

CONCILIATING NATIONAL PROVISIONS WITH INTERNATIONAL REGULATIONS. THE CASE OF UNACCOMPANIED MINORS IN THE EU AND IN ITALY

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Abstract: In recent years, a growing number of unaccompanied and separated children (hereinafter "unaccompanied minors") entered and passed through the European Union (EU) looking for a safe country or in the attempt to secure their future, an education and a better job, meeting often to family or community members already in the EU. To reach a predetermined destination in Europe has become increasingly dangerous for many unaccompanied minors, whose migratory project is based on decisions made by their families and on expectations fueled by partisan information obtained mostly from informal networks. Analysing the EU context, it appears evident the existence of a number of common features, mainly

caused by the sharing of common emergencies and by the structuring of similar domestic legal regulations. The northern European countries prefer the application of measures arising from the laws on immigration in relation to the protection of unaccompanied minors, instead the Mediterranean countries adopt provisions of protection under international law, EU law and its legal system with regard to child protection.

Keywords: unaccompanied minors; Italy; Convention on Children Rights of November 20, 1989; Consolidation Act on Immigration no. 286/1998; Committee for Foreign Minors.

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Introduction

The current period is characterized by a migration phenomenon whose predominant trend is constituted by a shift from the southern countries of the world, from Eastern Europe to the West. The causes lie in the interdependence of the world economic system, characterized by uneven development of countries and the exploitation of the West with the export of its market value and consumption. To determine the migration flows are therefore economic, social and political as the dramatic impoverishment of many countries and the need to escape from situations of war, oppressive regimes, to political and/or religious persecution. In the choices of the migrant determinant is the attraction exerted by the West, with its ability to present itself as a kingdom of wealth, opportunities, freedoms³.

In recent years, a growing number of unaccompanied and separated children (hereinafter "unaccompanied minors") entered and passed through the European Union (EU) looking for a safe

country or in an attempt to secure their future, an education and a better job, meeting often to family or community members already in the EU. Reach a predetermined destination in Europe has become increasingly dangerous for many unaccompanied minors, whose migratory project is based on decisions made by their families and on expectations fueled by partisan information obtained mostly from informal networks

The increasing intensification of migration, which involved Italy and Europe in recent decades reached its peak following the revolutions of the Arab Spring and subsequent civil conflicts that have destabilized North Africa and the Middle East, led to highlighted deficiencies and problematic nature of the national and international in hospitality and ability to identify and pursue long-term strategies appropriate systems, on the one hand, to cope with this emergency and, second, to protect migrants.

In recent years it has become increasingly important a particularly vulnerable category of migrants: migrant

³ www.unhcr.it/wp-content/uploads/2016/01/3Proteggere_i_Minori_in_Transito.pdf.

children, accompanied or not in their migratory path. Migrant children may belong to different categories: children born in a country other than that of legally residing parents; children who come regularly in the destination country in order to rejoin their parents; minors who arrive irregularly in the destination country to be reunited with parents or other relatives; children who enter illegally in the country of destination together with the parents; children transiting from one country in anticipation of heading to other countries; children victims of trafficking; and minors who arrive irregularly in the country of destination, after dealing with the journey without any reference family.

The latter ones are particularly vulnerable because most subjected to the risks and dangers of this migration process. Children who decide to embark on a migratory path without guidance from a reference adult are so-called unaccompanied minors. For these reasons the “unaccompanied minors”, landed in Italy to flee to hardship and violence inflicted on their prey lands of war and poverty, will be the target of the present article. In the first paragraph therefore it will be analyzed the complex system of

motivations, then the EU dimension of the phenomenon from its juridic and legal point of view and, last but not least, it will be presented the Italian case.

The system of motivations

Through the analysis of unaccompanied minors’ countries of origin, it seems quite obvious that they come from the periphery of the world economic system. The testimonies of the minors themselves and the analysis of the living conditions in their countries of origin (collected by researchers in more or less recent years) suggest that migration is perceived as one of the most important ways to improve their future as well as their families’ socio-economic conditions. This can be properly considered their main reason for migration. In fact, at the basis of minors’ migration, we can find the so-called “push-factors” - conflicts, wars, generalized poverty, social instability, negative perspective of the future creating a premature sense of responsibility, etc. – as well as the “pull-factors”, such as Italy’s image - as represented both by the positive feedbacks from their emigrated relatives/friends and by mass-media, especially television channels

broadcasting in their countries. The multitude of migratory motivations may recall the famous Max Weber's "ideal types". It must be noted, however, that we make this distinction on a theoretical base only: in fact, the whole motivation process of migration choices must be analysed in both its complexity and its interconnection of various components. Even if some factors are more decisive than others, we must emphasize the interdependence of multiple factors, as confirmed by the interviews with the minors themselves⁴.

Unfortunately, there are few studies related to the motivational aspects of unaccompanied minors' migration. For statistical reasons, most of them are addressed to specific national groups like Albanians, Moroccans and Afghans; moreover, they only refer to legally entered unaccompanied minors. Yet, despite the fact that they only reflect views and attitudes of those minors who were interviewed during the survey, the obtained information is detailed and precise enough to let us understand the

reasons behind the migration process for the most of them.

