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State Responsibility and the 'Best Interests of the Child' Principle

Evaluating the Detention of Unaccompanied and Separated Children (UASC) in
Mediterranean First-Entry European States

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Abstract

This thesis critically examines the implementation of the 'best interests of the child' (BIC) principle concerning the detention practices of Unaccompanied and Separated Children (UASC) in the Mediterranean first-entry European states of Malta, Italy, and Greece. Specifically, it explores the complex intersection between state responsibility for migration governance and the rights of vulnerable child migrants, as enshrined in international and regional legal frameworks.

Through a socio-legal and comparative case study approach, this research investigates how the selected states operationalize the BIC principle in detention procedures, highlighting discrepancies between legal obligations and practical implementations. The analysis employs an interdisciplinary theoretical framework, integrating Human Rights-Based Approaches (HRBA), Child Protection Minimum Standards (CPMS), and child developmental and vulnerability theories to evaluate the legal and psychosocial impacts of detention on UASCs. Through critically assessing national practices against established international standards and recent jurisprudential developments the research reveals systemic shortcomings in the reception and care of child migrants.

The thesis aims to provide actionable recommendations for Malta, Italy, and Greece, advocating for enhanced compliance with international child protection standards and the prioritization of care-based, child-centric alternatives to detention. Ultimately, this research contributes to the discourse on child-sensitive migration governance by emphasizing the urgent need for frontline European states to reconcile their migration control policies with child protection obligations.

Keywords: Unaccompanied and Separated Children (UASC), Best Interests of the Child (BIC), Mediterranean migration route, child detention, human rights, international law, European Court of Human Rights (ECtHR), child protection, migration governance.

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1. Introduction

Forced displacement driven by persistent conflicts, environmental disasters, and economic instability continues to reach unprecedented levels year after year globally with entire communities often having no choice but to migrate in search of safety. Children constitute a particularly significant portion of those fleeing such crises and face additional specific and intensified risks due to their vulnerability. As of the end of 2024, 123.2 million people had been forcibly displaced from their homes due to persecution, conflict, violence, human rights violations, or events seriously disturbing public order. Among them, an estimated forty-nine million, or approximately 40 percent, were children under the age of 18.¹

Unaccompanied and Separated Children (UASCs) represent a significant and exceptionally vulnerable subgroup among those forced to flee as they are uniquely exposed to dangers such as exploitation, trafficking, forced labour, sexual violence, physical abuse, and severe psychological trauma, due to their age and lack of caregivers.² In 2024, approximately 43,000 asylum applications from unaccompanied minors were registered across EU+ countries, accounting for the highest rate of applications in a single year since 2016.³ Furthermore, in 2024 alone, 218,000 UASCs were registered by UNHCR globally.⁴ Unlike children accompanied by parents or guardians, UASCs navigate the perilous migration journey alone and often rely on smugglers or informal networks to help them cross borders, which increases the risk of falling into exploitative situations.⁵ Furthermore, they are also frequently exposed to extreme conditions during transit such as overcrowded boats, lack of basic necessities, and violence by both state and non-state actors.⁶

¹ United Nations High Commissioner for Refugees (UNHCR), *Global Report 2024* (UNHCR 2025) <<https://reporting.unhcr.org/global-report-2024>> accessed 2 July 2025.

² Ibid; UNHCR, 'Global Appeal 2025 – Outcome Area 5: Child protection' (UNHCR 2025) <<https://reporting.unhcr.org/global-appeal-2025/outcome-areas/child-protection>> accessed 16 May 2025; Human Rights Watch (HRW), *Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece* (HRW Report, 22 December 2008) <<https://www.hrw.org/report/2008/12/22/left-survive/systematic-failure-protect-unaccompanied-migrant-children-greece>> accessed 16 May 2025.

³ European Union Agency for Asylum (EUAA), 'Data on unaccompanied minors' (Fact Sheet No 29, 21 August 2024) <<https://euaa.europa.eu/publications/data-unaccompanied-minors-fact-sheet-no29>> accessed 9 May 2025.

⁴ UNHCR, *Global Report 2024* (n 1).

⁵ UNHCR, 'Briefing Note: Unaccompanied and Separated Children in Europe' (13 June 2016) 2 <<https://www.unhcr.org/ngo-consultations/ngo-consultations-2016/Europe-Bureau-Briefing-Note.pdf>> accessed 9 May 2025.

⁶ ibid; United Nations Children's Fund (UNICEF), 'World Refugee Day: The biggest migration routes in the world' (20 June 2025) <<https://www.unicef.ch/en/current/blog/2025-06-20/world-refugee-day-biggest-migration-routes-world>> accessed 28 June 2025.

Even after they survive the transit journeys, the situation of UASCs remains fraught with risk. Upon arrival in new countries, they rely entirely on the receiving state's protection systems to safeguard their rights and well-being. However, receiving or host states often detain children under their existing migration control policies rather than referring them through child protection systems. Detention is frequently justified by these States under the guise of different reasons such as protecting the child, preventing their absconding, or verifying their identity. In reality, this practice “*exposes the children to serious protection risks and psychological distress,*” as they are placed in prison-like conditions not designed for children.⁷ The perilous journey and systematic exposure of UASCs to detention and inadequate reception conditions at European borders have been extensively documented by agencies such as Save the Children whose report specifically highlights the urgent necessity to shift from detention-based models towards comprehensive care-based solutions that prioritise immediate protection needs, psychological support, and child-centric reception standards.⁸

Reports also indicate that detention conditions frequently fall short of minimum international standards because detained children lack access to formal education, child-specific care and support, and appropriate health services, and are subject to severe restrictions on contact with family or carers.⁹ The heightened vulnerability of UASCs is significantly exacerbated by systemic gaps in States' approach to migration governance, especially in the context of detention of children. In many first-entry states there are no specialized reception procedures for children: age and vulnerability are frequently assessed haphazardly by untrained officials, and guardianship systems are weak or non-existent.¹⁰ Without child-specific procedures, migrants' detention ends up as the default response. Moreover, the failure to provide durable solutions or timely status

⁷ UNHCR, 'Briefing Note: Unaccompanied and Separated Children in Europe' (n 5) 2.

⁸ Jennifer Allsopp et al, 'Crossing Lines: Realities of migrant children at EU external borders' (2025) <<https://resourcecentre.savethechildren.net/document/crossing-lines-realities-of-migrant-children-at-eu-external-borders>> accessed 9 June 2025.

⁹ Penal Reform International (PRI), 'Safeguarding Children in Detention: Independent Monitoring Mechanisms for children in detention in MENA' (2011) <<https://www.penalreform.org/resource/safeguarding-children-detention-independent-monitoring-mechanisms-children-detention/>> accessed 9 June 2025; Platform for International Cooperation on Undocumented Migrants (PICUM), 'Report on PICUM's International conference on undocumented children in Europe: Invisible Victims of Immigration Restrictions' (2009) <<https://resourcecentre.savethechildren.net/pdf/5002.pdf?embed=1>> accessed 9 June 2025.

¹⁰ HRW, *Left to Survive* (n 2).

determination processes often leaves minors in prolonged detention and legal limbo, which undermines their psychosocial development and places them at risk of further marginalization.

These alarming global trends of forced child displacement have found one of their starkest manifestations along the Mediterranean route. This route is an irregular migration corridor that has evolved into both a humanitarian crisis zone and a litmus test for Europe's commitment to child protection. This route has become particularly urgent to study, not only because of the volume of unaccompanied minors arriving but also the specific convergence of high-risk transit conditions, politically sensitive border management, and overstretched first-entry systems.

1.1 UASCs and the Mediterranean Route

Across the Mediterranean migration route, the number of UASCs arriving in Europe has surged in recent years, placing Italy, Greece, and Malta on the frontlines of a humanitarian challenge. These three Mediterranean states serve as de facto first-entry points into the European Union for thousands of minors fleeing conflict, persecution, and poverty. While the global nature of forced displacement is well-documented, the operational challenges faced by receiving states are highly contextual. Along the Mediterranean route this tension between legal commitments and enforcement-driven policy responses is notably acute.

The migration flows through the Mediterranean route makes very evident the existing tension between European states' border control policies and their human rights commitments. On the ground, UASCs frequently end up in conditions that are inconsistent with child protection standards. For example, Human Rights Watch documented that Italy's Lampedusa centre operated like a prison, where asylum seekers, including children, were detained for weeks in "*degrading*" conditions.¹¹ Furthermore, conditions such as chronic overcrowding, ad hoc and inconsistent age-screening, and delayed guardianship assignments have meant that many UASCs face de facto detention in these first-entry States rather than care-based services. Specifically, this reveals the paradox wherein states simultaneously label UASCs as both, vulnerable children as well as irregular migrants. These classifications by States subject migrant children to contradictory treatments of protection on paper but detention in practice. These realities on the ground

¹¹ HRW, 'Italy Shuts Down 'Worrying' Migrant Hotspot' (2018) <<https://www.hrw.org/news/2018/03/14/italy-shuts-down-worrying-migrant-hotspot>> accessed 9 June 2025.

underscore the urgent question whether the best interests of the child are truly being prioritized in frontline reception of UASCs.

Central to all child protection obligations is the Best Interests of the Child (BIC) principle, which is a cornerstone of international human rights law, requiring authorities to prioritize the child's best interests in every action affecting them.¹² Implementing this principle is not only a moral imperative but also a legal obligation for European states under the UN Convention on the Rights of the Child (CRC), the European Convention on Human Rights (ECHR), and EU law such as through Article 24 of the EU Charter of Fundamental Rights.¹³ However, a persistent concern in this sphere is whether the best interests of unaccompanied children are being upheld in asylum and reception procedures in practice in European first-entry States, especially amid the large migration flows that the region has been experiencing over the last decade. Especially in high-pressure border contexts, the principle risks being overshadowed by arguments of administrative speed or narrow interpretations of protection. The operational gap between legal standard and administrative reality thus demands critical scrutiny.

The impetus to explore State implementation of the BIC principle in the context of detention of UASCs was the 2023 ECtHR judgment in *J.B. and Others v. Malta*, where the Court found that Malta had violated the rights of three unaccompanied minors by subjecting them to conditions of detention incompatible with Article 3 and Article 5 of the European Convention on Human Rights.¹⁴ This case was emblematic of broader systemic issues faced by frontline states including the conflation of immigration enforcement with child protection, the failure to provide timely legal or guardianship support, and the inadequacy of state institutions to account for the vulnerabilities of unaccompanied children. Crucially, the case also exposed the gap between legal principles and their real-world operationalisation, prompting the question about how the BIC standard is assessed, interpreted, and implemented in first-entry EU countries.

¹² *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) art 3.

¹³ *Convention for the Protection of Human Rights and Fundamental Freedoms* (European Convention on Human Rights, as amended) (adopted 4 November 1950, entered into force 3 September 1953) ETS 5; *Charter of Fundamental Rights of the European Union* [2012] OJ C326/391, art 24.

¹⁴ *J.B. and Others v Malta* App no 34584/22 (ECtHR, 30 January 2023).

The J.B. case¹⁵ specifically concerned Malta; however, the challenges it revealed are not unique to only one country. Similar concerns have been raised in Italy and Greece, where efforts to reform guardianship systems and expand child protection services remain inefficient or inconsistently applied. Therefore, the issues highlighted serve as both a point of reference and a thematic anchor for this thesis by underscoring the pressing need to critically examine how the BIC principle is translated from legal text into administrative practice.

1.2 Problem Statement

Despite binding obligations under international and European legal frameworks, the operationalization of the BIC principle in the context of detention of UASCs remains uneven and frequently compromised in European first-entry states as seen with the practices of prolonged or automatic detention. These detention practices expose children to severe physical and psychological risks and undermine the legal safeguards designed to protect them. In this regard, this thesis identifies a core institutional tension between migration control and child protection. Through this, it raises urgent normative and empirical questions about how far the BIC principle genuinely governs state responses to UASCs in practice.

1.3 Research Objectives

This thesis will critically examine how Malta, Italy, and Greece have operationalized the BIC principle in determining detention of UASCs, highlighting achievements, gaps, and ongoing challenges, with an aim to provide actionable recommendations to improve the overall standard of child protection in the context of UASCs. This evaluation will be guided by a comparative analysis of legal norms, institutional procedures, and documented practices, using indicators derived from international and regional child protection standards. The research explores both the existing legal framework and the existing operationalisation of the BIC principle in determining detention related decisions. The research contributes to the growing body of work on child-sensitive migration governance by offering a comparative analysis of state practices in the context of legal jurisprudence, implementation gaps, and the evolving responsibilities of frontline EU states.

A comparative socio-legal approach is adopted throughout this research in order to capture both the formal legal obligations of States and the practical realities of how these obligations are

¹⁵ Ibid.

implemented on the ground. This dual lens is essential given the persistent implementation gaps in the child protection context. A purely doctrinal approach is necessary to delineate legal obligations under international, regional, and national frameworks; however, it would not suffice to capture the operational realities faced by UASCs. In contrast, a purely sociological study might neglect the normative content of child protection law and frameworks. This thesis therefore integrates doctrinal legal analysis with socio-legal interpretation of institutional practices, policy implementation, and jurisprudential development. This allows for a more nuanced understanding of where and why implementation gaps arise and how they may be bridged.

1.4 Research Questions

The review of the context, legal framework, and recent developments reveals a complex landscape in which Malta, Italy, and Greece operationalize the BIC principle in the decision-making process for the detention of UASCs. As the research will elaborate, significant progress has been made since 2020: Greece abandoned a harmful detention practice and is in the process of building a nationwide guardianship system; Italy has maintained legal safeguards and is trying to expand its capacity amid rising arrivals; Malta has taken initial steps to shorten child detention periods and tries to involve its child protection services more directly. Yet persistent gaps between obligation and implementation show that these states have not fully reconciled migration management with child-rights obligations.

This thesis takes these findings as a starting point to investigate the core research question:

“How is the ‘*best interests of the child*’ principle being implemented in the context of the detention of UASCs in the first-entry states of Malta, Italy, and Greece, and what measures can enhance the alignment of national practices with international and European child protection standards?”

This main question is supported by the following sub-questions that are designed to structure the comparative analysis and assess both legal compliance and practical effectiveness:

1. BIC in Detention Procedure: In what ways do Malta, Italy, and Greece operationalize the BIC principle in their detention related decision-making procedures for UASCs? This sub-question examines formal protocols (e.g. BIC assessments, specialized units, or guidelines for handling minors) as well as actual practices during the decision-making process.

2. Law vs. Implementation: Where do discrepancies arise between states' legal obligations under international law, European law, and national law, and their practical implementation on the ground? This is with the aim to identify specific areas of non-compliance or inconsistent practice and to analyse why these gaps persist despite the binding obligations in place.
3. Margin of Appreciation and National Variation: How does the concept of margin of appreciation manifest in national policies toward UASCs, and to what extent does it account for the differences in protection mechanisms among Malta, Italy, and Greece? This will also guide the analysis of whether certain divergences fall within an acceptable range of discretion or whether they cross the line into breaching internationally or regionally binding obligations.
4. Humanitarian Standards: To what extent do existing operational frameworks governing the detention of UASCs in Italy, Greece, and Malta align with recognised international humanitarian protection standards in the context of children, and to what extent do these standards influence State responses in practice?

Through addressing these questions, the thesis aims to critically examine how institutional practices, legal interpretations, and structural constraints shape the operationalisation of the BIC principle in the context of detention of UASCs entering Europe through the Mediterranean route. The analysis will connect the legal commitments to on-the-ground realities so as to not only to assess compliance but with the goal to propose actionable, context-sensitive recommendations that can bridge the persistent implementation gap and advance more child-sensitive migration governance in frontline States along the Mediterranean route.

2. Methodology

This thesis investigates how the BIC principle is implemented in the context of the detention of UASCs in Italy, Greece, and Malta. As noted previously, although these states are legally bound under international and regional frameworks to prioritise children's best interests, they instead often respond to UASCs through migration enforcement rather than protection-oriented mechanisms. This disconnect between legal commitment and operational reality is particularly visible in detention decisions and therefore forms the core problem that this research seeks to

understand. The approach taken in the research methodology is therefore in consideration of the need to analyse both, the formal structure of law and the practical implementation of migration governance.

2.1 Research Approach and Design

This thesis adopts a qualitative, socio-legal, and interdisciplinary research approach positioned within the frameworks of an interpretivist paradigm.¹⁶ This approach reflects the belief that law and/or legal standards cannot be understood in isolation from the social, institutional, and political contexts in which they are being applied and therefore, allows the research to explore how legal obligations are interpreted and implemented in practice. Additionally, the research for this thesis is exploratory and inductive as it begins with grounded observations and develops insights by identifying patterns across multiple contexts.¹⁷

The methodology of the research is anchored in two main formats. The first is doctrinal research which has been used to identify and interpret international, European, and national legal norms relevant to the protection of UASCs. This includes treaty law, jurisprudence from international courts, EU directives, and domestic legislation. The doctrinal component establishes the legal benchmark against which the conduct of states can be evaluated. In conjunction to this, socio-legal research has been used to assess how these norms are implemented or understood on the ground. This includes a qualitative analysis of institutional reports, civil society documentation, and relevant case studies to understand how detention decisions are operationalised frontline contexts. This dual methodological approach enables the research to evaluate not just the subject of the law, but also its functional application within contested landscapes. Furthermore, it allows the study to explore how states negotiate the competing priorities of migration control and child protection rather than evaluating state and institutional compliance with obligations in a binary manner.

