

According to the Directive 2011/95/EU to be granted with a "refugee status"[1] "means the recognition by a Member State of a third-country national or a stateless person as a refugee". The same Directive describes a "minor"[2] a "a third-country national or stateless person below the age of 18 years" and an "unaccompanied minor" as "a minor who arrives on the territory of the Member State unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned."

Moreover, this Directive expresses a requirement for immediate protection of these minors on the Articles 24, 27, 29 and 30, by providing them essential conditions related to accommodation and healthcare on the same terms as other children in the Member States, and access to education under conditions identical to those of nationals of the host states[3].

The concept of "unaccompanied minor" according to the United Nations High Commissioner for Refugees (UNHCR) is a child who's "separated from both parents and other relatives and not being cared for by an adult who, by law or custom, has responsibility to do so."[4]. Besides, the Article 20 of the United Nations Convention on the Rights of the Child (hereinafter CRC) refers to them as children "temporarily or permanently deprived of his or her family environment."

[1] Article 2, (e) 'refugee statues' means the recognition by a Member State of a third-country national or a stateless person as a refugee.
[2] Article 2, (k) 'minor' means a third-country national or stateless person below the age of 18 years.
[3] Article 24 ("Residence Permits"), Article 27 ("Access to Education"), Article 29 ("Social Welfare"), Article 30 ("Healthcare").
[4] https://www.unhcr.org/resettlement-handbook/3-resettlement-submission-categories/3-5-children-and-adolescents-at-risk/.

Therefore, it is crucial to enunciate these legal definitions under these European and International regulations to better understand the subject to be developed and for the latter articulation of those concepts.

1.2 The contextualization and evolution of the concept of "unaccompanied minors"

In 1924, the League of Nations, which preceded the establishment of the United Nations (hereinafter UN) in 1946, introduced the first international declaration dedicated to safeguarding children's rights: the Declaration of the Rights of the Child, also known as the Geneva Declaration of the Rights of the Child. This was the first document to explicitly recognize specific rights for children[5]. Since then, the concept of child rights has progressed significantly.

In 1946, the UN has also established the United Nations International Children's Emergency Fund (UNICEF) tasked with assisting children worldwide. Subsequently, in 1948, the UN adopted the Universal Declaration of Human Rights (hereinafter UDHR), the first globally acknowledged declaration on human rights.

Within this document, children are mentioned only twice, in Articles 25 and 26[6], where they are associated with family and parental discretion over education. Therefore, alongside with their mothers, children are entitled to "special care and assistance" and "social protection." However, at this point, children were not yet regarded as distinct individuals granted with recognized and protected rights.

[5] The League of Nations has adopted the Geneva Declaration on the Rights of the Child, drafted by Eglantyne Jebb, who was the founder of the Save the Children Fund. The Declaration mentioned some rights that children were granted with just as: means for their development; special help in times of need; priority for relief; economic freedom and protection from exploitation (https://www.humanium.org/en/geneva-declaration/)

[6] Article 25, n. º 2: "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection." Article 26, n. º 1: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages (…).

This reality was about to change as, further on, the UN began its formal focus on children's rights in 1959 by adopting the Declaration of the Rights of the Child, which expanded on the earlier Geneva Declaration. However, neither declaration specified the age range defining childhood, which made it difficult to determine the categories of people under that scope. This declaration consisted of ten straightforward principles that addressed basic children's rights, including the right to free education and the right to a name and nationality.

Another complementary legal document was the International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights (ESCR), which came into force in 1976, reaffirming the importance of civil and political freedoms as outlined in the UDHR. These covenants mentioned children three times, emphasizing their protection and the right to education even though it was always in the context of the family.

These treaties and covenants set the stage for the 1989 UNCRC which, finally, acknowledged and addressed the active roles of children in society.

Therefore, under international law, the primary legal instrument for the protection of children is the CRC. Not too long after this, the concept of "unaccompanied minors" also emerged in another international law instrument.

In fact, it was on June 20th of 1995 that the notion of "unaccompanied minors" first acquired legal relevance due to a Council Resolution in a section named "Additional Safeguards for unaccompanied minors and women". There it was mentioned, for instance, the need for the presence of an adult during personal interviews[7] besides, it was expressed that when an application for asylum of an unaccompanied minor is examined, the national authorities must consider their mental development and maturity, among other aspects. This represented an essential provision that starter to enhance the rights of "unaccompanied minors" as legal subjects.

[7] "Unaccompanied minors must be represented by an appointed adult or institution that assists them during the procedures. Member States must endeavour to involve female employees and interpreters where necessary, particularly where female asylum-seekers find it difficult to present the grounds for their application owing to the experiences they have undergone or to their cultural origin."

Moreover, regarding the asylum process, the European Union established the Common European Asylum System (hereinafter CEAS) in 1999, to ensure standardized legal procedures and protections for individuals seeking asylum, including unaccompanied minors.

Further on, during the year of 2000, the UN General Assembly adopted two Optional Protocols to the 1989 CRC, obligating State Parties to take key actions to prevent children from partaking in hostilities during armed conflict and to end the sale, sexual exploitation and abuse of children.

There is also to be mentioned the General Comments from the Committee on the Rights of the Child[8], especially concerning unaccompanied children and the principle of the best interests of the child, such as the General Comment No. 6 (2005) on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin.

In May of 2010, the European Commission adopted the Action Plan on Unaccompanied Minors (2010-2014), proposing a common approach at the Union level based on the principle of the best interest of the child.

Additionally, the Council of the European Union and the representatives of the governments of the Member States have adopted "Conclusions on the Protection of Children in Migration" in 2017. This document reaffirms that migrant children have the right to be protected, consistent with relevant provisions of EU law, including the EU Charter, and with international law on the rights of the child.

Right after, in May 2018, the European Parliament adopted a resolution on the "Protection of children in migration" which stresses that all children, irrespective of their migration or refugee status, must enjoy their rights enshrined in the CRC.

Moreover, in September of 2020, the European Commission adopted a New Pact on Migration and Asylum, containing several solutions through new

[8] "General comments provide an authoritative interpretation of the rights contained in the Articles of the CRC. The main purpose of a General Comment is to promote implementation of the Convention and assist State Parties in fulfilling their reporting obligations" in https://www.childrightsconnect.org/wp-content/uploads/2013/10/Fact-sheet-CRC-GC-EN.pdf.

legislative proposals and amendments to pending proposals, which aimed to constitute an important step forward in the way the Union tackles migration issues towards a more cohesive response.

This proposal intended at reform a comprehensive migration and asylum policy, focusing on three main pillars: Efficient asylum and return procedures; Solidarity and a fair distribution of responsibilities; Strengthened partnerships with third countries.

1.2.1 Notes on the New Pact on Migration and Asylum

The Pact as a legal element does not constitute a new piece in the history of EU integration on migration and asylum.

In fact, in 2008 the European Council has adopted the European Pact on Immigration and Asylum which intended to end mass regularizations of the status of migrants at the national level which had taken place in various Member States in the beginning of the century. Having stated this, the harmonization of asylum rules and a common approach to borders and migration became an imperative.

However, the 2020 Pact was instead developed under the post-2015 climate of closed borders so there was a clear objective to manage the external borders as the pre-requisite for going back to the regular application of the Schengen agreement.

Therefore, the EU's New Pact on Migration and Asylum has introduced the concept of "asymmetric solidarity", allowing Member States to selectively decide how they wish to contribute, based on alternatives to relocation.

This system, designed to be adaptable, relies heavily on the European Commission to decide what types of contributions are fair and appropriate, especially when voluntary pledges are insufficient.

However, this brings up several unresolved questions left for future discussion, such as: What defines meaningful participation in sharing responsibilities?

This flexibility comes at the expense of asylum seekers, who are commodified, traded, and transferred between Member States discretionarily in a system of managed migration. Consequently, the rhetoric of solidarity seems more like an apology for the existing Dublin system[9], rather than a meaningful revision of a framework.

Furthermore, it is questionable whether the Pact can address the existing implementation gaps, as it overlooks some key issues worth mentioning asylum seekers' preferences are ignored, border states remain the gatekeepers of the EU's external frontier, and the complexities of cooperation with third countries are taken for granted and not well-determined.

This suggests that the EU may be shifting from a majoritarian approach to solidarity (achieved through unanimity or qualified majority voting) to a more authoritarian approach, where decisions are centralized in the hands of the Commission.

Thus, the debate on the 2020 Pact arises the question of solidarity in EU migration and asylum law into conversation with two dominant historical conceptualizations of solidarity to verify in which extent they resonate with each other. The question driving the analysis was why solidarity has not worked according to expectation.

According to the author, Philippe De Bruycker[10], the alternative offered by the Commission's proposal does not represent a genuine consensus, but rather highlights the ongoing disagreements among Member States. While it may sooth certain countries, particularly those in the Visegrad group[11] by incorporating their preferred model of "flexible solidarity" this approach is unlikely to rebuild trust between EU Member States, who remain deeply divided on asylum

[9] The Dublin system refers to the Dublin Regulation, a cornerstone of the European Union's asylum policy. Its primary function is to determine which EU member state is responsible for examining an asylum application aiming to prevent "asylum shopping". This Regulation will be referred and developed further on.