By analysing the biographies of migrant minors, Monia Giovannetti outlines four profiles of unaccompanied minors in Italy⁵, highlighting the characteristics of the main "push and pull" factors that determine their migration choice:

1. *Minors fleeing wars, persecutions, conflicts* who, forced by objective reasons to leave their country without a clear destination, undertake a groping journey; this is, for example, the case of some Afghan minors who stop in other countries before choosing Italy.

2. *"Dispatched Minors", driven to migrate for economic reasons in search of job opportunities*, who choose Italy because, after gathering information both by their family members and friends who have had positive migration experiences and by the media, they "have built" an image of Italy as a country offering the best socio-economic opportunities. Most of these cases are represented by Albanian

⁴ Melossi D. and Giovannetti M., *I nuovi sciuscià*, Donzelli, Rome, 2002.

⁵ Giovannetti M., *L'accoglienza incompiuta. Le politiche dei comuni italiani verso un sistema di*

protezione nazionale per i minori stranieri non accompagnati, Mulino, Bologna, 2008.

minors who have a “wide range of knowledge” and high expectations from Italy, despite the lack of labour and housing opportunities.

3. *Minors attracted by “new models and styles of life”*, who migrate in order to experience a new way of life, advertised by television images which nourish such a desire, sometimes since a very early age.

4. *Minors motivated by the crumbling of society*, who opt for migration as a consequence of the departure of their family members or group of friends.

As will be highlighted later, the great majority of unaccompanied minors in Italy come from Morocco, Egypt, Albania and other Eastern European countries (all of them characterized by socioeconomic and/or political problems). As shown by the interviews conducted by Melossi and Giovannetti⁶, the fall of Communism (and all of its consequences; i.e. the case of Albania), as well as other political conflicts (as in the case of Afghanistan) have had a negative impact on the population in terms of precarious

economic conditions linked with social instability. This has led minors to flee to Italy or other countries. At the same time, the perception of migration as the “only hope” has continued to grow steadily.

Moreover, the socio-economic conditions of their family of origin have a direct influence on the migration choice of the minors, and generate the “adultization of minors”, a phenomenon consisting both in social roles which are unsuitable for their age and in a premature sense of responsibility. Poverty itself, combined with a low socio-educational status and the scarcity of local job opportunities, encourages minors to migrate in the hope of finding better jobs, or at least better salaries.

However, presuming that all the unaccompanied minors who have immigrated to Italy stem from a difficult socio-family background would be a mistake. In fact, in some cases the conditions of their families are decent and therefore the reason behind their migration must be sought elsewhere. In general, however, problematic socio-family background is nevertheless prevalent.

⁶ Melossi D., Giovannetti M., *Cit.*

The problems of the school system in their countries of origin can also explain, to some extent, the unaccompanied minors' choice to migrate. A school system unable to facilitate students' insertion in the labour market, as it does not offer positive prospects for the future, generates potential migrants⁷.

So far we have highlighted the main reasons that lead unaccompanied foreign minors to migrate, but we have neither explained nor detailed the question of why they migrate to Italy. The most relevant explanations lie in the construction of Italy's image and in the expectations connected to such a dream country offering great opportunities. This leads to an underestimation or trivialization of the risks linked with a minor's decision to migrate. The image conjured up in the minor's mind, before migrating, is a result of the following two reasons: family and friends who have had positive experiences of migration (or at least this is what they relate) and the mass media, especially television. Albania is the most eloquent example of the impact of

television on the construction of Italy's image. In fact, social perception had produced a kind of "dualistic vision": the "old" of the Albanian society and the "new" of the western one.

As regards unaccompanied foreign minors from EU Member States, it is assumed that in the absence of representative surveys, the determinant factors are the same, despite the diversity of the immigration paths, of the relevant legislation and of minors' expectations.

In conclusion, regardless of the increasingly common mirage of the West, in the imagination of migrant unaccompanied minors (mainly due to the "virtual space" factor) Italy is seen as the European *El Dorado* - although their expectations are not always satisfied. We can say that the neoclassical approach to the "cost-benefit analysis" regarding the migration choice is not always applicable in the case of unaccompanied foreign minors due to the risks they face in order to achieve a generic "better future".

Unaccompanied Minors in the EU

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http://www.giovaniesocieta.unibo.it/paper/1a/gior_dano.pdf.

According to Eurostat data, the EU has seen a rise in the number of unaccompanied minors seeking asylum, with almost half coming from Afghanistan. Since 2008, about 182,845 unaccompanied minors have entered the EU seeking asylum, with nearly half (88,245) arriving in 2015 alone. Nearly 7% of all first-time asylum applications in

2015 were from unaccompanied minors, the highest share since data on accompanied minors became available in 2008. Moreover On January 31st 2016, the European Union's police agency, Europol reported that 10,000 migrant children fleeing war and poverty in Europe were missing over the past two years only half in Italy⁸.