This combination of doctrinal and socio-legal methods is supported by existing scholarship that argues for interdisciplinary engagement when analysing legal norms that intersect with complex social processes. It is often reiterated that socio-legal research is particularly suited to investigating the law in action, where formal legal norms meet institutional and political realities.¹⁸ In the

¹⁶ Reza Banakar and Max Travers (eds), *An Introduction to Law and Social Theory* (Hart Publishing 2002).

¹⁷ Robert K. Yin, *Case Study Research and Applications: Design and Methods* (SAGE 2018).

¹⁸ Reza Banakar and Max Travers (eds), *Theory and Method in Socio-Legal Research* (Hart Publishing 2005) 6–7.

context of child migration, socio-legal inquiry enables the researcher to analyse the different levels of interpretation, contestation, and adaptation that would have otherwise remained unrepresented through doctrinal analysis alone. Therefore, understanding the implementation of the BIC principle requires methodological tools capable of tracing both the textual meaning of the law and the administrative conditions under which that meaning is applied or diluted. Accordingly, the methodology integrates doctrinal and socio-legal methods to offer a comprehensive account of the legal, institutional, and practical dimensions shaping the detention of UASCs.

2.2 Case Study Selection

This research is structured around a comparative case study of Italy, Greece, and Malta. These are three Mediterranean states that constitute key first-entry points along the Mediterranean migration route. The selection of these cases is based on the fact that these states are pivotal points along this route where legal obligations concerning UASCs collide most visibly with the pressures of migration management.

These selected countries hold significant geopolitical relevance due to their exposure to consistent maritime migration flows, especially UASCs. Each of these selected jurisdictions experiences continuous migration flows that test the operational limits of child protection infrastructure. Additionally, all three countries are signatories to key international and regional legal instruments, including the UNCRC, the ECHR, and relevant EU directives. Despite these shared obligations, the states demonstrate distinct practices on-the-ground which allows this thesis to conduct a comparative analysis of compliance and divergence from established law and standards.

Recent institutional reforms within these States make them even more suitable for examining evolving child protection frameworks in the context of detention of UASCs. Italy's 'Zampa' Law (2017), Greece's Guardianship Law (2018), and Malta's Minor Protection Act (2019) all mark domestic legal developments that reshaped national protection responses toward UASCs. Additionally, these countries benefit from relatively high levels of secondary data availability that provide triangulable sources of qualitative evidence for this research.

Finally, the selection of these cases allows a balance between comparative breadth and analytical depth. Limiting the study to three States ensures that each case can be examined in terms of national legal frameworks as well as the actual practices of detention and BIC assessments. The

aim of the study is not to generalise across the entire EU, but to produce a grounded and context-sensitive understanding of how first-entry states interpret and implement the BIC principle in high-pressure settings. These three cases are not exhaustive but are emblematic of the broader challenges confronting Europe’s asylum and reception systems.

2.3 Data Collection and Sources

This research relies on secondary qualitative data, allowing for in-depth analysis without direct fieldwork. The data sources are therefore organised into categories, reflecting the dual-methodological design of doctrinal and socio-legal inquiry, to clarify the link between the type of source and the information gathered.

| Data Source Type | Applicable Methodology | Purpose of Use |
|----------------------------------------|----------------------------------|----------------------------------------------------------------|
| International and regional legal texts | Doctrinal Research | Establish legal obligations regarding BIC and detention |
| National legislation | Doctrinal Research | Contextualise domestic legal obligations |
| ECtHR jurisprudence | Doctrinal & Socio-Legal Research | Analyse judicial interpretations of State practices |
| Institutional reports | Socio-Legal Research | Assess on-ground implementation and practices |
| Academic literature | Doctrinal & Socio-Legal Research | Interpret standards and frame legal and sociological discourse |

Table 2.1: Overview of Data Sources, Methodological Approaches, and Their Application in the Research.

The selection of sources was influenced by recency, reliability, and thematic relevance to the research questions. Sources were triangulated to ensure consistency in findings across different institutions and jurisdictions. Data collection followed a purposive strategy guided by interpretivist and exploratory research principles. Lastly, all sources are cited according to OSCOLA guidelines.

2.4 Theoretical Framework

This research is placed in a theoretical framework that draws on three intersecting bodies of theory: humanitarian standards in child protection, human rights-based approaches (HRBA) to the child, and developmental vulnerability theory. Each of these theories provide this research with distinct lenses through which the implementation of the BIC principle in detention contexts can be examined. The humanitarian standards offer actionable benchmarks, the HRBA underlines the legal standard of protection, and developmental theory captures the deeper human cost of detention practices. These theories are therefore operationalised throughout this research to analyse legal texts, policy documents, and institutional practices across Italy, Greece, and Malta. Collectively, the three theoretical frameworks form an interdisciplinary structure that allows the thesis to evaluate UASC detention practices from both legal and operational perspectives. This ensures that the research questions are examined not only through compliance metrics but also through deeper analysis of on-ground realities.

2.4.1 Humanitarian Standards in Child Protection

The research is informed by the Minimum Standards for Child Protection in Humanitarian Action (CPMS) which provide both a practical and ethical foundation for evaluating state practices toward the detention of UASCs. Developed by the Alliance's Child Protection Working Group and formally integrated into the Global Protection Cluster, the CPMS are designed specifically to guide child protection practice and they have become the principal reference for practitioners operating in both conflict and migration environments.¹⁹ These standards reflect a broad humanitarian consensus by drawing on principles of the CRC and offer both practical and ethical criteria against which state treatment of UASCs can be evaluated. Particularly relevant are CPMS Standards 3 (Case Management), 13 (Unaccompanied and Separated Children), and 15 (Case Planning), which set benchmarks against which BIC determinations and detention policies can be assessed. These standards serve as key reference points for evaluating the adequacy of protection responses in practice. Therefore, by using these humanitarian benchmarks, the study assesses whether Italy, Greece, and Malta's detention policies and practices align with what is considered the minimum acceptable care for vulnerable children.

¹⁹ Alliance for Child Protection in Humanitarian Action, *Minimum Standards for Child Protection in Humanitarian Action* (2019) <https://alliancecpha.org/en/cpms> accessed 23 April 2025.

The CPMS framework is applied in this thesis in two ways: (1) identifying indicators of child-centric care within detention facilities, and (2) identifying the gap between each State's protection standards and its procedural reality. Analysing the research through this lens complements the legal analysis by focusing on operational standards of care and ensuring that the comparative study considers not only the legal obligations, but also the standards required by prevailing humanitarian norms for children in custody. Overall, the use of this framework strengthens the study's ability to evaluate current detention practices against globally recognized benchmarks of minimum care and therefore, provides a nuanced understanding of how far the BIC are being realized in frontline settings.

2.4.2 Human Rights-Based Approaches to the Child

This thesis adopts a HRBA to child protection throughout the study. This framework ensures the conceptualization of the child not only as a passive recipient of care but as a rights-holder with legally enforceable entitlements, and states are enshrined as duty-bearers which obligates states to respect, protect, and fulfil those rights in good faith. This theoretical lens is enshrined in the binding standards of the CRC and other related human rights instruments. By utilizing the HRBA, the study can comprehensively assess whether each State's laws and actions meet the child-rights obligations that give substance to the best-interests principle in detention contexts.

The HRBA is supported by authoritative interpretations from the UN Committee on the Rights of the Child. Notably, General Comment No. 6 (2005) interprets the obligations of states in relation to UASCs and emphasizes procedural guarantees and child-sensitive procedures.²⁰ Likewise, General Comment No. 14 (2013) emphasizes that the BIC principle requires active measures in law and policy to ensure children's well-being is a primary consideration in all decisions, including those about detention or migration control.²¹ The HRBA also provides a means to critically examine states' justifications for their practices and challenges the arguments of administrative discretion or national security by highlighting the fundamental child rights at stake. Courts such as the European Court of Human Rights (ECtHR) have repeatedly underscored the heightened

²⁰ UN Committee on the Rights of the Child (CRC), *General Comment No 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, UN Doc CRC/GC/2005/6 (1 September 2005) paras 19–22, 33–38.

²¹ CRC, *General Comment No 14: On the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration*, UN Doc CRC/C/GC/14 (29 May 2013) paras 1–6.

protection owed to children as a particularly vulnerable group. This means that state authorities do not have a large margin to depart from child-rights norms in contexts like immigration detention.²² Relying on these instruments, the thesis establishes a normative benchmark for each country case study through which detention practices are evaluated against the child-rights standards that the HRBA demands.

Overall, the theoretical framework of HRBA directly informs the comparative socio-legal methodology employed in this thesis by ensuring that the analysis of State practices remains connected to the legal meaning of the best-interests principle. By framing detention practices through this lens, the thesis critically evaluates the material and procedural safeguards granted to UASCs and provides a normative benchmark for evaluating whether national practices meet the threshold of effective rights realisation or if they tip into rights-infringing practices.

2.4.3 Child Development and Vulnerability Theories

To further contextualise the socio-legal dimension of the research, the thesis draws on child developmental and vulnerability theories with the aim of creating an evaluative understanding of how detention affects UASCs' well-being and developmental trajectory. This interdisciplinary framework recognizes that detention is an issue beyond legal or policy levels because it heavily affects the psychological and physical development of children. By drawing on established developmental and vulnerability theories, the research can better interpret what the BIC principle entails, especially under the extreme conditions of forced migration and institutional detention.

Through the lens of childhood development, a key perspective used in this thesis is Bowlby's attachment theory which emphasizes that a stable and caring relationship with a consistent caregiver is crucial for a child's emotional security and healthy development.²³ UASCs who are detained in restrictive environments and without access to family or caregivers are at grave risk of developmental harm. The lack of a nurturing figure and the prevalence of stress in detention can impede the child's ability to form trust and socio-emotional skills, undermining their well-being. In an extended detention setting, young children may experience anxiety, regression in developmental milestones, or attachment disorders, while adolescents can exhibit depression,

²² *Mubilanzila Mayeka and Kaniki Mitunga v Belgium App No 13178/03 (ECtHR, 12 October 2006) paras 50–58.*

²³ John Bowlby, *Attachment and Loss, Volume I: Attachment* (2nd edn, Basic Books 1983) 265–270.

aggression, or withdrawal.²⁴ This clearly illustrates how detention practices can conflict with the child's best interests when a system causing this harm fails to meet the fundamental developmental needs that any BIC assessment must directly account for. By integrating attachment theory into the framework of analysis, the thesis evaluates implementation of the BIC principle also through the tangible impacts on a child's growth and psychological health.

The research also utilizes Martha Fineman's vulnerability theory which provides the research with a conceptual framework for understanding the special position of children in law and society. This theory argues that vulnerability is a universal and inherent aspect of the human condition, but certain groups experience particular heightened vulnerability that warrants a stronger protective response by the State.²⁵ Through the framework of this theory, the thesis conceptualizes UASCs in detention as vulnerable subjects due to their age, separation from caregivers, trauma of displacement, and the impacts of detention. This approach therefore reinforces that the BIC principle should be the paramount consideration in UASC detention cases by framing the principle as the legal mechanism through which the State must acknowledge and responds to the child's needs.²⁶ Furthermore, this theoretical lens also helps assess whether each country's legal and institutional framework responds to the child's vulnerability in actuality or whether it just exacerbates it. Overall, vulnerability theory allows the research to critique practices that treat UASCs as immigration rule violators rather than as children in need of specialised care. It also guards against performative implementation of BIC procedures by asking whether those procedures actually achieve substantive protection for the child.

The thesis builds an evaluative understanding of the real developmental impact of detention on children by connecting childhood development and the vulnerability theory. The study positions its legal and empirical findings with these theoretical frameworks so as to analyse any identified patterns of practice through the developmental and vulnerability lens for further contextualisation. This therefore enhances the analytical force of socio-legal findings by connecting them to the lived

²⁴ Louise K. Newman and Zachary Steel, 'The Child Asylum Seeker: Psychological and Developmental Impact of Immigration Detention' (2008) 17(3) *Child & Adolescent Psychiatric Clinics of North America* 665, 667–670.

²⁵ Martha Albertson Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20 *Yale J L & Feminism* 1.

²⁶ Kirsten Sandberg, 'The Rights of Vulnerable Children and the Principle of the Best Interests of the Child' (2015) 23 *International Journal of Children's Rights* 633, 636–640.

effects of institutional decisions, allowing for a more comprehensive assessment of what BIC should entail in practice.

2.5 Analytical Framework

This research relies on specific analytical tools to interpret and synthesise the data and information collected through the above theoretical methodologies. Given the study's dual emphasis on legal obligations and institutional practice, the analytical framework employed here combines the four phases of legal mapping, thematic analysis, comparative synthesis, and interpretive integration. These phases also support both vertical (law-to-practice) and horizontal (cross-national) analysis, ensuring that all findings reflect the intersection of international norms, implementation gaps, and contextual realities.

2.5.1 Data Triangulation

Given the reliance on secondary data, data triangulation is an essential analytical tool for this research. The study cross-verifies findings across four primary categories of sources: (1) international and regional legal norms, (2) case law and jurisprudence, (3) institutional and civil society reports, and (4) academic literature. The adoption of this method aims to enhance both the reliability and credibility of conclusions by identifying convergences or inconsistencies across findings. For example, gaps between formal compliance and practical implementation are identified by comparing legal norms with ECtHR case law and reading this in context with the field reports from NGOs and UN agencies.

Additionally, the study also adopts methodological triangulation by combining doctrinal legal research with socio-legal interpretive methods, and source triangulation by drawing from different institutional and geographic contexts. This layered approach allows the thesis to make a contextually informed assessment of how the BIC principle is operationalized in practice.

2.5.2 Data and Information Analysis

The analysis of data in this study follows a structured and theme-based process designed to synthesise doctrinal texts with socio-legal interpretations. Given the interdisciplinary nature of the methodology, the data analysis was guided by legal reasoning and thematic mapping and conducted through four stages.

The first phase involved a comprehensive legal mapping of international, regional, and national instruments relevant to the BIC principle in the context of detention of UASCs. Legal provisions were examined against the interpretive guidance provided by instruments such as CRC's General Comment No. 6. The aim of this stage was to identify the normative structure of states' obligations and identify the recent legal developments in the interpretation of these obligations.

During the second phase, the study engaged in the thematic classification of institutional and civil society reports and relevant case law. Information was classified into pre-identified categories aligned with the thesis sub-questions. This included: (1) BIC assessment and decision-making procedures, (2) domestic operationalization of legal frameworks, (3) margin of appreciation and state discretion, and (4) guardianship systems and roles.

The third phase was the process of comparative synthesis which sought to identify the common patterns and divergences across the case studies. State practices and consequent effect on the detention procedures of UASCs were assessed in relation to one another in order to allow the analysis to distinguish between state-specific shortcomings and regional or international structural issues.

The final phase involved interpretive integration through which findings from legal and empirical sources were analysed through the theoretical lenses outlined earlier. The CPMS framework was used to evaluate procedural adequacy in detention settings, the HRBA informed the analysis of compliance standards, and developmental vulnerability theory provided the tool to assess the likely psychosocial impact of prolonged detention and institutional neglect. This process ensured that the analysis did not just catalogue practices but also assessed their real-world consequences.

By maintaining consistency across these phases, the analysis aims to capture learnings beyond just the surface-level with the hope of developing a critical, context-sensitive understanding of how the BIC principle is translated into practice in frontline EU states in the context of detention of UASCs.

2.6 Ethical Considerations

This study adheres to high academic ethical standards, particularly given the research focus on vulnerable children. No primary data was collected through interviews or surveys, thereby

avoiding any direct or indirect harm to human subjects or beneficiaries of protection. All data used was from publicly available secondary sources.

The research also follows the ‘Do No Harm’ principle, avoids speculation, and tries to acknowledge the limits of institutional reports and legal texts in capturing lived experiences. While the study engages with charged topics such as detention and exploitation, it tries to do so with academic objectivity to the extent possible in such contexts. Additionally, to minimize confirmation bias, the study draws from a wide range of sources, including critical and supportive assessments of state practice. All materials are cited transparently and appropriately.

2.7 Researcher Positionality

The research is conducted with an explicit awareness of the researcher’s positionality. The author does not claim neutrality in the abstract but rather explicitly embraces a critical socio-legal orientation that recognises the power asymmetries faced by UASCs in legal and administrative settings. The research not only studies the normative commitments required through child rights frameworks but also remains critically aware of the effects of institutional inertia, political will, and systemic exclusion on the fulfilment of these commitments.

The researcher additionally brings prior field experience and institutional familiarity with refugee contexts. While this aids interpretive nuance, it also requires constant reflexivity to prevent bias or over-identification with institutional narratives. This self-awareness is operationalized through structured peer reviews and transparency in evidentiary interpretation.

2.8 Limitations of the Study

There is a strong attempt to ensure high academic integrity of the study, however, limitations of the research should still be acknowledged. These limitations do not undermine the overall validity of the research but rather delineate the boundaries within which its findings should be interpreted.

The most significant constraint is the absence of primary data. Due to the ethical and practical complexities of engaging directly with UASCs, this research relies exclusively on secondary sources. While this choice protects vulnerable populations from potential harm or retraumatisation, the absence of interviews or field-based observation limits insights into the everyday experiences of UASCs and frontline workers. As a result, some of the lived dimensions of detention can only be inferred through the lens of institutional or judicial observations.