[10] De Bruycker, Philippe; "The New Pact on Migration and Asylum: What it is Not and What it Could Have Been" *Droit et Politique de l'Immigration et de l'Asile de l'UE* ,15/dec/2020. https://eumigrationlawblog.eu/ consulted on 20/07/2024.

[11] The Visegrad Group (V4) is a regional alliance in Central Europe, consisting of four countries: the Czech Republic, Hungary, Poland, and Slovakia. Established in 1991, the group was named after the Visegrád Castle where the leaders of these countries met to coordinate their policies and promote regional cooperation.

policies. Instead of building a true pact that reconciles differing perspectives, this proposal is more of a fragile compromise composed of contradictory elements.

Furthermore, the New Pact has also introduced a reconstruction of asylum procedures, particularly through the establishment of border procedures that apply to applicants considered unlikely to receive international protection. While these procedures aim to streamline asylum processes, they raise serious concerns regarding their implications for vulnerable groups, especially unaccompanied minors.

These specific measures don't seem to correctly protect the rights of minors, as the introduction of automatic returns for rejected applicants could lead to longer detention times and potentially violate their rights under the CRC.

Moreover, the mentioned "solidarity philosophy" on border management and illegal entry prevention may detract from the core mission of safeguarding the rights of unaccompanied minors and child refugees. How? By inadvertently leading to the establishment of large, closed centers at external borders, which could undermine human rights protections, hurting the right of family reunification and the best interest of the child.

In addition, the New Pact positions detention as a more common practice in managing asylum seekers, potentially normalizing the detention of unaccompanied minors and children.

Previously, the EU recognized that detention should be an exceptional measure, reserved for specific circumstances. However, this Pact, detention could become a standard practice, contradicting the EU's previous stance and risking the rights and well-being of children.

In conclusion, while the New Pact introduces clearer criteria for asylum procedures and aims to facilitate the management of migration, it raises critical questions about the protection of unaccompanied minors and child refugees. The proposal must align more closely with international human rights standards to ensure that the rights of these vulnerable individuals are not only recognized but also effectively safeguarded. By prioritizing the protection of unaccompanied minors, the EU can work toward a more humane and just asylum policy that truly

reflects its commitment to human rights and the dignity of all individuals, particularly the most vulnerable[12].

1.3 The "vulnerability" of Unaccompanied Minors

An unaccompanied minor in asylum, whether foreign or stateless, lives, by definition, in a country different than his or her own. In addition, according to the specific circumstances of his or her case, the minor is also surrounded by several inherent obstacles: the legalization process, the culture integration, the language barrier.

Moreover, if the referred minor is not, on top of that, under the responsibility of a family member as a figure of guidance, protection and legal representation, there is a higher possibility that this child suffers from a phenomenon of double victimization. First, as a minor in an environment that is diverse from his or her common background, and, in addition, as someone who does not have an immediate and trustworthy figure to follow in a situation of distress.

Considering this sensitive scenario, it is of utmost importance that the superior interest of the minor is considered by leaning on the rights of the child, covered and protected by International and European Law.

In fact, as previously mentioned, the 1898 UN CRC have introduced a new policy on this field, emphasizing a new spectrum of rights granted to minors. Its universal importance and credibility were validated by the fact that the Convention has been ratified by every country in the world, except for two.

According to this Convention, minors are granted their own human rights, which is something acquired regardless of their legal representatives' rights.

Therefore, attributing effective rights to children has represented a great impact by moving the minor to a central area where he or she is envisioning not merely as a fragile figure with the need to be assisted by a tutor, but, first, as a

[12] DUIĆ, D., & ČEP, M. (2021). Impact of the New Pact on Migration and Asylum on child refugees and unaccompanied minors. *Balkan Social Science Review*, 17, 117-143.

holder of rights. The minor was, from then on, considered as an active part of the democratic process recognized by society and the central powers.

Despite this evolution, unaccompanied minors in migration are still a vulnerable figure due to the situation they are living and the conditions that surround them.

Hence, due to their young age and lack of power to use their voice, they are particularly exposed to several threats, embodying an easier targeted for abuse and exploitation.

This vulnerability is evident at every stage of the migration process: during the journey, upon arrival, and throughout the adaptation period. Their "unaccompanied" status increases their risk of falling victim to various crimes and abuse, and their safety often goes overlooked.

In conclusion, unaccompanied minors in asylum face particularly precarious situations, making them highly susceptible to human rights abuses, human trafficking, and sexual exploitation. Therefore, their rights must be protected at all costs, and their legal safeguards should be reinforced to prevent ongoing victimization.

1.3.1 The International Legal relevance of the "vulnerability" qualification

With the previous context established, it is understood that unaccompanied minors in asylum constitute a particularly "vulnerable" target. But when did the European Law first used this qualification to describe unaccompanied migrant minors and when did it acquired legal relevance?

Once Law is permeable to the social phenomenon's it covers and guarantees, this application has started with the need to better assure the safety of individuals who were facing many challenges at once, while lacking proportional protecting mechanisms.

In fact, to name an issue is to give it a real dimension, and to cover it legally means to guarantee its protection.

Therefore, the European Asylum Law has included special guarantees for vulnerable individuals since the first-generation instruments of the CEAS. This approach is based on the principle of equality before the law, a cornerstone of EU law enshrined in both the TEU Article 2[13] and the EU Charter of Fundamental R (hereinafter CFR) on Article 20[14]. Consequently, vulnerable applicants should benefit from the same rights and comply with the obligations as other applicants under CEAS instruments, applied and interpreted considering the EU Charter. Even so, the word was still not found on the text of these instruments.

However, the Reception Conditions Directive (hereinafter RCD) and the Asylum Procedures Directive (hereinafter APD) address vulnerability through the concepts of "special reception needs"[15] and "special procedural guarantees"[16] on Chapters V and II respectively. The RCD expresses that Member States shall consider the specific situations of vulnerable persons, ensuring their reception conditions meet their special needs throughout the asylum procedure.

The "vulnerability" dimension of such persons can impact the assessment of an applicant's eligibility for international protection, requiring an individualized approach in the light of its specific necessities that must be analyzed casuistically.

However, while the CEAS instruments provide examples of categories of vulnerable groups, they do not exclude the possibility of other or additional categories once the list is not exhaustive nor closed.

For instance, during the COVID-19 pandemic, applicants at risk of the virus may have had special reception need as the European Commission recommended transferring individuals from at-risk groups to individualized

[13] "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."
[14] "Everyone is equal before the law."
[15] Article 21, of the RCD: "Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking (…)".
[16] Article 24, n, º 1 of the APD: "Member States shall assess within a reasonable period of time after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees.".

reception locations and providing special protections[17]. This was a practical example of a "vulnerable group" that was not specifically mentioned on those legal instruments but were considered inside of the scope of such definition.

Therefore, even though the CEAS consider some categories of people as "vulnerable", the mere inclusion in this sphere does not automatically grant specific entitlements.

Thus, Member States must, instead, individually assess whether an applicant has special reception needs or requires special procedural guarantees, with obligations determined by this assessment as Article 22, n. º 1[18] and 3[19] of the RCD and the Article 24, n. º 1[20] and 3[21] contain.

1.3.2 Jurisprudence

There are some European Union Jurisprudential Cases worth mentioning as they brought attention not only the "vulnerable" character of individuals in asylum, namely unaccompanied minors, but to other principles that directly connect with this.

The evolution of this concept, present on the Court of Justice of European Union (hereinafter CJEU) discussions and conclusions is particularly important to prove that the vulnerability state of unaccompanied minors in asylum has not only legal importance and protection but is also discussed and considered before the European Union courts.

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[17] EASO. (2021). *Judicial analysis: Vulnerability in the context of applications for international protection*. EASO Professional Development Series. Produced by IARMJ-Europe under contract to EASO.

[18] "In order to effectively implement Article 21, Member States shall assess whether the applicant is an applicant with special reception needs. Member States shall also indicate the nature of such needs (…)".

[19] "Only vulnerable persons in accordance with Article 21 may be considered to have special reception needs and thus benefit from the specific support provided in accordance with this Directive."

[20] "Member States shall assess within a reasonable period of time after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees."

[21] "Member States shall ensure that where applicants have been identified as applicants in need of special procedural guarantees, they are provided with adequate support in order to allow them to benefit from the rights and comply with the obligations of this Directive throughout the duration of the asylum procedure."

The joined Cases *A, B and C v Staatssecretaris van Veiligheid en Justitie,* 2 December 2014, the CJUE has dealt with the assessment of applications for refugee status based on sexual orientation. While the specific term "vulnerability" may not have been used frequently in the judgment, the cases addressed the broader context of how asylum authorities should handle applications involving vulnerable individuals, particularly those subject to persecution based on their sexual orientation.

Considering this, the CJEU has emphasized that the assessment of asylum claims must respect the fundamental rights and dignity of the applicants. This includes avoiding any measures that could infringe on the dignity or private life of individuals, such as intrusive questioning or requiring evidence that violates personal integrity.

Besides, the Court has noted that while determining the credibility of an applicant's declared sexual orientation is essential, the methods used must not undermine their fundamental rights. Therefore, the competent authorities must conduct assessments that consider the vulnerable position of individuals fearing persecution due to their sexual orientation.