EU-28. Unaccompanied minors applying for asylum (2008-2015)

	2008	2009	2010	2011	2012	2013	2014	2015
Sweden	1,510	2,250	2,395	2,655	3,575	3,850	7,045	35,250
Germany	765	1,305	1,950	2,125	2,095	2,485	4,400	14,440
Italy	575	415	305	825	970	805	2,505	4,070
Austria	695	1,040	600	1,005	1,375	935	1,975	8,275
United Kingdom	4,285	2,990	1,715	1,395	1,125	1,265	1,945	3,045
Netherlands	725	1,040	700	485	380	310	960	8,895
Hungary	175	270	150	60	185	380	605	8,805
Belgium	470	705	860	1,385	975	415	470	3,100
Greece	295	40	145	60	75	325	440	420
France	410	445	610	595	490	365	270	320
Spain	10	20	15	10	15	10	15	25
EU 28	11,695	12,190	10,610	11,690	12,540	12,725	23,150	88,245

Source: IDOS Elaborations on Eurostat data

Notwithstanding these important statistical data, as regard the definitions under the EU law there is no a common, concrete, consistent one nor for unaccompanied minor nor for child. Of course, on the basis of specific definitions, the Lisbon Treaty introduced an objective for the EU to promote children's rights.

Moreover the Charter of Fundamental Rights of the European Union guarantees the protection of children's rights by EU institutions, as well as by EU countries when they implement EU law. Among the unaccompanied minors the situation is even more complex as several related categories can be underlined, such as:

Unaccompanied minors

⁸ <http://www.euronews.com/2016/01/31/10000-refugee-children-are-missing-says-europol/> .

A minor who arrives on the territory of the Member States unaccompanied by the adult responsible for them by law or by the practice of the Member State concerned, and for as long as they are not effectively taken into the care of such a person

A separated child is a child under 18 years of age who is outside their country of origin and separated from both parents or their previous legal primary caregiver

A minor temporarily received is a minor entered under temporary reception solidarity programmes promoted by institutions, associations or families, or a minor followed by one or more adults with mentoring or guidance functions

Minors victims of trafficking⁹ are children who have been formally identified as a victim of trafficking in human beings according to the national authority

Others: in transit; smuggled; sent for medical reasons, abandoned by mothers after birth, “left behind” under the custody of relatives or neighbours¹⁰ (i.e. 85,000 in Romania according to official data; 350,000 according to several NGOs), etc.

For the purpose of the EU policies, on the basis of the Article 2(f) of Council Directive 2001/55/EC¹¹, an unaccompanied minor usually refers to a third-country national or stateless person below the age of eighteen, who arrives on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as

long as they are not effectively taken into the care of such a person, or a minor who is left unaccompanied after they have entered the territory of the Member States. It's important to note that, by definition, unaccompanied minors who are EU nationals are excluded (such as thousands Roma unaccompanied minors from the Western Balkans in Italy, Spain and so on).

⁹ Trafficking means the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

¹⁰ Unaccompanied minors are also those resulting from the act of emigration of their parents. This crushing of families produces “variable geometry transnational families”, characterized by a strong sense of belonging, despite distances and frequent separations. Sociologists have highlighted the phenomenon of change in the roles of transnational family and the strong social stigmatization of mothers, accused of abandoning children to the care of other family members, (who thus support the emancipation of women from the domestic sphere). On the one hand sociologists highlight the evident sense of the “abandon” felt by children at home (therefore called “social orphans”), which can also contribute to develop antisocial behaviors; on the other hand the “left behind” generations could represent also resilient generations, aware of the sacrifices made by the parents and really motivated to overcome by their own all the obstacles of life.

¹¹ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32001L0055>.

Most of all, variations in the term and definition for unaccompanied minors exist at national level in the United Kingdom.

The comprehensive legislative instruments at both EU and Member State level, of which the protection of the most vulnerable (including minors) is one of fundamental principles of Lisbon Treaty, include many provisions for providing such protection, notably, in the case of unaccompanied minors, for those who have requested asylum, even if there are a number of other circumstances, for example provisions for minors not in asylum procedures, which are still ambiguous (11,921 just in Italy at the end of 2015).

Specific initiatives to enhance the promotion, protection and fulfillment of children's rights in the internal and external policies of the EU are outlined in:

- the 2006 Communication on “Towards an EU strategy on the rights of the child”¹²;
- the 2007 Communication on “EU Guidelines for the Promotion and

Protection of the Rights of the Child”¹³, providing the foundation for EU action to protect and promote the rights of the child in its external policy;

- the 2008 Communication on “A special place for children in EU external action”¹⁴ committed the EU to maximise and co-ordinate the use of the available instruments in its external action with a specific provision to provide humanitarian aid to *inter alia* separated and unaccompanied minors in countries on the edge of conflict, actually in conflict or emerging from conflict and resulting from natural disasters where governments are overwhelmed, unable or unwilling to act.

