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The Right to Health

A Case Study of Unaccompanied Children and the Challenges of Minimum
Access to Healthcare in Greece

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*“There is no trust more sacred than the one the world holds with children.
There is no duty more important than ensuring that their rights are respected,
that their welfare is protected, that their lives are free from fear and want and
that they can grow up in peace.”*

– Kofi Annan –

This work is dedicated to them, the vulnerable children around the world, who suffer and still fight for their rights to be recognized on their path away from war and persecution.

ABSTRACT

The following master thesis is about the elaboration of the right to health for unaccompanied children (UAC) in Greece, the country within the European Union (EU) which faced high pressure following the so-called refugee crisis in 2015. Key players and supporters to reach and fulfill the standards of the right to health are the EU and the Council of Europe (CoE), who adopted legal instruments on fundamental rights and created Action Plans including the right to health to support and guide but also to monitor states in their protection, promotion and fulfillment of human rights system. Internationally there are more institutions like the World Health Organization (WHO) and other United Nations institutions, that set a focus on adequate health care access for refugees throughout the globe – inter alia aiming for the Sustainable Development Goals (SDG). Besides the legal framework this thesis emphasizes on the margin of appreciation of the states, as well as challenges within Greece, especially considering the change of government and connected decisions regarding the health care system in July 2019. The work of Non-Governmental-Organizations (NGOs) as a parallel healthcare system to the national and local healthcare system will be part of this thesis and will show the practical challenges and barriers within the country. COVID-19 as well as age assessment procedures will be used as examples that unaccompanied minors are exposed to a higher risk of an insufficient protection and access to healthcare. The situation of unaccompanied children in detention will also be examined in order to elaborate current circumstances and challenges regarding access to medical healthcare for those detained on the Greek islands as well as homeless children on the mainland. Furthermore, the solidarity as an EU principle regarding medical care support in the asylum and migration process in Greece, will also be discussed.

ACRONYMS

AMKA	Personal Social Security Number in Greece
CEAS	Common European Asylum System
CEB	Council of Europe Development Bank
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CSO	Civil Society Organizations
ECHR	European Convention on Human Rights
ECRE	European Council for Refugees and Exiles
ECtHR	European Court of Human Rights
E.K.K.A	National Centre of Social Solidarity
ESC	European Social Charter
EU	European Union
FRA	Fundamental Rights Agency
GCR	Greek Council for Refugees
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
iNGO	international Non-Governmental-Organization
K.Y.P.A.	Foreigner's Health Care Card
LIAM toolkit	Linguistic Integration of Adult Migrants
MRF	Migrant and Refugee Fund
MsF	Médecins Sans Frontières International
NGO	Non-Governmental-Organization
PAAYPA	Foreigner's Temporary Insurance and Health Coverage Number

RSA	Refugee Support Aegean
SDG	Sustainable Development Goal
TFEU	Treaty on the Function of the European Union
UAC	Unaccompanied children
UAM	Unaccompanied minors
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations Children's Fund
UNHCR	United Nations High Commissioner for Refugees
WFP	World Food Program
WHO	World Health Organization

TABLE OF CONTENTS

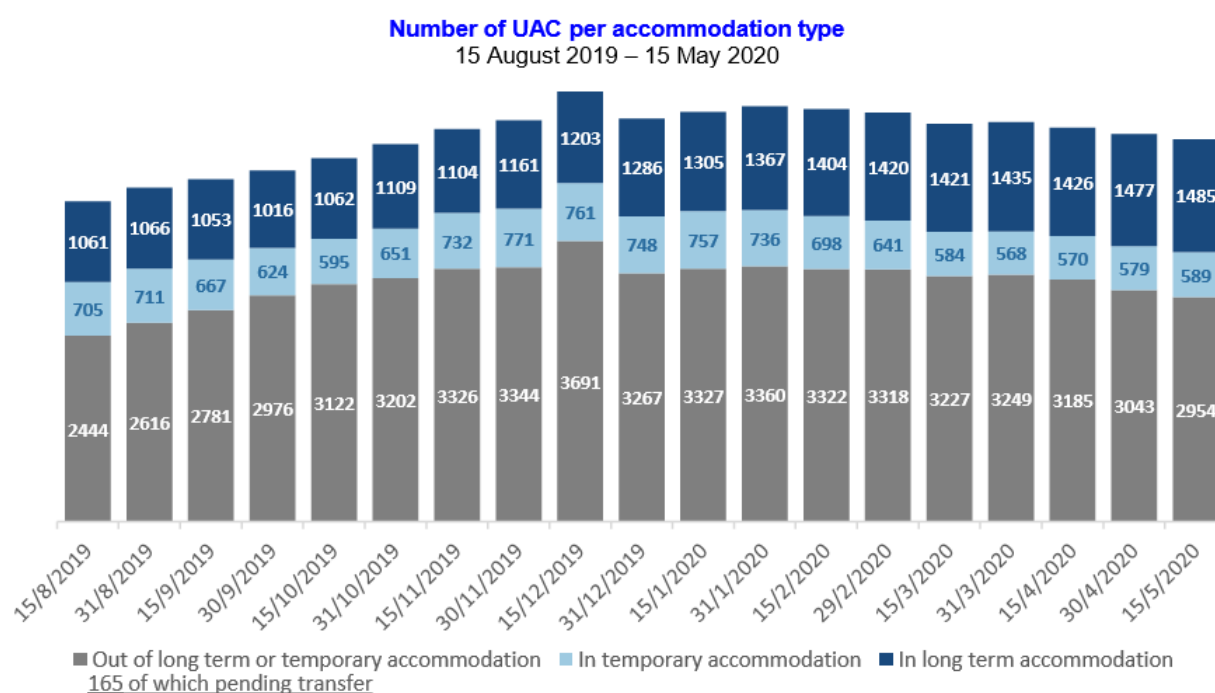
1. INTRODUCTION	8
1.1. Background to the research topic	8
1.2. Research questions	10
1.3. Terminology and limitations	11
1.4. Methodology and thesis structure	13
2. RESPECT AND PROMOTION OF UAMs' RIGHT TO HEALTH	15
2.1. Introduction to the chapter	15
2.2. Relevance of the CoE, EU and UN	15
2.3. The right to health within the legal framework	18
2.4. Connection between the right to health and other fundamental rights	20
2.5. The margin of appreciation of the states	24
2.6. International context of the right to health	26
2.6.1. Council of Europe Action Plan on Protecting Refugees (2017-2019)	26
2.6.2. Sustainable Development Goal 2030 UN – Goal 3	28
2.6.3. WHO – Draft Global Action Plan 2019-2023	30
3. CHALLENGES FOR UAMs' RIGHT TO HEALTH IN GREECE	32
3.1. Introduction to the chapter	32
3.2. Access to medical care and governmental decisions in Greece after 2015	32
3.3. UAM's within detention in Greece	34
3.4. Age assessment and vulnerability of UAM	36
3.5. Covid-19 and the protection of UAMs	38
4. BARRIERS AND STRUCTURAL REFORMS TO ACHIEVE MEDICAL CARE AND A STABLE ENVIRONMENT FOR UAMs	43
4.1. Introduction to the chapter	43
4.2. Barriers for iNGO's, other institutions and doctors	43
4.3. Health related cases of UAM in Greece after the refugee crisis in 2015	46
4.4. Solidarity as an EU principle	49
4.5. Healthcare as a priority to avoid exclusion of UAMs from society	52

5. CONCLUSION	56
BIBLIOGRAPHY	60
APPENDIX	77

1. INTRODUCTION

1.1. Background to the research topic

The refugee crisis in 2015 and its aftermath had an enormous impact on Greece. Over a million of people fled across the Mediterranean Sea to escape war and persecution.¹ The number of unaccompanied minors (UAM) or children (UAC) separated from their parents, who arrived in Greece in 2019, was about 5000 individuals under 18 years of age.²



Source: E.K.K.A “Situation Update: Unaccompanied Children (UAC) in Greece”, 15th May 2020.

Its peak was reached in December 2019 and since then there was no significant decrease. International organizations like the CoE, the EU, United Nations (UN) institutions, especially the United Nations High Commissioner for Refugees (UNHCR) and international and local NGO’s are working inter alia for the rights of those children, including provisions of medical care for displaced people. The Council of Europe monitors the compliance of its Member States with the European Convention, as well as its other core instruments.³ Meanwhile, the UNHCR focuses on the work for refugees by supporting states in order to ensure that human rights, such

¹ Bolliger, L. and Aro, A., “Europe’s Refugee Crisis and the Human Right of Access to Health Care: A Public Health Challenge from an Ethical Perspective”, Volume 20, Fall 2018, P.1.

² E.K.K.A, “Situation Update: Unaccompanied Children (UAC) in Greece”, 15th May 2020.

³ CoE, “who we are”, last modified 01st May 2020.

as the right to health, are not violated and particularly important for this thesis, that the access of essential health care is guaranteed.⁴ Critical health conditions among refugees are common and caused by many different reasons. Starting with unsafe journeys from their countries of origin, trauma, effected by war, as well as sickness caused by unhygienic conditions in the refugee camps.⁵ In addition to that, there are different barriers for unaccompanied children to get access to health care, which constitutes an enormous challenge especially for asylum-seekers but also for the NGOs to help those children.⁶ The national healthcare system is playing an important role for these circumstances and will be analyzed in this thesis. Apart from that the following study will be based on the best interest of the child and will take into account the analysis of projects like the Action Plan on Protecting Refugees and Migrant Children (2017-2019) by the Council of Europe and the Draft Global Action Plan (2019-2023) created by WHO, as well as the Sustainable Development Goals as a long-term program around the globe by the UN, in order to elaborate health-related challenges in practice and within the legal framework.

In addition to that, this thesis will examine the Greek government's recent decision in July 2019, of changing the law relating to access to healthcare, which started a noticeable discussion among human rights defenders and institutions like Doctors of the world, Médecins Sans Frontières (MsF) and Amnesty International.⁷ Inter alia financial cuts in public healthcare were adopted, which exacerbated the access to healthcare for newly arrived refugees.⁸ Furthermore, there will be a focus on the procedure of providing minimum access to healthcare, especially for unaccompanied children trying to get asylum as well as on the right to health concerning the human rights framework in Europe with a special emphasis on Greece. Hereby the European project PHILOS needs to be discussed, since this project was created to offer all nationally needed resources to cover all the medical needs regarding vaccinations of refugees and migrants, especially for children.⁹

Another important angle of this thesis are the critical conditions children are facing under detention as well as inhuman treatment on Greek islands, such as Lesbos, since they are exposed to infectious diseases like scabies and tuberculosis without being treated.¹⁰ Moreover, there is a lack of action in transferring asylum-seeking children to the mainland where appropriate

⁴ UNHCR, "Public Health", last modified 01st May 2020.

⁵ IOM, "World Migration Report 2020", Migration and Health, 2019, P.213.

⁶ Bolliger, L. and Aro, A., 2018, P.2.

⁷ Doctors of the world, "Project-Greece", last modified 01st May 2020.

⁸ Amnesty International, "Greece: Grant asylum-seekers and migrant children healthcare", 17th Jan 2020.

⁹ RSA, Report: "STRUCTURAL FAILURE: Why Greece's reception system failed to provide sustainable solutions", June 2019, P.2.

¹⁰ Gill, N. and Good, A., "Asylum Determination in Europe", 2019, P.109.

housing for refugees would be available.¹¹ Covid-19 took its part of impeding the situation of access to healthcare and complicated the national medical care conditions for migrants and refugees especially most vulnerable groups like children. Difficulties and lessons learned will be concluded from the study, also considering the circumstances that resulted from Covid-19. Apart from that, the connection to the right to life and right to freedom must be respected, as essential components to avoid risks for the right to health, as mental health conditions in detention and dangerous conditions in hotspots like the camps create a risk for the children and their wellbeing.¹² In this regard the procedure of age assessment will be analyzed to demonstrate domestic challenges and vulnerability of UAMs. Moreover, the connection between the right to health and other fundamental rights, like the right to education and family reunification will be made, as there are occurring challenges of social exclusion, if unaccompanied minors are not able to get the needed access to healthcare, such as vaccinations, in order to be transferred to the mainland or participate in school.¹³ Hereof, the principle of solidarity will be examined, since all European Member States committed to supporting one another to ensure protection, social inclusion of asylum-seekers and refugees as obligatory. Nevertheless, practical barriers occur within the discrepancy of legal framework and practice in Greece which has to become subject to critical scrutiny in the following thesis. Especially challenges regarding the work of iNGOs and NGOs for the access to medical care will enlighten the problematic aspects of the healthcare structure in Greece.

1.2. Research questions

Essential aspects of the following thesis are the minimum standard of medical care and access to healthcare for unaccompanied children within the human rights law framework, the adaptation in the state policies, state obligations as well as daily work in practice, to ensure this right. The identification of the core content of the right to health needs to be analyzed as well as how the eligibility of the right is compatible with human rights standards in daily practice but also with policies introduced by the CoE. The analysis of all the minimum elements of the core content on the right to health is important in order to ensure and keep its necessity as a human right.¹⁴

¹¹ UNHCR, “Vulnerable asylum-seekers struggle to access medical care on overcrowded Greek islands”, Feb 2020.

¹² Nowak, M., “The United Nations global study on children deprived of liberty”, 2019, P. 146.

¹³ UNHCR, Factsheet “Access to education for Refugee and migrant children in Europe”, Sept 2019, P.14.

¹⁴ Coomans, A.P.M., “In search of the core content of the right to education”, 2002, P.166.

Following research questions will be considered in the study:

- *What is the minimum access to health care for UAMs in Greece - legal framework and is it compatible with International, European and EU Law standards for the protection of the right to health?*
- *What are the consequences of the current situation including measures introduced by the new government in 2019 for UAMs, Greece and the EU?*
- *What are the challenges and possible solutions for the protection of UAMs right to health in Greece?*

1.3. Terminology and limitations

The following thesis will be limited by the author on the minimum standards of the right to health for unaccompanied children in Europe. A specific focus will be put on Greece, analyzing the parallel healthcare system which is working alongside the public healthcare system, in reference to the need of iNGOs and institutions, like the CoE, which implemented Action Plans to adhere to the existing human rights.¹⁵ A minor case law elaboration will be included into the discussion to emphasize practical barriers to health services and the dilemma of discrimination among national authorities towards UAM.¹⁶

A detailed study on possible changes within European policies would go beyond the scope of this thesis. However, the case study of Greece will demonstrate challenges as an example of restrictions within the law and the situation of the access to medical care for UAMs in Europe.

Since the thesis is written during the time effected by the Coronavirus (Covid-19) pandemic, there is a limitation of access to relevant research material. Libraries were closed and getting in contact with interview partners like NGOs and doctors became more challenging. Hence the number of interview partners is limited to four participants - this includes a dentist and a nurse from Doctors of the world (Médecins du monde) and two medicine students working for Medical Volunteers International e.V.. However, the following study will show actions from the state as well as from the UNHCR, as an example of how a state needs to fulfill its obligations

¹⁵ CoE, “Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019)”, May 2017,P.5.