In another light, in the Case *M v Minister for Justice and Equality, Ireland, Attorney General*, 2 of December 2017, the CJEU has discussed the concept of "vulnerability" in the context of the right to be heard and the obligation to conduct an interview with an applicant for subsidiary protection. The case was focused on the procedural rights of applicants and how specific vulnerabilities may necessitate specific procedural safeguards.

The CJEU emphasized that, in general, applicants for subsidiary protection should be granted an interview. However, the necessity of the interview must be assessed considering the specific circumstances of each case, including any vulnerabilities of the applicant.

The Court noted that vulnerabilities could stem from various factors such as age, state of health, or experiences of serious violence. These vulnerabilities must be considered when deciding whether an interview is necessary to ensure the applicant's right to be heard.

Therefore, this decision has highlighted the importance of considering the individual's vulnerabilities in the procedural safeguards of the asylum process.

In the Case *MP v Secretary of State for the Home Department,* 24 of April 2018, the CJEU addressed the issue of vulnerability in the context of subsidiary protection under the Qualification Directive.

The case involved an applicant who had suffered severe past persecution and argued that returning to his home country would lead to a risk of serious harm due to the psychological trauma and its long-term effects.

The CJEU emphasized that the assessment of "serious harm" under the Qualification Directive must include consideration of the applicant's past experiences of persecution or serious harm. The psychological aftereffects and the risk of deterioration in the applicant's mental health upon return to the home country are crucial factors.

The Court acknowledged that mental health conditions resulting from past persecution could render the applicant particularly vulnerable. This vulnerability must be considered when assessing the risk of inhuman or degrading treatment under Article 15, b[22] of the Qualification Directive.

1.4 The Rights of an Unaccompanied Minor in a Member State

There are European Union policies and legal instruments within the CEAS that constitute a framework to migrant minors addressing multiple matters such as the application processes, the requirements for the entrance and their consequent integration.

[22] "Serious harm consists of: (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin;"

As previously stated, the Action Plan on Unaccompanied Minors has brought awareness for these children's specific needs while, also has pointed out some commands of action[23].

This has as a primary objective to assist the minor with the needed protection to avoid rights violation and assuring his or her protection in the best way possible according to the circumstances.

The European Economic and Social Committee (EESC) notes that there is a tension between national legal frameworks governing immigration control and those related to child protection. Therefore, the Committee recommended that Member States should establish legal provisions ensuring unaccompanied foreign minors have access to international protection processes and receive age-appropriate information[24].

Moreover, the RCD expresses on its Article 24 that unaccompanied minors must be assigned a legal guardian as soon as possible upon arrival and that this person is responsible for acting in the child's best interests, protecting their rights, and representing them in asylum or legal proceedings.

The Directive defends that the one who applies for international protection should be granted to a dignifying life, by the access to basic healthcare, education and housing (under similar conditions as nationals). It also stipulates that unaccompanied minors must be provided with age-appropriate accommodation, considering their gender and other specificities.

To this end, it would be beneficial, for instance, to create specialized asylum units to assist migrant children and communicate information in their native languages, taking into consideration gender and cross-cultural dimensions into national systems. These centers could assure that minors are totally aware of their own rights, converting those from the legislative universe to the practical

[23] In the Introduction of this document, paragraph 6, it is stated the following "The Commission places the standards established by the United Nations Convention on the Rights of the Child (UNCRC) at the heart of any action concerning unaccompanied minors."

[24] European Economic and Social Committee. (2015). *Opinion of the European Economic and Social Committee on the 'Implementation of the Common European Asylum System: the role of the EU in the fight against human trafficking.* Official Journal of the European Union, 15.1.2015, p. 69.

reality of its beholders. The guardian appointment procedure in Belgium is interesting for this purpose and adds innovation.[25]

Regarding this, the Council of Europe's Committee of Ministers has issued a recommendation in 2019 with nine guiding principles concerning the appointment, legal responsibilities, tasks, and cooperation at national and international levels regarding guardianship such as the "Protection of the rights of unaccompanied and separated children in migration through guardianship" (Principle 1) and the "Legal responsibilities and tasks of guardians"(Principle 4).

According to the Council of Europe, the term "guardian" refers to a person appointed or designated to support, assist, and, where provided by law, represent unaccompanied or separated children in proceedings concerning them. The guardian should operate independently to ensure that the minors rights along with their best interests are preserved. Therefore, the guardian ends up playing a vital role as a mediator between the minor and all other stakeholders with shared responsibilities towards the child.

Therefore, unaccompanied minors are granted with the right to be supported by a legal guardian until they reach adulthood. This guardian should be informed of all decisions made regarding the child and provide support and assistance throughout the entire process. This figure must always act in the child's best interests and not have a conflict of interest with national child protection services[26]. The Asylum Act which also expresses that unaccompanied minors who are asylum seekers under international protection are entitled to a legal representation in its Article 79, n. º 1 and 2.

According to the CRC, guardians shall ensure that unaccompanied minors are protected from all forms of harm, neglect and exploitation as supported in Articles 19, and 32 to 36. Article 12 of the same legal instrument states that

[25] During assessment of the application for international protection, the "Centre of Gender and Refugee Studie in Belgium", an unit specialized in dealing with asylum applications from unaccompanied minors, interviews the minor. The conversation is adjusted to the age and special needs of the minor to be interviewed. (in https://www.cgrs.be/en/unaccompanied-child).

[26] Article 25, n. º1, a) of the Directive 2013/32/EU: "Member States shall take measures as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive (…).". Article 24, n. º 1 of the 2013/33/EU: "Member States shall as soon as possible take measures to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive (…)".

"States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely (…)" and the representative of the Member-States in playing that role is the legal guardian.

Although the European Union law recognizes the importance of legal guardianship, it does not define its obligations. Therefore, the legal guardian should be a "qualified representative" with experience in dealing with minors, knowledgeable in the country's immigration laws, and child protection legislation, with the authority to represent the child throughout the decision-making process, provided the minor consents. The role of this figure will be developed on the subsequent sub-chapter.

1.5 The role of the Legal Guardian

The EU asylum framework includes provisions regarding the appointment of guardians or representatives for unaccompanied applicants seeking international protection, as mentioned in the previous sub-chapter. This requirement is outlined in Article 31 of the Qualification Directive (2011/95/EU), Article 24 of the RCD and Article 25 of the APD, and Article 6 of the Dublin Regulation (EU) No. 604/2013 (hereinafter Dublin III Regulation).

The Committee of Ministers of the Council of Europe has stressed that an effective guardianship system is crucial for safeguarding the rights of unaccompanied and separated children in migration[27]. The CRC on its Article 5 express that the States Parties shall respect the responsibilities, rights and duties of legal guardians to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance.

This is highly relevant once the situation where a minor is alone from the period he or she arrives to a new destination country, constitutes a fertile soil for interferences in his or her safety. The lack of determination in a timely manner

[27] Council of Europe. (2019). *Effective guardianship for unaccompanied and separated children in the context of migration: Recommendation CM/Rec(2019)11 of the Committee of Ministers and Explanatory Memorandum*. Printed at the Council of Europe, October 2022.

of a legal guardian is one of the reasons unaccompanied minors go missing from federal reception facilities.

However, unaccompanied minors cannot receive a guardian until they are admitted to the asylum procedure and transferred to an administrative division and this process can go on for several weeks[28].

Therefore, providing timely and proper guardianship is crucial for ensuring the best interests of unaccompanied or separated children, guiding them towards a safer and more controlled environment[29].

The EU asylum regulations define a representative as an individual or organization appointed by competent authorities to assist and advocate for an unaccompanied minor in procedures outlined in these regulations. The representative ensures the best interests of the child and exercises legal capacity on behalf of the minor when necessary. When an organization is appointed as a representative, it designates a specific individual responsible for fulfilling its duties in accordance with these regulations.

The figure of a legal guardian should also play a vital role in identifying the child's needs and coordinating with other professionals, such as psychosocial or health specialists, interpreters, and community members. This multidisciplinary approach is especially important when there are doubts about a child's age and no personal documentation is available, considering that exploring the whole history of the minor through various analyses contributes to minimize errors. Although it might appear that involving various professionals in a minor's case during such a vulnerable period could lead to excessive interference, a holistic approach helps address the applicant's needs from multiple perspectives, providing a more comprehensive understanding of their situation.

The EU asylum framework outlines general responsibilities for legal representatives or guardians without exhaustively listing specific tasks. These

[28] Council of Europe. (2019). Effective guardianship for unaccompanied and separated children in the context of migration: Recommendation CM/Rec(2019)11 of the Committee of Ministers and Explanatory Memorandum. Printed at the Council of Europe, October 2022.
[29] Portuguese Refugee Council. (2024). *Country report: Legal representation of unaccompanied children*. Last updated July 10, 2024. (in: https://asylumineurope.org/reports/country/portugal/asylum-procedure/guarantees-vulnerable-groups/legal-representation-unaccompanied-children/)

responsibilities include informing the child about procedures, accompanying them through various processes such as asylum interviews and age assessments, and ensuring their overall well-being. The guardian's role is particularly critical throughout the relocation process, from initial asylum application to assessing the child's best interests, evaluating family connections and, ultimately, consenting to relocation.