Since 2009 there have been several changes in relation to key provisions of International and EU legislation on asylum and immigration that address the situation of unaccompanied minors, as reviewed below, along with actions affecting unaccompanied children under the EU Agenda for the Rights of the Child¹⁵:

¹²<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52006DC0367>.

¹³<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:133604>.

¹⁴<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52008DC0055>.

¹⁵http://ec.europa.eu/justice/fundamental-rights/rights-child/eu-agenda/index_en.htm.

- The revised Asylum Procedures Directive¹⁶ (2013/32/EU recast) which aims at fairer, quicker and better quality asylum decisions. Asylum seekers with special needs will receive the necessary support to explain their claim and there will be greater protection of unaccompanied minors (Articles 7 and 25).

- The revised Reception Conditions Directive¹⁷ (2013/33/EU recast) ensures that there are humane material reception conditions for asylum seekers across the EU, that fundamental rights are respected and that detention is only applied as a measure of last resort. It provides particular attention to unaccompanied minors and victims of torture and ensures that vulnerable asylum seekers can also access psychological support. Finally, it includes rules on the qualifications of the representatives for unaccompanied minors and places an obligation for family tracing of the UAM. Article 24 includes specific provisions for

unaccompanied minors (minors are also provided for under Article 23).

- The revised Qualification Directive¹⁸ (2011/95/EU) clarifies the grounds for granting international protection and therefore will make asylum decisions more robust and will improve the access to rights and integration measures for beneficiaries of international protection. It ensures a better taking into account of the best interests of the child (when relevant) and of gender-related aspects in the assessment of asylum applications, as well as in the implementation of the rules on the content of international protection.

- The revised Dublin Regulation¹⁹ (604/2013) enhances the protection of asylum seekers during the process of establishing the State responsible for examining the application, and clarifies the rules governing the relations between states. It contains specific obligations on the treatment of minors, including unaccompanied minors, under Article 6, including the obligation to

¹⁶<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0032>.

¹⁷<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0033>.

¹⁸<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF>.

¹⁹<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0604>.

trace their families. In general, the Dublin III-Regulation enhances the protection of UAMs which marks an improvement in comparison to the Dublin II-Regulation.

- The Anti-Trafficking Directive²⁰ (2011/36/EU) includes new provisions on assistance, support and protection of unaccompanied children who are victims of trafficking, such as an individual assessment of the special circumstances of the child and an appointment of a guardian or representative from the moment the child is identified by the authorities.

- Other EU legal instruments containing provisions in relation to unaccompanied minors include Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography²¹ and Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime²².

The EU has already committed to a number of international conventions which have placed an obligation to take

appropriate protection and prevention measures in relation to migrants and/or children (e.g. the UN Refugee Convention and Convention on the Rights of the Child; the Hague Convention on the Protection of Children - HCCH; and the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms - ECHR).

In 2010, the Council of Europe (CoE) adopted the Guidelines on Child-friendly Justice²³, which aimed to assist professionals working with children to safeguard their rights in all stages of criminal, civil and administrative judicial proceedings. These Guidelines contain specific provisions for unaccompanied minors, particularly with regard to protection from discrimination and detention in the absence of residence status. Building on the CoE Guidelines and other international standards in the area of child-friendly justice, the European Commission has been working towards the development of indicators that would allow it to measure the progress of

²⁰<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0036>.

²¹<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0093>.

²²<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0029>.

²³http://ec.europa.eu/justice/fundamental-rights/rights-child/friendly-justice/index_en.htm.

Member States in implementing the existing standards.

Finally in 2010, the European Commission adopted an *Action Plan on Unaccompanied Minors (2010–2014)*²⁴. A *Mid-term report on the implementation of the Action Plan on Unaccompanied Minors*²⁵ was subsequently produced by the European Commission in late 2012 and noted that the collection of comparable and disaggregated data continues to be a key challenge. While ‘reliable’ statistical data on unaccompanied minors seeking asylum is available, less is known about irregular and/ or trafficked minors. The Report called for more information regarding the outcomes of unaccompanied minors after arriving in a (Member) State, including services and supports at each stage of applicable procedures, age and family assessments and durable solutions.

The publication of the Report was followed by a *European Parliament resolution on the situation of unaccompanied minors*²⁶ in September 2013 which called for the EU to adopt

"strategic guidelines" to better protect unaccompanied children. Aspects highlighted in the resolution include avoiding detention for unaccompanied minors, providing special care including education, integration and family tracing where possible.

The Italian case

With regard to foreign minors resident in Italy, their rights are guaranteed by the New York Convention on Children Rights of November 20, 1989, which was ratified and implemented in Italy by Law no. 176 of May 27, 1991. Italy has also ratified and implemented (Law no. 77, March 20, 2003) the European Convention on Children’s Rights (Strasbourg, January 25, 1996). Since 2014 the “Committee for Foreign Minors” has been the appropriate body in charge of overseeing the residence conditions of foreign minors who are temporarily admitted on the national territory, as well as coordinating the activities of the involved administrative bodies. This committee has been an inter-

²⁴https://ec.europa.eu/anti-trafficking/eu-policy/action-plan-unaccompanied-minors-2010-2014_en.