The study is also vulnerable to certain constraints due to its reliance on institutional reporting. Reports by international organisations, NGOs, and state institutions may voluntarily or involuntarily reflect advocacy priorities or data gaps. While source triangulation has been employed to mitigate these effects, there may still be an effect on the depth of comparative insight gained from these reports.

Another limitation of this study is the temporal fluidity of migration governance. The legal and institutional landscapes in States are continuously evolving in response to changing migration flows, political climates, and funding arrangements. The study captures developments in Italy, Malta, and Greece between 2016 to mid-2025 and therefore, its findings are time-bound. Policy shifts that occur beyond the study's research window may affect the relevance or applicability of specific conclusions from this research.

Despite these limitations, the research offers context-sensitive insights with broader normative implications and situates its findings within clearly defined boundaries that come with conducting research at the intersection of migration governance, international law, and children's rights.

3. State of the Art

This chapter provides a critical review of existing scholarship, jurisprudence, and policy on the detention of unaccompanied and separated children (UASCs) in European first-entry states and situates this assessment at the intersection of child rights, migration governance, and established international humanitarian standards. Specifically, it examines leading theories, laws, and research findings on thematic topics such as universal human rights claims versus sovereign migration control, conceptual debates on the BIC principle, insights on child immigration detention, and specific national practices. Furthermore, this chapter establishes the theoretical and doctrinal framework necessary for understanding the BIC principle and its implications for the detention of UASCs and serves as the foundation for the practical and operational analysis conducted in this research.

Through the mapping and analysis of the existing body of knowledge, this chapter highlights how the literature to date has interacted with understanding how child protection obligations are reconciled with border control objectives and where standards of human rights and humanitarian principles converge or conflict in practice. By mapping these debates and evidentiary findings, this chapter lays the foundation for this thesis' analysis on how Italy, Greece, and Malta reconcile the BIC of UASCs with their migrant detention practices. This chapter sets the scholarly and theoretical foundations for the thesis, while detailed legal and jurisprudential analyses of the BIC principle will be extensively addressed in later chapters.

3.1 Universality and Contestations of Human Rights in Migration Governance

An underlying consideration for this study is the longstanding debate over the universality of human rights versus entitlements under state sovereignty. It is commonly understood in the study of human rights that certain fundamental rights are inalienable and apply to all individuals, irrespective of legal status or nationality. However, in the context of cross-border migration, the universality of rights is often contested and curtailed by States. In line with this argument, Jack Donnelly argues that while human rights are theoretically universal, “*except in cases of genocide, sovereignty still ultimately trumps human rights*”.²⁷ This is described as the “*relative universality*” of human rights where rights are normatively universal but still contingent on sovereign

²⁷ Jack Donnelly, 'The Relative Universality of Human Rights' (2007) 29(2) Human Rights Quarterly 281, 303.

recognition for their enforcement.²⁸ Under this perspective, if an individual has no state willing to grant them protection such as in the case of refugees or irregular migrants, then those universal rights become redundant.

Michael Ignatieff critiques the politics that need to be considered when addressing the universalism of human rights. He highlights that such human rights discourse can be perceived as a form of moral imperialism and provoke greater resistance from governments that see universalist claims as threats to their autonomy.²⁹ In light of this, he suggests a minimalist approach to human rights that recognises their value for human dignity but still appreciates the need for sovereign backing. Ignatieff's analysis underscores the central tension between human rights principles that enshrine universal child protections and sovereign migration governance. Within the context of transnational migration, this tension is referred to by Seyla Benhabib as the constitutive dilemma of liberal democracies. She treats this as a collision between "*sovereign self-determination claims on the one hand and adherence to universal human rights principles on the other*".³⁰ It is important to note that governments still frequently treat immigration as a special jurisdictional situation where they can enjoy greater sovereign latitude. This phenomenon is often referred to as "*immigration exceptionalism*".³¹

Cathryn Costello observes that international and regional human rights bodies to some extents have allowed for weaker protections in immigration detention as compared to criminal detention. This indirectly gives legitimacy to a state's immigration control prerogatives argument in the derogation of human rights. She further notes that the universal right to liberty is enforced less for migrants which results in routine, or sometimes even automatic, detention of asylum seekers across Europe.³² Here, Costello terms the affected individuals as the "*elusive universal subject*" because while they may theoretically have rights, they have no practical access to these rights due to sovereign migration control.³³ In the context of UASCs, although they are entitled to protections as children, they may still be treated as illegal migrants first and as children second. This is further

²⁸ Ibid.

²⁹ Michael Ignatieff et al, *Human Rights as Politics and Idolatry* (ed Amy Gutmann, Princeton University Press 2001) 53.

³⁰ Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge University Press 2004) 2.

³¹ David S Rubenstein and Pratheepan Gulasekaram, 'Immigration Exceptionalism' [2017] 111 Nw U L Rev 583.

³² Cathryn Costello, 'Human Rights and the Elusive Universal Subject: Immigration Detention under International Human Rights and EU Law' (2012) 19(1) *Indiana Journal of Global Legal Studies* 257, 260.

³³ *ibid* 285–87.

highlighted by scholars like Michael Flynn who documents that states often justify immigration detention on administrative grounds so that they can circumvent the scrutiny caused by the deprivation of liberty in other contexts.³⁴

The clash between universality and sovereignty is particularly pronounced in the case of UASCs because it causes a direct conflict between the two powerful normative frameworks of the BIC and sovereign border governance. Within this debate, Alice Farmer notes that the fundamental principle of the best interests of the child should take precedence over immigration enforcement and that detention of children under the argument of migration control cannot be in line with a meaningful best-interests approach.³⁵ Furthermore, authors like Jacqueline Bhabha have highlighted the extent of marginalisation of UASCs. She documents how such children often fall through the cracks of protection considerations because neither the adult-centric refugee rights frameworks nor the citizenship-dependent child welfare systems fully protect them.³⁶ This demonstrates that universality of human rights protections is not automatically assured for UASCs but rather, it must be actively operationalised within unfavourable policy environments. Understanding this broader human rights contestation builds a base for this thesis to assess the BIC principle as the legal vehicle to prioritize children's rights in migration governance.

3.2 Theoretical and Conceptual Debates on the BIC Principle

3.2.1 Evolution of Article 3(1) CRC

The BIC principle is codified in the CRC and has evolved into a cornerstone of international law. Article 3(1) declares that “*in all actions concerning children, whether undertaken by public or private welfare institutions, courts, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*”³⁷ This broad formulation establishes the BIC as a primary consideration across all stages of decision-making. Conceptually, the BIC principle is often described as having three elements: it is (1) a substantive right of every child to have their best interests assessed and given due consideration, (2) a fundamental interpretative legal principle, i.e., if a law or measure can be interpreted in different ways, the one that best

³⁴ Michael Flynn, 'Kidnapping Refugees?: The Immigrant as Terrorist in the Post-9/11 Era' (2003) 15 IJRL 660.

³⁵ Alice Farmer, 'Migration Controls vs. Child Rights' (2016) 28 IJRL 266, 271.

³⁶ Jacqueline Bhabha, 'Arendt's Children: Do Today's Migrant Children Have a Right to Have Rights?' (2009) 31 Human Rights Quarterly 410, 421.

³⁷ CRC (n 12) art 3(1).

realizes the child's interests should be chosen, and (3) a rule of procedure as actors in the process must evaluate how their decisions will affect the child and also document that the child's interests were considered in their decision-making.³⁸ The breadth of this principle allows it to apply to all areas of law and policy involving children.

At the same time, the limits of the BIC principle must be recognized as part of the conceptual framework. Scholars and practitioners have noted that "*the concept is vague and indeterminate*" because determining what exactly constitutes a child's BIC in each situation can be complex and heavily dependent on context.³⁹ The broad wording of the principle's codification offers very little substantive guidance on what the child's best interests could be in a given situation. This leaves significant discretion with authorities or judges to interpret the concept. Furthermore, Kirsten Sandberg notes that the best interests of the child is a central but still indeterminate concept because it gains concrete meaning only through context-specific evaluation.⁴⁰ This vagueness is problematic for the principle's application because while it allows flexibility to adapt to each child's circumstances, it still risks subjective decision making or even misuse. In migration settings, the indeterminacy emboldens states to unfavourably reconcile a child's best interests with their own immigration control interests.

To guard against this, the CRC Committee issued General Comment No. 14 (2013) which provides an authoritative guidance on interpreting and implementing Article 3(1). It also outlines a holistic method of assessment that considers various factors in the child's situation including: the child's own views and wishes, while considering age and maturity; the child's identity, including gender, culture, religion, language, and any other identity facets; the importance of preserving the family environment and maintaining relationships; the child's care, protection and safety, including protection from violence, abuse, or exploitation; the child's situation of vulnerability; and the

³⁸ CRC, *General Comment No 14* (n 21) para 6.

³⁹ Elaine Sutherland and Lesley-Anne Barnes Macfarlane (eds), *Implementing Article 3 of the United Nations Convention on the Rights of the Child: Best Interests, Welfare and Well-being* (Cambridge University Press 2016) 27; Marta Tomasi, 'The European Court of Human Rights and the Best Interests of Unaccompanied Migrant Minors: a Step Towards a More Substantive and Individualized Approach?' (International Law Blog, 10 October 2019) <https://internationallaw.blog/2019/10/10/the-european-court-of-human-rights-and-the-best-interests-of-unaccompanied-migrant-minors-a-step-towards-a-more-substantive-and-individualized-approach/> accessed 23 May 2025.

⁴⁰ Kirsten Sandberg, 'The Convention on the Rights of the Child and the Vulnerability of Children' (2015) 84 *Nordic Journal of International Law* 221, 222.

child's rights to health and education, among others.⁴¹ The Committee also directed that a child's best interests must be assessed on a case-by-case basis so that the individual circumstances of each child can be accounted for. This would therefore require decision-makers to gather all relevant information about the child's context and to analyse which option can best protect the child's holistic development and welfare. In practice, this necessitates a multidisciplinary approach and the comprehensive involvement of child protection professionals throughout the assessment process to ensure that the child's best interests are protected.⁴²

3.2.2 Theoretical Lenses

The BIC principle is also analysed in this thesis through three theoretical lenses, each emphasizing a different dimension of the child's status. These standards, namely the HRBA, CMPS, and development/vulnerability theories, are each introduced here briefly, with detailed application in later chapters.

The HRB) conceptualizes children as active rights-holders and states as duty-bearers. Under the HRBA theory, BIC is treated as a binding legal obligation that is derived from international instruments like the CRC and therefore, states must implement it in good faith. This approach also provides a framework to critique state justifications of administrative burden or deterrence against child protection requirements. In the context of UASCs, this is reiterated by the CRC Committee's General Comment No. 6 (2005) on unaccompanied children, which stresses that State obligations under the CRC, including the best interests principle and the right to special protection, apply to all children under a State's jurisdiction, "*irrespective of their nationality, immigration status or statelessness*".⁴³ This approach is also supported by the ECtHR which consistently holds that the "*extreme vulnerability*" of children takes precedence over any considerations relating to irregular migration status.⁴⁴

The CPMS offer an operational benchmark for assessing care in contexts including displacement and detention and translates humanitarian and human rights principles into concrete indicators that guide operations. By referencing CPMS, researchers can evaluate whether conditions and

⁴¹ CRC, *General Comment No 14* (n 21) paras 48–79.

⁴² *ibid* paras 46-47, 85.

⁴³ CRC, *General Comment No 6* (n 20) paras 12.

⁴⁴ *Mubilanzila Mayeka* (n 22) para 55; *Khan v France* App no 12267/16 (ECtHR, 28 February 2019) para 74; *Darboe and Camara v Italy* App no 5797/17 (ECtHR, 21 July 2022) para 144.

procedures meet basic thresholds of child protection. An analysis of existing literature reveals that few relevant academic analyses explicitly incorporate the CPMS or other humanitarian standards when examining immigration detention practices. The humanitarian standards lens is useful for the purposes of this research because it frames BIC not only as a legal norm but also as a practical duty of care. By integrating this lens, the thesis goes beyond just the letter of the law in order to also assess the humanitarian reality against global child protection standards.

Approaching the research with an understanding of child development and vulnerability theory provides the study with a deeper perspective on why detention is fundamentally against the BIC principle. John Bowlby's Attachment Theory asserts that children require stable and nurturing caregiving relationships and a secure environment for emotional and cognitive development. Consequentially, prolonged separation from caregivers and exposure to stress can cause lasting harm to children, especially in formative years. Bowlby's findings originated decades ago but they are still useful to this research because contemporary studies on detained asylum-seeking children show the prevalence of symptoms such as anxiety, depression, regression, and behavioural problems.⁴⁵ In this context, the operationalisation of the BIC principle must ensure that such impacts are weighed heavily. Furthermore, Martha Fineman's vulnerability theory helps contextualise this research by framing children as vulnerable subjects who are entitled to an affirmative state obligation that mitigates their vulnerability.⁴⁶ In the context of UASCs, detention without comprehensive safeguards would therefore represent a failure of the state's positive obligation to protect the child's vulnerabilities. By incorporating this developmental and vulnerability-based theoretical framing; this thesis treats developmental harm and vulnerability as central to evaluating the acceptability of states' actions.

Overall, the BIC principle is enshrined and understood through legal doctrine as well as broader theories of justice and care for children in this thesis. In the context of UASCs, a human-rights lens obligates the prioritisation of the child's rights, a humanitarian lens establishes the standards of protection, and a developmental lens underscores the real-life impacts on the child's growth and development. Importantly, all three lenses converge on the understanding that detention of children

⁴⁵ Juliane Schubert and Dasha Ocheret, *Behind Bars: The Detention of Migrant Children in Sweden and Germany* (Save the Children Sweden 2015) 11–15; Zachary Steel et al, 'Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia' [2004] 28 Aust N Z J Public Health 527.

⁴⁶ Martha Albertson Fineman, 'The Vulnerable Subject and the Responsive State' [2010] 60 Emory LJ 251.

is rarely, if ever, in their best interests. These theoretical lenses form the basis for evaluating the practical operationalisation and implementation gaps discussed in Chapters 4 and 5.

3.3 Detention of UASCs: Legal and Empirical Scholarship

3.3.1 International and Regional Legal Standards

There is a broad consensus in international law that the detention of children for migration control must be avoided and used only as a last resort. In Article 37(b), the CRC provides that children should be detained only “*as a measure of last resort and for the shortest appropriate period of time.*” In General Comment No. 6, the CRC Committee went further than this specifically for UASCs by emphasizing that they “*should not, as a general rule, be detained*” and if needed, alternative care arrangements should be made instead of detention.⁴⁷ The UN Guidelines for the Alternative Care of Children and UNHCR’s Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers reinforce that immigration detention in the context of children violates the BIC principle and should be prohibited in policy.⁴⁸ Furthermore, in 2017 the UN Committee on the Rights of the Child and the Committee on Migrant Workers issued Joint General Comment No. 4/23 where they noted that children should never be detained for reasons related to their or their parents’ migration status.⁴⁹ This evolving consensus has informed national and regional considerations and may be considered as soft law. Within the regional governance systems of Europe, the legally binding standards are enshrined within the provisions in the ECHR, ECtHR jurisprudence, and EU law which will be extensively analysed in Chapter 4.

3.3.2 Empirical Evidence on Detention Practices and Harms

Existing research documents the practical realities and harms of detaining UASCs. Studies have consistently found that even short periods of detention can have severe and lasting effects on children’s mental health. Sarah Mares (2021) confirmed the occurrence of high rates of self-harm, suicidal ideation, and attachment disorders among detained asylum-seeking children.⁵⁰ This is also

⁴⁷ CRC, *General Comment No 6* (n 20) para 61.

⁴⁸ UN General Assembly (UNGA), 'Guidelines for the Alternative Care of Children' Res 64/142 (24 February 2010) para 29(c)(iv); UNHCR, 'Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention' (2012) Guideline 9.2.

⁴⁹ UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and CRC, *Joint General Comment No 4 (CMW) and No 23 (CRC) on the Human Rights of Children in the Context of International Migration* (16 November 2017) para 5.

⁵⁰ Sarah Mares, 'Mental health consequences of detaining children and families who seek asylum: a scoping review' (2021) 30(10) *European Child & Adolescent Psychiatry* 1615.

supported by Lorek et al. (2009) whose research conducted health assessments of asylum-seeking children in UK detention centres and found high rates of mental health difficulties among adolescents who had been detained.⁵¹ These institutional reports also note that the stressors in these scenarios include not only the deprivation of liberty but often also the substandard conditions of detention and the uncertainty about the future. Furthermore, a press release from IOM, UNHCR, and UNICEF highlighted that detention has negative long-term impacts on children's health and well-being and is never in their best interests.⁵² Therefore, detention adds trauma to an already vulnerable child's life and compounds their double vulnerability.

The Global Study on Children Deprived of Liberty (2019) published data showing that thousands of migrant children were in detention worldwide and often in conditions far below international standards. This data analysis also found that detained children frequently suffer from insomnia, loss of appetite, and symptoms of trauma. Furthermore, many interviewed children could not understand why they were being punished when they had committed no crime in their eyes.⁵³ This mental uncertainty further erodes their trust in authorities and can hamper their societal integration capacities. Human Rights Watch (HRW) has also published qualitative reports featuring insights from interviews with detained minors and reiterated that *“immigration detention has serious adverse consequences for children's health, well-being, and safety. As a result, it is never in the best interests of the child and amounts to a violation of children's rights.”*⁵⁴ Such evidence demonstrates that detention is inherently at odds with a child's best interests due to the harm caused.