Once these minors are not able to control the circumstances they are living in, they may be considered incapable of making decisions due to their age or even designated as adults against their will, leading to their marginalization. Therefore, they are even more exposed to distress, violence, and exploitation in their origin, transit, and destination countries, perpetuating their trauma and revictimization.

In this light, law requires the appointment of a guardian as soon as possible but it does not specify a time limit for this appointment. To contribute for a smooth and efficient transition, national organizations for guardians also organize courses and facilitate the exchange of views and experiences, for instance, Non-Governmental Organizations (hereinafter NGOs) in the asylum field and the Migration Agency offer courses for guardians.

Having stated this, it is unquestionable that guardians and *ad-hoc* administrators or representatives play crucial roles in supporting unaccompanied minors from their entry into the system until they reach adulthood.

In this regard, a case worth mentioning is the *Rahimi v. Greece Case*, of July 5th, 2011, where the European Court of Human Rights (hereinafter ECtHR) decided on a subject that involved an unaccompanied Afghan minor who was detained under undermine conditions in Greece without any legal guardianship or adequate care. According to this, the court has examined whether Greece had violated the ECHR, particularly Articles 3 (prohibition of inhuman or degrading treatment) and 5 (right to liberty and security).

Thus, the ECtHR found that Greece had violated the minor's rights under both Articles. The court held that unaccompanied minors require special protection, and their detention without proper guardianship and support amounted to inhuman treatment.

Under this case, the duty of states to ensure legal guardianship and appropriate care for unaccompanied minors was enhanced, besides their protection from inhumane or degrading conditions.

Chapter 2-The Right of Family Reunification

2.1 Contextualization and legal scope

The Final Act of the UN Conference of Plenipotentiaries, which adopted the 1951 Refugee Convention, states that "the unity of the family (…) is an essential right of the refugee." Therefore, governments might "take the necessary measures for the protection of the refugee's family, especially with a view to ensuring that the unity of the family is maintained."

According to the 2017 UNHCR Summary Conclusions on the Right to Family Life, prolonged separation due to flight can severely impact refugees' well-being and jeopardize their integration, societal contribution, and ability to actively reestablish their lives in the asylum country. Therefore, regulations such as the UNHCR have continuously stressed that family reunification is vital for unaccompanied minors to fully enjoy the fundamental right to family life[30].

Hence, the successful completion of the family reunification process is crucial for effective integration of the applicants, as it is often the only mean for refugees to uphold their right to family unity, which in turn affects many other associated rights.

The Family Reunification Directive (2003/86/RC) aims to promote family reunification and must be implemented "in conformity with fundamental rights, particularly the right to respect for private and family life guaranteed by Article 7 of the Charter.", according to the ECHR.

Considering the heightened vulnerability that unaccompanied minors in asylum carry it is imperative that the family reunification process be conducted with the utmost efficiency and care. Thus, States are obliged not only to facilitate family reunification but also to refrain from interfering with this right (positive and negative dimension of the duty).

[30] Human Rights Act, Article 8.º, n. º 1: "Everyone has the right to respect for his private and family life, his home and his correspondence." (Right to Privacy).

Having stated this, an efficient family reunification process serves multiple critical functions. Firstly, it significantly enhances the safety and well-being of minors by placing them in a familiar and supportive environment, which helps mitigate the psychological and emotional stress that comes from separation and the uncertainties of living alone in a foreign state.

Additionally, if nothing is proved otherwise, reuniting unaccompanied minors with family members who can provide both emotional and practical support addresses their immediate safety needs and contributes to their overall stability and development.

To achieve that, it is essential that the process is both expedited and thorough. This means implementing robust mechanisms for verifying identities and family connections, assessing the suitability and safety of proposed family environments, and ensuring effective coordination between various stakeholders, including national and international agencies. By addressing these factors, it can be ensured that unaccompanied minors are reunified with their families in a way that prioritizes their safety and well-being.

Moreover, a well-conducted reunification process supports the broader goals of the asylum system by reducing the potential for exploitation and abuse.

In fact, unaccompanied minors without family support are at greater risk of falling prey to human traffickers and other predatory individuals.

The CJEU, in the *Bundesrepublik Deutschland* Case of August 1st, 2022, addressed a family reunification request made by Syrian national seeking to reunite with her father, who had obtained refugee status in Germany. The issue arose because the applicant had reached the age of majority before her father received his refugee status, resulting in the rejection of the request by the German authorities.

The main legal question concerns Article 4, n. º 1, c) of the Family Reunification Directive, which requires children to be minors at the time of reunification but does not specify when to assess this.

Hence, the CJEU ruled that the relevant date to assess the applicant's age should be when the sponsor's asylum application was submitted rather than

when the decision on refugee status was made. This interpretation directly aligns with the directive's purpose of promoting family reunification and protecting this crucial right to minors, as well as the child's best interest.

To conclude, the efficient reunification of unaccompanied minors with their families is not merely a procedural necessity but a fundamental aspect of safeguarding minor's their rights and future. By prioritizing a coherent and effective reunification process, the system strengthens its commitment to protecting a vulnerable figure that requires a reinforced protection.

2.2 The Application

The Council Directive 2003/86/EC of 22 September on the Right to Family Reunification establishes the rules under which non-EU nationals can bring their family members to the EU country in which they are legally residing. This Directive aims to establish common legal rules regarding the right to family reunification[31].

The primary goal established by this legal instrument is to preserve the family unit and facilitate the integration of nationals from non-member countries.

To achieve that, family members of a foreign national are entitled to a residence permit that matches the duration of the permit held by the individual they have reunited with. They are also granted the same access to education, employment, and vocational training opportunities as the primary permit holder.

After residing for five years, the spouse or unmarried partner, as well as any children who have reached adulthood, are eligible for an independent residence permit. The conditions and duration of this autonomous permit are determined by each national law.

Besides, it is essential to note that the Dublin III Regulation prioritizes family reunification for unaccompanied children, establishing criteria and mechanisms

[31] Article 6, n. º 1(Requirements for the exercise of the right Family reunification): "The Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health."

to determine the Member State responsible for examining an asylum application. This topic will be developed further on.

Therefore, if an unaccompanied minor applies for asylum in one Member State, the application must be processed in the Member State where a parent, responsible adult or relative, is proving that this meets the child's best interests. This entails an obligation for the Member State where the application was submitted to identify the minor's family members, or relatives through the Union, while preventing any violation of the child's granted rights during the process.

2.3 Evaluation of the request

As it was already mentioned, the process of analyzing an asylum application is carried out by a Member State responsible for the according procedures. The responsible country is determined by an outlined procedure present in Dublin III Regulation.

This Regulation establishes the criteria and specific mechanisms for determining the Member State responsible for examining an international protection request submitted in one of the Member States by a third-country national or a stateless person.

Once an application is submitted, the asylum seeker or the applicant for international protection must remain in that country until it is determined which state will review and decide on the request.

This means that the country responsible for evaluating and deciding the application should not be the same state where the application was submitted. Therefore, it is crucial for the competent authorities to carefully determine the responsible country for analyzing applications concerning minors, especially unaccompanied, to establish their legal status in a rapidly manner.

Once the responsible country is selected, it reviews and decides on the asylum request according to established connections, ensuring the international

protection applicants' rights are safeguarded under Article 3 of the Dublin III Regulation.

Furthermore, it is crucial to note that Article 5 of the Dublin III Regulation guarantees protections specifically for unaccompanied minors, setting criteria for states to follow during this period considering the minor's best interests.

Thus, this Article specifies the right of the minor to be represented and the guarantee of reunification not only with the immediate family but also with other relatives present in other Member States who assist and care for them.

In the absence of family members or other relatives, the responsible state should be the one where the minor submitted their most recent application. The Regulation also reassures that the determination of the Member State responsible for international protection requests from children is as expeditious as possible to conceive them asylum and protection status.

The CJEU *Case M.A. and Others* ruled on January 23, 2019, addressed important issues regarding the Dublin Regulation, specifically related to Brexit and the best interests of the child.

In this situation, the applicants, a family of Syrian nationals, had applied for asylum in Ireland after living in the UK for six years.

According to this, the Irish authorities requested that the UK take them back under the Dublin Regulation, which the UK accepted. However, the family has challenged this decision, citing health issues and the uncertainty caused by Brexit as reasons they should not be returned to the UK.

The CJEU was asked to clarify the interpretation of Article 17[32] (discretionary clause) of the Dublin Regulation, particularly whether a Member State is obliged to assess the best interests of the child when considering the use of this clause. Thus, the court confirmed that Article 17 is discretionary, meaning that a Member State is not required to apply it even in cases where a child's best interests are involved.

[32] "1- By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation."

This ruling confirmed the optional nature of Article 17, while also highlighting the importance of considering the best interests of the child in asylum cases, but only to the extent that the Dublin Regulation allows.

2.4 Relatives other than parents

When deciding to entrust the care of an unaccompanied minor to a relative other than the mother, father, or legal guardian-especially if the relative resides outside the jurisdiction of the Member State where the minor has applied for asylum-it is crucial to facilitate cooperation among the relevant authorities of the Member States, including the authorities or courts responsible for child protection.