¹⁶ Klotz, S. et al, “Healthcare as a Human Rights Issue”, 2017, P.366.

like safeguarding medical access on a daily basis and also adapting to emergency situations like the one Covid-19 has caused.¹⁷ Nevertheless, this thesis will not focus on state obligations or legal framework for specific acts of nature-beyond-control throughout a pandemic, although this would be a topic of interest for further research. Hence, the situation of Covid-19 in Greece will be discussed as an example of how the country reacted to special risks concerning medical support for unaccompanied minors which occurred in addition to the already critical situation for asylum-seeker and refugee children.

While studying the legal framework regarding the right to health, the distinction between different statuses of aliens need to be briefly explained, on the basis of differences within legal categories.

An asylum-seeker is a person who is aiming international protection and whose request is still in process by the country that the person is seeking protection in.¹⁸ Within the asylum system, interviews are considered to determine the asylum request. During mass movements in which people are fleeing from persecution, violence, and war, there are groups of asylum-seekers, crossing the border without having a personal interview – so called “prima facie refugees” and are recognized by the states or UNHCR in the same status as refugees.¹⁹

Moreover a refugee is a person who is recognized as a refugee within the Refugee Convention.²⁰ It encompasses people, who are forced to flee from their home country because of war or other threats to their life and therefore cannot return home.²¹ The difference between an asylum-seeker and a refugee can be explained by looking at their possibilities. An asylum-seeker can possibly get the status of a refugee, but asylum-seekers are not automatically recognized as refugees once they are applying for asylum.²² This difference in the status of a person is important for the investigation regarding the entitlement of the minimum access to healthcare later on in this study, since there are different laws applicable for certain groups.

Due to the focus of this thesis on the situation of unaccompanied minors, which is used as a synonym for unaccompanied children within the study, a clarification of the term is needed. UAM are children who are not accompanied by any caretaker, such as parents or relatives.²³ Within EU law those children can also be considered as “separated children” with their family

¹⁷ Interview Prof. Maria Daniella Marouda, “Situation of homeless UAM – UNHCR project”, 09th April 2020.

¹⁸ UNHCR, “Asylum-Seekers”, last modified 22nd June 2020.

¹⁹ Ibid.

²⁰ Convention Relating to the Status of Refugees, 1951, Art. 1.

²¹ Ibid.

²² International Council on Human Rights Policy, 2010, p.2.

²³ FRA, “Returning unaccompanied children: fundamental rights considerations”, 2019, P.2.

members being absent. Under international and EU law these separated children just like UAM are defined as persons under the age of 18.²⁴ The European Commission defines a more precise framing of the term unaccompanied, which says, once the child has entered one of the territories of the EU Member States without an adult, who would be responsible for the child by law, it will be considered as unaccompanied.²⁵

With further research, the term of “vulnerable groups” often appears and it includes people who are specifically in danger of emergency situations. It contains minors, people of advanced age, pregnant women as well as sick people.²⁶ As the WHO defines vulnerability as *“the degree to which a population, individual or organization is unable to anticipate, cope with, resist and recover from impacts of disasters.”* According to the following thesis the term vulnerable groups embodies UAM regarding health-related topics.

1.4. Methodology and thesis structure

This section will present the methodology and structure of the thesis. The decision between a qualitative and a quantitative research method depends on the research topic, even though both methods come along with strengths and weaknesses.²⁷ Whereas basic research, founded on quantitative research methods, aims for a more theoretical analysis, and applied research stresses a more practical base of specific programs and their performances.²⁸ Considering the topic of this thesis, a social research method is adequate for the study. The theoretical part is based on a desk research, especially focused on the human rights framework to understand, and identify the main current discussions within the human rights field, connected to the right to health. Central rights within asylum procedure like the right to asylum, health, and housing as well as life, education and family reunification will be analyzed because they are connected and crucial rights for the physical and psychological wellbeing of children. Additional sources as reports from NGOs, policies on the right to health, governmental announcements as well as Recommendations for the Member States and further published literature are considered within the study. The theoretical development of the study is considered in social research and is part of the basic research.²⁹ The first part introduces theoretical knowledge about the right to health

²⁴ Ibid.

²⁵ European Commission, “Unaccompanied Minor”, last modified 2nd July 2020.

²⁶ WHO, „Environmental health in emergencies”, last modified 2nd July 2020.

²⁷ Babbie, E.R., “The Basics of Social Research”, 2017, P.91.

²⁸ Carr, D., et all, “The Art and Science of Social Research”, 2018, P. 13.

²⁹ ibid.

and the human rights framework in Europe and a specific emphasis on the right to health for unaccompanied children in Greece. Furthermore, definitions and delimitations are included, as well as current programs of the Council of Europe, WHO and other institutions of the UN and will be analyzed in the following thesis. Legal policies on a domestic level in Greece will be elaborated in order to identify challenges and barriers in daily practice.³⁰ Apart from that state responsibilities and the implementation of the best interest of the child will be discussed in this section.

However, the second part of the thesis is based on qualitative and desk research methods, considering practical experiences in terms of interviews with NGOs and doctors working in Greece as well as compiling reports and statistics from UNHCR, National Centre of Social Solidarity (E.K.K.A) and relevant data from the field in refugee camps as well as in detention centers. This section contains the work of NGOs and doctors, which outlines current challenges and barriers for unaccompanied children to receive the minimum access to health care and how those children are supported by a parallel healthcare system.³¹ This includes the analysis of government decisions, as the Ministry of Health and an elaboration of the public healthcare system in Greece. Apart from that the legal framework and the impact of EU policies in the current situation will be underlined by minor case law studies, concerning decisions within the court on the right to health for unaccompanied minors, as well as connected fundamental rights, in order to proof the justiciability of the right to health.³² Using different kinds of research methods enables a richer result of the evidence of the study.³³ Having access to people, who are personally involved and participating in the system, fieldwork methodologies occur as an effective tool for analyzing different angles of the topic.

³⁰ Ministry of health, last modified 02nd May 2020.

³¹ Rosano, A., "Access to Primary Care and Preventive Health Services of Migrants", 2018, P 68.

³² Klotz, S., et all, P.365.

³³ Babbie, E.R., P.52.

2. RESPECT AND PROMOTION OF UAMs' RIGHT TO HEALTH

2.1. Introduction to the chapter

Chapter two is dealing with a brief history of the right to health and its interpretation within the human rights framework as well as governmental policies and the margin of appreciation of the states under international human rights law. Furthermore, the work of the UN, CoE and EU will be elaborated as well as recent programs and Action Plans introduced by the CoE and the WHO will be presented and analyzed to show implementation among states on the legally binding articles of different conventions. This study will highlight the impact of those programs on the right to health. In addition to that, the chapter will provide relevant articles on the right to health in general and an elaboration of specified rights established on the best interest of the child, in order to present an overview of the human rights protection of UAMs in Europe. The overview in chapter two is used to prepare the reader for the further study on the access to health for UAMs in Greece.

2.2. Relevance of the CoE, EU and UN

All three of the following institutions are important within the human rights field regarding protection and promotion. However, they differ in their responsibilities. To understand their main tasks and differences this chapter will give a brief overview on their responsibilities and connections to one another, concentrating on the right to health within their charters and conventions. Furthermore, the differences in their judicial bodies will be briefly explained to emphasize the complexity of the global human rights legal system.

The CoE founded in 1949 is the responsible human rights organization in Europe and embodies 47 Member States - 27 of which are also members of the EU. In order to protect human rights all Member States signed the Convention on Human Rights and are monitored by the European Court of Human Rights (ECtHR) to accomplish the successful implementation of the Convention.³⁴ The CoE also provides Recommendations and guidelines for the Member States regarding current challenges and their obligations to protect, prevent and fulfill the established human rights framework. The Recommendations are adopted by the Committee of Ministers to Member States.³⁵ Guidelines as *“the Handbook to family reunification or the*

³⁴ CoE, “who we are“, last modified 5th July 2020.

³⁵ CoE, “Human Rights Intergovernmental Cooperation”, last modified 5th July 2020.

Handbook for legal practitioners regarding protecting migrants” under the ECHR and ESC (Revised) are contributing to adhere the rights, implemented by the convention. They are focusing on current challenges and support the states in their practical work and will be of relevance for chapter three in which the circumstances of UAMs in detention will be explored. Apart from that there are differences in the courts depending on the legal foundation the applicant is claiming. The ECtHR is an international court and rules on individual or state applications regarding breaches on civil and political rights guaranteed by the European Convention on Human Rights (ECHR). Meanwhile the European Committee of Social Rights is the counterpart to the ECtHR and makes decisions based on the Social Charter (ESC) and its revised version.³⁶

The EU consists of 27 Member States which acceded to the CoE in the first place. The EU is a unique institution that represents different bodies. The Council of the European Union, enables the national governments and EU-level leaders to work closely together according to the adoption of EU laws as well as policies.³⁷ The Court of Justice of the European Union (CJEU) based in Luxembourg consists of one judge from each EU country and ensures, that EU law applies in all the EU countries equally.³⁸ It rules on the interpretation of the treaties established by the EU - the EU Charter of Fundamental Rights. Furthermore, the EU provides Directives for its Member States which are legally binding but work more as a strict guidance for implementations of national laws. For this thesis the Directive 2013/33/EU is of relevance since the European Parliament and the Council set up standards for people who seek protection in the EU including vulnerable groups like unaccompanied minors.³⁹ There will be a particular emphasis on Article 11 of the Directive, because it focuses on detention of UAM and Article 19 regarding health care as well on Article 21 and 24 that focus on vulnerable groups and on UAM in particular. Since Directives allow a great freedom for the Member States on how to transpose the content, states are allowed to implement their own national laws on how to reach the goals, established in the Directive.⁴⁰ It is an effective, binding document which guides Member States but it leads to challenges for the establishment on a national level.

The UN established the first charter containing human rights after World War II and therefore became a part of international law. The guiding principle of the UN’s Universal Declaration of Human Rights (UDHR) focuses on promotion and protection of human rights

³⁶ CoE, “ECHR – the Court in brief”, last modified 5th July 2020.

³⁷ European Union, „Institutions and bodies”, last modified 05th July.

³⁸ Ibid.

³⁹ Directive 2013/33/EU, Art 21 & 22.

⁴⁰ EU, “Regulations, Directives and other acts”, last modified 10th July 2020.

on the one hand by using legal instruments and on the other hand by including programs within the field.⁴¹ One of the main priorities of the UN is the cooperation of international institutions to solve challenges regarding economic, social, cultural or humanitarian problems around the globe. The UN is one of the main partners for the CoE especially regarding global activities. In 1951 the “Agreement on Cooperation and Liaison between the Secretariats of the UN and the CoE” was established and signed and got updated in 1971 which included agreements on working groups within CoE and UN bodies.⁴² Since 1989 a resolution has been adopted, which enabled the CoE to obtain the role of an observer which further connected the CoE’s work to the General Assembly of the UN and its committees.⁴³ The United Nations High Commissioner for Refugees (UNHCR) established in 1950 is focusing on the work to protect people forcibly displaced all over the world and therefore represents a key player among refugee work.⁴⁴ A self-study module regarding human rights and refugee protection published by the UN strengthened the support of UNHCR staff and partners for provisions and mechanisms to connect the correlating aspects of international human rights law, international refugee law and international humanitarian law. The self-study module aimed to protect refugees and asylum-seekers.⁴⁵ Especially relevant for this thesis is the awareness of the convention and protocols for the rights of the child and their compatibility for UAM which is an instrument of the laws mentioned above. To conclude also with the judicial body of the UN, the International Court of Justice (ICJ) located in The Hague, is responsible for cases submitted by Member States of the UN and forbids individual complaints.⁴⁶

To conclude, all the three main institutions are important for future work regarding human rights challenges around the globe. They are strongly connected and continue to develop further documents as Directives, Handbooks as well as Recommendations to support Member States in their plans of action and expect them to mandatory implement these documents on a domestic but also international level, even if not all of the documents mentioned above are legally binding.

⁴¹ UN, „What we do”, last modified 5th July 2020.

⁴² CoE, „External Relations”, last modified 5th July 2020.

⁴³ Ibid.

⁴⁴ UNHCR, “history”, last modified 07th August 2020.

⁴⁵ UNHCR, “Human Rights and Refugee Protection”, Self-study Module 5, Vol. I, 2006, P.1.

⁴⁶ ICJ, „How does the International Court of Justice differ from other international courts?”, last modified 5th July 2020.

2.3. The right to health within legal framework

After World War II, the United Nations established the first legal document to promote and protect human rights as a common standard for everyone.⁴⁷ Although the UDHR does not include a specific article on the right to health, it is associated with the right to an adequate standard of living.⁴⁸ The UDHR identifies medical care as a need within the right to an adequate standard of living but not as a core element or a separate right itself. It is mentioned among article 25(1), that everyone has:

*“the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, [...] or other lack of livelihood in circumstances beyond his control.”*⁴⁹

Even though, the declaration in its original form is not legally binding, it is used within international law because of its importance to political and moral guidance.⁵⁰ The WHO adopted a principle in its constitution according to the UDHR, which demands a more precise guidance for the states, including health related principles and they are used regularly for legal decisions. However, this constitution is non-binding.⁵¹

The first binding convention with a specific article on the right to health was adopted in 1966 and entered into force in 1976, known as the International Covenant on Economic, Social and Cultural Rights (ICESCR), by the United Nations General Assembly. Article 12(1) of the ICESCR however, recognized the right to health in the first place, but limited it to the “*highest attainable standard of physical and mental health*”, not considering social aspects as part of a holistic wellbeing, that were originally mentioned by the WHO in its constitution.⁵²

*“Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”*⁵³

WHO defines in its approach that the linkage of these circumstances categorized in physical, psychological and social circumstances need to be considered in order to understand the right to health.⁵⁴ This argumentation is used among human rights discussions and underlines the

⁴⁷ UDHR, 1948, Art. 2.

⁴⁸ Morsink, J., „The Universal Declaration of Human Rights”, 1999, P.192-199.

⁴⁹ UDHR, Art. 25(1).

⁵⁰ Klotz, S., et all, P.25.

⁵¹ Ibid, P.24.

⁵² Ibid, P.26.

⁵³ Constitution of the World Health Organization, “Preamble”, 1946.