Bhabha notes that unaccompanied children occupy an ambiguous legal space wherein child protection obligations and immigration priorities conflict. She further argues that liberty is a foundational right that should not be taken away simply due to a migration status.⁵⁵ Goodwin-Gill

⁵¹ Ann Lorek et al, 'The mental and physical health difficulties of children held within a British immigration detention center: a pilot study' [2009] 33 Child Abuse Negl 573.

⁵² International Organization for Migration (IOM), UNHCR and UNICEF, 'IOM, UNHCR and UNICEF Urge European States to End Child Detention' (News Release, 9 July 2022) <<https://www.unhcr.org/us/news/news-releases/iom-unhcr-and-unicef-urge-european-states-end-child-detention>> accessed 23 May 2025.

⁵³ United Nations Independent Expert for the Global Study on Children Deprived of Liberty, *Global Study on Children Deprived of Liberty : note* (A/74/136, 11 July 2019) <<https://digitallibrary.un.org/record/3813850?ln=en&v=pdf>> accessed 29 May 2025.

⁵⁴ HRW, 'Human Rights Watch Submits Comments on Proposed Rule Regarding the Detention of Children and Families' (6 November 2018) <<https://www.hrw.org/news/2018/11/06/human-rights-watch-submits-comments-proposed-rule-regarding-detention-children-and>> accessed 28 May 2025.

⁵⁵ Bhabha (n 36) 421.

also underscores that border enforcement measures must be consistently evaluated against fundamental humanitarian principles, particularly in relation to vulnerable groups such as children. While he acknowledges that detention can be used as an administrative tool, he warns that even well-intentioned states may lack the institutional capacity or alternative care structures necessary to avoid resorting to detention, leading to detention by default rather than by design.⁵⁶ Similarly, Crock points out that detention of children causes developmental delay and long detention can lead to loss of formative milestones that can never be recovered in a child's life.⁵⁷ These scholarly works collectively demonstrate that the existence of laws or court judgments is not enough, and the implementation of meaningful child protection responses requires political will and resources which may often be absent in frontline migration contexts.

3.4 Existing Gaps and Anticipated Research Contribution

The review of existing literature demonstrates a long and continuous engagement with the topic of UASCs in detention. However, the mapping of existing literature also reveals significant gaps. Current research on this topic tends to fall into silos where legal analysis often only focuses on doctrinal content and social research focuses on practices and qualitative impacts and only few studies combine both approaches. One consequence of this fragmentation is that while the literature may note theoretical gaps and propose legal solutions, it does so without accounting for the operational feasibility of solutions. This thesis aims to bridge this gap through the analyses in Chapters 4 and 5 by using an interdisciplinary socio-legal approach and evaluating not just the de jure compliance by states, but also the de facto implementation and the institutional reasons for any divergence.

Another gap noted in the literature is the lack of interaction with specific humanitarian frameworks like the CPMS in legal or policy analyses of the detention of UASCs. Due to this, the existing research does not consider the existing divide between the prevalent international minimum standards of child protection and the standards necessary for minimum legal compliance. Therefore, through the CPMS, this thesis establishes protection indicators to aid the assessment of whether states are truly operationalising BIC in their institutional practices. Additionally,

⁵⁶ Guy S Goodwin-Gill, 'Refugee identity and protection's fading prospect' in Frances Nicholson and Patrick Twomey (eds), *Refugee Rights and Realities: Evolving International Concepts and Regimes* (Cambridge University Press 1999) 220-252.

⁵⁷ Mary Crock and Mary Anne Kenny, *Protecting Migrant Children: In Search of Best Practice* (Elgar 2018) 45-50.

incorporating concepts like Bowlby's attachment theory or Fineman's vulnerability analysis allows for a deeper critique of state practice and positions the child's inherent dependency and developmental needs within the consideration of the BIC principle. Through this mapping of the literature, it is evident that while the principle is universally endorsed, its operationalisation in migration detention contexts remains challenging. By engaging critically with this body of scholarship, the research in this thesis aims to address the identified operationalisation gap from an interdisciplinary perspective. The theoretical and doctrinal discussions in this chapter provide the analytical benchmarks used in this thesis to critically evaluate the practical operationalization of the BIC principle as implemented by frontline European states.

4. Operationalising the BIC in the Detention of UASCs

This chapter analyses the evolving interpretation and application of the BIC principle to examine how it is operationalised in the context of the detention of UASCs. This analysis is further guided by the three theoretical frameworks discussed previously: the HRBA, the CPMS, and child developmental and vulnerability theory.

4.1 Legal Conceptualisation of BIC

4.1.1 BIC in the International Framework

The BIC is a fundamental principle of legal obligations related to child rights and a core guideline in all decisions affecting children. At its core, the principle requires that any action, decision, or policy concerning a child must prioritize the child's well-being and overall interests as a primary consideration. This doctrine was formalized in Article 3(1) of the 1989 United Nations Convention on the Rights of the Child (UNCRC), which provides that “*in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*”⁵⁸ This language makes clear that the principle applies to all contexts and to all actors dealing with children and also imposes a strong legal obligation on states. The UN Committee on the Rights of the Child has emphasized that the wording “*shall be a primary consideration*” means that no discretion exists to ignore the child's interests and authorities must assess and give weight to those interests in every case.⁵⁹ This principle therefore elevates children's interests to the forefront of assessment procedures and acknowledges children's unique vulnerability and context while permitting other factors to be weighed only when truly necessary.

In the context of UASCs, the BIC principle takes on an even greater significance since they are among the most vulnerable of all migrant demographics. These children often have fled conflict or persecution and endured treacherous journeys that cause them to suffer trauma, violence, and exploitation. Furthermore, upon arrival in a new country, they face the additional hurdle of complex legal systems and bureaucratic procedures. Article 20 of the CRC entitles children deprived of their family environment to special protection and assistance, and mandates states to

⁵⁸ CRC (n 12) art 3(1).

⁵⁹ CRC, *General Comment No 14* (n 21) para 36.

ensure appropriate alternative care with regard for continuity in the child's background.⁶⁰ Article 22 of the CRC specifically addresses refugee and asylum-seeking children, requiring States to ensure such children enjoy all their rights under the Convention and to receive protection and humanitarian assistance regardless of their status.⁶¹ Furthermore, Article 12 of the CRC guarantees children the right to express their views freely in all matters affecting them and to have those views given due weight.⁶² This reinforces that UASCs are entitled to specialised care and that their own views and wishes are integral to assessing their best interests.

In addition to the articles of the CRC, General Comment No. 6 (2005) of the CRC Committee on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin underscores that the BIC principle “*must be respected during all stages of the displacement cycle*”.⁶³ It also provides detailed guidance on applying this principle in processes such as appointment of guardians, access to asylum procedures, protection from trafficking, and finding durable solutions. The Committee also underlines that a comprehensive best interests assessment should precede any decision regarding the child and that child-specific forms of persecution and harms must be given due weight in refugee status determinations.⁶⁴ Therefore, States have a legal duty to treat these minors as rights-holders and furthermore, they must consider the child’s developmental needs when making any decision about their care or migration status.

Beyond the UNCRC, a range of international guidelines and soft-law instruments further reinforce the obligations under the BIC principle. UNHCR’s Guidelines on Determining the Best Interests of the Child (2008, updated 2021) outlines a formal process for Best Interests Determination (BID) in the refugee context and recommends that certain critical decisions must be made by a multidisciplinary panel following a detailed assessment of the child’s circumstances.⁶⁵ These guidelines may not be binding law, but they can be leveraged to influence stakeholder practices and have been referenced by courts to interpret the application of the BIC principle in the contexts of migration. Additionally, the UN endorsed Guidelines for the Alternative Care of Children emphasize that the BIC principle should guide any decision to place a child in alternative care with

⁶⁰ CRC (n 12) art 20.

⁶¹ *ibid* art 22.

⁶² *ibid* art 12.

⁶³ CRC, *General Comment No 6* (n 20) para 19.

⁶⁴ *ibid* paras 19–20, 25.

⁶⁵ UNHCR, *Guidelines on Determining the Best Interests of the Child* (May 2008, reissued 2021).

a preference for family-based solutions and stability in care arrangements.⁶⁶ Furthermore, UNICEF and IOM have emphasised that the operationalisation of the BIC principle in migration contexts necessitates a robust child-rights-based approach, prioritising the child’s rights over migration status, explicitly prohibiting detention related to migration status, and promoting alternative care arrangements compliant with human rights standards.⁶⁷

4.1.2 BIC in the European Regional Systems

Within the European context, both the Council of Europe (COE) and the European Union (EU) have embedded the BIC principle in their legal frameworks. While ECHR does not explicitly mention the BIC principle in its text, the rights enshrined therein apply to everyone, including children. Through case law, the ECtHR has progressively integrated the BIC principle into the interpretation of ECHR rights in cases involving children. The Court often draws on the existing consensus in international law to assert that children's best interests must be central in decisions affecting them. For example, in the *Neulinger and Shuruk v. Switzerland* judgment, the Court stated that there is a broad consensus that in all decisions concerning children, “*their best interests must be paramount*”.⁶⁸ The ECtHR therefore uses the BIC principle both as a substantive benchmark to assess whether state authorities gave sufficient weight to the child’s interests, as well as a procedural requirement to examine whether the authorities considered the child’s welfare and recorded reasons related to the child’s best interests in their decision-making process.⁶⁹

The Charter of Fundamental Rights of the EU enshrines children's rights through Article 24. Article 24(2) of the Charter states: “*In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.*”⁷⁰ This mirrors the wording of the UNCRC and elevates the principle to a binding obligation under EU law. The Charter thus ensures that in any field of EU competence, which includes immigration and asylum policy, children’s best interests should be a primary consideration. In addition, Article

⁶⁶ UNGA, 'Guidelines for the Alternative Care of Children' (n 48) para 2.

⁶⁷ IOM and UNICEF, *Technical Note. Inclusion of Children in the Context of Migration into National Child Protection Systems* (2024) <https://migrantprotection.iom.int/en/resources/report/technical-note-inclusion-children-context-migration-national-child-protection> accessed 17 May 2025.

⁶⁸ *Neulinger and Shuruk v Switzerland* App no 41615/07 (ECtHR, 6 July 2010) para 135.

⁶⁹ *Neulinger and Shuruk* (n 68) paras 136–139; *X and Y v Netherlands* (1985) 8 EHRR 235, para 27; Laurens Lavrysen, 'Rahimi v. Greece and the proceduralization of children's rights' (Strasbourg Observers, 15 April 2011) <https://strasbourgobservers.com/2011/04/15/rahimi-v-greece-and-the-proceduralization-of-childrens-rights/> accessed 4 June 2025.

⁷⁰ *Charter of Fundamental Rights of the European Union* (n 13) art 24.

24(1) of the Charter affirms children's right to protection and care as is necessary for their well-being, and Article 24(3) guarantees the child's right to express views freely and to have those views taken into consideration on matters which concern them, consistent with the child's age and maturity, thereby further reinforcing the norms enshrined under CRC Article 12.⁷¹

The EU has also translated these principles into its secondary legislation, especially in the asylum and migration policy frameworks. The Reception Conditions Directive (2013/33/EU) sets the standards for the material reception conditions and treatment of asylum seekers and contains a specific provision affirming the BIC principle. Article 23(1) of this Directive states: "*The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors.*"⁷² It also further enumerates factors that authorities must consider in assessing a child's best interests which include family reunification possibilities, the minor's well-being and social development, safety and security considerations, and the views of the minor in accordance with age and maturity. This aligns with the other prevailing international frameworks and obliges States to incorporate a BIC assessment in their national asylum systems. The Asylum Procedures Directive (2013/32/EU) similarly requires that the BIC be a primary consideration in the application of asylum procedures, and also further reinforces procedural guarantees for children including the appointment of a representative for unaccompanied minors and conducting child-appropriate interviews.⁷³ Additionally, the Qualification Directive (2011/95/EU), which defines grounds and content of refugee status and protection, notes in its preamble that the BIC should be a primary consideration of Member States when implementing the Directive.⁷⁴

Importantly, the Dublin III Regulation (604/2013) contains an important chapter on guarantees for minors. Article 6 of Dublin III obliges states to take account of the BIC in all decisions taken under the auspices of the regulation, and even more specifically in allocating responsibility for the claims

⁷¹ *ibid.*

⁷² Council Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) [2013] OJ L180/96 (Reception Conditions Directive) art 23(1).

⁷³ Council Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection [2013] OJ L180/60 (Asylum Procedures Directive) art 25(6).

⁷⁴ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) [2011] OJ L 337/9.

of unaccompanied minors.⁷⁵ It furthermore sets out criteria for determining a child's best interests in line with CRC principles, including maintaining family unity, the child's well-being and social development, safety considerations, and the views of the child. Additionally, the EU Return Directive (2008/115/EC), which governs the return of irregular migrants, mandates in Article 5 that Member States “*take due account of ... (a) the best interests of the child; (b) family life; (c) the state of health of the person concerned...*”.⁷⁶ This provision means that even in the context of removing an undocumented or asylum-seeking child, authorities must weigh whether return is compatible with the child's welfare, and whether alternatives such as granting a protected status or delaying removal are warranted to protect the child.

Agencies of the EU have further recognized the importance of intersectional approaches to strengthening the operationalization of the BIC principle. Integrated child protection systems, as advocated by the Fundamental Rights Agency (FRA), require not only adherence to international legal standards but also comprehensive intersectoral coordination. FRA highlights the imperative of robust governance frameworks, integrated services across health, education, and social protection, and meticulous monitoring and oversight mechanisms. These integrated systems provide the structural support necessary for the effective operationalisation of the BIC.⁷⁷

4.1.3 Universality of BIC

Overall, it is evident that international and European standards consistently reiterate and reinforce the BIC principle. There is a clear and traceable line from the enshrinement of BIC obligations at the global level to its codification at the regional level. However, despite the existence of formal standards, the real challenge is about the implementation and interpretation of this principle. It is especially necessary to understand how do courts and authorities apply this principle in practice, especially in challenging cases where children's interests might appear to conflict with other considerations such as immigration control or public order. Furthermore, the margin of

⁷⁵ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) [2013] OJ L180/31 (Dublin III Regulation) art 6.

⁷⁶ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [2008] OJ L348/98 (Return Directive) art 5(a).

⁷⁷ European Union Agency for Fundamental Rights (FRA), *Recommendation on Developing and Strengthening Integrated Child Protection Systems in the Best Interests of the Child* (2025) 25.

appreciation granted to states in human rights law may further complicate the understanding of legal obligations. In the following sections, this thesis will address these key dimensions and their effect on the operationalization of obligations with regards to UASCs.

4.2 Margin of Appreciation and Doctrinal Limits to State Discretion

In the context of international human rights obligations, specifically in the jurisprudence of the ECtHR, there is a consideration given to the margin of appreciation for States. This is a doctrine that defines the discretion afforded to states with regards to fulfilling their obligations and acknowledges that national authorities may be better placed to decide certain issues that involve subjective moral judgments or assessments of needs, subject to certain restrictions, because they are closer to their societies and hold democratic legitimacy. The doctrine therefore allows the Court to allow for some variance among state practice in how they implement rights, especially where there is no clear European consensus or where the case involves balancing competing interests and rights. However, the width of the margin afforded may vary. The latitude that States enjoy tends to be narrower when an especially important facet of an individual's identity or a fundamental right is at stake, or when there is a strong consensus across Europe on the issue. However, the latitude enjoyed may be wider when opinions diverge or sensitive moral/cultural issues are involved.⁷⁸ For the purposes of this study, the margin of appreciation doctrine is directly relevant to how the BIC is applied in practice. It gives us a lens to understand to what extent do international bodies defer to national authorities to determine a child's best interests. This issue is particularly important to understand in migration scenarios, where states might invoke administrative discretion or resource constraints as factors in their decisions about children.

The ECtHR's reference to the margin of appreciation in child-related cases can be traced back to landmark cases like *Handyside v. UK* (1976). In this case, the Court held that national authorities were in a better position to determine what was morally acceptable for children in their society and thus gave the UK a wide margin of appreciation to restrict indecent material in the name of child protection.⁷⁹ This deference to the State recognized the lack of a uniform European standard on morals and the primary role of the state in safeguarding children's upbringing. Similarly, in child custody and family law cases, the Court has reiterated that national authorities are generally

⁷⁸*Handyside v United Kingdom* App No 5493/72 (ECtHR, 7 December 1976) para 48.

⁷⁹ *Handyside v UK* (n 78) paras 62-63.

best placed to assess a child's best interests, given their direct access to evidence and the complex contextual facts. Therefore, as long as the domestic processes followed were fair and the decision of authorities was within the bounds of reasoned judgment, ECtHR usually will not establish its own view of a child's welfare over that of the State. This in certain cases effectively allows states a certain margin in evaluating BIC in individual cases.