The fact that the duration of procedures for placing a minor may result in exceeding the time limits set in Article 18, n. º 1[33] and 6 and Article 19, n. º 4[34] of the Dublin III Regulation does not necessarily prevent the continuation of the procedure for determining the responsible Member State or executing a transfer.

To help identify family members, siblings, or relatives of an unaccompanied minor, the Member State where the minor applies for asylum should, after holding a personal interview (as outlined in Article 5 of the Dublin III Regulation), gather and review any information provided by the minor or from reliable sources who know the minor's situation or travel history. The interview must include the representative mentioned in Article 6, n. º 2 of the same regulation. The authorities responsible for determining the Member State dutiful for examining the minor's application shall involve the representative from Article 6, n. º 2[35] of the Dublin III Regulation as much as possible.

[33] "The requested Member State shall make the necessary checks and shall give a decision on the request to take charge of an applicant within two months of the date on which the request was received."
[34] "Where the transfer does not take place within the six months' time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds."
[35] "2-Member States shall ensure that a representative represents and/or assists an unaccompanied minor with respect to all procedures provided for in this Regulation. (…)."

When applying the obligations of Article 8[36] of the Regulation, if the Member State responsible for the unaccompanied minor's application has information to start identifying and/or locating a family member, sibling, or relative, that Member State shall consult and exchange information with other Member States to: (a) identify family members, siblings, or relatives of the unaccompanied minor present in Member States; (b) establish the existence of proven family links; (c) assess the capacity of a relative to care for the unaccompanied minor, even if family members, siblings, or relatives are in more than one Member State[37].

If the information exchange indicates that multiple family members, siblings, or relatives are in another Member State(s), the Member State where the unaccompanied minor is present shall cooperate with the relevant Member State(s) to determine the most appropriate person to whom the minor should be entrusted, focusing on: (a) the strength of the family links between the minor and the identified individuals in the Member States; (b) the capacity and availability of the individuals to care for the minor; (c) the best interests of the minor which shall be analyzed casuistically.

2.5 Request for Family Reunification: When can it be rejected?

According to Article 6 of the Family Reunification Directive, Member States have the authority to reject an application for entry and residence of family members on grounds related to public policy, public security, or public health. However, even when making such decisions, they must consider the best interests of the child.

To this end, the Chapter V of this Directive ("Family Reunification in Refugees") contemplates in its Article 10, n.º 2, a) and b) that if a refugee is an unaccompanied minor, then Member States shall authorize the entry and residence for the purpose of family reunification of his/her relatives in the direct

[36] "1- Where the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. (…).".

[37] European Asylum Support Office (EASO). (2016). *EASO Practical Guide on Family Tracing.* EASO Practical Guides Series, March 2016. European Asylum Support Office.

ascending line or his/her legal guardian or any member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be tracked.

Regarding this, the mentioned Article broadens the definition of family members by allowing Member States to authorize reunification for relatives not explicitly mentioned in Article 4, provided they are dependent on the refugee.

In the light of the Article 11, n. º 2, when a refugee fails to provide official documentary evidence of the family relationship, the Member States shall consider other evidence to be assessed in accordance with national law on the existence of such relationship to prove that there is a bond of family nature between the applicant and the third party.

Therefore, a decision to reject an application cannot be based solely on the lack of documentary evidence. The Article illustrates that the criteria for granting international protection to refugees for family reunification purposes are more permissive compared to those for other foreign individuals. The principles for denying such requests are also more flexible, considering the unique and challenging circumstances faced by refugees.

In fact, one of the most common reasons for rejecting family reunification applications is the requirement to provide official documentation, such as marriage certificates, to prove family bonds. However, by permitting alternative methods of proving family relationships among refugees, the legislation ensures protection for an already vulnerable group, recognizing the challenges they may face in obtaining such evidence.

Therefore, the Article 11, n. º 2 obliges Member States to consider alternative evidence of family relationships when official documentation is lacking.

In fact, in the Case *E. v Staatssecretaris van Veiligheid en Justitie,* 13 of March 2019, the CJEU ruled that the absence of such documents, or doubts about the explanations provided, cannot be the sole reason for rejecting a reunification application. Such an approach would conflict with the Directive's primary goal of facilitating this family reunification. The Court also stressed that each case should be evaluated on its own merits, with all relevant factors considered, and that the evidentiary requirements should remain proportionate to the situation.

Besides, Article 12, n. º 1 and 2 prohibit Member States from requiring refugees or their family members to fulfill optional conditions, such as those outlined in Articles 7 and 8, as a prerequisite for family reunification. However, after reunification is granted, Member States may apply integration measures in line with Article 7, n. º 2.

Despite these favorable conditions, Chapter V of the Directive includes exceptions that allow Member States to deviate from these provisions under certain circumstances. For instance, Article 9 n. º 2 permits Member States to limit the application of the favorable provisions to family relationships that existed prior to the refugee's arrival in the host country.

Additionally, Article 12, n. º 1, second subparagraph, allows Member States to deny favorable conditions if family reunification can occur in a third country with which the refugee or their family members have special ties. The European Commission has clarified that this third country must be safe for the refugee and their family, and it is the responsibility of the Member State (not the applicant) to prove that reunification in this third country is possible.

Lastly, Article 12, n. º 1, third subparagraph, gives Member States the option to limit the favorable conditions to applications submitted within three months of refugee status being granted. However, in the Case *K and B*, 7 of November 2017, the CJEU ruled that this time limit cannot be enforced in situations where there are objectively justifiable reasons for the delayed submission of the application.

2.5.1 The Child's Best Interest Principle

During the analyses and throughout procedures related to the Family Reunification process, the minor's best interests must always be the barometer.

For this matter, the UNHCR determines that the child's interest is best served when they remain with or join their family, making family reunification typically in the best interests of unaccompanied children.

Besides, the CRC Committee[38] asserts that the child's best interests should be a primary consideration in all legislative, administrative, or judicial actions affecting them and reiterates the family's importance as "the fundamental group of society and the natural environment for the growth and well-being of (…) children". It mandates that applications for family reunification by separated children and parents be faced "positively, humanely, and expeditiously."

On another light, this Committee determines that family reunification in the country of origin is, sometimes, not in the child's best interests if there is a "reasonable risk" of fundamental human rights violations, as documented by refugee status or *non-refoulement*[39] obligations. In any other situation, the best interest of the child is fulfilled by the possibility to reunite with his or her family, even though every situation needs to be carefully interpreted.

These principles have been upheld in the CJEU Case *M.A. v État belge*, 11 of March 2011, where the Court has highlighted the importance of the child's best interests, determining that family reunification requests must be examined even if an EU citizen's family member is subject to an entry ban.

The Court's decision reaffirms that the child's best interests are not merely a supplementary consideration but a fundamental principle that must guide all aspects of family reunification.

This principle mandates that authorities should not simply deny a reunification request based on procedural obstacles or entry restrictions without carefully considering how those decisions impact the child's well-being and developmental needs.

Additionally, the ruling underscores that any impediments to family reunification should not override the essential requirement to provide a stable

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

[39] "Non-refoulement is a principle of international law that prohibits returning individuals to their country of origin if they seek asylum due to a fear of persecution, torture, inhumane treatment, or any other violations of human rights based on their race, religion, nationality, social group, or political opinions. This principle is enshrined in the 1951 Refugee Convention, specifically in Article 33." (in:https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf)

and supportive environment for the child, therefore, the agents in charge must carefully analyze and foresee the impact of their decisions on the minor's life.

In fact, the protection of children's best interests, as outlined in the CRC serves as a universal right, legal principle, and procedural standard that must be considered in all matters involving minors. This principle applies to both domestic and international laws and actions affecting children, ensuring that it is considered by authorities and involved actors.

According to this, it is important to mention that the interpretation of children's best interests under these regulations must align with Article 24[40] (The rights of the child) of the CFR and the CRC, as implemented through the legal frameworks of individual Member States.

Besides, the Common European Asylum and Immigration Policy is grounded in several key EU regulations and directives that emphasize the importance of safeguarding vulnerable groups, especially children, by incorporating the best interests of the child principle. This principle is explicitly embedded within various legislative instruments that govern asylum and immigration processes.

For instance, Article 6 of the Dublin III Regulation mandates that the child's best interests are prioritized when determining which Member State is responsible for processing an asylum application. Similarly, Article 23 of the Reception Conditions Directive ensures that appropriate provisions are in place to protect minors in reception facilities, recognizing the need to cater to their specific vulnerabilities. Additionally, Article 5 of the Return Directive (2008/115/EC) ensures that decisions regarding the return of minors from EU Member States also respect the child's best interests.

Besides, the Qualification Directive through Article 20 addresses the protection of minors when granting international protection. Article 25 of the APD also introduces special procedural safeguards to ensure that the best interests of unaccompanied minors are upheld throughout the asylum process.

[40] Article 24, n. º 1: Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

All of these legal frameworks are incorporated into the domestic laws of Member States, either directly or indirectly, and are aligned with Article 24 of the CFR of the European Union, which echoes the principles set out in Article 3 of the CRC This alignment strengthens the argument that the best interests of the child should be interpreted in accordance with General Comment No. 14 of the CRC.

By prioritizing the child's best interests, the Court aligns with international human rights standards and the CRC, which advocate for the protection and care of children as a primary concern. This decision reinforces the notion that the child's right to family life and emotional security must be preserved, even when facing complex legal or administrative barriers.