²⁵http://ec.europa.eu/dgs/home-affairs/e-library/docs/uam/uam_report_20120928_en.pdf.

²⁶<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0251&language=EN>.

ministerial body chaired by a representative of the Ministry of Social Policies (currently incorporated within the Ministry of Labour and Social Policies). The Committee for Foreign Minors has been in charge of overseeing: the residence conditions of minors, the cooperation with the involved administrations, the verification of the unaccompanied minor status, the implementation of the assisted return procedure and, finally, the census of unaccompanied minors on the territory. To this end, in the year 2000 the Committee created a special database of unaccompanied minors who have been reported to the Committee itself. Within the spending review policies, the Committee tasks have been then entrusted to the General Directorate on Immigration and Integration Policies within the Ministry of Labour and Social Policies.

As regards the admission conditions for foreign minors, we need to distinguish between accompanied and unaccompanied minors. In the first case, minors are entrusted to relatives within the third degree - who are regularly residing on the national territory - by means of a formal procedure. In the second case, they are reported as residing in Italy without

their parents or any other adult who can be legally responsible for their representation or assistance.

Foreign minors in Italy are granted the right to education, to health care and to the same labour protections as for Italian minors (including the prohibition of working if the minor is below 16 years of age and has not yet fulfilled school obligations). Moreover, unaccompanied minors are legally granted special protection and assistance, such as accommodation in a safe place, the principle of *non-refoulement*, the right to a “minor age” residence permit and the possibility of recurring to guardianship or foster care.

Unaccompanied minor asylum applicants represent a different case, and the Directive of the Ministry of Interior of December 7, 2006 aimed to solve their specific problems. According to this directive (which reinstates the existing Italian laws on immigration, including both Law no. 39 of February 28, 1990 and the Decree of the President of the Republic no. 303 of September 16, 2004), unaccompanied minors have the “right to receive all the information regarding the possibility of applying for asylum - and the

connected consequences of the application according to the current legislation - as well as the right of expressing their own opinion”. To this aim, a cultural mediator or an interpreter provides the necessary assistance.

In case an unaccompanied minor applies for international protection, the authority receiving the application immediately suspends the usual procedure followed for the time being; the asylum application is then brought to the attention of the Juvenile Courts having territorial jurisdiction; and finally the application itself is confirmed by a guardian, who is appointed by the Tutelary Judge and who will provide assistance during the whole procedure of examination of the application (Legislative Decree no. 25/2008). At the same time, the minor is reported to the General Directorate on Immigration and Integration Policies, which would be responsible for him in case of a negative response to the application for asylum.

In the meantime, when a minor is not yet eligible to receive protection and assistance from the Protection System for

Asylum Applicants and Refugees²⁷ (SPRAR), and since the detention of unaccompanied minors is prohibited, the minor is in this case hosted and assisted by the social services of the Municipality where he currently resides (sometimes in accommodation facilities owned or managed by the so-called “third sector”, when a specific agreement has been set). Furthermore, the municipalities have the duty to immediately report the minor to the Central Service of the SPRAR so that he can receive protection - that is provided by the System itself and funded by the National Fund for Asylum Policies and Services.

The accuracy of the asylum application procedure regarding unaccompanied minors at the border or within the national territory is handled by the Border Police, the Police Offices within the Reception Centres and the Police Headquarters, in collaboration with the United Nations High Commissioner for Refugees (UNHCR) and other agencies involved in asylum applicants’ protection. Once the asylum application has been submitted (after the guardian’s approval),

²⁷ <http://www.sprar.it/>.

the Police headquarters issues the documentation certifying the status of minor's application for asylum; once in possession of this documentation, he can finally have access to all the reception services offered by the SPRAR. If the SPRAR cannot immediately accommodate the minor in its facilities, hospitality and assistance should then be provided by the same Municipality in which the minor himself is residing at that time.

During the hearing before the National Commission for the Right of Asylum, the unaccompanied minor is assisted by his guardian, and is adequately informed about the importance and the possible consequences of that personal hearing. In case the minor's application is not confirmed or the international protection status is not granted, the matter is then turned over to the General Directorate on Immigration and Integration Policies.

The issue of unaccompanied minor asylum applicants is particularly delicate also in the light of the large

number of them arriving by sea on the Southern shores of Italy (and particularly Sicily). In 2008, the total amount of minors who landed on the Italian coastline was 2,751, of whom 2,124 were unaccompanied. The most critical situation was recorded in the Sicilian island of Lampedusa, where, out of the 2,327 minors arrived in the course of the year, 1,948 were unaccompanied. Only a few hundred of them have applied for asylum. In the following years the number of unaccompanied minors landed in Italy has widely increased and has peaked around 13,000 in 2014 and 12,360 in 2015 (equal to 8% of total people landed). The main areas of origin are Eritrea, Egypt, Gambia and Somalia. Only 4,070 of them applied for asylum in Italy.