⁵⁴ Klotz, S., et all, P.24.

interpretation that health and well-being is not only a matter of identification of diseases by medical experts but an extension of the term health itself that includes the impact of the environment as an element of well-being.⁵⁵

The access to health care for all can be found in article 12 of the ICESCR, which is adopted in other UN Human Rights Conventions like the UN Convention on the Rights of the Child (CRC) adopted in 1989. The ICESCR plays an important role for unaccompanied minors and therefore also for this thesis, because this convention contains the right to housing, family reunification and education, which are necessary elements for the elaboration of this study, that directly affect the mental health conditions of the child. In addition to that analyzing the history on the development of the right to health with a closer look at UAM, the ESC must be considered, especially its revised version from 1996. It will be discussed with regard to the rights of asylum-seeker and refugee children connected to the right to health. Especially article 11 which highlights *“the right to protection of health”* will be of interest, since it focuses on the provision of health as well as prevention in the face of epidemics.⁵⁶ Furthermore, article 13 of the ESC (Revised) emphasizes the right to social and medical care, especially for a person,

“who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition.”

Further research on this article has shown, that since the CoE works on the protection of migrants under the ECHR as well as the ESC (Revised), that following example gives an impression of the difficulties of compatibility of law standards and CoE Member States obligations i.e. to fulfill the right to health. State parties are free to decide, which articles they accept and sign out of ESC (Revised) and are therefore not automatically bound by the charter.⁵⁷ Article 13 of the ESC (Revised) limits within the appendix of the charter insofar as its validity only occurs for foreigners, who either belong as a national to another state party, are lawful residents to that state party or work within the state party.⁵⁸ Which results in a gap of access to this right for certain groups of people, such as UAM. In addition to that, article 35 of the Charter of Fundamental Rights, states the access to healthcare for everyone as a universal standard by principle but it does not cover the entitlement of asylum-seekers and especially UAMs to having

⁵⁵ Ibid.

⁵⁶ European Social Charter (Revised), 1996, Art. 11.

⁵⁷ UNHCR, “Human Rights and Refugee Protection”, Vol. I, P.106.

⁵⁸ European Social Charter (Revised), Appendix, paragraph 1.

access to medical care.⁵⁹ Within the EU, the Directive 2013/33/EU implemented specific articles focusing on UAMs wellbeing, such as healthcare, family reunification, education and offering appropriate mental healthcare for the child.⁶⁰ This was a great achievement for the EU since Member States used the Directive to implement new national laws based on its foundation. A further interest of this thesis will be the Convention Relating to the Status of Refugees (Geneva Convention 1951) and its Protocol (1967) as it is established as the key instrument on legislation concerning the rights of refugees. The UNHCR is working on the protection of those rights and makes sure, that states are interacting with the institution in order to guarantee that the rights are taken into account according to legislation.⁶¹

2.4. Connection between the right to health and other fundamental rights

In order to elaborate the right to health in detail, further connections to other fundamental rights need to be considered, since they require conditions which are related to the degree of a person's healthy life.⁶² As mentioned above the wellbeing of a person relies on different aspects and not only on a healthy physical condition.

Speaking about human rights in the setting of health care within jurisdiction, one needs to understand the distinction of positive and negative rights.⁶³ Negative rights belong to civil and political rights as implemented within the International Covenant on Civil and Political Rights (ICCPR), in which public resources are not involved, such as the right to life. Its nature belongs to a moral point of view rather than the obligation for an action of a person or a state. However, positive rights are connected to social and economic matters as implemented within the ICESCR, which implies the support of public money such as the right to health and right to education.⁶⁴ The UDHR contains both negative and positive rights without categorizing them - but from a legal point of view the distinction is important, to understand rights that deal with liberty and participation in political life and human rights which ensure equal conditions and treatment as well as rights of people and groups and finally state obligations regarding those rights.⁶⁵ Taking this into account, positive rights are more complicated to justify because of

⁵⁹ Wörz, M., et all, „Access to Healthcare in the EU Member States”, 2006, P.2.

⁶⁰ Directive 2013/33/EU, Art. 19, Art. 23(4), Art. 24 (2a,2b).

⁶¹ Ibid.

⁶² Klotz, S., et all. P. 31.

⁶³ McHale, J., “Fundamental rights and health care”, 2010, P.283.

⁶⁴ Ibid, P. 284.

⁶⁵ Globalization101, “three generations of rights”, last modified 20th June 2020.

their ethical and moral approach that requires an active acting of the state.⁶⁶ According to the three generations of human rights, which are considered throughout history, negative rights are interpreted as belonging to the first generation rights (civil and political rights), whereas positive rights are connected with second (socio-economic rights) and third (collective-developmental) generation rights.⁶⁷

The right to life as an important fundamental right needs to be mentioned first, because of its substantial component of avoiding the loss and deprivation of one's life.⁶⁸ The interpretation and challenges of the right to life regarding medical care of children are mentioned *inter alia* in the Complain No. 14/2003 of the European Committee of Social Rights, which emphasizes the impact on children's health conditions and points out how the right to life is threatened if medical care is not provided for immigrants without refugee status.⁶⁹ According to the right to life, article 5 ECHR on the right to liberty and security is strongly connected to the mental wellbeing of a person.⁷⁰ However, the right contains the protection from birth and that every child can develop in a proper way, which leads to the beginning of human rights standards particularly to the dignity of a human being.

Another fundamental right, that is strongly connected to the right to health is the right to education. Access to education ensures a safe space for children where they can learn, socialize with others and express themselves in a protective atmosphere surrounded by teachers and other children.⁷¹ These aspects are important for a healthy psychological development of the child and helps to identify challenges and offer support for children who need to overcome past trauma as well as showing a perspective of a greater future and strengthen a child's identity and sense of belonging.⁷² The right to education is established on an international level within legal documents that bind the states to guarantee the right to education on the one hand for nationals but also for refugee children specifically.⁷³ Article 22 of the Convention relating to the Status of Refugees emphasizes on the equal treatment of refugee children and nationals when it comes to elementary education. Apart from that comparable articles can be found in other international conventions such as the Convention on the Elimination of all Forms of

⁶⁶ Globalization101, "negative vs positive rights", last modified 13th June 2020.

⁶⁷ *Ibid*, "three generations of rights".

⁶⁸ European Convention on Human Rights, 1953, Art. 2.

⁶⁹ FIDH (The International Federation for Human Rights) v. France [2004] 14/2003.

⁷⁰ McHale, J., P.286.

⁷¹ Burde, D., "Education in Crisis Situation. Mapping the Field", 2006, P.21.

⁷² Sinclair, M., "Education in Emergencies", 2001, P.23.

⁷³ Convention Relating to the Status of Refugees, Art.22.

Racial Discrimination of 1963 (article 5)⁷⁴, but most importantly the great success within the CRC (1990), when the Committee on the Rights of the Child established a convention with a special protection of children's rights arguing in the best interest of the child. Education needs to be accessible for everyone and cannot be a benefit only accessible to those of a certain legal status. 30 years ago, the Committee on the rights of the child established within the CRC, inter alia, the need of a quick access to the educational system, and the necessity to promote educational programs for children in need.⁷⁵ In Greece the access to education is only available for children, who received medical examination as well as vaccinations, and is only offered on the mainland. This leads to discrimination towards children without refugee status and leads to challenges for the country which will be examined in chapter three and four of this study.

Apart from that the right to family reunification is strongly connected to the well-being and the mental health condition of a child. "*The Handbook and Guidelines on Procedure and Criteria for Determining Refugee Status*" has introduced many Recommendations regarding state obligations to protect children. Even though the described document is a non-binding instrument, it contains a chapter of the principle of family unity and an emphasis on the behalf of the minors on the importance of family unity.⁷⁶ Article 22 of the CRC focuses on family unity as well, and ensures protection by the states whether the child is an asylum-seeker or a refugee. Regardless of this status a child should receive the necessary protection and assistance in tracing back the family with the aim to reunite them.⁷⁷ Being with the family contributes to a stable life of a child and therefore family reunification will always be considered for asylum procedures. Growing up in a safe environment has been proved to be a contributing component of a stable mental health condition, which also can be transferred to the right to housing, as it contains factors of security and therefore contributes to the wellbeing of a person.⁷⁸

Furthermore, the right to asylum needs to be mentioned which is implemented in the Charter of Fundamental Rights of the European Union and claims the international protection of a person and goes along with the Geneva Convention.⁷⁹ To this is article 19 which prohibits deportation of people and ensures protection for those who come from a country where torture or a risk of death would be expected once the asylum-seeker would return. Asylum-seekers,

⁷⁴ See also the Convention on the Elimination of all Forms of Discrimination against Women (Art. 10 & 14) and the Convention Against Discrimination in Education (Art. 3, 4 & 5)

⁷⁵ Convention Relating to the Status of Refugees, Art.22.

⁷⁶ UN Refugee Agency, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection, 2019, P.41.

⁷⁷ See also: Directive 2013/33/EU, Art.23(a).

⁷⁸ CRC, Art. 16 & 27 and ESC (Revised), Art. 31.

⁷⁹ Charter of Fundamental Rights of the EU, 2000, Art. 18.

especially children, belong to the most vulnerable groups and face difficulties in some countries to have a fair access to medical care. Responding to these difficulties the Common European Asylum System (CEAS) is providing provisions regarding asylum procedures as well as conditions and qualifications to establish minimum standards of protection for asylum-seekers.⁸⁰ Since every asylum application needs to be proved and elaborated, every EU country needs to determine its responsibility regarding the claim. The Dublin Regulation supports member states to elaborate the asylum application and ensures a quick access to all the procedures needed as well as taking into account special provisions on protection of the applicant, like certain vulnerability criteria i.e. regarding unaccompanied children.⁸¹ It also focuses on the asylum seekers' best interest and on the pledge to prioritize granting the asylum to UAM which is part of the CEAS.

Lastly, implemented in article 37(b) of the CRC, state parties need to prevent children from their deprivation of liberty:

“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

Since deprivation of liberty can cause an immense impact on the child's mental health condition, further research has been done on this particular threat towards children.⁸² However, under Greek national law the prohibition of taking children into custody does not exist and therefore causes a contradiction to the CRC and which will be discussed further in chapter three.⁸³

To conclude and understand the investigation of the right to health and other fundamental rights connected to it, the wellbeing of a child cannot be interpreted only on a physical basis. A lot of different circumstances influence the wellbeing and especially children have various needs that need to be met and responded to for them to grow up in a proper and healthy way. According to the best interest of the child, the next chapter will analyze state measures and obligations to support and realize assistance for children to receive appropriate medical care in the first place, but also to give them the opportunity to live a healthy life. Apart from that in chapter four there

⁸⁰ European Parliament, “Guaranteeing the right to asylum”, last modified 2nd July 2020.

⁸¹ European Commission “Country responsible for asylum application (Dublin)”, last modified 3rd July 2020.

⁸² Nowak, M., P.117.

⁸³ ICJ, “Joint Submission of the ICJ and GCR to the UN Special Rapporteur on the human rights of migrants report on ending immigration detention of children and seeking adequate reception and care for them”, 15th May 2020, P.1.

will be a minor analysis of cases to emphasize on breaches within the law. It will also give an impression of the court decisions that serve as examples for the above-mentioned human rights framework in practice.

2.5. The margin of appreciation of states

The right to health has been implemented in various international United Nations and domestic human rights instruments to strengthen its importance as well as to improve adherence in further instruments as measures for states and monitoring bodies.⁸⁴ Within the margin of appreciation, the CoE established the obligation of its Member States to respect, protect and fulfill human rights under the ECHR. It is implemented to sanction states, who are not fulfilling their obligation properly as well as to ensure an effective protection of the common standards of human rights.⁸⁵ However, there are national differences within the states. The margin of appreciation is taking the states sovereignty into account and appropriate measures regarding their national limits are made. It offers a flexibility in decision-making in court, that takes the cooperation of the Member States regarding their obligations under the conventions into consideration.⁸⁶ Analyzing the right to health from a moral point of view the approach of the four sets of duties among Member States stresses the need for a stronger change of the future mindset of the states.⁸⁷ Firstly, to respect and protect human rights based on international conventions. Secondly, states need to achieve the duty of the well-being for those people in their care including vulnerable groups like migrants and refugees on the same level as its nationals. Thirdly, one of the most precious duties, the duty not to harm individuals and finally the fourth duty which embodies equal treatment in a democratic state as a requirement and contains specific measures to introduce a change in the local healthcare system.

To investigate state obligations and measures that have been introduced to protect UAM, the achievement of respecting, protecting and fulfilling human rights lie in the responsibility of the states.⁸⁸ From an international law perspective, the states are obliged to act under their jurisdiction as the conventions declares, inter alia the Convention on the Rights of the Child and the Convention and the Protocol Relating to the Status of Refugees. Apart from that the CEAS represents the foundation of the legislative framework within Europe and therefore needs

⁸⁴ Toebe, B., "The Right to Health A Multi-Country Study of Law, Policy and Practice", 2014, P.406.

⁸⁵ CoE, "The Margin of Appreciation", last modified 27th June 2020.

⁸⁶ Ibid.

⁸⁷ Straehle, C., "Asylum, Refuge, and Justice in Health", 2019.

⁸⁸ Klotz, S., et all, P.32.

to be considered while analyzing measures created and implemented by the CoE for all the member states.⁸⁹ Action Plans created by the CoE, which will be analyzed later on in chapter three, place stress on current challenges and obligations of the Member States and work as a guidance for further policy-making on a national level.

Analyzing specific articles about state obligations and the observance of the right to health the CRC mentions details regarding access to medical care in article 24(1):

“States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”

It is a duty of the state to act according to the right which emphasizes the necessity of access to healthcare and of not depriving people of their rights. In this regard the availability of healthcare needs to be implemented to such a degree that no person’s health will be harmed.⁹⁰ Especially vulnerable groups such as children and minorities need to be taken care of within the public healthcare system. In this regard the UN Committee of the ESCR already mentioned the necessity to have *“access to clean and potable water adequate sanitation, safe food and accommodation, healthy working and environmental conditions and health related information.”*⁹¹

This necessity is particularly important for vulnerable groups as UAMs and refugees living in exceptional circumstances and therefore need a special protection.⁹² Measures to fulfill the needed protection of vulnerable groups are under the responsibility of the states, however the access to healthcare for example can also be guaranteed by the private healthcare sector, but needs to be seen as a more complex solution, since the state has the obligation to control the private healthcare sector in order to avoid a harm of a person caused by receiving a lower standard of medical care.⁹³ It is part of the obligation of the states to fulfill the right to health and in addition to that there are guiding principles introduced by the UN found on “availability, accessibility, acceptability and quality of health facilities, goods and services”⁹⁴, which need to be included in the state parties obligations according to the General Comment No 14. However,

⁸⁹ CoE, “Migration and home Affairs”, last modified 24th June 2020.

⁹⁰ Klotz, S., et all, P.33.

⁹¹ Ibid, P.36.

⁹² Freeman, M., et all, 2014, P.146.

⁹³ Klotz, S., et all, P.38.

⁹⁴ UN Committee on ESCR, “GC No. 14”, 2000, par. 35.

it is also accentuated, that states should work closely in cooperation with WHO to receive support on health-related strategies on a domestic level.⁹⁵ In this regard the international context becomes relevant for further improvements on the domestic level, since all Member States of the CoE, EU and UN are working closely together to establish measures for the Member States to fulfill their obligations, as the following chapter will explain.