Chapter 3-Limitations to the Right of Family Reunification

3.1 The concept of "family" and its importance

The Refugee Convention of 1951 does not explicitly address family unity or family life. In fact, the term "family" is absent from the Convention, only appearing indirectly in Article 12, n. º 2[41].

Discussions on family unity are found in the Final Act of the Convention, a non-binding document from the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons. This Act emphasizes family unity as a crucial right for refugees, urging measures to protect this right, particularly for minors[42].

The principle of not separating children from their parents unless it is in their best interests aligns with the CRC's objective of ensuring a family environment for the child's development, as emphasized in its preamble[43].

The chosen formulation of the text ("shall ensure") in the Article 3, n. º 2[44] of the CRC imposes an obligation on States to take proactive steps to prevent separation, even in migration contexts. The CRC Committee supports this

[41] Article 12, n. º 2: "Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage (...)."

[42] "B. THE CONFERENCE, considering (…) RECOMMENDS Governments to take the necessary measures for the protection of the refugee's family, especially with a view to:
(1) Ensuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country:"

[43] "(…) Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community, (…)." "

[44] "2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."

interpretation, urging States to pursue solid, rights-based solutions, including family reunification.

The obligation to maintain family unity, as articulated in Articles 9 and 10 of the CRC, encompasses both a negative and a positive duty. Negatively, as it requires that states refrain from interfering with family unity and, positively, as it mandates that states actively work to maintain and facilitate family unity. The CRC Committee supports both poles of this obligation, underscoring the state's responsibility to prevent and address separations, regardless of their underlying motives[45].

The statement "against their will" present in Article 9, n. º 1[46], in its first part, most likely includes both the parents' and the child's will, considering the CRC's emphasis on respecting the child's views.

The legal protection afforded to the "unity of the family" and the concept of "family" is primarily justified by its significant impact on the life of the minor involved. In other words, the protection of family unity is reliant upon its importance to the child's well-being and developmental needs. This means that the legal framework emphasizes preserving family relationships to the extent that they are vital for the minor's overall welfare and stability.

In fact, parental involvement in a child's development path encompasses behaviors such as showing interest, participating in school activities, encouraging academic efforts, and supervising schoolwork[47] and, according to the author Flouri[48] (2006), when parents demonstrate interest in their child's education, it conveys respect and importance, which can significantly enhance the child's self-esteem. This involvement not only contributes to improved

[45] "647.The Committee recommends that the States parties take all necessary measures to ensure that parents, both mothers and fathers equally, are able to meet their parental responsibilities (…)" "649. In the light of the discussions, the Committee wants to emphasize that all necessary measures should be taken to prevent the separation of the child from her/his family of origin. In that regard the Committee refers to the previous paragraphs on the importance of the family environment and the need to provide the parents with the support they need in the performance of their parental responsibilities."

[46] "1. States Parties shall ensure that a child shall not be separated from his or her parents against their will (…)."

[47] Cotton, Kathleen; Wiklund Reed, Karen- "Parent Involvement in Education", *School Improvement Research Series,* (1989), 1-2.

[48] Krauss, S., Orth, U., & Robins, R. W. (2020). Family environment and self-esteem development: A longitudinal study from age 10 to 16. *Journal of Personality and Social Psychology, 119*(2), 457–478 and Flouri, E. (2006). Raising expectations. *The Psychologist, 19*(11), 664–666.

learning environments and better academic performance but also bolsters the child's sense of competence.

Furthermore, empirical studies have shown that interventions designed to increase parental involvement has shown that children are more likely to manifest a confident and brave behavior if their parents are present[49]. This study shows that the presence of a parent reduces the fear response in the brains of children.

Therefore, the family presence, despite being the parents or other relatives, in unaccompanied minors' life manifest social, emotional and psychological benefits: (a) Socially, once it contributes to his or her integration in the community and the culture; (b) Emotionally, as having family members close fosters confidence, sense of security, and stability; (c) Psychologically, as the reassurance of family presence alleviates one source of stress in an otherwise unfamiliar and daunting environment.

The uncertainty of whether and when a minor will be reunited with their family, the potential condition of their family members, and the overall situation contributes heavily to the minor's emotional stress. This uncertainty creates a tense environment for the minor, compounding the challenges they already face. Despite the best efforts of agencies, NGOs, and guardians to support the minor, the inherent stress of not knowing and the fear of separation add to the emotional burden of their situation.

3.2 Right to Family Reunification vs. The minor's best interest

Considering that the "best interests of the child" principle (outlined in Article 3 of the CRC) is often seen as vague, the Article 9 of the CRC provides a clearer standard for this principle in cases of family reunification for children seeking

[49] Hara R., Steven; Burke J., Daniel- "Parent Involvement: The Key To Improved Student Achievement", The *School Community Journal* (1998), 9-10.

international protection. Here, the child's best interests are the paramount consideration, not just a primary one.

The Refugee Convention's on its Article 9, paragraph 1, offers examples of situations where separation might be deemed necessary, including cases of abuse, neglect, or custody disputes. However, this enumeration is illustrative rather than exhaustive. The core requirement remains that any decision to separate a child from their family must be rigorously justified by demonstrating that such separation unequivocally serves the child's best interests.

Clearly, family reunification cannot be considered to align with the child's superior interests if it results in placing the child in a dangerous, precarious, or abusive environment. The primary consideration must always be the child's safety and well-being, ensuring that any decision made does not exacerbate their vulnerability or endanger their welfare

Therefore, the non-admission of the request for family reunification must be justified by the child's best interests, a stricter standard compared to general interference with family life as outlined in other international instruments.

Having stated this, the principle aims to prioritize the minor's best interests over the state interests in immigration control, as the CRC Committee reinforced on its General Comment No. 14 (2013).

Moreover, it also reflects the right of the child to have their best interests taken as a primary consideration (Article 3), emphasizes in paragraph 6 that the child's best interests constitute a threefold concept: (a) a substantive right, (b) a fundamental interpretative legal principle, and (c) a procedural rule (which requires procedural guarantees for assessing and determining the best interests of the child).

First, as the best interest of the child must be considered in all actions and decisions affecting children. This right obligates states to prioritize the child's well-being above other considerations. It is also considered a fundamental interpretative legal principle as it serves as an interpretative principle guiding the application of laws and policies meaning that any legal or administrative decision must be evaluated through the lens of what serves the child's best interests. At last, a procedural rule once it requires that the best interests of the

child be assessed through a clear and fair procedure, ensuring that the child's views are heard and considered, and that the process includes appropriate safeguards to protect the child's rights.

For minors seeking international protection, particularly unaccompanied ones, the application of the best interest principle is fundamental. This means that any decision to refuse or delay family reunification must be based on a clear and compelling demonstration that such a decision is in the child's best interests, with no viable alternatives available. This requirement ensures that state interests, including those related to immigration control, do not overshadow the child's fundamental rights and needs.

In practical terms, this means that any interference with a child's right to family life must be approached with extreme caution. The decision-making process must involve a thorough evaluation of the child's circumstances, including a consideration of their emotional, psychological, and developmental needs.

To conclude, the only permissible restriction on the right to family life is when such separation is genuinely in the best interests of the child. This must be the primary concern when it comes to the protection of unaccompanied minors as every measure to be taken should follow this guiding principle.

Chapter 4-When the abuse takes place after the Family Reunification

4.1 Legal Consequences

In the last chapter it was linked the principle of "best interest of the child" with the right of Family Reunification, just as its relevance and legal foundation.

However, during those considerations, it has been highlighted the importance of a deep and careful analyze of each case to objectively determine what is for that minor, in that situation, the effective best interest.

Therefore, despite the clear legal foundation, the application of the "best interests of the child" principle in family reunification cases requires a nuanced and detailed appreciation. Each case presents unique circumstances that must be carefully examined to determine what truly serves the child's best.

Having stated this, Member States must study the individual circumstances', as every unaccompanied minor's situation is distinct, involving different family dynamics, personal experiences, intimate characteristics and contextual factors. Therefore, a "one-size-fits-all" approach is insufficient.

Thus, decision-makers must consider individual factors such as the child's emotional and psychological needs, their current living conditions, and the potential impact of reunification or continued separation.

This includes evaluating the safety and suitability of the family environment, the child's relationship with potential family members, and any existing risks, dangers or vulnerabilities. This assessment shall be conducted by professionals with expertise in child welfare and protection to ensure a comprehensive understanding of the minor's needs.

Furthermore, the appreciation of a request for family reunification shall consider the potential benefits just as the possible risks. For example, while the family reunification may offer emotional stability and continuity of care for the minor, it must be weighed against the risk of placing the child in a potentially harmful or unstable environment.

Therefore, decision-makers must ensure that their decisions do not inadvertently increase the child's vulnerability or introduce new risks.

This process of analysis, deliberation, and conclusion can lead to a determination where family reunification is deemed permissible if it aligns with the principle of the best interests of the child. On the contrary, if it does not meet this principle, the request must be denied, provided that all other legal requirements have been fulfilled.

What has just been described is a "two-way street," where decisions about family reunification are ideally straightforward: either they meet the principle of the child's best interests, or they do not. However, the reality is often more nuanced and complex than a simple black-and-white scenario. Therefore, it is essential to address the "grey areas" that arise in practice.