However, the scope of the margin of appreciation narrows considerably when basic rights or significant harms to the child are being assessed, or even when there is a strong international or European consensus on what the obligations are in that circumstance. The ECtHR in recent case law has increasingly signalled that states cannot deviate from core obligations towards children. In *Neulinger*, the Court referenced a broad consensus in support of BIC and this suggests that there is less room for a state to argue an approach that may neglect children's welfare.⁸⁰ In other words, giving due weight to children's best interests can influence the proportionality analysis such that states are not given the latitude they may otherwise enjoy if their actions would significantly impair a child's well-being or fundamental rights. The ECtHR has also explicitly stated that the "*extreme vulnerability*" of the child takes precedence over any considerations relating to the child's status as an irregular migrant or other administrative convenience.⁸¹ This reflects the idea that when it comes to children, the threshold for acceptable state action is higher, and the usual deference the Court might show to state authorities in other cases is reduced in these circumstances.

In the specific context of asylum and migration governance, the margin of appreciation doctrine interacts with the BIC principle in notable ways. Immigration control has traditionally been seen as an area where states have a relatively wide margin and states are afforded discretion in how they regulate entry and removal of non-nationals, given the lack of a full consensus on immigration policies and the sovereign interest in controlling borders. However, where the treatment of child migrants or refugees is concerned, the ECtHR has increasingly curtailed this discretion by emphasizing the inviolability of the BIC principle and highlighting the aspects of vulnerability. The Court's case law effectively establishes that children should not be deprived of liberty in inappropriate conditions, and that authorities must exhaust alternative measures, as will be further detailed in subsequent sections. This significantly curtails any manoeuvrability states have to

⁸⁰ *Neulinger and Shuruk* (n 68).

⁸¹ *Mubilanzila Mayeka* (n 22) para 55; *H.A. and Others v Greece* App no 19951/16 (ECtHR, 28 February 2019).

justify detention or neglect of child migrants under the guise of immigration enforcement. The Court's reasoning in these cases often emphasizes that because of the absolute nature of certain rights and the fundamental consensus about child protection, there is no margin for states to treat children in ways that violate their basic rights.

While limiting state latitude, the doctrine of margin of appreciation however also recognizes that BIC determinations can be culturally and socially influenced to a degree. Not every country has identical child protection systems or resources, and decisions made in their cases might involve complex or reasonable disagreements. In such scenarios, if the options for action fall within a range of acceptable solutions that respect the child's rights, the state might be given discretion to choose one. It is however important to note that this discretion is bound by the standards set by international law which emphasizes that a state cannot invoke cultural difference or discretion to implement a practice that would directly undermine a child's fundamental rights or dignity.

In the process to understand the ECtHR's approach, it must also be considered that the court's supervision itself has evolved. Where earlier cases gave significant latitude to domestic authorities under the ethos of subsidiarity, more recent jurisprudence shows that the Court is now willing to delve deeper into whether a child's best interests were genuinely respected. Therefore, through the interpretivist perspective, it can be understood that the meaning of BIC in Europe is being gradually clarified through regional apparatus. The Court's role here has often been to set outer limits such as making clear that detaining children in bad conditions or leaving a child homeless without state care is never compatible with ECHR standards and no margin may be allowed there, while still leaving detailed implementation methods, such as the exact form of alternative care, to the State's judgment.

4.3 Application and Interpretation by the European Court of Human Rights

This section directly engages with Sub-question 2 of the thesis by examining how jurisprudence of the ECtHR illustrates gaps between legal obligation and implementation in the context of UASC detention. The analysis herein also adopts the interdisciplinary lens introduced previously by assessing selected cases through the HRBA, CPMS, and developmental vulnerability frameworks.

The ECtHR has played a pivotal role in operationalizing the principle of the BIC in Europe, including in the sensitive context of UASCs. Although, as noted previously, the ECHR itself is

silent on the concept. The Court's case-law over the past two decades shows an increasing willingness to incorporate the standards of the UNCRC and other international child protection norms when assessing state conduct under the Convention. The analysis of ECtHR jurisprudence in this study is not purely doctrinal. Instead, it is examined through the lens of the research's threefold theoretical framework. Where applicable, CPMS indicators are referred to evaluate institutional adequacy, the HRBA is used to assess normative compliance, and child developmental and vulnerability theories help the research highlight the real-world consequences of detention on UASCs. As further analysis will show, the overall trajectory of the court demonstrates a clear obligation that States must give primary consideration to the child's best interests, and failure to do so can lead to findings of violations of the ECHR.

An influential case from the ECtHR was *Mubilanzila Mayeka and Kaniki Mitunga v Belgium* (2006) which concerned a five-year-old girl from the Democratic Republic of Congo who was detained alone in a Belgian immigration facility and then deported while unaccompanied back to her country.⁸² The ECtHR found multiple violations of the ECHR in this case, underscoring the child's extreme vulnerability and the State's failure to adequately protect her. The Court observed that due to her very young age, her status as an illegal immigrant alone in a foreign country, and the absence of her family, the child was in an extremely vulnerable situation. Belgian authorities had no special legal framework at the time of the case for unaccompanied minors and therefore, had not taken adequate measures to care for her. On the contrary, they kept her in a detention centre for adults with no access to counselling or educational support and then removed her from the country without ensuring anyone would receive her upon arrival. This "*demonstrated a lack of humanity*" and amounted to degrading treatment in breach of Article 3 ECHR in the opinion of the Court.⁸³ Significantly, the Court explicitly linked the failure to consider the child's best interests with Belgium's Convention violations. The detention of a child in those conditions and deporting her with no prior arrangements manifestly ignored her best interests, especially given that alternatives such as arranging for her to join her mother who was eventually located in Canada were not pursued. The judgment also further stressed that a child's extreme vulnerability is the decisive factor and takes precedence over considerations of status as an illegal immigrant in these

⁸² *Mubilanzila Mayeka* (n 22).

⁸³ *Mubilanzila Mayeka* (n 22) paras 50-58.

cases.⁸⁴ Here, the ECtHR set a clear precedent that immigration enforcement cannot justify treating a child in a manner that conflicts with their fundamental need for care and protection. The state's margin of appreciation in such circumstances was effectively completely curtailed and any conduct that showed a total lack of humanity toward a vulnerable child was condemned.

The *Rahimi v. Greece* (2011) case at the ECtHR dealt with an unaccompanied 15-year-old asylum seeker in Greece who was detained in an overcrowded detention centre among adults and then left to fend for himself on the streets after release.⁸⁵ The Court in this case found Greece in violation of Article 3 (inhuman and degrading treatment), Article 5(1) and (4) (unlawful detention and lack of judicial review), and Article 13 (lack of effective remedy). In its reasoning, the ECtHR emphasized that Greek authorities had failed to consider the BIC in how they treated Rahimi. Additionally, two key points were noted: (1) the authorities did not consider “*best interests of the applicant as a minor or his individual situation as an unaccompanied minor,*” and (2) did not consider whether placing the applicant in such detention was a measure of last resort.⁸⁶ This latter point reflects CRC standards, which note that detention of children should be a last resort for the shortest time possible, and the obligation that authorities had to look for alternatives such as placing the child in a safe facility for minors.⁸⁷ The ECtHR was critical of Greece's “*automatic application*” of immigration detention to a minor and held that by ignoring the child's extreme vulnerability, Greek authorities had not demonstrated primacy for the child's best interests. The Court further noted that even though the detention lasted only two days, the deplorable conditions of detention and the lack of access to care exacerbated the harm caused to the applicant. The case underscored that Rahimi's “*extremely vulnerable position*” as an unaccompanied minor was not considered at all and “*the authorities had given no consideration to his individual circumstances when placing him in detention,*” which made the experience degrading despite its short duration.⁸⁸ This case is a prime example of the ECtHR adopting a procedural BIC approach where it looked at whether the state authorities considered the BIC and found that they had not, which contributed to the finding of a Convention violation. The lack of procedural safeguards that was found by the courts would also violate CPMS Standard 13 which underscores the right of unaccompanied

⁸⁴ *Mubilanzila Mayeka* (n 22) para 55.

⁸⁵ *Rahimi v Greece* App no 8687/08 (ECtHR, 5 Apr 2011).

⁸⁶ *Rahimi* (n 86) paras 86–94.

⁸⁷ CRC (n 12) art 37(b).

⁸⁸ *Rahimi* (n 86) paras 87-94.

children to adequate case management and care. This further reinforces that detention without child-specific considerations is a practice that breaches operational as well as legal standards in humanitarian protection.

The relationship between detention of migrant children and the BIC principle was further explored and developed in the *Popov v. France* (2012) case. Here, the applicants were a Kazakh family with two young children, ages 5 months and 3 years, who were held in an immigration detention centre in France for two weeks pending their removal.⁸⁹ The ECtHR found that the conditions of detention where an environment essentially designed for adults, with inappropriate facilities for children had serious negative effects on the children, amounting to inhuman and degrading treatment in violation of Article 3. Importantly, the Court explicitly invoked the BIC principle in its analysis under Article 8 concerning the right to family life. It held that “*child’s best interests cannot be confined to keeping the family together and that the authorities have to take all the necessary steps to limit, as far as possible, the detention of families accompanied by children*”, and to effectively protect their right to respect for family life.⁹⁰ In this opinion of the court, keeping the family together was not enough because the state also needed to minimize the harm caused by avoiding or sharply limiting detention when children are involved. The Court further noted that in this case, there was no evidence the family would have absconded if not detained so depriving them of liberty was not a last resort but rather an unnecessary hardship on the children. Thus, the failure of the authorities to sufficiently consider alternative measures and their lack of regard to the children’s best interests qualified the detention as disproportionate. The *Popov* case is therefore significant in that it affirms a substantive standard by emphasizing that the BIC ordinarily require that children not be detained for immigration purposes, and that if they are held exceptionally (with family in this case), conditions must be appropriate, and duration of detention must be very short. The ruling and the corresponding opinion of the court in this case has influenced the obligations of states by requiring them to end or severely curtail immigration detention of minors.

Another crucial affirmation of State obligations under the BIC principle was through *H.A. and Others v. Greece* (2019) where the ECtHR examined the situation of several unaccompanied minors held in “*protective custody*” in Greek police station cells due to lack of space in dedicated

⁸⁹ *Popov v France* App nos 39472/07 and 39474/07 (ECtHR, 19 January 2012).

⁹⁰ *Popov* (n 90) paras 147–152.

shelters.⁹¹ The Court here found violations of Article 3 and Article 5, and noted that detaining children in police cells for weeks, even though it was labelled as protective, without proper care or access to outdoor/development space, was inherently harmful. Critically, the Court underscored that Greek authorities had not treated the children's best interests as a primary consideration because by leaving the boys in jail-like conditions and not expediting their transfer to appropriate minors' facilities, the authorities failed to give primacy to the children's welfare. Additionally, if the circumstances of this case are also considered from the perspective of the attachment theory, it would indicate that the institutional neglect seen in this case would very likely contribute to long-term developmental trauma of the minors and therefore, further exacerbate the harm identified by the Court. The Court also referred to the Rahimi case and found the same fundamental lapse on the part of the state where there was no individualized consideration of whether each child should have been in detention at all, and no evidence was given that detention was strictly necessary as a last resort.⁹² This represents a continuity in the ECtHR's stance that administrative inconvenience or shortages of shelter capacity do not excuse violating children's rights. States in such scenarios have positive obligations to mobilize resources or find solutions that respect BIC through means such as by quickly appointing guardians, seeking foster care or NGO shelter placements, etc., rather than simply relying on detention measures.

The case of *Khan v. France* (2019) further illustrates the court's stance. The case concerned a 12-year-old unaccompanied Afghan boy who lived for months in the Calais migrant camp (colloquially called the "Jungle") and received no timely state protection even after a domestic court ordered the authorities to take care of children who were alone. The ECtHR found that France violated Article 3 because of the inhumane conditions Khan endured as well as the failure to execute the court order to transfer him to a shelter.⁹³ In its reasoning, the ECtHR gave substantial relevance to the BIC principle by emphasizing that measures which were general in nature and did not address the specific situation of the child were inadequate to meet France's obligations. The Court highlighted that Khan, as an unaccompanied foreign minor, belonged to "*the category of the most vulnerable persons in society*," and thus France was obliged to do everything reasonably possible to protect and care for him.⁹⁴ In this circumstance Khan's particular best interests included

⁹¹ *H.A. and Others v Greece* (n 82).

⁹² *H.A. and Others v Greece* (n 82).

⁹³ *Khan v France* App no 12267/16 (ECtHR, 28 February 2019).

⁹⁴ *Khan v France* (n 94).

his stated goal of joining relatives in the UK which the State failed to consider. Therefore, the authorities' failure to individualize their response to the context was a key factor in finding that Article 3's severity threshold was met. In essence, *Khan v. France* signals that even outside of detention, benign neglect of an unaccompanied child's needs violates the Convention. This case also illustrates the Court moving toward a more substantive enforcement of BIC where the authorities must not only avoid directly harming a child, but they also must take proactive steps to provide a standard of care. General measures like marginally improving camp hygiene were also deemed insufficient and rather what was required was to get the child out of that harmful environment, in alignment with his best interests.

Another case that underscores the Court's evolving stance is *J.B. and Others v. Malta* (2023), in which the ECtHR found Malta in violation of Articles 3 and 5 of the Convention for detaining three unaccompanied minors in inappropriate conditions with no individualised assessment or procedural safeguards. The minor applicants had all been subjected to detention under Malta's immigration law without being provided with meaningful legal representation, effective guardianship, or access to case review mechanisms. The Court emphasised that these children had not been treated in accordance with their best interests and concluded that no adequate consideration had been given to their vulnerability as unaccompanied minors and this "*amounted to inhuman and degrading treatment*".⁹⁵ The ruling of the Court therefore criticised Malta for its conflation of immigration enforcement with protective custody. When examined through the HRBA framework, the *J.B.* case reflects a categorical failure by the State to recognise the child as a rights-holder and itself as a duty-bearer. The absence of individualised BIC assessments and the lack of prompt guardian appointments ran contrary to the obligations under the CRC and General Comment No. 6.⁹⁶

In the recent case of *M.Y. and Others v. Greece* (2025), the ECtHR reaffirmed its approach towards detention practices involving UASCs. The Court explicitly emphasized that states must ensure that reception conditions meet the specific needs and vulnerabilities of children. It also further reinforced that the extreme vulnerability of unaccompanied minors must take precedence over immigration enforcement objectives. Critically, the judgment articulated clear standards against

⁹⁵ *J.B. and Others v Malta* (n 14) para 106.

⁹⁶ CRC, *General Comment No 6* (n 20) paras 20–22.

prolonged detention and inadequate conditions, further underscoring the necessity of immediate placement into suitable child-specific accommodation, and effective access to psychological, educational, and legal support services.⁹⁷

One commonality running through all the aforementioned cases is the ECtHR's recognition of the concept of 'double vulnerability' wherein children who are migrants or asylum-seekers are doubly vulnerable because they are minors by age and also foreigners without the support structures normally available to children. The Court has explicitly said this vulnerability "*must be a primary consideration*" and cannot be treated as just one equal factor among others such as immigration status.⁹⁸ The Court through these cases also reaffirmed that the child's status as an irregular migrant does not diminish the state's obligations but instead increases them. This aligns with the view of the CRC Committee and other bodies like the UN Committee on Migrant Workers through their Joint General Comments in 2017, that children should never be treated as violators of immigration rules and their best interests and rights come first, and migration control considerations come second.⁹⁹ The ECtHR's case-law strongly reflects this and consequently, any argument by a state that an unaccompanied child was illegal or only entitled to minimal treatment is likely to be met with censure from the court.

It is clear that the ECtHR's application of the BIC principle has both procedural and substantive dimensions. Procedurally, the Court looks at whether domestic authorities actually considered the child's best interests and how they balanced them against other interests. If a decision was taken by the authorities with no evidence that the child's welfare was evaluated, the Court will likely find a violation on those grounds. Substantively, the Court assesses whether the outcome respected or unduly compromised the child's best interests. For instance, even if a state argues it considered the child's interests but still chose to detain for deterrence reasons, the Court might find substantively that this outcome is not reconcilable with the child's best interests and thus disproportionate. In cases such as *Neulinger* and other subsequent family law cases, the Court indicated that depth of analysis matters and that authorities must demonstrate in their reasoning that the child's interests were at the forefront. Likewise, in other migration cases like *M.H. v. Croatia* (2021), which concerned a family's pushback resulting in a child's death or *Sh.D.* and

⁹⁷ *M.Y. and Others v Greece* App nos 51980/19 and others (ECtHR, 19 June 2025) paras 16–17.

⁹⁸ *Mubilanzila Mayeka* (n 22); *H.A. and Others v Greece* (n 82).

⁹⁹ CMW and CRC, *Joint General Comment No 4 and No 23* (n 49) para 5.

Others v. Greece and others (2019), which considered the detention of minors in transit, the Court scrutinized whether states followed procedures to protect children and whether they seriously weighed the potential harm to the child.¹⁰⁰

In summary, the ECtHR's jurisprudence has evolved to make the BIC principle a real, enforceable standard under the ECHR, particularly through Articles 3, 5, and 8.¹⁰¹ Within this theme, the court has further emphasized several key points to States regarding the operationalisation of the BIC principle. The court notes that children are inherently vulnerable, especially when they are unaccompanied, and their best interests and protection needs must take priority over immigration enforcement objectives. Additionally, detaining children for immigration purposes or even keeping them in conditions not suited for children violates their rights, except in truly exceptional circumstances. In almost all cases, States must find alternative solutions to detention in line with the child's best interests. States also have positive obligations to ensure care and providing guardians, suitable accommodation, healthcare, and facilitating family tracing or reunion are not optional measures but required by the convergence of CRC obligations and ECHR interpretation. Furthermore, authorities and courts should explicitly demonstrate that they have identified what the child's best interests are and how those interests were weighed in legal proceedings. A failure to demonstrate this can by itself indicate that the decision-making process was deficient and therefore in violation of the BIC principle.