2.6. International context of the right to health

One of the main difficulties of the implementation of human rights on a national level is the transfer of human rights law from an international perspective into practical agendas and policies.⁹⁶ It goes along with increasing financial challenges, differences in healthcare systems and therefore policies and agendas are focusing on measures for the implementation of the right to health in the national healthcare system and to find a fair accessibility of medical care in practice.⁹⁷ This chapter will introduce two of the recent Action Plans by the CoE and WHO as well as another international program by the UN to support a successful implementation of the human rights standards. The focus will be on the content of health-related aspects and ideas to improve current situations in Europe. This chapter does not elaborate all existing Action Plans but it gives an overview of the most relevant and recent Action Plans implemented for the sake of the protection of asylum-seeker and refugee children. Further developments and measures implemented by international instruments, on a national level in Greece regarding the access to healthcare will be analyzed within chapter three and four.

2.6.1. Council of Europe Action Plan on Protecting Refugees (2017-2019)

Since this thesis is focusing on the right to health for unaccompanied minors, the Action Plan on Protecting Refugees is an important instrument created by the CoE in 2017. According to one of the CoE's main tasks to support its Member States in creating new strategies for challenging situations, the following Action Plan was introduced because of problems affecting vulnerable groups like minors and refugees in the "refugee crisis" after 2015.⁹⁸ The Action Plan is not a creation of new standards within the human rights framework, it rather focuses on already existing standards and offers a concrete idea of implementing activities on how to treat

⁹⁵ Ibid, par. 63.

⁹⁶ Toebes, B., et al, P. v.

⁹⁷ Ibid, P.405.

⁹⁸ CoE, Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019), 2017, P.5.

children in migration.⁹⁹ The protection of migrant children in the Action Plan includes unaccompanied minors as well as children who are waiting for the final asylum decision – which also includes children, who might have to leave the country again. The content of the Action Plan can be divided into three main parts:¹⁰⁰

1. *Ensuring access to rights and child-friendly procedures*
2. *Providing effective protection*
3. *Enhancing the integration of children who would remain in Europe*

To identify concrete actions regarding those pillars the CoE is working closely together with organizations such as UNHCR, WFP, WHO and other institutions to identify follow-up programs and work on the improvement of migration on a global level. Therefore in 2019 a meeting was held with all participating Member States of the CoE to identify achievements within the Action Plan and to allow a dialogue for best practice results and challenges.¹⁰¹ As an outcome of this meeting the Member States recognized the need of a closer work with national migration authorities and therefore created a network for all Member States.¹⁰² Besides the collaboration of all the different organizations, the Council of Europe Development Bank (CEB) played a significant role for the Action Plan, since the CEB supported and continues to organize financial support for all the Member States in need regarding the work for migrant and refugee children through the Migrant and Refugee Fund (MRF).¹⁰³ At the end of 2019 the CEB approved 28 million Euros to support projects focusing on vulnerable groups like UAM among 15 countries.¹⁰⁴ Furthermore, the Action Plan provides a child-friendly guidance according to the protection of children within migration.¹⁰⁵ Measures to arrange appropriate housing for UAM and additional support in finding other solutions like foster placements, as well as family reunification have been a great success of the Action Plan. In this respect, a handbook was introduced by the end of 2019 as a guidance regarding family reunification for refugees and migrant children, which embodies standards and best practices.¹⁰⁶ Since family reunification is one of the components of gaining a high standard of the psychological wellbeing of the child, the handbook guides the states through their obligations but also through legal standards as well

⁹⁹ Ibid.

¹⁰⁰ Ibid, P.6.

¹⁰¹ Ibid, P.7.

¹⁰² CoE, “Newsroom – Migration and Refugees”, 27th Feb 2020.

¹⁰³ CoE, “Refugee and migrant children in Europe – Final report”, 14th Feb 2020, P.22.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid, P.30.

¹⁰⁶ Ibid, P.10.

as practical barriers and best practice in the process of family reunification.¹⁰⁷ Challenges regarding the cooperation of Member States and the elaboration of the best interest of the child in various cases related to family reunification can cause a slowdown in the process. In addition, the handbook offers process optimization such as support regarding procedures.¹⁰⁸ The challenge of establishing general provisions into practical policies has been a great success, as well as further Recommendations introduced by the Committee of Ministers' Deputies (CM/Rec(2019)2) which contain the protection of health-related data and monitoring mechanisms for further improvements among the states. Especially the access to social services became a focus of the Action Plan, working together with the SDG target on a global level. Difficulties with the access to child-friendly information as well as procedures have been elaborated in the Action Plan and through it finally a handbook for the Member States according to "*frontline professionals on how to convey child-friendly information to children in migration*" has been published.¹⁰⁹ It contains international and European standards for procedures to implement child-friendly information on asylum and migration processes and especially to clarify their rights.

It is the state's responsibility to create national policies and to launch Action Plans as part of a stable health system including collecting health data to implement a monitoring of the provision, fulfillment and protection of the right to health.¹¹⁰ An Action Plan offers a guideline for all Member States and focuses on current challenges and therefore pressures states to take action and to set new targets.

2.6.2. Sustainable Development Goal 2030 UN – Goal 3

The Agenda for SDG has been adopted in 2015 by all UN Member States as a long-term project with regard to 17 different main goals which demand the need of active action among all participating countries by the year 2030.¹¹¹ The main targets of these goals are ending poverty and reducing inequalities as well as ensuring health and education and lastly working against climate change. Within this study, Goal 3 will be of great relevance, since it covers health targets for the SDG ensuring healthy lives and it promotes the wellbeing for all at all ages. One

¹⁰⁷ CoE, "handbook – family reunification for refugee and migrant children – standards and promising practices", 2020, P.3.

¹⁰⁸ Ibid, P.9.

¹⁰⁹ CoE, "Refugee and migrant children in Europe – Final report", 14th Feb 2020, P.7.

¹¹⁰ UN, "The Right to health", Fact Sheet no. 33, 2008, P.27.

¹¹¹ Sustainable Development Goals, "Knowledge Platform", last modified 30th June 2020.

of the aims among SDG 3 is the improvement to solve health-related inequality and a better equity regarding processes within the national policies and practical work, which leads to a better cooperation according to governments and policy making.¹¹² For example unaccompanied minors and other vulnerable groups need to be more included in the processes of policy making which also affects participation among politics. Goal 3 contains the protection of the right to health of those vulnerable minorities considering the “*global vision of sustainable development*” and actions that focus on a framework without inequalities and exclusion of these groups.¹¹³ However, there is also the approach to work on an equitable healthcare system rather than on focusing on the approach of ending inequalities in the first place. In this regard the target is strengthening the aspect of gaining a more holistic approach of the promotion of the wellbeing for all – this contains the whole policy process beginning with the framework of the policy and ending with a proper monitoring and evaluation after implementation.¹¹⁴ Reaching a healthcare system available for all and free including vulnerable groups like UAM shall be implemented by the countries, to ensure policy coordination, implementation, monitoring and evaluation of the SDG, the institution “SDG watch Europe” is focusing on the EU work as well as on how the Member States are ensuring national progress regarding the SDGs.¹¹⁵ In Greece the Hellenic Platform as a national institution supports the government according to national reviews as well as ad-hoc manners connected to SDGs. Through Hellenic Platform the cooperation of civil society organizations (CSO) in Greece has been ensured as well as other national multi-stakeholder platforms including educational approaches, business and policy making.¹¹⁶ Every six months the members of Hellenic Platform meet in order to discuss progress and challenges to ensure a proper monitoring and evaluation of the Agenda 2030 in Greece. Analyzing the development of the last years in Greece further research stresses, that the country emphasized SDG 3 especially in the year 2016 throughout an adoption of a new law.¹¹⁷ It ensures the implementation of free access to medical healthcare services introduced by a card – the AMKA card - which allows treatment at hospitals and covers medical care for everyone, including refugees and migrants regardless of their official legal status.¹¹⁸ Furthermore, treatments under special circumstances among refugees, such as protection measures like vaccinations, have been introduced with the support of WHO and UNICEF as

¹¹² Klotz, S., et all, P.171.

¹¹³ Ibid.

¹¹⁴ Ibid, P.177.

¹¹⁵ SDG watch Europe, “Our work”, last modified 2nd July 2020.

¹¹⁶ Ibid.

¹¹⁷ Law 4368/2016, Art. 33.

¹¹⁸ Hellenic Republic, “Voluntary National Review on the implementation of the 2030 Agenda for SDG”, July 2018, P.43.

well as NGO's and elaborated medical care solutions within a working group with the EU and the National Immunization Committee. In addition, health-related investments have been a challenge for the Ministry of Health since austerity measures became a burden for the Greek country and makes it harder to create more vacancies within the health sector.¹¹⁹ Unfortunately due to further financial cuts within Greece and a government change including a change of law during 2019 regarding the access to medical care for asylum-seekers, achieving Goal 3 will become a key challenge for the country. Therefore, further work on policies will be needed in order to ensure and improve the national healthcare system, as well as the work with other EU Member States to horizon the goal of implementing an affordable and transparent health care system.¹²⁰

2.6.3. WHO – Draft Global Action Plan 2019-2023

The Draft Global Action Plan 2019-2023 focuses on refugee assistance and migration governance to accomplish health as an important attribute within the improvement of global health.¹²¹ The eligibility of access to healthcare for migrants as well as refugees differs within countries and domestic law. This is an inequity and needs to be analyzed while taking specific circumstances, such as mass arrivals of asylum-seekers and refugees, among national level into account, but it also contains an improvement of priorities, legislation and international instruments for the structure of access to medical care services.¹²² However, international cooperation is needed to support each other, especially the countries which are more involved in taking care of migrants and refugees because of their geographical placement and thus receive and host an enormous number of people in need.¹²³ Regarding the WHO Global Action Plan six priorities are identified:

Priority 1. Reduce mortality and morbidity among refugees and migrants through short- and long-term health interventions

Priority 2. Promote continuity and quality of care, developing, reinforcing and implementing occupational health and safety measures

¹¹⁹ Ibid, P.45.

¹²⁰ Ibid.

¹²¹ WHO, “Promoting the health of refugees and migrants – Draft global action plan 2019-2023”, 23rd May 2019, P.6.

¹²² Ibid.

¹²³ Ibid, P.7.

Priority 3. Mainstreaming refugee and migrant health into national, regional and global health policies; and health & well-being of refugee and migrant women, children and adolescents; and promote partnership and intersectoral, intercountry and interagency collaboration

Priority 4. Enhance the capacity to tackle the social determinants of health and accelerate progress towards achieving the SDGs, including UHC

Priority 5. Support measures to improve communication and counter xenophobia

Priority 6. Strengthen health monitoring and health information systems

In May 2019, the Health Assembly decided its validity within the report on promoting the health of refugees and migrants. Additionally, the Member States agreed to the Global Action Plan 2019-2023 regarding to reach SDG 3 – especially SDG 3.8, which deals with health-related needs of migrants and refugees. A strong collaboration of the UN Systems as well as intergovernmental and non-governmental mechanisms will be part of the work. Furthermore, assistance regarding regional offices responsible for public health matters will be provided.¹²⁴ This Action Plan has been created under the responsibility of WHO and aims a global scope of health protection especially focusing on refugees and migrants and will be of relevance within the next years to improve current inequalities among and within the countries. However, its success depends on the work regarding migration policies, responsibility of UN Member States as well as the involvement of the civil society to finally reach social justice within universal coverage of health.¹²⁵

¹²⁴ WHO, “Refugee and Migrant health”, last modified 2nd July 2020.

¹²⁵ Pant, S., et al, “WHO’s global action plan to promote the health of refugees and migrants, 1st Aug 2019, P.2.

3. CHALLENGES FOR UAMs' RIGHT TO HEALTH IN GREECE

3.1. Introduction to the chapter

The following chapter will emphasize a more practical approach on the right to health for unaccompanied minors and current challenges in Greece influenced by governmental decisions. Since chapter two gave a theoretical basis of understanding the holistic interpretation of the importance of medical care for UAM within the legal framework, chapter three will emphasize more on challenges within the healthcare system including homeless children but also UAMs within detention in Greece. It will also be discussed how arising challenges through age assessments and because of the Covid-19 pandemic affected ensuring appropriate healthcare for UAM in practice.

3.2. Access to medical care and governmental decisions in Greece after 2015

Greece has signed the main legal documents on the protection of human rights according to migrants and also agreed and ratified the Charter of Fundamental Rights of the EU as well as further Directives and became an EU-acquis on migration and asylum. Apart from that Greece ratified the ESC and its revised version by the CoE and integrated international conventions within national law.¹²⁶ According to the Dublin Regulation, Greece is obligated to ensure the implementation of the rights as well as to provide care of asylum-seekers.¹²⁷ However, the compatibility of International, European and EU Law standards for the protection of the right to health needs to be questioned regarding the transfer of daily routine. Since the refugee crisis reached its peak in 2015 the government had to take new measures to offer international protection of medical care for all - their own citizens but also refugees and asylum-seekers. Therefore, the Greek Parliament established a new provision in 2016, which outlines:

“the right of free access to the services of the Greek Public Health System by all refugees, asylum-seekers and beneficiaries of international protection, as well as those residing in Greece on humanitarian grounds or for exceptional health reasons.”¹²⁸

This law also includes vulnerable groups such as UAM without considering the official legal status but according to national law, the people need to have a social security number – so called

¹²⁶ WHO, “Greece: assessing health-related capacity to manage sudden large influxes of migrants”, 2015, P.6.

¹²⁷ Regulation No 604/2013, Art 15.

¹²⁸ Law 4368/2016, Art. 33.

AMKA card – in order to get free access to medical care.¹²⁹ However, as encouraging the law appears in the first place, Greece could not offer a proper health care service, since the financial crisis and connected austerity measures influenced shortages of capacities to cover a stable health care system.¹³⁰ In addition to that, cultural mediators have been missing to reach a better communication among individual patients. Furthermore, the process failed in providing asylum-seekers with an AMKA-card within the status of waiting for the final decision of the asylum application.¹³¹ According to this, it is difficult for asylum-seekers to make use of the right to health considering the lack in the process in Greece of providing a social security number for vulnerable groups such as asylum-seekers.¹³² In order to counteract towards the difficulties within the process and to include asylum-seekers within the healthcare system and not only for emergency cases, the Foreigner's Health Care Card (K.Y.P.A.) should have been introduced to apply for non-Greek citizens.¹³³ According to Amnesty International's latest letter on the deny of health care for migrant children and asylum-seekers, it was emphasized, that no actual procedure was introduced to receive K.Y.P.A to protect UAM or asylum-seeker, as well as undocumented people in need of access to medical care. Greece's obligation according to EU and international law to bring up the Directives conditions (2013/33/EU), that

“asylum-seekers have the right to free access to the Public Health Structures and are entitled to medical and pharmaceutical care including the necessary treatment for diseases and the necessary mental health treatment”

was implemented in article 17(3) of Law 4540/2018, but still cannot be transferred into practice.¹³⁴ In July 2019 there has been a change within the Greek government and due to the election of the Ministry of Labor of the New Democracy Party, the access to a social security number for asylum-seekers got withdrawn.¹³⁵ Since a person with a social security number is required to receive medical treatment in Greece, the new Asylum Law in November 2019 introduced the PAAYPA system as a new version of a *“temporary security number for insurance and healthcare for third-country nationals”*, which however, left UAMs yet without

¹²⁹ Amnesty International, “Migrant children and asylum-seekers still denied healthcare”, Greece, 12th Feb 2020, P.2.