These grey areas involve situations where the application of the best interest principle may not be clear-cut. Factors such as varying degrees of risk, differing interpretations of what constitutes a safe and supportive environment, the relatives in contact, and the presence of mitigating circumstances all contribute to the complexity of decision-making in family reunification cases.

Alternatively, there are instances where the child may only face danger or a precarious situation once the family reunification has occurred, becoming a victim within their own family. These situations present a particularly challenging scenario, as the risks and harms only manifest once the reunification process is complete, or, at least, they are only met from that contact on. When this occurs, an additional layer of vulnerability is imposed on the minor, resulting in further victimization.

Therefore, what is the international law protective and reaction mechanisms in such cases?

The Article 19[50] of the CRC mandates that states protect children from all forms of violence, including physical and emotional abuse within the family. This provision requires countries to implement effective measures, such as law enforcement and social services, to shield children from harm. Further guidance

[50] "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse (…) while in the care of parent(s) (…)."

is provided by General Comment No. 13 (2011) which outlines comprehensive strategies to prevent and address violence against children.

In addition, the Council of Europe has established several protective measures such as the Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, commonly known as the Lanzarote Convention, which focuses on safeguarding children from sexual exploitation and abuse, including within the family, and mandates preventive and protective actions. The European Social Charter also includes provisions aimed at protecting children's rights and combating violence and exploitation[51].

At the international level, the ICC under the Rome Statute, addresses severe crimes including those involving significant abuse against children, demonstrating a global commitment to protecting children from serious harm.

From an EU legal perspective, the protection of children, especially in situations of family violence or abuse, is comprehensively addressed through various legal frameworks that aim to safeguard their well-being and ensure their rights are prioritized.

Therefore, Article 24 of the CFR serves as the cornerstone for the protection of children within the EU, establishing that children's best interests must be a primary consideration in all decisions affecting them, while also ensuring their right to express their views freely.

In the specific context of asylum and immigration, EU directives take concrete steps to ensure that unaccompanied minors and vulnerable children are protected from harm. Namely, Article 6 of the Dublin III Regulation underscores the importance of considering the child's best interests when determining which Member State is responsible for examining their asylum application, particularly to avoid placing them in abusive or violent environments. Similarly, the RCD and the Return Directive both emphasize that the special needs of children, including protection from violence and exploitation, must be factored into decisions involving their care, detention, or return to their country of origin[52].

[51] Article 17- The right of children and young persons to social, legal and economic protection.
[52] Article 10, n. º 1: "Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child."

Furthermore, the Victims' Rights Directive (2012/29/EU) also provides strong protection for child victims of violence, guaranteeing them access to justice, psychological support, and safety measures. This directive recognizes that children who experience violence or exploitation, particularly in the context of family reunification or migration, must receive comprehensive protection and support throughout the legal process.

In summary, European and International law provides a comprehensive and multifaceted approach to protecting children from family violence, including situations where abuse may occur after reunification.

4.2 Post Family Reunification: Problems and Potential Solutions

When a minor becomes a victim of their family after the reunification process, the system may believe it has resolved a problem, but it states may inadvertently place the child in harm, undermining the primary goal of reunification, which is ensuring the child's best interests.

In this regard, competent authorities must ensure rigorous monitoring after reunification to assess the success of family integration and promptly address any signs of abuse or neglect.

The CRC obliges states to ensure the well-being of children under their jurisdiction, including those reunited with family members. In fact, its Article 3 establishes that "in all actions concerning children, the best interests of the child shall be a primary consideration." This provision requires states to ensure ongoing protection even after reunification to uphold the child's rights.

Besides, the Article 19 of the CRC further mandates that "States Parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect, maltreatment, or exploitation, including sexual abuse, while in the care of parents, legal guardians, or any other person who has the care of the child.", which expresses that the assigned states have the duty to act in order to prevent and/or combat any kind of mistreat between children and their tutors.

The ECtHR has consistently held that states have both a positive and negative obligation to protect the right to family life under Article 8 of the European

Convention on Human Rights. This means that while states should facilitate family reunification, they must also protect minors from potential harm within the family setting. The case law such as *Z and Others v. the UK*, May 10th, 2001, emphasizes that states must intervene in cases of family violence or neglect when aware of such dangers according to Article 3 of the ECHR that contains that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment.".

Given the legal foundations provided by the CRC, ECHR, and Lanzarote Convention, post-reunification monitoring is not just a best practice but a legal obligation.

After reunification, social services and special states agencies should schedule regular check-ins with the minor and their family to assess the living environment, the child's development and emotional state, just an evaluation of the integration process. These visits should not only focus on immediate danger but also on long-term integration and well-being.

The trauma of separation and the challenges of reunification often necessitate ongoing psychological support. Counselling services, tailored to the child's age and experiences, can help the minor adjust to their new family environment, cope with emotional stress, and help register any new occurrences that might be important when accessing the post-family reunification period.

Therefore, in cases where family reunification becomes itself a source of a harmful or abusive scenario, an effective, urgent and direct measures should be actioned.

Post-reunification monitoring and support are essential components of safeguarding the rights and well-being of unaccompanied minors. Without these safeguards, family reunification, though well-intentioned, may expose minors to new vulnerabilities.

By establishing regular social worker visits, offering psychological support, and ensuring efficient recourse mechanisms, states can fulfil their legal obligations and ensure that family reunification truly serves the child's best interests. These mechanisms not only protect minors from harm but also support their long-term development and integration into society.

4.3 Responsibility of the Member State

If a Member State authorizes family reunification based on the child's best interests, but the reunification ultimately endangers the child's safety and well-being, the authority responsible should be held accountable for the negative outcome.

One scenario could involve a negligent analysis by the State, where an inadequate examination of the request fails to uphold the child's best interests. In this case, the State would be responsible for neglecting its duty.

Alternatively, the situation may have been unforeseeable, where: (a) there is no history of abuse or criminal records by the relatives, (b) a thorough analysis by the multiple responsible professionals indicated reunification was appropriate, and (c) all factors suggested the reunification aligned with the child's best interests. In such cases, where the State could not reasonably predict the harm, it should not be held liable but should act firmly to protect the child and remove them from danger.

Here, the focus shifts to remedial action. When unforeseen harm occurs post-reunification, the State is required to intervene according to Article 19 of the CRC, to remove the child from the harmful situation and provide immediate protection.

On the previously mentioned *Z and Others v. the UK* the ECtHR held that the State can be found responsible for failure to protect children from harm in certain situations, particularly if the authorities had prior knowledge of the risk. While this case concerned domestic child protection issues, its principles can be analogously applied to the failure of authorities in family reunification cases.

While family reunification is a vital right for unaccompanied minors, it must be balanced with the need to ensure the child's safety and well-being. Member States have a legal and moral obligation to conduct rigorous assessments in these cases. If they fail to do so, the State may be held liable for any resulting harm. On the other hand, in cases where the harm was unforeseeable, the State's obligation shifts to providing immediate protection. The key to mitigating these risks lies in the implementation of comprehensive assessments, enhanced monitoring, and clear legal frameworks for intervention.

Since the crime of domestic violence often occurs in private family settings, family monitoring should be an essential tool and service to ensure the prevention of abuse, particularly in the post-family reunification phase.

Minors and their relatives involved in the migration process have often experienced emotional distress or trauma, which can have long-lasting effects on their thoughts, emotions, and behaviors. Therefore, periodic assessments of the family ties, relationships, and overall integration should be a normal part of the family reunification process for asylum seekers.

Monitoring could occur at various stages, including: (a) the preliminary stage of family reunification; (b) the mid-term period during the family's integration process; and (c) occasional visits afterward to evaluate the family environment, if necessary.

The third phase should be further divided into two responses: one for cases where there is a reasonable suspicion of abuse within the family, and another for cases where there is no substantial reason to continue regular monitoring. In the first scenario, visits should be unannounced, and each family member should undergo individual interviews. In the second scenario, the assigned social worker should maintain contact with the family as needed to check on their integration progress**.**

The involvement of the system with the families plays a vital role in documenting their adjustment, needs, and challenges, while also highlighting testimonies of successful integration.

In cases where there is a possibility of family abuse toward minors, this involvement serves as a crucial tool for prevention. Nothing can more effectively identify present or potential issues than a local, direct contact with the families. Consequently, social agents act as a bridge between individuals and the judicial system, facilitating communication, advocacy and resolution by providing a closer look at the families' situations.

4.4 Consequences for the child: A two times goodbye?

A situation where a child must leave their family once again illustrates a troubling cycle of revictimization for the minor.

When an unaccompanied minor arrives in a new environment, they initially face significant vulnerabilities and challenges. Afterwards, upon reuniting with family members, if it translates into some kind of abuse, it will consequently exacerbate their existing trauma. As the case undergoes legal scrutiny, the minor may find themselves returning to the same state of vulnerability, now burdened with additional trauma from these compounded experiences.

This potential cycle underscores the urgent need for more effective protections and support systems for unaccompanied minors, ensuring their safety and well-being at every stage of the process. To address these issues, when there are allegations of abuse it is crucial to appoint a legal guardian for the minor right away, while positioning the minor far from danger.