According to the Foreign and Border Police Service of the Public Security Department, other severely affected border crossings are the Adriatic ports of Ancona, Venice, Bari and Brindisi and the airports of Rome (Fiumicino) and Milan (Malpensa)²⁸.

²⁸ Working Group On The Convention On The Rights Of Childhood And Adolescence (Crc Group), *Second supplementary report to the United*

Nations on the monitoring of the Convention in Italy, Rome, November 2009.

There are many unaccompanied minors who, not being intercepted at points of entry, are then tracked on the national territory. This mainly happens in the street, but also in cases of spontaneous show up in public service offices, at police headquarters or associations, and as the result of crime-fighting operations aiming to dismantle networks involved in trafficking and exploitation of children. Also included among the unaccompanied minors intercepted on national territory is the substantial number of those who have drifted away from the emergency reception facilities since the very early stage of identification.

For all the reported unaccompanied minors, the principle of *non-refoulement* is recognised (except for reasons of public order and State security, in which case the Juvenile Court will enforce the expulsion) and the fact that “the reception should not be limited to mere maintenance or hospitality” but must also include “the necessary care, education, training, sport”, in view, however, of an assisted return. The principle of *non-refoulement* (established by art. 19, paragraph 2 of the Consolidation Act on Immigration no.

286/1998) is preceded - in paragraph 1 of the same article - by the principle of *non-refoulement* to a country where the subject runs the risk of persecution. The procedures for unaccompanied minors who do not submit an asylum application are the following: at the time when their presence on the territory is officially reported, they are issued a temporary residence permit for minor age reasons (Presidential Decree no. 394/1999, art. 28) which allows an investigation on their family and the organization of their assisted return.

The minor age residence permit can be issued only in the case of absence of the conditions required for the release of other types of permit, such as custody, family or others (Circular of the Ministry of Interior, December 23, 1999).

If an adult family member regularly residing in Italy is tracked down, the relevant judicial authority shall entrust the minor to him; otherwise, in the absence of an appropriate family environment, the minor is fostered by a family or a community, according to art. 2, par. 1 and 2 of Law no. 184/1983. Furthermore, the Commission for Childhood concludes agreements, on the one hand with national

humanitarian organizations or associations (such as VIS, AIBI, etc.) or, on the other hand, with international ones (such as the International Social Service, the International Organization for Migration or the Italian Red Cross) in order to implement programmes aiming to track down the unaccompanied minor's family in his country of origin; this kind of research, carried out in the best interest of the minor, must be absolutely confidential, in order to protect the safety of the minor who applies for international protection (Legislative Decree no. 140/2005).

If possible, in the interests of the minor and in order to guarantee the right to family unity, the minor is reunited with his family through apposite projects of assisted return, including the accompaniment of the minor to his country of origin, his family reunification and his gradual reintegration (school, work, etc.). In this case, once the investigations are successfully completed and the insertion program is elaborated, the General Directorate on Immigration and Integration Policies informs the Juvenile Court, which then issues an authorization for the return - unless there are judicial proceedings to be borne by the minor or

mandatory procedural requirements. The repatriation is then carried out by the Police (in case of assisted return), the social services and/or the organizations which had completed the investigation in the country of origin.

In the absence of the necessary and indispensable conditions for the assisted return, the General Directorate on Immigration and Integration Policies decides in favour of a “non-suit”. It then reports the situation to the social services and the Tutelary Judge (or the Juvenile Court), which have to provide for the custody of minors (Law no. 183/1984) and start a project of social and civil integration of at least two years.

The General Directorate on Immigration and Integration Policies takes its decisions for or against the return of unaccompanied minors based on criteria which are not rigidly established by law. For this reason, it is important that the General Directorate has access to the widest possible range of information in order to assess the risks and opportunities, as well as evaluate the will of the minor.

The minor, or the adult who is responsible for his custody, may appeal to the Courts (Ordinary Court or TAR -

Regional Administrative Tribunal) in order to contest the authorization for the return. Similarly, the unaccompanied minor asylum applicant can appeal to the Court to contest the refusal of the status recognition on the part of the relevant office.

The coming of age of a minor is another delicate point because under certain conditions the former minor may apply for a residence permit for study or work. The Circular Letter of the Ministry of Interior of March 28, 2008 (establishing that both guardianship and foster care are valid requirements for obtaining a residence permit at the coming of age) put an end to the restrictive interpretation of the legislation, according to which the conversion of a minor age residence permit into another type of residence permit at the coming of age would be provided only for those minors who can prove that they have been living in Italy for at least 3 years and have been attending an integration program for at least 2 years (this provision precluded *de facto* all minors over 15 from access to these opportunities).

The legislature revised the matter through regulatory modifications (Law no.

94/2009, also known as the “Security Package”), following which the issuing of residence permits upon coming of age is now possible only if the requirements provided for by Law no. 189/2002 are met *jointly* (and no longer *alternately*).