¹³⁰ Aida, “Country Report: Greece”, 2020, P. 168.

¹³¹ Amnesty International, “Migrant children and asylum-seekers still denied healthcare”, P.2.

¹³² Ibid.

¹³³ Aida, P.169

¹³⁴ Amnesty International, „Greece must immediately ensure that asylum-seekers, unaccompanied children and children of irregular migrants have free access to the public health system”, 2019.

¹³⁵ Aida, P.168.

a positive asylum decision and other vulnerable groups behind.¹³⁶ It should apply to all newly arrived asylum-seekers and it shall also be handed with the asylum seeker card.¹³⁷ Nevertheless, the law has not been introduced in practice yet since technical issues among the interconnection of the system of healthcare occurred.¹³⁸ Moreover, the PAAYPA loses its validity once the asylum-seeker cannot stay within the country and therefore gets rejected.¹³⁹ This causes enormous inhuman proportions and epidemics within the refugee camps but also for UAM on the mainland, causing hundreds of untreated people, who are missing a working healthcare system.¹⁴⁰ On a domestic level, in an Amendment of article 60(3) of the law 4636/2019(A'169) Greece introduced an observance of a higher protection for UAM and their housing conditions as well as an arrangement of further steps in the public and private care services for the protection of children's health and education status. Several Action Plans suggesting health-related improvements of the CoE and the higher goal of SDG 3 contributed to take further actions in policy-making on the national level in Greece. However, the practice shows that Greece is not able to find a well-established solution to achieve the necessary protection for its own citizens but also towards asylum-seekers and refugees.

3.3. UAM's within detention in Greece

The E.K.K.A center is working on statistics inter alia that deliver the numbers of UAMs in detention. Following statistic represents the development of the number of children who are kept in reception centers, protective custody or identification centers in Greece within August 2019 and May 2020 - these are all options to keep UAMs detained and to deprive them of their liberty.¹⁴¹

¹³⁶ European public health alliance, "Access to health is a luxury for stranded refugees in Greece", 31st Mar 2020.

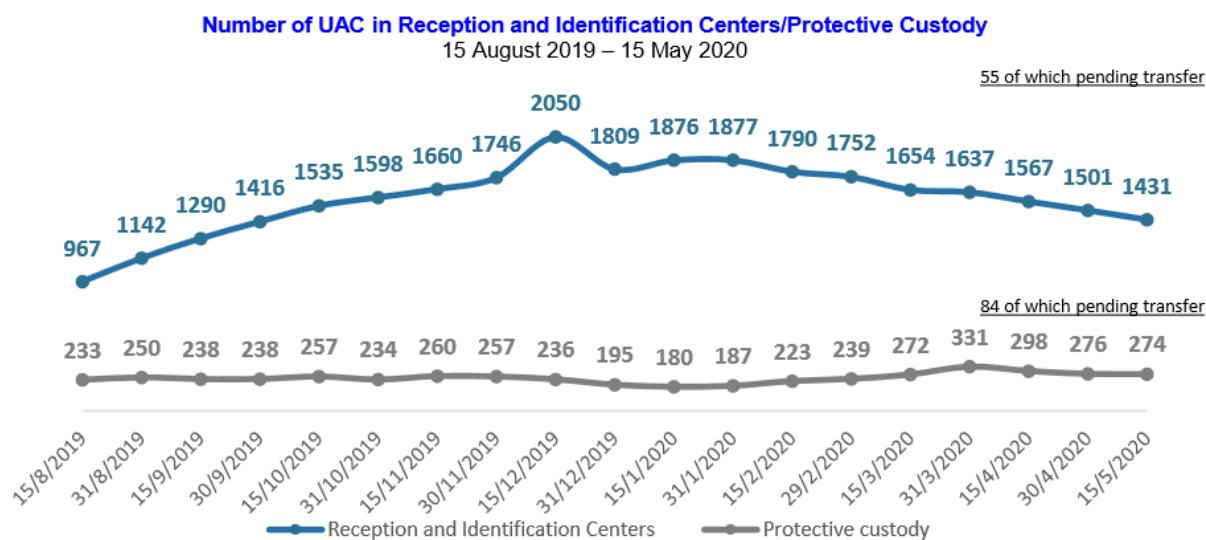
¹³⁷ Aida, P. 167 & Law 4636/2019, Art. 55(2).

¹³⁸ Interview Prof. Daniella Maria Marouda, "Situation of homeless UAM – UNHCR project", 09th April 2020.

¹³⁹ Law 4636/2019, Art. 55 (2).

¹⁴⁰ Kokkinidis, T., „Greece Tightens Health Care Provisions for Migrants, Asylum Seekers", 04 Oct 2019.

¹⁴¹ CRC, Art 37(b).



Source: E.K.K.A “Situation Update: Unaccompanied Children (UAC) in Greece”, 15th May 2020.

Since Greece never adopted a national law regarding the prohibition of detention of migrant children, it became a routine to imprison migrant and refugee children since the country faces a lack of accommodation for them.¹⁴² Greece has been practicing the use of detention centers for children for many years among other things due to the lack of protection measures within the national system in Greece, which however, is not working in the best interest of the child.¹⁴³ These children are confronted with inhuman and degrading conditions in the reception centers, affecting their mental health conditions.¹⁴⁴ They are placed in overcrowded prisons often without any access to sanitations and especially access to medical care.¹⁴⁵ There is a high risk that these conditions will have an impact on the mental health of vulnerable groups like UAMs if they are kept detained and exposed to incriminating incidents.¹⁴⁶ Further research has shown while keeping children detained within the migration process, they face incidents as self-harm, suicide, fights with other detainees, physical and mental abuse by detention officers as well as punishments of solitary detention which can cause immense traumatic experiences and are unfortunately very common.¹⁴⁷ However, it also needs to be considered, that some children already experienced traumatic situations before immigration custody and are therefore already vulnerable and affected by their mental health condition, which can predispose them to even

¹⁴² ICJ, “Joint Submission”, 15th May 2020, P.1.

¹⁴³ Directive 2013/33/EU, Art. 23(1).

¹⁴⁴ Gill, N. and Good, A., 2019, P.109.

¹⁴⁵ Ibid.

¹⁴⁶ Nowak, M., P. 150.

¹⁴⁷ Nowak, M., P.151.

worse future mental health disorders once they get arrested.¹⁴⁸ As implemented in article 11 (detention of vulnerable persons and of applicants with special reception needs) within the Directive 2013/33/EU,

“The health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to national authorities.”

Greece cannot ensure its international legal obligations if the country keeps on holding children in detention without access to healthcare and therefore it is not able to ensure the highest attainable standard of health either, since the lack of medical care puts children at high risk concerning their mental health condition as well as physical health.¹⁴⁹ Greek authorities tend to act against national law while accepting decisions like detaining children rather than acting on behalf of the child and providing them with guardians, legal assistance or social workers in safe zones. This critical circumstance can be caused by understaffed personnel regarding the asylum procedure for children but can also be interpreted as a breach among Greek authorities and will be underlined in the case law analysis later on in this study.

3.4. Age assessment and vulnerability of UAM

Age assessment of UAM has been identified through first reception services as a procedure as part of the asylum process and was introduced under Joint Ministerial Decision 92490/2013. It embodies further details of the procedure in the Joint Ministerial Decision 1982/2016 applying to people who seek international protection.¹⁵⁰ It was established as a *“Programme for medical examination, psychosocial diagnosis and support and referral of entering without legal documentation third country nationals, in first reception facilities.”*¹⁵¹ Due to mass arrivals of people fleeing from war and persecution most of them enter the border of Greece without carrying their documents. Among those people are also children and adolescents who might not be able to prove their real age.¹⁵² Greek authorities identify the age of those children and if they are not identified as underaged, UAM cannot receive special protection and access i.e. for education and medical care. Therefore, the age assessment procedure becomes crucial for children, but it also evokes pressure and stress affecting mental health conditions of UAM. Due

¹⁴⁸ Ibid, P.150.

¹⁴⁹ ICJ, “Joint Submission”, P.4.

¹⁵⁰ Joint Ministerial Decision 1982/2016.

¹⁵¹ Joint Ministerial Decision 92490/2013.

¹⁵² Kadir, A., et al, „Children on the move in Europe: a narrative review of the evidence on the health risks, health needs and health policy for asylum seeking, refugee and undocumented children”, 2019, P.11.

to language difficulties in administrative and medical determination and inappropriate examination procedures, which do not lead to a valid result of the age, children are exposed to stressful and unfair procedures.¹⁵³ According to the Aida report (2019 update) and the GCR, the Greek authorities experience insufficiency among specialists for an adequate procedure of the age assessment.¹⁵⁴ During May 2019 and September 2019 the lack of a department of psychosocial responsibilities proves, that all age assessments examined during this specific time, were held without respecting the procedure implemented on a national level.¹⁵⁵ UNHCR identified a breach in the procedure provided by the government, which emphasizes on a “step-by-step” assessment where medical and psychosocial evaluations need to be considered first. In 2019 these assessments have been ignored because of understaffed employees and therefore questionable measures for the assessment of age have been used in hospitals like radiographs of extremities and dental checks, which should always be considered as the last methods.¹⁵⁶ Since Greece struggles with an increasing number of asylum applications, cases have been identified where errors have been made according to important information like the age of the applicant, caused by understaffed administration offices and working conditions under hard pressure.¹⁵⁷ According to this, Greek authorities such as the police tend to examine age identification only by registration pictures or visual appearance, which should be put into question very critically as it is working against the best interest of the child.¹⁵⁸ Since Greece already struggles to ensure child protection by using less guardianships and trained employees in the age assessment procedure, a valid verification of the age assessment is not given. The non-existing legal framework of involving police authorities as a responsible actor in the age assessment process underlines the complexity of the procedure.¹⁵⁹ The Ombudsman of Greek already stated in a Special Report (2017) that the age assessment procedure for UAM is not expressing a successful implementation and that it does not take the special vulnerability of children into account. This statement is still valid since until now there has been no change of the procedure in practice. The results of the hand and wrist x-ray scans are questionable regarding their validity and precise examination.¹⁶⁰ Since the procedure of identifying age among UAM is not well established and lacks qualified professionals who are urgently needed

¹⁵³ Fundsformgos, “NGOs urge EU Member States to help Unaccompanied Children from Greek Islands”, March 2020.

¹⁵⁴ Aida, P. 113.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid, P.45.

¹⁵⁷ Ibid, P. 114.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid, P.116.

¹⁶⁰ Greek Ombudsman, “Migration flows and refugee protection: Administrative challenges and human rights”, Special Report 2017, P.25.

in the process and because there are not enough guardians to protect those children by offering them translations and by helping them understand further examinations, children are left behind and often suffer from stress disorder.¹⁶¹ The situation in Greece to provide protection in the best interest of the child throughout the asylum procedure and the connection to the wellbeing of the child according to their mental health condition is not satisfying. Children are exposed to inhuman treatment and the system cannot afford to provide the necessary care for children, whose specific needs form their special vulnerability.¹⁶² Further research by the European Academy of Pediatrics invoke that Member States should not perform age assessment procedure, since under a human rights perspective the procedure is unethical and harmful for the asylum applicants' mental health condition.¹⁶³

3.5. Covid-19 and the protection of UAMs

Covid-19 brought a formidable challenge to the globe and especially towards vulnerable groups. This was also an enormous challenge for Greece regarding asylum-seeker and refugees, since they are suffering from the lack of medical care and protection measures in the country. Social distancing is not possible to adhere to at overcrowded camps and accommodation sites. In a complaint letter addressed to the Greek authorities, EU, CoE and UN written by several organizations, it is emphasized that,

“camps, especially on the Aegean islands, suffer from severe overcrowding and lack of adequate sanitary facilities, making it impossible to ensure social distancing and hygiene conditions for both residents and employees. This poses a major threat to public health for both asylum seekers and for society as large.”¹⁶⁴

According to the domestic decision to suspend the registration of asylum applications in Greece in the period from 01st March to 01st April 2020, refugees and migrants have been kept at the borders.¹⁶⁵ In this regard asylum-seekers and refugees in detention centers were left without having been provided with minimum standards of protection as appointed within legal framework and without having been protected from facing unhygienic living conditions.¹⁶⁶

¹⁶¹ Kadir, A., et all, „Children on the move in Europe”, P.11.

¹⁶² Aida, P.107.

¹⁶³ Kadir, A., et all, „Children on the move in Europe”, P.11.

¹⁶⁴ Greek Council Refugee, “Protect the most vulnerable to ensure protection for everyone!-Open letter of 121 organizations”, 25th Mar 2020.

¹⁶⁵ MacGregor, M.,“Greece ends month-long freeze on asylum applications”, 03rd April 2020.

¹⁶⁶ Greek Council Refugee, “Protect the most vulnerable to ensure protection for everyone!-Open letter of 121 organizations”, 25th Mar 2020.

However, the suspension got extended until the 10th of April due to Covid-19 and impeded asylum-seekers to receive a proper protection.¹⁶⁷ Even before the suspension was ordered, the access for registration of asylum-seeker applications was difficult and detaining was a common procedure on the islands. The EU put pressure on Greece to extend detention also before the Joint EU-Turkey Statement of March 2016 has been released.¹⁶⁸ After the announcement of the statement, hotspots switched to closed centers, which lead into imprisonment, but after a month Greece recognized that it was impossible to keep thousands of people detained.¹⁶⁹ Analyzing the circumstances for UAMs during the time of Covid-19, UNICEF stated that, 1.900 UAM and separated refugee children face difficulties in getting access to proper accommodation and protection in the camp on Moria, Lesvos. It is not possible for them to protect themselves against diseases especially Covid-19 since hygiene kits, as well as hand sanitizers or even diapers for children are not available.¹⁷⁰ The Open letter of 121 organizations, addressed to the Greek authorities, demanded immediate steps regarding public health protection, especially for those who are vulnerable like UAM. This includes the transfer of children to the mainland or to other EU Member States for the sake of health protection of refugees and asylum-seekers but also to protect the situation of public health. UNICEF simultaneously addressed the transfer of children as well as measures regarding public health.¹⁷¹ In addition to that, the organizations addressed the EU and all its Member States, to take immediate action of introducing mechanisms to protect the most vulnerable groups, such as children from the spread of Covid-19, emphasizing on the removal from the Greek islands to accommodation on the mainland or to other Member States. Most importantly, they expect the support of Greek authorities within the target of safeguarding public health. The CoE and UN are addressed with the request of assisting Greece in preventing a crisis of public health and introducing monitoring procedures according to EU's and all Member States' work within the legal framework of conventions and human rights standards. Nevertheless, Greece had tried to impose closed centers since the adoption of the Joint EU-Turkey Statement, following EU pressure¹⁷², Greek authorities put several camps in lockdowns starting in April 2020, which led to closed centers and deprived the asylum-seekers of their liberty.¹⁷³ This procedure is only accepted under ECHR Article 5(1)

¹⁶⁷ MacGregor, M., "Greece ends month-long freeze on asylum applications", 03rd April 2020.