To conclude, this potential cyclical nature of trauma faced by unaccompanied minors underscores the urgent need for a unified response and a strong collaboration between legal systems within the Member-States and those with the involved third countries. Establishing effective practices for information exchange is essential to ensure that all stakeholders can work together to protect this vulnerable target.

By fostering a coordinated approach, we can enhance the safeguarding of unaccompanied minors, ultimately promoting their well-being and supporting their journey toward healing and stability.

The path from vulnerability to re-victimization, exacerbated by the lack of immediate protective measures, calls for a more cohesive and continued examination of the state of the minors after their reunification.

By prioritizing monitorisation of each process and implementing robust support systems that focus on the holistic well-being of these minors we can prevent that they engage and further victimization. Only then can we ensure that they are not just surviving, but truly restarting to heal and thrive in a safe and nurturing environment.

In conclusion, addressing these critical gaps not only safeguards children but also facilitates a comprehensive analysis of each reunification case.

This approach allows for the collection of vital data that can be studied to draw meaningful conclusions about the evolution of European integration in family reunification policies and practices. Ultimately, prioritizing the child's best interests will lead to more informed strategies that enhance the protection and support of vulnerable minors, paving the way for a system that acts in all the stages of the reunification process, including after the reunification, to ensure there is truly happy ending to this minor's story that was never a fairy tale to begin with.

5- Conclusion

This Dissertation based on the topic of “International Protection of Unaccompanied Minors in the EU” had as main objectives to answer to the following questions: (a) When does the Family Reunification applies? (b) When can it be rejected? (c) What happens if family reunion is wrongly admitted by the Member-State?

One significant finding was the complexity surrounding family reunification processes, which, while essential for the well-being of minors, can be hindered by bureaucratic barriers. This highlights the need for clearer guidelines and more supportive measures to facilitate the reunification of minors with their families.

While this study has addressed these critical issues, it also acknowledges areas that warrant further exploration. For instance, the long-term effects of family reunification on the integration and stability of unaccompanied minors remain under-researched. This is proved to be essential for a proper evaluation of the post-reunification period.

In summary, this dissertation offers critical insights into the protection of unaccompanied minors within the EU and advocates for stronger cooperation among Member States to prioritize their rights and welfare.

7-Bibliograhy

Amman, A. (2021). The invisible children: Missing unaccompanied minors and child trafficking in Austria (Master's thesis, Universität Wien).

Biondi, P. (n.d.). The best interests of the child and the right to family unity under EU law. School of Advanced Study, University of London.

Borges, B. B. (2012). Imigração de menores não acompanhados: Possíveis lições de uma apreciação da questão sob a perspectiva europeia. Revista Jurídica UNIARAXÁ, 16(15), 86-104.

Bolborici, A. M. (2018). The migrant children and unaccompanied minors in the EU: Perspectives on the action plan. Bulletin of the Transilvania University of Braşov – Special Issue Series VII: Social Sciences Law, 11(60), 2.

Carvalho, I. M., & Paoletti, I. (2023). Protection of unaccompanied migrant minors in two European Union countries: (Re)acting or being (in)different? Revista Crítica de Ciências Sociais, 130, 5-26.

Crea, T. M., et al. (2021). Unaccompanied immigrant children in long-term foster care: Identifying and operationalizing child welfare outcomes. Child and Family Social Work, 26(1), 1-12.

Costamagna, F., et al. (2022). Family reunification in EU law: Essential texts, cases, and materials. Torino: Università degli Studi di Torino.

Council of Europe. (2019). Effective guardianship for unaccompanied and separated children in the context of migration: Recommendation CM/Rec(2019)11 of the Committee of Ministers and Explanatory Memorandum. Printed at the Council of Europe, October 2022.

Crisp, J. (2018). The development of a comprehensive policy response for refugee children. UNHCR.

Diop, M. (2009). Unaccompanied minors' rights within the European Union: Is the EU asylum and immigration legislation in line with the Convention on the Rights of the Child? Legal Paper. Bruxelles: Université Libre de Bruxelles.

Duic, D., & Čepo, M. (2021). Impact of the New Pact on Migration and Asylum on child refugees and unaccompanied minors. Balkan Social Science Review, 17, 117-143.

EASO. (2016). EASO Practical Guide on Family Tracing. EASO Practical Guides Series, March 2016.

European Agency for Fundamental Rights. (2020). Guardianship systems for unaccompanied children in the European Union.

European Economic and Social Committee. (2015). Opinion of the European Economic and Social Committee on the implementation of the Common European Asylum System: The role of the EU in the fight against human trafficking. Official Journal of the European Union, 15.1.2015, p. 69.

European Union Agency for Fundamental Rights. (2020). Relocating unaccompanied children: Applying good practices to future schemes.

Ferrara, P., et al. (2016). The "Invisible Children": Uncertain future of unaccompanied minor migrants in Europe. The Journal of Pediatrics, 169, 332-333.

Favi, A., et al. (2021). The best interest of the child in the context of transnational movement: National courts and the EU CFR. Handbook prepared by the E-NACT Research Unit at the University of Florence.

Fitzgerald, D., & Eberle, M. (2019). Children and migration: A review of international and European law. Routledge.

Ioffe, Y. (2024). The right to family reunification of children seeking international protection under the Convention on the Rights of the Child: Misplaced reliance on travaux? International Journal of Refugee Law, 34, 215-240.

International Criminal Court. (2013). Policy on children. Office of the Prosecutor.

International Organization for Migration. (2018). International migration law, nº 15: Human rights of migrant children.

Jaiswal, S. K. (2017). Role of parental involvement and some strategies that promote parental involvement. Journal of International Academic Research for Multidisciplinary, 5(2), 95-101.

John, A., & Arturo. (2023). Family reunification for migrants and refugees: A forgotten human right? A comparative analysis of family reunification under domestic law and jurisprudence, international and regional instruments, ECHR case law, and the EU 2003 Family Reunification Directive.

Krakenes, O. H. (2016). Family reunification for unaccompanied minors: An exploratory study of practice-based experiences of professionals (Erasmus Mundus Master's Programme in Social Work with Families and Children). Göteborgs Universitet.

López Ulla, M. (2021). About the case law of the European Court of Human Rights regarding unaccompanied children. EuroMediterranean Journal of International Law and International Relations, 9, 1-12.

Mastrorillo, M., et al. (2016). Mental health needs of unaccompanied refugee minors: A systematic review. BMC Psychiatry, 16(1), 1-9.

Morris, K. (2020). The impact of trauma on unaccompanied minors: A longitudinal study. Child Abuse & Neglect, 108, 104-660.

Mueller-Bamouh, V., et al. (2016). Are experiences of family and of organized violence predictors of aggression and violent behavior? A study with unaccompanied refugee minors. European Journal of Psychotraumatology, 7, 1-10.

Nobre Russo, A. (2015). A proteção internacional dos direitos humanos em frente à vulnerabilidade das mulheres e crianças migrantes (Master's thesis). Coimbra: Faculdade de Direito da Universidade de Coimbra.

Noronha Rodrigues, J., & Andrade, A. B. (2019, March). A proteção internacional e o instituto de asilo na União Europeia. Judge.

Oduola, S., & Dykxhoorn, J. (2022). Triple trauma, double uncertainty, and a singular imperative to address the mental health crises within asylum-seekers and refugees system: A commentary on Hvidtfeldt et al. (2021). Social Psychiatry and Psychiatric Epidemiology, 57, 2157–2159.

Oldroyd, J. C., et al. (2021). The experiences of children and adolescents undergoing forced separation from their parents during migration: A systematic review. Health and Social Care, 29(1), 1-12.

Papoutsi, E. (2023). The protection of unaccompanied migrant minors under international human rights law: Revisiting old concepts and confronting new challenges in modern migration flows. International Journal of Refugee Law, 35(2), 220-258.

Parusel, B. (2017). Unaccompanied minors in the European Union – Definitions, trends, and policy overview. Social Work and Society – Online Journal, 15(1), 1-15.

Save the Children. (2018). Voices from the Children: Unaccompanied Minors in Europe.

Schulz Natalia, A. (2023). The principle of the best interests of the child and the principle of mutual trust in the justice systems of EU Member States - Return of a child in cross-border cases within the EU in the light of EU Council Regulation 2019/1111 and the situation in Poland. Journal of Private International Law, 19, 481-505.

Teixeira Guedes, S. (2018). A proteção dos menores em contexto de asilo: O caso dos exames de avaliação de idade (Master's thesis). Porto: Faculdade de Direito da Universidade do Porto.

UNHCR. (2021). Guidelines on the protection of refugee children. United Nations High Commissioner for Refugees.

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

Van den Bulck, D. (2019). Guide for unaccompanied minors who apply for asylum in Belgium. Commissioner General for Refugees and Stateless Persons. Funded by the European Asylum, Migration and Integration Fund (AMIF).

Van Voorhis, F., et al. (2013). The impact of family involvement on the education of children ages 3 to 8: A focus on literacy and math achievement outcomes and social-emotional skills. MDRC.

Zucconi, C. (2023). The role of EU law in promoting child rights: A comparative analysis of the EU Charter and the UN Convention on the Rights of the Child. European Journal of Law and Education, 2(1), 33-57.