Thus, according to the new regulation, residence permits issued to unaccompanied foreign minors for minor age reasons can be converted at the coming of age only when the following joint requirements are met: being under guardianship or foster care, having entered Italy since at least 3 years and attending an integration project since at least 2 years.

Nowadays for those who are not under these conditions it's therefore needed the written opinion of the General Directorate on Immigration and Integration Policies. In the case the unaccompanied foreign minor is in possession of a residence permit for reasons of custody (due to the “non-suit” decision or to the custody ordered by the Juvenile Court or Social Services, and enforced by the Tutelary Judge), not only can he immediately enter the labour market (in accordance, of course, with the rules on child labour), but he may also convert his previous residence permit into

a new one for reasons of study or work as soon as he comes of age (Circular of the Ministry of Interior of April 9, 2001).

In the specific case that a minor is under the custody of a regularly residing non-EU citizen, he may have his name endorsed on his guardian's residence permit until he turns 14 and then he receives his own residence permit for family reasons. The residence permit for family reasons allows him to work, and can also be converted into a residence permit for study or work when the minor comes of age.

According to Law no. 184/1983, the rules concerning minors entrusted to a guardian (name endorsed on the guardian's residence permit and issue of a residence permit for family reasons after turning 14) should also be applied to:

- minors under protection living with their guardian who, if foreigner, must be regularly residing in Italy (according to the Consolidation Act on Immigration no. 286/1998, art. 29, par. 2; Consolidation Act on Immigration no. 286/1998, art. 31, par. 1);

- minors entrusted *de facto* (i.e., without any measure enforced on the basis of Law no. 184/1983) to regularly residing

relatives within the fourth degree, who live with the relatives themselves (Law no. 184/1983, art. 9, par. 4; Consolidation Act on Immigration no. 286/1998, art. 29, par. 2; Consolidation Act on Immigration no. 286/1998, art. 31, par. 1).

Although the fact that, when confronted with minors who are in these conditions, many Police Headquarters do not issue a residence permit for family reasons, but only for minor age reasons, it is still possible to appeal the decision to the Courts in order to obtain a residence permit for family reasons.

The reception of unaccompanied foreign minors - and related expenses - is a responsibility of the Municipalities which, since 1990, acquired a statute of autonomy (Law no. 142/1990). To this regard, the Ministry of Interior only manages the first reception until the appointment of a guardian, whereas the funds for minors' reception are allocated by the Regions based on the reported amount of minors (instead of the actual one).

On the basis of Law no. 384/2002 regarding the implementation of the integrated system of interventions and

social services, the Municipalities have to program and implement their services

in accordance with the various agencies involved. This aspect could explain the discrepancies in the

practical application of the legislation on Italian territory, due to the lack of an adequate financial

support.

Act of Law of October 19, 2015 no. 173 amended the national regulation on adoption of by favoring the adoption of children by their foster parents. The judge shall decide based on the assessments of social services and upon due consideration of the child's opinion when twelve years old, or younger "if the child is capable of judgment".

On January 20, 2016 entered into force Legislative Decree of December 15, 2015 no. 212 implementing Directive 2012/29/EU on the rights, support and protection for victims of crime. The decree amends the Criminal Code and the Criminal Process Code to ensure adequate level of protection and assistance, in both stages of access and participation to criminal proceedings, both outside the trial and independently from it.

Finally, thanks to Legislative Decree of August 18, 2015, no. 142, the revised Reception Conditions Directive (2013/33/EU) and the revised Asylum Procedures Directive (2013/32/EU recast) were implemented. In particular Art. 19 of such law established a unique reception system for unaccompanied minors tout-court and unaccompanied minors applying for asylum under the competency of the Ministry of Interior. One consequence is therefore the possibility of unaccompanied minors not applying for asylum to be received within the SPRAR system.

It was finally approved by the Chamber of Deputies on 30 June, the European bill 2015-2016 (C. 3821).

The European Law, together with the European delegation Law, is the instrument of adjustment is for the European Union: the two instruments replace the old annual Community law. While the content of the law of the European delegation, being discussed at the Senate (S. 2345), is limited to the proxy provisions necessary for the transposition of directives and other acts of the European Union, the European Law, contains direct regulations implementation to ensure the order is for the European

national adaptation, with special attention to cases of incorrect transposition of European legislation.

Among the innovations contained in the new law, Article 10 provides for the issue of an autonomous residence permit to foreign minors, even before the age of fourteen, to fully implement the Regulation (EC) No. 380/2008 establishing a uniform format for residence permits for third-country nationals.

In particular, paragraph 1, lett. a) the new standard replaces the paragraph 1 of Article 31 of Legislative Decree n. 286/1998 (Immigration), providing that, at the stranger's youngest son with these partner and regular resident, is released "a residence permit for family reasons valid until coming of age" or "an EU residence permit of long term.

The minor until the fourteenth year of age should not therefore be registered, as in the current version of the standard, in the residence permit or residence permit of one or both parents.

Please remember that the younger partner and regularly residing follows the legal status of the parent with whom he lives or the most favorable among those of

parents with whom he lives. A minor who is entrusted under Article 4 of Law 4 May 1983, n. 184, follows the legal status of foreigners who has been given, if more favorable.