¹⁶⁸ European Council, "EU-Turkey statement", 18th March 2016.

¹⁶⁹ Koutsouraki, E., "The indefinite Detention of Undesirable and Unreturnable Third-Country Nationals in Greece", 2017, P.13-15.

¹⁷⁰ UNICEF, "Refugee and migrant communities brace for COVID-19 in already dire conditions on the Greek islands", 27th March 2020.

¹⁷¹ Ibid.

¹⁷² European Commission, "Seventh Report on the Progress made in the implementation of the EU-Turkey Statement", 2017, P.15.

¹⁷³ ICJ, "Joint Submission", P.3.

for a specific reason and only in combination of a procedure described by law and goes along with other human rights standards such as ensuring conditions among the detention center, which would never harm health conditions of the people involved. These attributes have not been observed and therefore they put health conditions at risk and brought harm to asylum-seekers and UAM regarding their mental stability and physical health condition. Apart from that under ICCPR and under refugee law the state needs to prove the necessity and proportionality of each individual and their circumstances to avoid arbitrary detention.¹⁷⁴ However, this has not been the case for Greece. In addition to that, denying NGOs access to reception centers has made logistical support of camps difficult, as Medical Volunteer International e.V. describes,

*“throughout Covid-19 it was almost impossible for us to support medical care within the camps since the lockdown permits doctors to enter them. We offered medical support outside the area of the camps to avoid conflicts with the national authorities.”*¹⁷⁵

UNICEF supported the islands regarding the arrangement of temporary shelters for the National Public Health Organization so that at least some doctors are now available to provide medical care for those in need. To ensure a safer environment throughout the pandemic, the ICJ and the Greek Council for Refugees set out a Recommendation towards the UN Special Rapporteur on the rights of migrants, to work on a development as well as implementation for non-custodial measures¹⁷⁶ in the framework of Covid-19 but also to impose the prohibition of detaining children in Greece. UNHCR recognized the problem to ensure medical care during a lockdown for UAM and therefore implemented a program in cooperation with local NGO, as Praksis, ARSIS and METAdrasi, to arrange medical care for homeless children which includes a helpline for children in need.¹⁷⁷ Meanwhile the Minister of migration approved this procedure and introduced local advertisement for those helplines. In addition to that, UNHCR managed to finance additional accommodation for homeless children in Athens until 31st of May 2020 to avoid a higher risk of contamination and spread of Covid-19.¹⁷⁸ Because the government has struggled for many years for an apparently stable healthcare system, mostly affected by long lasting austerity measures, Covid-19 challenges Greece and its ability to adopt ad hoc measures for health protection and prevention towards asylum-seeker and refugee children

¹⁷⁴ Ibid.

¹⁷⁵ Interview, Medical Volunteers International, 25th June 2020.

¹⁷⁶ Legal term to avoid imprisonment. See also more information at “United Nations Standard Minimum Rules for Non-custodial Measures (1.1).

¹⁷⁷ Interview Prof. Daniella Maria Marouda, “Situation of homeless UAM – UNHCR project”, 09th April 2020.

¹⁷⁸ Ibid.

enormously.¹⁷⁹ For instances, in comparison to EU standards, Greece's number of emergency beds was one of the lowest among EU Member States with 6 beds per 100.000 people, whereas the minimum average among the EU is stated at 12 beds per 100.000 people.¹⁸⁰ However, Greece was able to increase its equipment to the minimum standard of emergency beds throughout the beginning of the pandemic, health conditions on the islands remain terrible. About 150 newly arrived asylum-seekers needed to stay outside the camps on the island and faced unbearable conditions without shelter during March and beginning of April 2020.¹⁸¹ As elaborated by Lancet Migration, the global collaboration to advance migration health, the only way to receive resources like sanitizers, tents, blankets and sanitation facilities is to get them from UNHCR and smaller local NGOs as so far these resources have not been sufficient yet to protect and prevent asylum-seekers from Covid-19. The government gets accused of not establishing appropriate public health measures for nationals as well as people in need like asylum-seekers and refugees, which is mentioned in the Lancet Migration call for urgent global action specifically addressed to the Greek authorities:

“People in quarantine must have the space to be able to practice physical distancing; have access to food, WASH, and health services, and be tested for COVID-19 regularly. Keeping people together in substandard conditions where they are predisposed to contracting COVID-19 due to inability of individuals to effectively self-isolate, or where there is insufficient food or water supply, is not an appropriate public health response.”¹⁸²

Covid-19 has brought a global challenge for healthcare systems and Greece is an example of a country which had already struggled with its stability among the public healthcare system before the pandemic started. In this regard it becomes even more challenging for Greece to ensure a proper protection for migrants and refugees and the country needs to respond with measures to avoid legal and administrative barriers regarding medical access for those people in need.¹⁸³ Recommendations drawn by Lancet Migration towards the Greek government are focusing on improvements of the spread of public health information, inclusion of migrants and refugees within the healthcare system as well as ensuring a global strategy contributing towards the approach of supporting refugees during Covid-19. This is supported by WHO, UNHCR and the European Commission, who implement measures such as monitoring and funding to be

¹⁷⁹ ICJ, “Joint Submission”, P.4.

¹⁸⁰ Lancet Migration, “Situation Brief: Asylum seekers & Refugees in Greece during Covid-19”, 27th May 2020, P.3.

¹⁸¹ Ibid.

¹⁸² Ibid, P.5.

¹⁸³ Ibid.

used for ad hoc circumstances.¹⁸⁴ Furthermore, a prioritization of moving the most vulnerable individuals like elderly people and children out of detention to safe shelter needs to be arranged to ensure a standard of hygiene conditions especially during a time of pandemic as well as to avoid contamination among the people.¹⁸⁵ Unfortunately the Greek authorities refuse to respond to calls of organizations who ask for immediate action against detention and for access to healthcare.¹⁸⁶

¹⁸⁴ Ibid, P.5., see also WHO, “WHO and UNHCR join forces to improve health services for refugees, displaced and stateless people”, 21st May 2020..

¹⁸⁵ Kondilis, E., “Rapid Response: Covid-19 pandemic and refugees, asylum seekers and migrants in Greece”, 11th May 2020.

¹⁸⁶ Ibid.

4. BARRIERS AND STRUCTURAL REFORMS TO ACHIEVE MEDICAL CARE AND A STABLE ENVIRONMENT FOR UAM

4.1. Introduction to the chapter

The following chapter will elaborate main barriers for the parallel healthcare system provided by iNGOs and NGOs, to identify gaps in the national healthcare system. In this regard interviews with Medical Volunteers International e.V. and Doctors of the World, underline barriers and current challenges based on their practical experiences. A minor case analysis of court decisions among cases connected to medical care in Greece after 2015 will emphasize on misbehavior according to national authorities and therefore stresses on the complexity between the national law in theory and its translation on a practical level. It also proves discriminations and violations of the right to health and breaches of other fundamental rights that are essential to the wellbeing of the child and are closely connected to the right to health. Since Greece is a Member State of the EU a further elaboration on the principle of solidarity will be made regarding the support of relocation mechanisms to ensure proper medical care and shelter for UAM among the Member States. Furthermore, the principle of solidarity of the EU and considerations of a structural reform as a future improvement of relocation processes will be elaborated. Finally, the connection of the right to health to further challenges as social exclusion within the society needs to be examined to highlight a holistic approach on the importance of the right to health for UAM.

4.2. Barriers for iNGO's, other institutions, and doctors

As earlier elaborated within chapter three the practical reality of the accessibility of medical care of vulnerable groups has been identified as a complex situation in Greece. The collaboration of iNGOs and NGOs regarding the national government challenged processes like funding, managing resources and political decisions among Greece, since the crisis started in 2015.¹⁸⁷ Additionally, the bureaucratic government including conflicting procedures among field work as well as the lack of sufficient mechanisms regarding people in need, complicated a clear system for the actors of humanitarian work.¹⁸⁸ Small NGOs with less experience offered medical care services and were working next to MsF and other emergency institutions, trying

¹⁸⁷ Gunst, M., et al, "Healthcare access for refugees in Greece: Challenges and opportunities", Health Policy Vol. 123, 2019, P.820.

¹⁸⁸ Ibid.

to cushion the need for medical care. Weekly meetings among iNGOs and smaller NGOs are held in Athens to identify current needs for asylum-seekers and to arrange the distribution of doctors, clothes and other supplies needed in the hotspots.¹⁸⁹ Unfortunately it is common that regional NGOs can only participate until donations and funds are exhausted, afterwards their work cannot be continued and therefore other institutions cannot rely on their support consistently.¹⁹⁰ Referring to a statement of MsF in December 2019, the increase of patients and the need of a regular treatment within the healthcare system is stressed:

“Our medical and mental health teams witness daily the harmful health consequences of the intentional exclusion of asylum seekers and undocumented people accessing their fundamental right to health. Between July and November this year, in our day centre in Athens we have seen a steep rise in the number of patients seeking care who don’t have AMKA, going from 18% of patients in January to 43% in November. Many health conditions our patients present with are manageable with regular treatment, yet, as people are unable to access this, their conditions are at risk of deteriorating.”¹⁹¹

Since most of all children who are arriving in Greece have on a practical perspective no access to medical care under the public healthcare system, caused by inoperative procedures of receiving a social security number and financial cuts of the government to the detriment of the resources for the public healthcare system, health conditions have become critical on the islands. Institutions like MsF are left alone regarding medical treatment, which actually should be regulated within the role of the state.¹⁹² On the Greek islands it is even harder to get access to medical care, since the reception centers only contain a small number of doctors and available public hospitals are limited.¹⁹³ Doctors of the world uses mobile health units to reach areas on the Greek islands which are not covered with the necessary medical equipment and provide healthcare as well as psychological support without expecting a social security number.¹⁹⁴ This is theoretically not a legal way but appears as the only way of providing and protecting those vulnerable people with their medical treatments needed. Since AMKA has been removed, asylum-seekers are not able to get access to free healthcare except from emergency cases. However, even before June 2019 the access to health care for asylum-seeker was not ensured

¹⁸⁹ Interview, Medical Volunteers International e.V., 25th June 2020.

¹⁹⁰ Ibid.

¹⁹¹ MsF, “MSF statement about access to healthcare for asylum seekers and undocumented people in Greece”, 19th Dec 2019, P.1.

¹⁹² Ibid, P.2.

¹⁹³ UNHCR, “Factsheet Greece”, 1-29 Feb 2020, P.4.

¹⁹⁴ Doctors of the world, “Project-Greece”, last modified 01st May 2020.

for all, since the AMKA card was only delivered to people, who got the positive asylum decision.¹⁹⁵ NGOs are the main care provider for asylum-seeker and the national healthcare system makes it even harder for the organizations to care for the enormous number of people in need, since resources are limited.¹⁹⁶ Another barrier to ensure medical care for UAM is the lack of translators offering a competent medical and cultural interpretation of health-related topics.¹⁹⁷ This is also caused by financial challenges, since the NGOs depend on donations and partner corporations including funds especially because they struggle to cope all expenditures such as medical care kits, salaries of doctors, translators and logistics – as to that, volunteer work is of great importance for most of the institutions.¹⁹⁸ Unfortunately, despite proposals of iNGOs as well as prioritization of the EU and international law, to offer free access to primary healthcare, primary care remains privatized in Greece, even though the country implemented domestic laws according to Directives of the EU and guidelines among WHO to reach a change within the national legal framework.¹⁹⁹ Children are suffering in camps like in Moria, Lesbos, especially those are left behind which need a long-term treatment of illnesses as epilepsy which can cause incurable brain damages if the patient does not receive an appropriate treatment.²⁰⁰ Furthermore, asylum-seekers are forced to pay for medications on a private basis and are not able to bear the costs even if they receive support through the cash assistance program (90 Euros a month) financed by the UN.²⁰¹ As MsF explains in the statement, some of the treatments like medicating Hepatitis B need a special treatment that costs up to 1.200 Euros, which leads the patient to extremely challenging circumstances, since they cannot afford to get treated and therefore they cannot even decide to receive medical care. One of the main barriers mentioned by MsF and as well in the interviews with Doctors of the world and Medical Volunteers International e.V., is the lack of structure among the provision regarding primary healthcare. Bureaucratic procedures and understaffed employees in the hospitals and administrative functions caused by austerity measures, lead to less attention of the necessary medical care. Children are especially vulnerable and are suffering from danger to face chronic diseases and mental health problems which often lead to self-harm or even worse to suicide.²⁰² During the interview with Medical Volunteer International e.V. it became clear that the need for a political decision regarding medical care could not be stronger and therefore becomes essential. Medical

¹⁹⁵ Interview, Medical Volunteers International e.V., 25th June 2020.

¹⁹⁶ Interview, Doctors of the world, 10th July 2020.

¹⁹⁷ Kadir, A., et all, „Children on the move in Europe”, P.13.

¹⁹⁸ Interview, Medical Volunteers International e.V., 25th June 2020.

¹⁹⁹ Gunst, M., et all, P. 823.

²⁰⁰ MsF, “MSF statement”, 19th Dec 2019, P.2.

²⁰¹ Ibid.

²⁰² Council of Europe Commissioner for Human Rights, 2018, para 43.

humanitarian organizations are working on their limits but cannot solve the needed healthcare for all asylum-seekers.²⁰³ Recent government decisions in Greece support the fear of leaving patients behind once their asylum application has been rejected. MsF and other iNGOs and NGOs appeal to the national government to take action regarding a free access to healthcare services in order to stop inhuman treatment.²⁰⁴ By the end of 2019 MsF identified over 140 children in need of a specific medical treatment in Lesvos and therefore expects the government authorities to arrange the transfer for those children to the mainland in order to ensure an appropriate treatment. If there will not be a support by the government soon, vulnerable groups like UAM will suffer long-term damages because of their health conditions and Greece would accept a risk of increasing deaths among unprivileged populations and most vulnerable groups.²⁰⁵

4.3. Health related cases of UAM in Greece after the refugee crisis in 2015

The following chapter will elaborate a minor case study to give an impression of the reality within decisions of national authorities in Greece. The first two cases are focusing on UAM detained in police custody who experienced threats against their rights connected to health conditions. In addition to that Refugee Support Aegean (RSA) elaborates another case of degrading treatment of UAM without taking care of their specific vulnerability. The fourth and last case is a collective complaint focusing on misconduct among Greek authorities which affects UAM's health condition. In order to stay within the scope of this thesis only decisions and accusations against national authorities will be outlined to emphasize the risks that are posed to the well-being of the child in Greece as well as the connected challenge of having appropriate access to medical care.