For frontline states on the Mediterranean route, these standards mean that their asylum and migration systems must be child sensitive and related procedures must meaningfully incorporate the BIC principle, especially when it is regarding the detention of UASCs. This illustrates how ECtHR jurisprudence pushes states to improve their migration governance to meet BIC standards.

4.4 Normative Standards in Humanitarian Practice

This section explores the operationalisation of the BIC principle through non-legal but widely adopted humanitarian standards. As highlighted previously, the CPMS framework complements the legal analysis of this thesis by offering practical guidance on the implementation of child protection in crisis and displacement contexts.

¹⁰⁰ *M.H. and Others v Croatia* App no 15670/18 (ECtHR, 18 November 2021); *Sh.D. and Others v Greece* App no 14165/16 (ECtHR, 13 June 2019).

¹⁰¹ ECHR art 3, 5, 8.

While international and regional laws set out the obligations and principles for States, practitioners working with children in crisis situations often rely on detailed guidelines to inform their day-to-day actions. One of the key resources in this regard is the CPMS, produced by the Alliance for Child Protection in Humanitarian Action. These standards are not binding law, but they represent a broad consensus of best practices and ethical standards for protecting children in emergencies, including during conflicts, disasters, and displacement situations. They are also particularly relevant in refugee contexts where multiple humanitarian actors, including UN agencies, NGOs, state services, coordinate efforts to care for children. This includes children who are unaccompanied or separated. Notably, the BIC is one of the foundational principles of the CPMS, ensuring that this legal principle is translated into concrete actions and organizational policies on the ground.¹⁰² This section operationalises the CPMS framework within the overall doctrinal and empirical inquiry conducted in this chapter and details the applicability of the CPMS in the context of the detention of UASCs.

Principle 4 of the CPMS is titled "*The best interests of the child*" and it reiterates that children have the right to have their best interests assessed and taken into account as a primary consideration in all actions or decisions that concern them, both in the public and private spheres.¹⁰³ This language closely follows Article 3(1) of the CRC, reaffirming that humanitarian actors must embed the best-interests principle in all their interventions. The CPMS also elaborates what BIC means in practice and broadly equates it to the child's well-being. This is determined by a variety of individual factors like age, maturity, gender, disability, experiences, and contextual factors like whether the child has family support, the quality of care that is accessible, and specific risks they face. According to the CPMS, there are three aspects to the BIC concept: (1) it is a basic right of the child to have their best interests assessed and taken as a primary consideration; (2) it is a fundamental legal principle meaning that if a law or policy can be read in different ways, the way that best serves the child should be chosen; and (3) it is a rule of procedure and therefore, any decision affecting children must follow a process of evaluating the impact on the child and documenting that the child's interests were prioritized.¹⁰⁴ Through this interpretation, the CPMS

¹⁰² Alliance for Child Protection in Humanitarian Action (n 19) para 29.

¹⁰³ *ibid.*

¹⁰⁴ *ibid.*

ensure that humanitarian workers understand the principle not just as an abstract idea but as a practical guide for decision-making in the context of child protection.

Furthermore, the CPMS demonstrates how to implement BIC procedures in humanitarian settings while recognizing that the capacity of the state may be overwhelmed or minimal in emergencies. Specifically, the standards call on humanitarian actors to support state authorities in establishing BIC procedures and building on national mechanisms wherever possible. In such scenarios, the CPMS stress that agreed-upon procedural safeguards should be implemented because children's best interests are systematically considered rather than left to ad hoc decisions by standardizing such procedures, even in chaotic crisis environments.¹⁰⁵ Another core element of the CPMS is the participation of children in determining their best interests as stated through Principle 3 and Principle 4. These principles underline that children should be active participants in defining their own best interests whenever possible. Humanitarian workers should thus inform children about decisions being made and options available to them in age-appropriate ways; encourage children to express their concerns or preferences; and finally, give due weight to those expressed views in the final decision.¹⁰⁶ In practical terms, humanitarian agencies often operationalize this by assigning guardians to unaccompanied children who ensure the child's voice is expressed and taken into account in any official proceedings.

There are specific standards enshrined in the CPMS that directly address the needs of UASCs, notably through Standard 13 which provides detailed guidance on preventing family separation, expeditiously identifying UASC, providing interim care, and finding durable solutions.¹⁰⁷ This standard ties in strongly with the BIC principle because it calls for the development of a care plan for every UASC based on a BIC assessment and requires that proactive actions, such as family tracing, must be conducted unless it's against the child's wishes or not in their best interest. Furthermore, other Standards such as Standards 13, 16, 18, and 19 outline additional good practices in the treatment of minors including placing unaccompanied children in family-based care rather than large institutions whenever possible, ensuring siblings are kept together, avoiding unnecessary moves between multiple facilities, and monitoring the quality of care in the alternative

¹⁰⁵ *ibid.*

¹⁰⁶ *ibid.*, principles 3, 4.

¹⁰⁷ *ibid.*, standard 13.

care setting.¹⁰⁸ Moreover, the CPMS integrate the BIC principle into other ancillary areas of humanitarian action, other than migration response, that impact children. The Standards on education, psychosocial support, justice for children, and child labour all note that interventions must be guided by the child's best interests.¹⁰⁹

In essence, the CPMS serve as a vital framework to translate legal principles into concrete quality standards for humanitarian response on the ground. They create a collective understanding among humanitarian actors that every action should be considered through the lens of a child's best interests. For Mediterranean frontline states the CPMS provide a benchmark for what proper care looks like and therefore, encourages national authorities and partners to institutionalize BIC procedures in substantive ways. This alignment of law, policy, and practice is critical to ensure that the child's best interests remain the paramount consideration from high-level policy to field operations.

4.5 Implications for Frontline States: Comparative Insights

The analysis of ECtHR jurisprudence has revealed a consistent outlook that the detention of UASCs is only permissible in truly exceptional and strictly justified circumstances. Across all reviewed cases, the Court has held that the failure to treat the child's best interests as a primary consideration, through the lack of individualised assessment, inappropriate detention conditions, or absence of procedural safeguards, constitutes a violation of the ECHR. Moreover, the Court's interpretation aligns closely with international legal standards under the CRC, and this is further operationalised through the CPMS, thereby reinforcing the necessity for States to prioritise the BIC substantively and procedurally in practice. Therefore, this directly governs the practices of the frontline states of Italy, Greece, and Malta, which are being analysed in this thesis, particularly given their strategic position along the Mediterranean route and their continuous interactions with UASCs.

While legal jurisprudence and established standards have made important strides in clarifying the content and procedural expectations of the BIC principle, the translation into national systems still varies considerably. The findings in this chapter highlight that frontline states have faced repeated censure by courts for their systemic failures to implement alternatives to detention. Furthermore,

¹⁰⁸ *ibid*, standards 13, 16, 18, and 19.

¹⁰⁹ *ibid*, standards 20, 21, 23, and 24.

the ECtHR's evolving jurisprudence signals that margin of appreciation is increasingly constrained where children's fundamental rights are at stake. Accordingly, this compels receiving States to not only adjust their legal frameworks but also demonstrate through practice that BIC assessments are applied in a case-specific, procedurally meaningful, and developmentally appropriate manner. The following chapter will examine how the frontline States of Italy, Greece, and Malta have institutionalised these standards within their domestic child protection and asylum governance mechanisms.

5. Normative and Implementation Gaps – The Case Studies of Italy, Greece, Malta

Italy, Greece, and Malta face unique contexts as first-entry Mediterranean states that receive significant arrivals of migrant children. Each has enacted reforms in recent years that impact the treatment of UASCs and are meant to increase the protections offered. However, monitoring reports and case-law repeatedly document ongoing deficits in practice due to the continuing confinement of UASCs in hotspots, transit camps or detention centres, and often without adequate care. This chapter undertakes a comparative case-study analysis of these countries with the aim of revealing gaps between legal norms and practice. The objective here is to examine how each country's domestic legal and policy framework addresses the detention of UASCs and to identify normative and implementation gaps in applying the BIC principle. In other words, this chapter assesses the extent that BIC are incorporated into the domestic laws of each state, and how these principles are effectively operationalised in the treatment of UASCs.

Each country case study is structured identically to ensure consistency and comparability across jurisdictions. The research first outlines the domestic legal and policy framework in the country, including the transposition of relevant EU and international standards. This is followed by a review of the institutional and operational practices of each country which describes how authorities actually manage UASC arrivals and decisions on detention. Lastly, a thematic analysis of normative and implementation gaps is conducted through the application of the frameworks of HRBA, CPMS, and the child developmental and vulnerability theories. The comparative synthesis of these countries operational realities draws out cross-cutting observations and divergences among Italy, Greece, and Malta, and effectively summarises the contexts leading to each state's normative and implementation gaps.

5.1 Italy

5.1.1 Legal and Policy Framework

Italy's framework for UASCs has evolved markedly over the past decade. Within this framework, a landmark reform was Law No 47 of 7 April 2017 (colloquially called the "*Zampa Law*"), which explicitly recognizes all UASCs as children entitled to the full range of rights that are afforded to Italian minors. Specifically, Article 1 declares that UASCs are entitled to the same rights as Italian or EU minor citizens. The law also prohibits the expulsion or refoulement of minors at borders

without exception and further forbids their detention for purposes of removal. Importantly, it also establishes that the child's best interests must guide all measures affecting them.¹¹⁰

Prior to 2017, Italy's regulatory framework for migrant children was largely found in the Immigration Code and 2015 Reception Decree (D. Lgs. 142/2015).¹¹¹ This framework was very fragmented, and implementation was inconsistent. The introduction of the Zampa Law introduced comprehensive protection measures including mandating prompt age assessment by qualified professionals, including medical and psychosocial experts. It also required a presumption in favour of minority if doubt remains. Notably, the law created a national guardianship system under juvenile courts which included a new concept of trained voluntary guardians. Furthermore, the law also expands reception rights by explicitly promoting family-based care (*affidamento familiare*) as a priority over institutional reception and noting that UASCs must be housed in specialized facilities with appropriate staffing and cultural mediators.¹¹² These reforms were initially praised and even UNICEF Italy welcomed it as a "*historic law to boost support and protection*".¹¹³

While the Zampa Law harmonized national policy, subsequent developments have altered the legal landscape. In 2018 the security-oriented "*Salvini*" decrees (DL 113/2018, converted by L 132/2018) restructured the reception system by excluding asylum seekers from the Sistema di Accoglienza e Integrazione (SAI) network.¹¹⁴ This network functions as a national reception and integration system for refugees, asylum seekers, and other vulnerable individuals. Further legislative amendments between 2020 and 2021 such as the DL 130/2020 (converted into Law 173/2020), partially rolled back the Salvini measures in a positive way.¹¹⁵ The legislative

¹¹⁰ Legge 7 aprile 2017, n 47, *Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati* (Gazzetta Ufficiale, Serie Generale n 93, 21 aprile 2017).

¹¹¹ Decreto Legislativo 18 agosto 2015, n 142, *Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale* (Gazzetta Ufficiale, Serie Generale n 214, 15 settembre 2015).

¹¹² *ibid.*

¹¹³ UNICEF, 'UNICEF hails new Italian law to protect unaccompanied refugee and migrant children as model for Europe' (Press Release, 29 March 2017) <https://www.unicef.org/eca/press-releases/italian-law-protect-refugee-children> accessed 9 June 2025.

¹¹⁴ *Decreto-Legge* 4 ottobre 2018, n 113, *Disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica, nonché misure per la funzionalità del Ministero dell'interno e l'organizzazione e il funzionamento dell'Agenzia nazionale per la destinazione dei beni sequestrati e confiscati alla criminalità organizzata* (Gazzetta Ufficiale, Serie Generale n 231, 4 ottobre 2018), converted and modified by *Legge* 1 dicembre 2018, n 132 (Gazzetta Ufficiale, Serie Generale n 281, 3 dicembre 2018).

¹¹⁵ *Decreto-Legge* 21 ottobre 2020, n 130, *Disposizioni urgenti in materia di immigrazione, protezione internazionale e complementare, modifiche agli articoli 131-bis, 391-bis, 391-ter e 588 del codice penale, nonché*

changes during this period reopened access to SAI for asylum seekers and reinstated institutional support such as reception and integration services.¹¹⁶

Most recently however, the Government adopted Decree-Law 133/2023 (converted into Law No 176/2023), which introduced significant modifications to safeguarding mechanisms for UASCs. Most notably, it allowed public security agents to adopt anthropometric and radiological age assessments in situations of mass arrivals. This effectively circumvented juvenile court oversight and multidisciplinary evaluation requirements established by the Zampa regime. The same decree extended the maximum period UASCs may spend in first-reception centres. Children under 16 years are now permitted to stay up to 45 days, while 16–17-year-olds may be held for up to 150 days.¹¹⁷ This is significantly longer than the previous limits of 30 and 90 days, respectively. While the government framed it as a response to arrival pressure, such extensions lead to prolonged confinement. This new policy shift directly undermines the 2017 protections and signals to a legislative trend in Italy that appears to prioritise administrative flexibility and migration control over child-specific protection.

5.1.2 Institutional and Operational Practices

Italian law plainly prohibits any detention of UASCs. Article 19(4) of the Reception Decree provides that “*unaccompanied children can never be detained*”.¹¹⁸ Nonetheless, reports show that minors have repeatedly been held in border hotspots, which function as detention-like facilities. In 2022, over 10,000 children entered Italy’s hotspots, including 7,341 UASCs.¹¹⁹ Though hotspots are officially categorized as reception points, their overcrowded and high-security conditions effectively deprive children of liberty. Furthermore, the Italian National Guarantor for Persons

misure in materia di divieto di accesso agli esercizi pubblici ed ai locali di pubblico trattenimento, di contrasto all'utilizzo distorto del web e di disciplina del Garante nazionale dei diritti delle persone private della libertà personale (Gazzetta Ufficiale, Serie Generale N 261, 21 October 2020), converted and modified by *Legge* 18 dicembre 2020, n 173 (Gazzetta Ufficiale, Serie Generale N 314, 19 December 2020).

¹¹⁶ European Council on Refugees and Exiles (ECRE), *Asylum Information Database (AIDA) Country Report: Italy, Detention of Vulnerable Applicants* (July 2024) <<https://asylumineurope.org/reports/country/italy/detention-asylum-seekers/legal-framework-detention/detention-vulnerable-applicants/>> accessed 9 June 2025.

¹¹⁷ *Decreto-Legge* 5 ottobre 2023, n 133, *Disposizioni urgenti in materia di immigrazione e protezione internazionale, nonché per il supporto alle politiche di sicurezza e la funzionalità del Ministero dell'interno* (Gazzetta Ufficiale, Serie Generale N 233, 5 ottobre 2023), converted and modified by *Legge* 1 dicembre 2023, n 176 (Gazzetta Ufficiale, Serie Generale N 283, 4 dicembre 2023).

¹¹⁸ *Decreto Legislativo* 18 agosto 2015 (n 112) art 19(4).

¹¹⁹ Association for Studies on Immigration (ASGI), 'Detention of vulnerable applicants: Country Report – Italy' (July 2024); HRW, 'Italy: Children Stuck in Unsafe Migrant Hotspot' (23 June 2016) <<https://www.hrw.org/news/2016/06/23/italy-children-stuck-unsafe-migrant-hotspot>> accessed on 3 June 2025.

prompted Darboe and Camara, where the ECtHR noted that Italy had failed to give the child the benefit of the doubt.

Unfortunately, Decree-Law 133/2023 has formalized some of these loopholes. It authorizes public security agents in mass arrival scenarios to perform age estimates through anthropometric measurements or X-rays, and this subject only to retrospective court approval. Furthermore, there are no longer any prescribed clear safeguards such as written consent and psychological evaluation, and the new rules invert the presumption of age and erode transparency.¹²⁸ Therefore, while Italy's legislation nominally embeds best-practice standards for age assessment, children remain largely at risk for being mis-identified and subsequently confined in adult centres.

Under the reformed framework, every newly identified UASC must have a legal guardian appointed by the Juvenile Court as soon as possible. The guardian is often a specially trained volunteer and is responsible for the child's protection and representation in all procedures. The law also guarantees that children may lodge asylum applications in person or through their legal guardian, and that they have the right to be heard with a cultural mediator present.¹²⁹ These legal provisions follow HRBA principles of participation and accountability on paper. However, while Italian law and even circulars, such as CNDA circular 6425/2017,¹³⁰ recognize the guardian's central role, in reality many UASCs still lack timely representation.

In practice, however, guardian appointment procedure has lagged greatly. By law, the Questura (police) must notify the Juvenile Court immediately when a UASC is found, and the court must then nominate a guardian. In the interim, the reception-centre staff may assist the child with paperwork. As soon as the guardian is appointed, they are meant to take charge for all subsequent steps.¹³¹ Evaluations however revealed many issues. A 2020 monitoring survey found guardians worryingly absent at the identification stage, with significant mismatches between guardian numbers and minor arrivals. As of end-2022, only 3,783 volunteer guardians were registered nationwide for assisting about 20,089 UASCs. Furthermore, most guardians are concentrated in a few courts such as in the cities of Turin, Rome, and Milan, while many regions remain critically

¹²⁸ Decreto Legge 5 ottobre 2023, n 133 (n 118).