As a result of the changes, paragraph 1, letter b) Article 10 repealing paragraph 2 of Article 31, which provided that the child was released, only to her fourteenth year of age, "a residence permit for family reasons valid until coming of age", or "a residence card".

The second paragraph of Article 10 acts accordingly by amending Article 28, paragraph 1, letter a), (on residence permits for foreigners for which prohibited the expulsion or *refoulement*) of the Presidential Decree n. 394/1999, providing for the deletion of the words "except for the recording of minors under the age of fourteen in the residence permit of the parent or custodial foreigners legally residing in Italy".

Finally, paragraph 3 of the new rule, called a transitory provision, establishing that once the new law comes into force, at the time of renewal of the residence permit of the parent or the custodial adult it will be released to the minor an individual residence permit.

Conclusions

At the EU level, notwithstanding the positive juridical climate, the issue of unaccompanied minors continues to be undervalued and it seems urgent to address it by specific research and projects highlighting gaps in current legislation and cross border arrangements, opportunities offered by existing tools, and new tools, to cover areas where cooperation is currently inefficient. The present contribution would like to contribute to underline these needs and to widen the involvement of the scientific community.

In fact if the task of the national legislature is also to conciliate the constitutional interests, as well as security and public order, social life, democracy, the condition of family life with international conventions and fundamental rights, it appears necessary to achieve uniform legislation in national and international level on unaccompanied minors, which allows them the recognition of international protection in all the cases in which the return of the child, in the verge of the major age, is contrary to his/her best interest.

Analysing the EU context, it appears evident the existence of a number of common features, mainly caused by the sharing of common emergencies and by the structuring of similar domestic legal regulations. The northern European countries prefer the application of measures arising from the laws on immigration in relation to the protection of unaccompanied minors, instead the Mediterranean countries adopt provisions of protection under international law, EU law and its legal system with regard to child protection.

The Italian legal system is an exception within the Mediterranean model, establishing specific measures to the treatment of the most vulnerable. For example, article 18 of the Consolidated Text no. 286/98 provides for the possibility of obtaining a residence permit for reasons of social protection, valid for 6 months and renewable, in order to allow the child to escape the violence and the criminal organization and to participate in an assistance and social integration programme.

Despite Italy's efforts to guarantee the protection of these children, some NGOs have expressed a particular

concern because of the high risk to which the unaccompanied minors who land on Italian shores are subjected, especially in the case of young Nigerian victims of sexual exploitation and Egyptian children. Finally, a new rule called a transitory provision, establishing that once it comes into force the new law, at the time of renewal of the residence permit of the parent or custodial adult, for the fourteen years child it should be released an autonomous residence permit²⁹.

In this second decade of the third millennium, international migration is becoming one of the most important issues of the EU, which already was facing an unprecedented economic crisis (except of the 1973 oil shock). Within the migration phenomenon the unaccompanied minors represent a problem within the problem.

It's not just an economic issue, related to the need of allocating substantial amount of financial resources to the reception of newcomers and especially of children (for whom the reception facilities, supported by ad hoc professionals, cost more than the others).

The funding issue in fact can be addressed and resolved, so far as it was done albeit with great difficulty by small municipalities. The most worrying aspect is that it's hard to frame exactly the terms of the issue, as well as it's impossible to predict the future and assume and carry out effective strategies of intervention.

The so called "fiscal compact", presented by the Italian Government and accepted by the European Commission, is more credible (as well as expensive) in the phase of involvement of the countries of origin or transit in the duties related to the control of flows, than in the building phase (support for the development of departing areas with adequate financial allocations).

The question is not easy to solve and the unbalances of the European Union are matched by 54 African countries situations, largely hit by internal or external conflict and burdened by widespread corruption. It requires more foresight in order to start doing something very significant, to begin to sow hope, the only one that can hold the people on the spot.

²⁹ www.integrazionemigranti.gov.it.

Currently we are witnessing a mutual encouragement to move to another EU Member State, where for each newcomer it will be spent a lot and reception standards will be relatively modest. Those same sums of money spent on site, it could possibly do much more. In other words, we must in part accept a certain continuation of migration flows and partly make it more attractive to remain in place. This also applies to unaccompanied minors, many times encouraged - even against their will - to leave the country and emigrate to become a source of income, albeit at the cost of suffering, humiliation, harassment. Maybe some of them, if properly helped, they could do more remaining on site. Migration, which is expected to continue throughout the century, is not a panacea and it also requires the development on site. Africa, characterized by an increase of GDP of 5% a year, is not a dead continent, as it has not Asia, a continent from which many unaccompanied minors also originates

To sum up till to reach extreme conclusions, it can be said that it's important to better accommodate unaccompanied minors, solve the

suspended legal problems, prepare their successful participation. But we must not rely on fate and the "laissez faire" and, working on site, it must also temper the expulsion causes (push factors). Easier said than done, but at least it's time to start thinking about it seriously.

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