The European Court of Human Rights as well as the European Committee of Social Rights claimed in 2019 to stop detention of unaccompanied minors in Greece and expected the national authorities to take active actions.²⁰⁶ The following examples will emphasize on breaches against the well-being of the child and measures that have been taken under jurisdiction. For example, ECHR Rule 39 of the Rules of Court enables unaccompanied minors to claim for interim measures regarding their placement in detention.²⁰⁷ Most of the cases are dealing with the

²⁰³ MsF, "MSF statement", P.3.

²⁰⁴ Ibid.

²⁰⁵ Ibid, P.2 and also Interview, Medical Volunteers International, 25th June 2019.

²⁰⁶ Aida, P.191.

²⁰⁷ CoE, „Rules of Court”, Rule 39, 01st Jan 2020.

conflict of offering appropriate housing with a safe environment under Article 5 ECHR, to stop the deprivation of liberty of the child and Article 3 on inhuman and degrading treatment.²⁰⁸ Cases that are held before Court get examined individually and especially vulnerable groups like asylum-seeking children and other minorities depend on special protection, since they belong to an underprivileged group of people.²⁰⁹

ECtHR, H.A. and others v. Greece, 2019

The ECtHR claimed against Greece, that the arrest of UAMs at the Greek border and the immediate placement within protective custody is not acceptable, since the Greek authorities should have considered a placement within a so called “safe zone” for UAM first, like the Diavata center as such, was not considered by the Greek authorities.²¹⁰ Therefore, a breach of Article 3 and Article 5 of the ECHR has been found as well as Article 3 of the CRC, which emphasizes that detention shall always be a measure of last resort. Greek authorities did not follow their obligation to act in the best interest of the child and used custody as an inappropriate measure, especially regarding the fact, that authorities did not considered the vulnerability of UAM.

ECtHR, Sh.D and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia, 2018

This case is about detention conditions in Greece of five unaccompanied minors from Afghanistan. The Court held, that three of the applicant’s custodies are considered to be using the degrading treatment of isolation which can cause negative effects on their mental health condition. A violation of the Greek authorities can be identified, and the Court accused Greece that the authorities did not act within their scope of duty to consider state obligations like protecting the applicants and consider their vulnerable situation at this age.²¹¹

In addition to these two cases concerning the order of the ECtHR to national authorities of transferring UAM to safe zones and reception facilities in order to stop detention immediately, there are also other institutions which support cases under ECtHR decision. For example, a case of two UAM who have been kept in custody facing degrading conditions, since the cells were not created for a longer stay than a couple of hours and besides that they got into custody mixed

²⁰⁸ Ibid.

²⁰⁹ CoE and ECtHR, “Court talks discourse - Asylum”, 2016.

²¹⁰ ECtHR, H.A. and others v. Greece [2019] 19951/16.

²¹¹ ECtHR, Sh.D and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia, [2018] 14165/16.

with adults waiting for their criminal law procedures.²¹² The ECtHR initiated a claim against Greece in 2019 and examined the lack of protection under national, European and international legislation. In this case the children experienced multiple imprisonments on their path of applying for asylum and were held in inhuman conditions, which is why the court decided to expect Greece to take measures according to protection policies for UAM and to make sure that national authorities guarantee the obligation to protect and fulfill the rights of the child.²¹³

Complaint submitted by ICJ and ECRE v Greece, before the European Committee of Social Rights

The last case introduced in this thesis is a collective complaint referring to several articles of the ESC (Revised). The following breaches have been identified:

article 7(10), the right of children and young persons to protection, 11(1,3), the right to protection of health and the right to social and medical assistance, 16, the right to appropriate social, legal and economic protection for the family, 17, the right of children and young persons to appropriate social, legal and economic protection and 31(1,2) the right to housing.²¹⁴ It gives an example of how Greek authorities are working against the obligations under ESC (Revised). The Greek law including policies and their daily practice represents breaches of the above-mentioned Articles and especially deprive UAM of their right to health, social and medical access as well as connected rights as education and social protection. According to this case, the European Committee of Social rights set out measures required by the Greek government, as

“to ensure access to health care and medical assistance, in particular by ensuring the presence of an adequate number of medical professionals to meet the needs of the children whose rights are the subject of this complaint; and to ensure that all the relevant public authorities are made aware of this decision.”²¹⁵

This emphasizes on the current need for protection of UAM and unfortunately also shows the failure of Greece on a national level to provide and protect children with appropriate housing and medical care.²¹⁶ Breaches of the national authorities regarding the protection of vulnerable groups as well as acting against the best interest of the child as implemented in domestic but

²¹² RSA, “Detention and Reception Conditions Legal and Case Analysis Press Releases Publications Unaccompanied Minors”, 06th Nov 2019.

²¹³ Ibid.

²¹⁴ ICJ and ECRE v Greece [2019] 173/2018.

²¹⁵ Ibid.

²¹⁶ ICJ, “Joint Submission”, P.1.

also European and international law, can be identified in various cases. These are just a few cases to give an impression of unlawful practices among national authorities in Greece. Children are held in custody and there is no policy for protection against it relating to UAM in Greece.²¹⁷ Besides degrading treatment within detention unaccompanied minors suffer mainly from the lack of safe shelters, a working process aiming at safeguarding children during their asylum procedure as well as a proper access to medical care and information about their rights.

4.4. Solidarity as an EU principle

The EU based on the Fundamental Rights Charter has set out the construct of a united Europe according to shared values, which each Member State agreed to, as well as it transferred these ideas to national level. These fundamental values and ideas “*include the securing of a lasting peace, unity, equality, freedom, security and solidarity.*”²¹⁸ The concept of sharing profitability as well as challenges and burdens on an equal base among all Member States is strongly linked to the principle of solidarity.²¹⁹ Article 80 of the Treaty on the Function of the European Union (TFEU) includes the approach of solidarity and responsibility sharing among Member States of the EU according to asylum applicants and relocation decisions.²²⁰ Social protection is another attribute embodied by the principle of solidarity and it is implemented within the Charter of Fundamental Rights – just as relevant to this thesis is that article 35 mentions the principle regarding healthcare. In addition to that the Dublin Regulation also deals with responsibilities of the Member States, e.g. which country bears the duty to prove the applicants asylum request, since this task lies within the scope of the country where the asylum-seeker enters irregularly.²²¹ Nevertheless, it also allows other Member States to take over the duty of proving asylum applications from those Member States which are the first gate for asylum-seekers, even if the asylum-seeker originally has not been within their territory responsibility.²²² This way the EU shares authority regarding the asylum procedure and therefore acts in solidarity with the other Member States. Especially among TFEU the case of solidarity in emergency situations is set out among EU and emphasizes:

²¹⁷ ICJ and ECRE v Greece [2019] 173/2018.

²¹⁸ EurWORK, “Solidary principle”, 4th May 2011.

²¹⁹ Ibid.

²²⁰ FRA, “Relocating unaccompanied children: applying good practices to future schemes”, 2020, P.12.

²²¹ Regulation No 604/2013, Art. 13(1).

²²² Ibid, Art. 17.

*“In the event of one or more Member States being confronted by an emergency situation characterized by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.”*²²³

The principle of solidarity among EU Member States towards vulnerable groups like UAM is especially of importance when it comes to implementing measures like relocating children. It is a useful strategy for all Member States, mostly for those states which are not able to place every asylum-seeking child among their own country, like Greece, because of mass arrivals, lack of care and accommodation.²²⁴ Further research has shown the danger that arises through crimes like human trafficking of children, once there is no official system which protects and shrinks the risks for migrating and refugee children.²²⁵ Unfortunately, the number of UAM who are transferred to other Member States is lower than the number of people in need such as unaccompanied minors currently in Greece. Reasons are among other things capacity challenges regarding accommodation for vulnerable groups with specific needs as medical care and psychological care within reception, even if the hosting Member State and its authorities accepted the request of relocation in the first place.²²⁶ Domestic differences among authorities of the Member States complicate the procedure of relocating children, since agreements of child protection including guardians and legal support of children vary among the EU Member States. After all, coordination involves different admission criteria among states, including different roles, like social workers, international organizations and healthcare providers, the process of relocation occurs slowly and less transparently. However, under EU and national law the Member States and key actors provide guidance and references for legal documents in order to ensure protection of UAM throughout the relocation procedure.²²⁷ Nevertheless, the principle of solidarity regarding the relocation procedure presents a more complex situation, since the hosting Member States set out several criteria under bilateral agreements and this allows the process to be very flexible.²²⁸ For example, preferences like a certain age of the child, date of arrival as well as a specific nationality hampers the efficiency within the concept of relocation. The European Emergency Relocation Mechanism was introduced to arrange information sharing among the Member States under the Dublin Regulation, to gain a more efficient

²²³ TFEU, 2012, Art. 78(3).

²²⁴ FRA, “Relocating unaccompanied children: applying good practices to future schemes”, P.10.

²²⁵ Ibid.

²²⁶ Ibid, P.12.

²²⁷ Ibid, P.15.

²²⁸ Ibid, P.18.

procedure.²²⁹ Criteria of nationalities have been applied to gain a successful relocation of the asylum applicant, but it also excludes UAM e.g. from Afghanistan, Pakistan and Iraq since they were not recognized by the relocation procedure.²³⁰ Within the principle of solidarity of the EU this criteria has led to misconduct among states and is not working in the best interest of the child, since it became a criterion for excluding children and discrimination on the basis of their country of origin.²³¹ As the FRA report (2020) mentions, the European Commission adopted the task to establish a mechanism of a fairer placement of the children.²³² Since then the vulnerability of children is being taken into account first and foremost when prioritizing the relocation of children and their health conditions are considered as more relevant than their nationality.²³³ To ensure medical care of UAM health assessments are implemented within the relocation procedure as well as an exchange of health-related data between the Member States.²³⁴ This way protocols offer information about pre-existing illnesses of the children and Member States are able to provide necessary care once the child arrives. An additional act of solidarity is the implementation of the AMIF to provide financial support as well as international protection. Costs has been funded by the AMIF ensuring Greece 500 Euros for every person that has been relocated inter alia to bear travel expenditures. In addition, the hosting state receives 6.000 Euros to cover upcoming relocation fees.²³⁵ This regulation has been introduced in article 18 (EU Regulation no. 516/2014) bearing in mind the principle of solidarity. Due to the current refugee crisis, as well as Covid-19, the EU Member States translated their commitment of solidarity in practice and managed to relocate 1.600 UAM and separated children from Greece to other Member States.²³⁶ However, there is still an enormous number of children waiting for their asylum procedure to be examined and are still in need of an appropriate access to healthcare as well as other fundamental rights regarding their protection.

Although in theory relocation is a promising concept, the practice has shown difficulties and a complexity to its purpose. Arranging proper care and protection for UAM comprises mechanisms for responsibility sharing of the Member States and needs to be improved with the

²²⁹ Ibid, P.17.

²³⁰ E.K.K.A., “Report: service for the management of accommodation requests of asylum seekers and unaccompanied minors”, 2016.

²³¹ FRA, “Relocating unaccompanied children: applying good practices to future schemes”, P.18.

²³² Ibid.

²³³ Ibid, P.28.

²³⁴ Ibid, P.32.

²³⁵ Ibid, P.37.

²³⁶ UNICEF, “UN agencies welcome latest relocations of unaccompanied children from Greece, call for further action and solidarity”, 08th July 2020.

help of further policy making.²³⁷ Funding is a major part of improvement to provide every actor needed in the relocation procedure of UAM and to establish a process in the best interest of the child.

4.5. Healthcare as a priority to avoid exclusion of UAMs from society

The EU is facing a main challenge within migration regarding exclusion of certain groups from society, especially the exclusion of asylum-seeking and refugee children. On the one hand this challenge is caused by the placement of refugee camps in urban areas and on the other hand by the access to social services like education and healthcare.²³⁸ As elaborated in the last chapters the well-being of a child is influenced by various circumstances and needs special protection regarding immigration policies and integration programs, which ensure the entitlement of a child's human rights.²³⁹ Disadvantages arising from language skills have been a problem since the refugee crisis started – the Action Plan on Protecting Refugees includes a language teaching program – Linguistic Integration of Adult Migrants (LIAM toolkit) – specifically designed for adults, in order to support refugee camps inter alia in Greece.²⁴⁰ However, children are participating in this program as well, as a measure of Greece to achieve higher language knowledge among refugees and to aim for a better integration. Apart from that the Committee of Ministers adopted a Recommendation in 2019 (CM/Rec(2019)4) on supporting young refugees in transition to adulthood. It is a great achievement for youth work and it includes measures within a strong cooperation respecting the ESC (Revised) and its framework to emphasize and identify needs for NGOs to focus on inclusion of young refugees and migrants.²⁴¹ The HELP Program established within the Action Plan on Protecting Refugee and Migrant Children in Europe supported states to take action including new courses that covers *“international legal framework, child-friendly procedures, alternatives to detention, family reunification, social rights and integration, guardianship, and age assessment”*²⁴² – an essential guideline and knowledge for lawyers to gain social inclusion for the children. Discrimination goes along with excluding people from society, especially refugee and asylum-seeking children who want to participate and to be educated in schools. They need to have an

²³⁷ Ibid, P.39.

²³⁸ Phillimore, J. and Goodson, L., “Problem or Opportunity? Asylum Seekers, Refugees, Employment and Social Exclusion in Deprived Urban Areas”, 2006, P.1715.

²³⁹ Ibid, P.1716.

²⁴⁰ CoE, “Action Plan on Protecting Refugee and Migrant Children in Europe”, P.16.

²⁴¹ Ibid, P.25.