¹²⁹ Decreto Legislativo 18 agosto 2015, n 142 (n 112) as amended by Legge 7 aprile 2017, n 47 (n 111).

¹³⁰ Commissione Nazionale per il diritto d'asilo, Circolare n 6425 (21 agosto 2017).

¹³¹ Decreto Legislativo 18 agosto 2015, n 142 (n 112) as amended.

underserved.¹³² The Children’s Ombudsperson further reports that guardians often withdraw from their duties due to distance or workload.¹³³ Consequently, many children end up beginning asylum procedures without their intended assigned guardian which undermines the law’s intent. All these circumstances added up demonstrate an apparent lack of the prioritization of the BIC principle in Italy’s operational realities.

Within Italy’s reception system, UASCs are legally required to be placed in dedicated facilities. For the first 48 hours, they must be placed in Centri di Prima Accoglienza (CPSA) and then transferred to SAI.¹³⁴ Furthermore, foster care is promoted as the ideal long-term solution for UASCs through the Zampa law.¹³⁵ Additionally, the Reception Decree mandates that housing and services must ensure the protection, well-being and suitable living conditions of each child.¹³⁶ However, the situation on the ground remains distant from these norms.

At the end of 2023, about 53% of Italy’s 23,226 unaccompanied minors were in SAI, while roughly 20% lived in private or kinship housing. Importantly, placements with foster families remained minimal at around 4% despite law and guidelines.¹³⁷ Many children spend prolonged periods in reception centres and regional monitoring reports have documented overcrowding, lack of specialized child care staff, and delays in transferring minors from first reception to SAI projects.¹³⁸ Overall, Italy’s alternative-care framework goals are admirable, but its execution suffers from resource bottlenecks and administrative delays which directly and negatively impact the operationalisation of the BIC principle.

5.1.3 Thematic Gap Analysis

At a legislative level, Italy’s framework for UASCs reflects several core principles of an HRBA. Notably, the Zampa Law affirms the equal rights of UASCs with Italian minors and prohibits their detention while explicitly institutionalizing their rights to participation, representation, and care.¹³⁹ However, it is evident that UASCs often cannot practically exercise these rights that are granted

¹³² ASGI, 'Unaccompanied Minors' (n 122); AIDA, 'Country Report: Italy' (n 117).

¹³³ Autorità Garante per l’infanzia e l’adolescenza, *Relazione al Parlamento 2018* (Garante 2019).

¹³⁴ Decreto Legislativo 18 agosto 2015, n 142 (n 112) art 18(1)-(2).

¹³⁵ Legge 7 aprile 2017, n 47 (n 110).

¹³⁶ Decreto Legislativo 18 agosto 2015, n 142 (n 112) art 19(1).

¹³⁷ AIDA, 'Country Report: Italy – Reception' (n 117).

¹³⁸ ActionAid–Centre for Human Rights Studies, *Accoglienza al collasso: Centri d’Italia 2024* (3 March 2025).

¹³⁹ Legge 7 aprile 2017, n 47 (n 111).

by law. From a participation perspective, many children never actually see their guardian when first interviewed thereby undermining their right to be heard. This denied them not only effective participation but also protection from procedural errors that can lead to wrongful detention or adult classification. Similarly, the principle of accountability is poorly reflected in hotspot contexts. Despite Article 19(4) of the Reception Decree prohibiting the detention of UASCs, cases such as *A.T. and Others v Italy* have shown that minors are often held in degrading conditions without access to legal redress or representation.¹⁴⁰ Furthermore, two HRBA pillars of the rule of law and non-discrimination have been undermined by the recent Decree-Law 133/2023 which allows security agents to effectively bypass judicial oversight and multidisciplinary age evaluations.¹⁴¹ This not only violates the presumption of minority but also institutionalises a discriminatory practice that treats vulnerable children as presumptive adults based on administrative convenience. The CPMS framework likewise highlights many discrepancies. While Italy's legal framework partially aligns with CPMS Standard 13 on UASCs, the actual conditions are far from the other CPMS standards. CPMS Standard 15 requires that care decisions be made through a structured, case-planning process tailored to the child's needs and with active child participation.¹⁴² However in the Italian context, reception process is still determined by logistical factors such as space availability in hotspots rather than through case-specific planning. Moreover, CPMS Standard 2.8 emphasises that UASCs should never be detained for reasons related to migration. Italy's repeated use of hotspots and the extended confinement permitted under Decree-Law 133/2023 directly contradicts this standard.¹⁴³ These facilities also frequently lack child-specific services which is in breach of CPMS indicators which require access to essential services and child-friendly environments. Furthermore, while Italy has introduced standards for trained guardians and cultural mediators, CPMS also requires that all frontline actors be trained in child protection. Italy's exposure of children to assessments by police personnel with no child protection training under Decree-Law 133/2023 contradicts the CPMS.

Italy's practices also fall short when assessed through the lens of Bowlby's attachment theory and Martha Fineman's vulnerability theory. John Bowlby's Attachment Theory shows that children

¹⁴⁰ *A.T. and Others v Italy* App No 47287/17 (ECtHR, 23 November 2023).

¹⁴¹ Decreto-Legge 5 ottobre 2023, n 133 (n 118).

¹⁴² Alliance for Child Protection in Humanitarian Action (n 103) standard 15.

¹⁴³ *Ibid* standard 2.8.

need consistent caregiving to develop healthily. This attachment disruption is particularly severe in the case of UASCs. The forced separation or neglect of UASCs, such as through prolonged stays in reception hotspots and absence of consistent caregiving environments interrupt children's ability to form stable attachments, which are essential to their psychological development. In practice, many UASCs in Italy face exactly these adverse conditions and have to endure the impacts of uncertain status, minimal emotional support, and bureaucratic neglect. Moreover, the inconsistencies in appointing guardians and delays in placing UASCs in community-based housing deprive them of the nurturing environments critical for emotional regulation and identity formation. Under Fineman's vulnerability theory, UASCs are paradigmatic vulnerable subjects whose compounded vulnerabilities demand not just formal rights but also positive institutional support.¹⁴⁴ Instead, Italy's framework and practice often treats vulnerability as a status to be regulated rather than a trigger for specialized state response. The transfer of assessment powers to police actors and prolonged hotspot detention periods instituted by Decree-Law 133/2023 reflects a securitisation approach that structurally neglects the redistributive obligations of the state.¹⁴⁵ While the Zampa Law was perhaps designed to promote child-sensitive care, the subsequent legal developments in Italy reflect a shift towards administrative efficiency at the expense of developmental needs.

Overall, the gaps between Italy's written commitments and on-the-ground reality become stark under these lenses. While Italian law aspires to HRBA norms and child-protection standards, its implementation often undermines children's developmental needs and exacerbates their vulnerability. This tension reveals that having a strong legal framework is necessary but not sufficient and only by fully operationalizing those protections can Italy satisfy the spirit of HRBA, CPMS and vulnerability theory.

5.1.4 Conclusion

Italy's approach to unaccompanied and separated minors combines progressive legislation with uneven practice. The Zampa Law and related reforms have set an admirable legal baseline: prohibiting detention, mandating guardianship, and formalizing children's rights in asylum, yet institutional gaps persist. Age assessments are often cursory, guardians are chronically scarce, and

¹⁴⁴ Fineman, 'The Vulnerable Subject and the Responsive State' (n 46) 258–267.

¹⁴⁵ Decreto-Legge 5 ottobre 2023, n 133 (n 118).

reception conditions can mirror detention. In the three frameworks examined, these shortcomings have serious implications. A genuine HRBA would demand that rights on paper translate into real protection; CPMS would require all children to live in a safe, stable environment; and developmental theories warn that continued neglect of minors' emotional and social needs will inflict lasting harm. The ECtHR judgments underscore that European law likewise sees such procedural and custodial failures as rights violations.

In sum, Italy's legal reforms have oriented the system correctly but turning orientation into operation has remained a challenge. To close these gaps, Italy would need not only stronger enforcement of its existing laws, but also more resources devoted to guardianship programs, foster care expansion, and child-friendly reception. The analysis above shows that addressing these deficits is essential if Italy wants to fulfil both the letter and spirit of its commitments to the most vulnerable children within its borders.

5.2 Greece

5.2.1 Legal and Policy Framework

In recent years, Greece has undertaken multiple legal reforms with the intention to improve the protection of UASCs within its domestic systems. One of the most significant changes came in 2018 with the introduction of Law 4540/2018, which transposed the EU Reception Conditions Directive into Greece's domestic law and introduced certain provisions for reception conditions.¹⁴⁶ Shortly thereafter, Law 4554/2018 was adopted with the aim to establish a comprehensive guardianship system for unaccompanied minors.¹⁴⁷ However, the system was never operationalised in practice due to bureaucratic and structural issues. In response, the Greek state repealed this law in 2022 and enacted a new legal framework through Law 4960/2022.¹⁴⁸ This new legislation established a national guardianship system and a structured accommodation framework for UASCs. It also introduced a new model of professional guardianship, defined minimum standards for care placements, and laid out transitional arrangements where public prosecutors

¹⁴⁶ Law 4540/2018, *Adaptation of Greek legislation to the provisions of Directive 2013/33/EU on the reception of applicants for international protection and other provisions* (Government Gazette A 91/22.05.2018).

¹⁴⁷ Law 4554/2018, *Guardianship of unaccompanied minors and other provisions* (Government Gazette A 130/18.07.2018).

¹⁴⁸ Law 4960/2022, *National Guardianship System for Unaccompanied Minors and related accommodation framework* (Government Gazette A 132/22.07.2022).

would now serve as interim guardians only for a limited period of time. The new law also imposed a legal obligation to appoint alternate caregivers who would be responsible for the child's daily needs until a permanent guardian was formally appointed. These legal provisions were subsequently codified within the revised 2022 Asylum Code under Article 66-11.¹⁴⁹

A further policy milestone came with the abolition of protective custody in police stations. Protective custody was a practice previously used in Greece to detain unaccompanied minors pending their official placement in suitable accommodations. In response to both legal pressure and sustained advocacy, the Greek government in late 2020 publicly committed to end the use of protective custody detention of children.¹⁵⁰ Law 4760/2020 formally ended this measure by amending Article 118 of Presidential Decree 141/1991. This new law reaffirmed that detention must be used only as a last resort, and if it is used, it must be only in child-appropriate facilities that ensure separation from adults.¹⁵¹ This change was in parallel to Presidential Decree 18 which established the Special Secretariat for the Protection of Unaccompanied Minors (SSPUM) within the Ministry of Migration and Asylum. The SSPUM was tasked with coordinating guardianship, case management, referrals to accommodation, and general welfare for unaccompanied minors.¹⁵² However, in 2023, the Greek government replaced this body with a newly created General Secretariat for Vulnerable Persons and Institutional Protection (GSVP). The GSVP now oversees all aspects of UASC protection, including the guardianship system and the National Referral Mechanism.¹⁵³ While these institutional changes suggest an evolving structure for child protection governance, this reshuffling of mandates also caused administrative discontinuities that risk undermining the continuity of care and procedural safeguards that are essential for the protection of UASCs.

Taken together, these reforms reflect an intent to strengthen the legal and institutional infrastructure around UASC protection in Greece and to align national practices with international

¹⁴⁹ Law 4939/2022, *Code of Procedures for International Protection and Provisions for Migration and Asylum* (Government Gazette A 111/10.06.2022) art 66-11.

¹⁵⁰ E Cossé, 'Greece commits to end "protective" child detention' (HRW, 19 November 2020) <<https://www.hrw.org/news/2020/11/19/greece-commits-end-protective-child-detention>> accessed on 4 June 2025.

¹⁵¹ Law 4760/2020, *Reform of return procedures and abolition of protective custody of minors* (Government Gazette A 247/11.12.2020).

¹⁵² Presidential Decree 18/2020, *Establishment of the Special Secretariat for the Protection of Unaccompanied Minors* (Government Gazette A 34/19.02.2020).

¹⁵³ Joint Ministerial Decision 13807/2023, *Establishment of the General Secretariat for Vulnerable Persons and Institutional Protection* (Government Gazette B 1583/10.03.2023).

and European child rights obligations. However, the frequent restructuring of institutional responsibilities and significant implementation shortfalls have undermined the operationalisation of these reforms. Therefore, the transition from legal commitment to operational effectiveness in Greece remains challenging due to the issues caused by fluctuating institutional mandates and under-resourced child protection infrastructure, among others.¹⁵⁴

5.2.2 Institutional and Operational Practices

Historically, UASCs crossing Greece's borders were often placed under protective custody (Χρήση Προσωπικής Κράτησης) for extended periods of time in police stations or pre-removal centres. The ECtHR in *H.A. and Others v. Greece* (2019) found that this practice violated Article 3 and Article 5 of the ECHR.¹⁵⁵ Despite the formal abolition of protective custody and the introduction of child-specific care mechanisms, UASCs have repeatedly been subjected to operational detention practices that exploit various procedural loopholes. Furthermore, in the case of *M.Y. and Others v. Greece* (2025), the ECtHR held that the conditions under which the unaccompanied minors were detained, both in police stations and pre-removal detention centres, were incompatible with Article 3 of the ECHR. Importantly, the ECtHR dismissed the Greek government's arguments that detention conditions had improved, noting the minors were held in degrading conditions, frequently with adults, and without meaningful access to legal guardians or effective legal remedies.¹⁵⁶

The CPT (in 2014, 2017, 2019, and 2023) has also repeatedly criticised Greece for holding minors in inappropriate places such as closed camps and airport holding cells.¹⁵⁷ CPT inspectors also received numerous reports in 2023 that children rescued at sea were being detained in police-run facilities such as the Amygdaleza pre-removal centre (PROKEKA), rather than an appropriate reception centre.¹⁵⁸ The Ombudsman has likewise documented that families and unaccompanied

¹⁵⁴ AIDA, 'Country Report: Greece' (ECRE, 28 March 2024) <<https://asylumineurope.org/reports/country/greece/>> accessed 20 May 2025.

¹⁵⁵ *H.A. and Others v Greece* (n 82).

¹⁵⁶ *M.Y. and Others v Greece* (n 98) paras 14–17.

¹⁵⁷ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Greek Government on the visit... from 20 November to 1 December 2023* CPT/Inf(2024)21 (12 July 2024).

¹⁵⁸ *ibid.*

minors are systematically detained in Amygdaleza which bypasses the required First Reception Services.¹⁵⁹

The problem of UASC detention has been compounded by the introduction of Closed Controlled Access Centres (CCACs) on the Aegean islands since 2021. These CCACs are hybrid reception and detention facilities where all new arrivals, including UASCs, are de facto detained until security screening and registration procedures are complete. Although UASCs are theoretically recognised as vulnerable and should be prioritised for referral to child-specific facilities, in many cases they are left in CCACs for prolonged periods without adequate care or screening. Investigations have further reported that CCACs lack child-friendly services and thorough vulnerability screening.¹⁶⁰ The CPT in this context has formally urged Greece to end all child detention in such facilities, noting that even short stays there were harmful and violated the BIC principle. The CPT also explicitly demanded the termination of the Special Holding Facility for children at Athens airport.¹⁶¹ This demonstrates that even with the reformed detention procedures, implementation gaps and the exploitation of loopholes subjects UASCs to detention or conditions tantamount to detention and thereby, clearly violates the BIC principle.

All asylum-seeking minors are subject to an age-determination procedure but age assessment procedures in Greece remain another area of critical concern. The current process is governed by Joint Ministerial Decision 9889/2020, which outlines a three-stage assessment involving a psychosocial interview, a non-invasive medical exam, and, when necessary, a bone X-ray.¹⁶² However, implementation of these safeguards in practice is highly uneven. In many cases, the police conduct informal age assessments immediately without the required psychosocial interviews or access to appeal. This is because the law's protections do not apply to age determinations conducted for children under the responsibility of the Hellenic Police outside reception centres. The Asylum Information Database reports that minors arrested by police are usually X-rayed immediately without psychosocial evaluation and have no right of appeal. It also reports severe procedural flaws where the psychosocial interview is often skipped due to lack of trained staff, children are not adequately informed, and some officers rely on arbitrary criteria such

¹⁵⁹ Greek Ombudsman, *Special Report on External Monitoring of Return Procedures and Detention* (May 2023).

¹⁶⁰ Greek Ombudsman, *Special Report on Return of Third Country Nationals* (June 2023).

¹⁶¹ CPT, *Report to the Greek Government... 2023* (n 160).

¹⁶² AIDA, 'Country Report: Greece – Detention' (ECRE, 30 April 2024)

<<https://asylumineurope.org/reports/country/greece/detention-asylum-seekers/>> accessed 10 June 2024.

as appearance or behaviour.¹⁶³ This is further evidenced by the Greek Ombudsman which reported that on the island of Samos in 2023, psychosocial steps were skipped altogether and children were subjected to medical testing without due process.¹⁶⁴

In the case of *T.K. v. Greece*, a 17-year-old who arrived on Samos was mistakenly registered as an adult by authorities who disregarded his stated age and even later questioned the authenticity of his birth certificate. He was then also denied a legal guardian and detained in an overcrowded and unsanitary makeshift camp outside the official reception centre. The Court found these conditions to be degrading and in violation of Article 3 ECHR.¹⁶⁵ The *T.K.* judgment highlights a troubling culture of disbelief toward minors' claims of age in Greece. This lack of a consistent presumption of age minority means that children are often misclassified as adults and may remain in detention for extended periods of time without due process. Furthermore, while the Ministerial Decision provides a 15-day appeal period, any legal recourse is limited because in practice appeals are rare and often ineffective.¹⁶⁶ Furthermore, the Court's decision in *M.Y. and Others v. Greece* (2025) highlights critical deficiencies in Greece's age assessment procedures. The Court observed significant delays and inaccuracies in registering applicants as minors, incorrect recording of birth dates, and the lack of timely access to the asylum procedure. The judgment particularly criticised the Greek authorities for failing to provide minors with adequate interpretation services and information, significantly impairing their ability to communicate their true age and circumstances effectively.¹⁶⁷ These procedural deficiencies lead to prolonged violations of liberty in the context of UASCs.