²⁴² CoE, Refugee and migrant children in Europe – Final report”, 14th Feb 2020, P.8.

appropriate access to health care, to avoid exclusion from education programs and society.²⁴³ The right to health connected to social exclusion has been taken up by the program PHILOS, since host countries as well as Greece itself, require a certain health condition, like vaccinations of refugee children, in order to avoid further barriers for social services.²⁴⁴ PHILOS was a measure supported by the Asylum, Migration and Integration Fund of the EU's Directorate-General for Migration and Home Affairs to ensure inclusion of refugee children in society, focusing on mass vaccination for all refugee children in Greece.²⁴⁵ Furthermore, children can only be transferred to the mainland in Greece once they received vaccination - this is valid for schools as well and represents inequality for the children who do not receive the necessary access to medical care and creates a lack of vaccination coverage and therefore becomes a concern of public health.²⁴⁶ However, PHILOS has shown a successful measure to protect children from dangerous diseases, as challenges like the expansion of camps and also closure of other camps as well as changes within the population of the camps, make it harder for NGOs or the government to elaborate and plan new campaigns for vaccination programs.²⁴⁷ Nevertheless, the approach of vaccination of all refugee children as well as ensuring social inclusion should be considered a priority for future public health structures. 24 million Euros have been funded by the EU to PHILOS in order to support the Greek healthcare system and to provide medical care for refugees.²⁴⁸ However, difficulties in funding long-term vaccination programs among EU Member States have been a challenge since 1950 when the modern childhood immunization program has been introduced.²⁴⁹ Strongly connected to budget problems on a national level regarding healthcare services, there is still a lack of vaccinations within a long-term program. Therefore, the WHO adopted a Vaccine Action Plan in 2014 to ensure the basic covering of vaccines such as polio, measles, and rubella as well as hepatitis B among the EU from 2015 until 2020.²⁵⁰ Barriers like inequity between the Member States regarding financial expenditures of healthcare systems and differences of populations in need, such as vulnerable groups like UAM, refugees and migrants, combined with the problem of language barriers and gaps within the spread of the information of the importance of vaccinations, make it harder to implement a sustainable vaccination program.²⁵¹ Consequently,

²⁴³ WHO, "Health of refugee and migrant children – technical guide", 2018, P.7.

²⁴⁴ Mellou, K., et all, "Increasing childhood vaccination coverage of the refugee and migrant population in Greece through the European programme PHILOS", 04th July 2019, P. 6.

²⁴⁵ Ibid, P.1.

²⁴⁶ Ibid.

²⁴⁷ Ibid, P.4.

²⁴⁸ Gunst, M., et all, P. 821.

²⁴⁹ Rosano, A., P.11.

²⁵⁰ Ibid, P.12.

²⁵¹ Ibid.

the vaccination program specifically focuses on *“migrants, [...], in ensuring their eligibility and access to (culturally) appropriate immunization services and information.”*²⁵²

Furthermore, the implementation of cultural mediators and translators supported the approach to include all children within society in order to fill the gap of children who are neglected caused by the lack of access to the necessary medical healthcare.²⁵³ The ESC emphasizes in its revised version under Article 30 that the parties:

“take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance”

Since Greece has a lack of capacity for appropriate shelter for UAM, there is a serious risk for the children to face social exclusion. In the end of December 2019 there have been 5301 unaccompanied and separated minors in Greece and the capacity to arrange accommodation facilities for the children were only available for 1286 children.²⁵⁴ Regarding the Country Report of Greece, children are waiting six to eight months to be placed at a shelter for UAM, until then they are imprisoned on the islands.²⁵⁵ Especially on Lesbos the lack of appropriate access to housing, care and education for UAM is devastating. The Fundamental Rights Agency as part of the EU’s work, reported that among Greece and some other countries, basic education needs to be offered by the national state even if the asylum has not been approved yet, the access to education until the date of removal, needs to be ensured.²⁵⁶ The UNHCR established a program called “ESTIA”, funded by the EU to focus on accommodation and cash assistance within Greece.²⁵⁷ Herby the government of Greece is supported by the UN and they work closely with other international and national NGOs as well as state institutions and the local society to support UAM with their education. According to UNHCR,

*“81% of asylum-seeker and recognized refugee children in ESTIA accommodation are enrolled into public schools alongside their Greek peers. UNHCR estimates that 11,100 school-aged children (4-17) are on the Aegean islands, but less than three per cent attend schooling.”*²⁵⁸

²⁵² Ibid.

²⁵³ Mellou, K., et all, P.6.

²⁵⁴ Aida, P.171.

²⁵⁵ Ibid.

²⁵⁶ UNHCR, Factsheet “Access to education for Refugee and migrant children in Europe”, Sept 2019, P.4.

²⁵⁷ UNHCR, Factsheet “Greece”, 1-29 Feb 2020, P.2.

²⁵⁸ Ibid, P.4.

Implementing additional classes as part of six unofficial learning centers on the islands as well as medical support with psychological assistance for children and legal support for children, is one of the measures UNHCR adapted in order to avoid social exclusion of the vulnerable children.²⁵⁹

²⁵⁹ Ibid.

5. CONCLUSION

This thesis is an elaboration on how unaccompanied minors are protected within the human rights framework not only on an international but especially on a national level in Greece according to the right to health. The manner in which Greece translates policies into active implementation as well as difficulties among national authorities with putting laws in practice has been discussed. Especially the importance of the work of organizations like the CoE, EU, UN, iNGOs and NGOs are part of the study and their responsibilities have been elaborated. The intention to raise awareness for the critical circumstances UAM are exposed to and their health conditions in Greece as well as to gain a valuable understanding of the holistic approach of the right to health is another target of this thesis.

Summarizing the content of the study following research questions are intended to be answered:

What is the minimum access to health care for UAMs in Greece - legal framework and is it compatible with International, European and EU Law standards for the protection of the right to health?

Greece needs to develop a better implementation of its obligations regarding to respect, protect and fulfill the right to health for UAM as well as other fundamental rights connected to it within domestic law. The legislation and policies regarding unaccompanied minors in Greece need to be held accountable for their actions and the current situation calls for improvements regarding the support of CoE, EU and UN. International instruments as Directives and measures like Action Plans are implemented to protect the right to health of UAM but unfortunately, they did not improve the practice within Greece at its utmost level. However, with regard to its history Greece continuously tried to improve domestic legislations while adopting national laws for the free access to medical care for asylum-seekers and refugees. But still is not able to protect UAM adequately, as the current procedure of the PAAYPA number represents. Core obligations such as ensuring the access to healthcare without discrimination as well as a plan to establish a national public health strategy belong to the main obligations implemented by the ICESCR. However, as the example of the ESC (Revised) demonstrates within the study, the legal framework itself is not enough to reach the target of protecting all people in need of access to health, especially as vulnerable groups, since they are deprived of some elements of the rights and therefore not safeguarded enough in Greece.²⁶⁰ The compatibility of the legal framework especially on a national level is challenging, since domestic law differs among the Member

²⁶⁰ ESC (Revised), Art. 13(1&3).

States, even if the international standards set a valuable common approach, the states are allowed to choose the adoption and the way of implementing certain rights. The CoE outlines the minimum standard of the right to health for unaccompanied minors to guarantee at least emergency healthcare among national policies but it needs to be improved further. The EU supports its Member States and therefore also Greece with Directives, Recommendations and programs adapted for the improvement of global health, but since Directives give Member States a great freedom on how to transpose it on a national level, the practice shows gaps in the translation. Even if Directives are crucial for the Member States to implement further actions among national laws, the states are left with the freedom to interpret the Directives on their own legislation and therefore they vary from country to country. Since programs as PHILOS are limited actions, Greece is not finding a lasting solution to implement a stable healthcare structure for UAM or paradoxically for its own population. The CoE pushes the global health target among its Action Plans and for this purpose it puts pressure on the states to become active and reach a change of domestic laws and in addition to that develop progress within local systems.

What are the consequences of the current situation including measures introduced by the new government in 2019 for UAMs, Greece and the EU?

Solutions like imprisoning children in detention centers in order to handle mass arrivals and the number of asylum-seeking children in Greece as a solution to solve the problem of the lack of accommodation cannot longer be accepted. Overcrowded hotspots on the islands cannot be tolerated anymore and the transfer of children needs to be prioritized in the best interest of the child. Recommendations and calls from ECtHR addressing the Greek government underlining the urgent need for a change in these procedures, stresses the critical conditions in Greece. Since children belong to one of the most vulnerable groups around the globe, the EU must take further actions regarding the principle of solidarity. Relocation procedures within the act of solidarity are a great achievement among the EU Member States but they still lack because of its complexity and the consideration of differences in domestic standards of the EU Member States. Therefore, further measures like monitoring and evaluation systems need to be introduced in order to continue optimizations of policy developments. In addition to that Greece's healthcare system is currently not able to protect asylum-seekers and therefore the right to health for most vulnerable groups like children continue to get violated. NGOs and iNGOs are working under hard pressure to take care of the needs of the children and are reliant to the government's policy making relating to the access to medical care. They are the primary

protectors for asylum-seekers since the public healthcare system failed in its task. Greece is taking Directives and Recommendations of the EU seriously and tries to implement laws and guidelines among the national level as the Amendment of article 60(3) of the law 4636/2019(A'169) has shown. However, implementing a plan of action regarding improvements of the access to healthcare into daily practices in Greece, the country is still facing a major challenge because of a right-wing government and austerity measures generated by the past financial crisis. Without international funds like the MRF and the European Commission as the main coordinator for identifying solutions for UAM in Greece, the country would not be able to implement measures to improve relocation processes neither would it be able to ensure access to medical care. Furthermore, the tendency of the number of people on the move is still increasing rather than declining, which will be an enormous future challenge for the EU but especially for Greece, since its geographical position will remain one of the main first gates for refugees crossing the borders to the EU. This is why the emphasis on a well-established relocation procedure as well as EU support for a national healthcare service in Greece for all needs to be implemented.

What are the challenges and possible solutions for the protection of UAMs right to health in Greece?

One of the biggest challenges in Greece is the difficulty of implementing a well-established healthcare structure as well as an adequate provision of information for UAM about their rights. Technical problems caused by the interconnection among the platform of the system of healthcare, as the PAAYPA procedure has shown, cannot be a reason to deprive people from access to medical care services. Both the Greek government and the EU should take immediate public health measures for all. A great improvement would be a coordinated transfer of the children to the mainland and other EU member states to ensure proper housing and access to medical care as well as access to education. Social inclusion is an important part of the wellbeing of the child and is only possible in Greece if the child receives vaccination. Programs implemented by the EU as PHILOS supports asylum-seeking and refugee children but only for as long as the program lasts. Long-term projects need to be introduced more but this is strongly connected to financial funds. A sustainable stabilization of the Greek healthcare system can only be guaranteed if asylum-seekers, refugees as well as the local population will be equally considered, this would support the global goal of health coverage as well. Through the work of the CoE further Action Plans have been introduced including optimizations according to family reunification procedures which benefits the stability of children's mental health conditions.

Moreover, age assessments which are operating under no supervision of professional staff need to be legally forbidden because of their inhuman treatment of children and the risk of further mental health disorders. Having analyzed asylum procedures and treatment of asylum-seeking children in Greece it becomes clear, that national law as a protection for UAM in theory exists to a certain extent. The practice, however, implies misconduct among Greek authorities who take advantage of their position and accept unlawful behavior towards migrant children. Sanctions of Greek authorities have to be introduced more strictly to avoid further inhuman and degrading treatment of children. Greece is still keeping children in detention and this is considered as a harmful practice which has a serious impact on the mental health condition of the children and puts them in jeopardy, without having enough support of authorities who act in favor of their care. Additionally, the expanding of staff size for translation needs among administrative and medical offices, social services as well as guardians set up from the beginning of the asylum procedure, must be ensured. Unaccompanied minors are facing high risks on their path especially while kept in detention centers but also within the camps on the islands as well as on the mainland. To ensure a safe environment and access to healthcare for UAM, the EU and Greece need to continue to work closely together and must develop further plans of action for the sake of the child's vulnerability and human dignity.

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APPENDIX

1. Questionnaire Interview (2-5)

Organization/Institution:

Name:

Position:

Date:

- 1) How would you describe your duties within the organization?
- 2) Do you think the access to the primary healthcare system for asylum seeker is well established in Greece (focusing on unaccompanied children)?
- 3) Do you think the access to the primary healthcare system for refugees is well established in Greece (focusing on unaccompanied children)?
- 4) What are the main barriers to get access to primary health care for unaccompanied children?
- 5) Has the situation changed after the new government decision in 2019?
- 6) How are unaccompanied children protected by NGOs regarding medical access, what is the role of the organization regarding unaccompanied children?
- 7) Are there current challenges regarding Covid-19 and the protection regarding access to health care of unaccompanied children?
- 8) What needs to be improved within the health care system or within your work to gain a better access to health care for unaccompanied minors in the future?
- 9) Do you see Europe as an actor regarding healthcare support for Greece? (*Please explain your answer why yes or why not?*)
- 10) How did your organization finance the programs in Greece?

2. Summary of the results from the questionnaire

To gain deeper knowledge of the practical work of iNGOs as well as about the challenges they are facing in their work, four interviews have been conducted with organizations based in Athens, Greece. On the one hand with the well-known organization “Doctors of the world” (a dentist and a nurse) as well as with a smaller iNGO called “Medical Volunteers International, e.V.” (two medical students) established in Germany and has dedicated itself to medical volunteer work in Greece (Thessaloniki and Athens) since 2016. The questionnaire above already gives an impression of the main content of the questions that have been asked. This part shall give a summary containing most important results from all interview partners. Firstly, through the interviews it became clear, that there is a strong need for a stable public healthcare system in Greece. The amount of people, nationals, asylum-seeker and refugees, who are not protected by the state is increasing and the financial support for iNGOs is not sufficient to bear all expenditures needed to reach medical care for all. Lots of NGOs are stopping their projects, once they cannot afford medical kits and transport to the places, where they are actually needed. Secondly, most of the participants were not well informed about the legal structure when it comes to medical care, which underlines the situation of medical care of refugees and asylum-seekers. According to this, the organizations are reliable on the support from lawyers who could offer support for children providing more information on the process of getting a personal social security number as the first necessary step of ensuring medical care. Thirdly, language barriers have been identified which generally complicates the communication and especially aggravates the information flow including a successful translation of the diagnoses to patients. Children miss their regular check-ups which are important for their future health development and which diminishes the chance to identify illness at an early stage. Lastly, when it came to the question if Europe is giving enough support for Greece regarding the local healthcare challenge, the interviewees are aware of financial support for medical aid and relocation systems. On the other hand, they feel like it is not enough distributed within the country itself, since the government is known as a right-wing government cutting financial aid on their local healthcare system because of further austerity measures. In addition to that bureaucracy in Greece makes it even harder to get work permissions for i.e. doctors. Covid-19 has shown in which precarious circumstances the country has been and how financial cuts influenced especially in the areas of the Greek islands. The interviews have shown the mutually dependent components which form the conditions in Greece, and which structurally interfere with the successful implementation of a working health care system. The interviewees are in contact with the government and they are addressing the necessary requirements to improve the situation in form of complaint letters.

But they face challenges especially in the number of patients in need. Despite these great challenges every day the interviewees all shared a pessimistic and frustrating point of view of the situation, if the government do not act soon.

I would like to express my sincere admiration and gratefulness for the interviewees for having taken the time to answer my questions and for their commitment to improving the access to health care for refugees and asylum-seekers in Athens/Greece.

2020

The right to health : a case study of unaccompanied children and the challenges of minimum access to healthcare in Greece

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