A key safeguard for UASCs is the appointment of a legal guardian. Until July 2022, the only designated guardian for UASCs in Greece was the public prosecutor. This role was limited to formal representation and did not involve meaningful day-to-day advocacy.¹⁶⁸ In 2019 UNHCR piloted a project for the training and appointment of guardians through which they deployed about

¹⁶³ AIDA, 'Country Report: Greece – Guarantees for Vulnerable Groups' (ECRE, 30 April 2024) <https://asylumineurope.org/reports/country/greece/asylum-procedure/guarantees-vulnerable-groups/> accessed 10 June 2024.

¹⁶⁴ Greek Ombudsman, *Findings from Samos Site Visit* (2023) cited in AIDA, 'Country Report: Greece - Detention' (n 165).

¹⁶⁵ *TK v Greece* App No 16112/20 (ECtHR, 18 January 2024).

¹⁶⁶ AIDA, 'Country Report: Greece – Guarantees for Vulnerable Groups' (n 166).

¹⁶⁷ *M.Y. and Others v Greece* (n 98) para 15.

¹⁶⁸ *Rahimi v Greece* (n 86).

45 professional guardians covering ~2,200 children.¹⁶⁹ However, this was far from adequate based on the existing needs. The Rahimi judgment of the ECtHR explicitly condemned the Greek authorities for failing to appoint a guardian during the asylum procedure which left the child unrepresented and without support during critical stages of status determination. Here, the Court also noted that prosecutors rarely intervened to protect UASC rights, and Mr. Rahimi was left with no guardian after release.¹⁷⁰ In practice, this vacuum means children have no advocate during asylum interviews or detention reviews and UASCs are often represented in the asylum procedure only by untrained translators or NGO helpers, thereby undermining their ability to present their vulnerabilities or challenge administrative decisions.¹⁷¹

Procedurally, Greek law also currently requires a specialized procedure for vulnerable applicants, including UASCs. However, these children often fall through institutional cracks and are processed through general asylum channels in practice. BIC assessments and vulnerability screenings are legally mandated in Greece but they are frequently skipped due to lack of trained personnel and capacity.¹⁷² Field data from the Greek Council for Refugees (GCR) reveals that approximately 30% of first-instance interviews with minors in 2023 took place without any preceding medical or psychosocial assessment.¹⁷³ Moreover, even after identification, the asylum border procedure permits a 25-day period before transferring vulnerable cases to the regular process, during which time UASCs often remain detained in substandard facilities.¹⁷⁴

Alternative care arrangements are essential to ensuring that UASCs are not detained. However, they remain critically under-resourced. Though Law 4960/2022 mandates that every UASC shall be entitled to a care arrangement suitable to their best interests, the infrastructure to fulfil this requirement is severely lacking.¹⁷⁵ Greece's shelter network comprises a limited number of NGO-run group homes and semi-independent living apartments for older minors, but capacity of these shelters consistently falls short of the actual need. The abrupt closure of the ESTIA II housing programme at the end of 2022, which sheltered asylum families, further strained the already

¹⁶⁹ UNHCR, *Case study- Guardianship of UASC* (2022) <https://www.unhcr.org/sites/default/files/2022-12/Case-Study-Guardianship-in-Greece.pdf> accessed 9 June 2025.

¹⁷⁰ *Rahimi v Greece* (n 86).

¹⁷¹ AIDA, 'Country Report: Greece – Guarantees for Vulnerable Groups' (n 166).

¹⁷² AIDA, 'Country Report: Greece – Reception' (n 157).

¹⁷³ *ibid.*

¹⁷⁴ AIDA, 'Country Report: Greece – Guarantees for Vulnerable Groups' (n 166).

¹⁷⁵ Law 4960/2022 (n 151).

overstretched accommodation system and left many children homeless or without access to education and basic services.¹⁷⁶ Reports by the UNICEF in 2023 and 2024 highlight prolonged waitlists and a lack of placement options, especially for children under 15 years old.¹⁷⁷ Furthermore, during spikes in migrant arrivals in 2023–2024, there was no emergency scaling of accommodation plans which resulted in many children being left in CCACs or housed informally with unrelated adults.

Overall, on-the-ground practice in Greece remains characterised by systemic shortfalls in care, legal protection, and procedural safeguards despite the legal reforms in recent years. National institutions continue to rely on detention-like conditions as a default response which undermines the substantive rights of UASCs and fails to deliver on the BIC principle in any operationally meaningful way.

5.2.3 Thematic Gap Analysis

Under a human rights-based approach, the treatment of UASCs in Greece must be evaluated against the core principles of dignity, participation, accountability, transparency, and non-discrimination. Even though Greek legislation formally recognises BIC as a guiding principle in all administrative procedures concerning minors,¹⁷⁸ the translation of this norm into practice has been demonstrably inconsistent. It is evident that the principle of participation is routinely undermined because children are frequently excluded from decisions affecting their status, placement, or legal representation, particularly during age assessments and asylum interviews. Furthermore, the absence of independent legal guardians during these procedures, despite the formal mandate for guardianship under Law 4960/2022¹⁷⁹, denies UASCs meaningful opportunities to participate in or contest administrative decisions. This also compromises principles of accountability, as minors cannot even effectively exercise the right to appeal or seek redress without the proper institutional support. As highlighted previously, the ECtHR has also condemned Greek practices of the automatic detention of a minor without consideration of alternatives or appointment of a guardian.¹⁸⁰ These findings confirm that Greece's formal

¹⁷⁶ Network for Children's Rights, 'Input by civil society organisations to the Asylum Report 2023' (EUAA, 1 February 2023).

¹⁷⁷ UNICEF Greece, *Country Office Annual Report 2023* (2024).

¹⁷⁸ Law 4939/2022 (n 152) art 66-11.

¹⁷⁹ Law 4960/2022 (n 151).

¹⁸⁰ *Rahimi v Greece* (n 86).

recognition of rights is not sufficient. A functional rights-based framework requires institutions capable of realising those rights in context and Greece's operational practices demonstrate that they clearly do not meet these criteria.

When assessed against the CPMS, Greece's shortcomings are even more pronounced. CPMS Standard 2.8 stipulates that separated children should be provided with formal, community-based alternative care and that detention should only be used as a last resort.¹⁸¹ In practice, UASCs in Greece are still routinely held in closed Reception and Identification Centres or transferred to Pre-Removal Detention Centres. These detention environments are proven to be rarely child-appropriate and often characterised by poor sanitation, overcrowding, and the presence of unrelated adult detainees. The Council of Europe's Committee for the Prevention of Torture has repeatedly reported that such facilities fail to meet even basic child protection standards and expose minors to potential harm and retraumatisation.¹⁸² Moreover, Greece's existing monitoring mechanisms that should ensure time-bound and legally justified detention are fragmented and under-resourced, and therefore there is very limited availability of periodic review or child protection oversight to assess the continued necessity and proportionality of detention. The slow pace of referrals to open accommodation facilities compounds this issue because even when a minor's legal status is clarified, they often remain in detention simply due to a lack of space in child-specific facilities.¹⁸³ These systemic issues demonstrate a very large and stark gap between Greece's practice and the bare minimum standards that should be followed in child protection.

Through the developmental and vulnerability lens, the impact of Greece's practices becomes even more troubling due to the clear long-term harm being caused. Bowlby's attachment theory underscores the critical importance of stable caregiving environments in supporting resilience and emotional regulation in children.¹⁸⁴ Greece's practice of UASC detention in impersonal and institutionalised settings clearly disrupts the formation of trust and attachment, particularly for children who have already suffered from family separation or traumatic journeys. Additionally, the chronic delays in appointing guardians, the absence of consistent case workers, and the frequent relocation between temporary shelters or detention centres destabilise any sense of

¹⁸¹ Alliance for Child Protection in Humanitarian Action (n 103) standard 2.8.

¹⁸² CPT, *Report to the Government of Greece on the visit... from 13 to 17 March 2023* (CPT/Inf(2023)18).

¹⁸³ AIDA, 'Country Report: Greece' (n 157).

¹⁸⁴ Bowlby, *Attachment and Loss* (n 23).

continuity or safety for UASCs. This demonstrates that Greece’s approach fails to account for the psychological harm that arises from prolonged uncertainty that is compounded by delayed asylum decisions and opaque age assessment outcomes. Furthermore, Martha Fineman’s vulnerability theory demands institutional frameworks that not only recognise dependency and vulnerability, but also that this recognition must be used as a basis for targeted institutional adaptation and response.¹⁸⁵ Greece’s institutional arrangements are marked by overlapping mandates between ministries, reliance on underfunded NGOs, and weak inter-agency coordination. This entire structural network has consistently failed to meet the responsibilities of targeted and specialised care. Rather than proactively structuring its asylum and reception systems around the heightened vulnerabilities of UASCs, the Greek state continues to rely on reactive and ad hoc measures. Guardianship procedures remain inconsistently applied and access to psychosocial services are both geographically uneven and chronically understaffed. Therefore, in the Greek case it is evident that vulnerability is intentionally and routinely subordinated to migration control imperatives, and this directly contributes towards perpetuating structural harm to UASCs.

The research demonstrates that the Greek system continues to fall short across all three analysis frameworks. Specifically, it fails to realise the participatory and accountability guarantees of the HRBA, operates much below the benchmarks established by the CPMS, and neglects the core tenets of childhood development and vulnerability. While recent reforms have nominally strengthened the legal structures for child protection, these measures will remain hollow without coordinated implementation, adequate allocation of resources, and a genuine commitment to placing BIC at the heart of migration governance.

5.2.4 Conclusion

While Greece’s legal framework for UASCs has improved on paper, a large implementation gap nevertheless persists in practice. It must be noted that Greek laws do now prohibit arbitrary child detention and also promise dedicated guardianship frameworks. However, Greek agencies and authorities continue to detain and isolate children with insufficient safeguards and without regards for their best interests.¹⁸⁶ Despite public reports by the CPT, UN agencies, and even the Greek Ombudsman, the normative protections for UASCs in Greece remain weakened by loopholes and

¹⁸⁵ Fineman, ‘The Vulnerable Subject and the Responsive State’ (n 46).

¹⁸⁶ ECRE, ‘ECtHR: Greece Violated Convention by Placing Unaccompanied Minors in “Protective Custody” in Police Stations and Not Addressing Ill-treatment Complaints’ (30 November 2022).

authorities fail to apply even the letter of the law. It is clear that the Greek system still treats unaccompanied minors primarily as a security problem, instead of as vulnerable individuals whose best interests should be primary. In order to meet the minimum standards of child-rights and humanitarian child protection standards and reduce irreversible adverse developmental impacts, Greece must operationally eliminate all detention of UASCs, expedite screening and care referrals, and ensure independent guardianship and legal counsel mechanisms. While these reforms have so far remained largely aspirational, any failure to meet these core minimum standards with good faith and in a timely manner represents an intentional lapse in implementing the BIC principle.

5.3 Malta

5.3.1 Legal and Policy Framework

Malta's domestic law formally recognises unaccompanied children within a special legal category. The cornerstone of the legal framework concerning UASCs in Malta is the Minor Protection (Alternative Care) Act (2019, entered into force in July 2021), which reorganised guardianship and care processes for all minors in need. The Act also imposes a duty on anyone who comes in contact with any person who claims to be an unaccompanied minor to refer that child to the Principal Immigration Officer, who must in turn notify the Child Protection Director so that the child can be registered and issued an identity document within 72 hours. Immediately after registration, the Director must then apply to the Juvenile Court for provisional care and custody measures in the child's best interests and must further appoint a legal representative for the child during the asylum process. The Act also explicitly designates the Agency for the Welfare of Asylum-Seekers (AWAS) as the guardian for UASCs in Malta. Under this Act, all minors are entitled to a provisional care order and an appointed representative while their age is assessed. A full care order is issued once their age as a minor is confirmed.¹⁸⁷

These statutory safeguards are also complemented by additional legislations. Refugees (Reception Conditions) Regulations (S.L. 420.06/2013, as amended) and the *Procedural Standards in Examining Applications for International Protection Regulations* (S.L. 420.07) codify the right of an unaccompanied minor to legal assistance for all phases of the protection procedure within 30

¹⁸⁷ Minor Protection (Alternative Care) Act (Act XXIII of 2019) s 21.

days of a court's care order.¹⁸⁸ Notably, the 2021 amendments to the Reception Regulations require that UASCs must be represented and assisted by a representative as soon as possible upon arrival and also explicitly provide that any detention order should be revoked if the person's vulnerability is identified.¹⁸⁹ Additionally, through the Immigration Act (Ch.217 of the Laws of Malta) and its subsidiary Places of Detention Regulations (S.L. 217.03/1995), Malta designates specific sites where detention may legally occur, such as Safi Barracks, the Hal Far Initial Reception Centre (IRC), and Lyster Barracks.¹⁹⁰ However, the Marsa IRC, which is a repurposed school compound regularly used to accommodate families and children, is not even listed as an official detention site despite de facto serving that function.¹⁹¹ This discrepancy highlights a gap between legal codification and practical application. Taken together, these laws establish a legal framework that, in theory, should treat UASCs primarily as children in need of care rather than as migrants to be locked up. Yet, in practice, the enduring use of informal or non-designated facilities for child detention and the limited realisation of procedural guarantees undermines this child-rights-based approach and raise concerns about the genuine prioritisation of the BIC in Malta's asylum reception system.

5.3.2 Institutional and Operational Practices

Despite the existing legal framework, various institutions and official monitors have documented systematic gaps in practice in the context of UASCs in Malta. All individuals arriving by boat (including families and children) are initially held in closed centres for public-health reasons. As observed by NGOs and the Council of Europe's CPT, upon disembarkation everyone is detained under quarantine orders.¹⁹² Malta currently operates three primary reception/detention facilities out of which Safi Barracks is the main closed detention centre, housing mostly single men. However, detained UASCs awaiting age-assessment are also held here, often in spaces with unrelated adults. It was even reported that even lone women migrants were locked up in Safi's metal container units with almost no outside contact.¹⁹³ Families and unaccompanied children

¹⁸⁸ Refugees (Reception Conditions) Regulations, SL 420.06 reg 14(1)(b); Refugees (Procedural) Regulations, SL 420.07.

¹⁸⁹ Reception of Asylum Seekers (Amendment) Regulations 2021, LN 487 of 2021, SL 420.06.

¹⁹⁰ Immigration Act, Cap 217 (Malta) art 34; Places of Detention Designation Order, SL 217.03.

¹⁹¹ Global Detention Project, 'Marsa Initial Reception Centre, Malta' (2023).

¹⁹² AIDA, 'Country Report: Malta – Reception Conditions' (ECRE and aditus foundation, 25 October 2024).

¹⁹³ AIDA, 'Country Report: Malta – Detention of Vulnerable Applicants' (ECRE and aditus foundation, 25 October 2024).

whose age is immediately apparent are placed in the Marsa IRC, while adult men are sent to the Hal Far holding facility (colloquially known as “China House”). No systematic vulnerability screening is conducted at arrival other than a simple visual check by AWAS staff; hence many vulnerable adults and children who do not present as such are confined just like others. Only those children who are clearly identified as minors are separated from adult populations at the start.¹⁹⁴ Additionally, Marsa IRC is nominally an open centre for families and children because it has a free-access ward alongside its locked section.¹⁹⁵ In theory, free access should be the default for children, however in practice, children and infants have often been detained in the closed units, also at times with unrelated single men.¹⁹⁶ The China House was also reopened in 2020 and is also often used to detain asylum seekers under medical isolation orders. Disturbingly, children who had cleared health screenings still remained locked in China House well beyond their clearance periods. Reports confirm that “children are (still) being held in closed centres,” and noted unsanitary, overcrowded conditions with no space to play or education.¹⁹⁷

Beyond the initial disembarkation and reception, procedural age assessment and screening operations in Malta are also found to be lacking. In theory, any claimant whose age is in doubt must undergo an age examination through medical and psychosocial means with a panel of experts, while remaining in care order status. However, in practice, anyone not visibly a child is presumed to be an adult until proven otherwise, even if the person insists that they are a minor. AWAS delegates observe that if AWAS presumes someone is a child upon initial review, that person is referred to the child protection procedure. However, the individual remains in custody for a few days at least on public health grounds. Conversely, if AWAS has doubts then the person is sent for formal age assessment by medical experts and is kept in detention throughout the procedure, including during any appeal of the age decision. Only after all legal appeals are exhausted will a re-classified UASC be released from detention and handed to AWAS care.¹⁹⁸ As a result, NGOs

¹⁹⁴ AIDA, 'Country Report: Malta – Reception Conditions' (n 195); AIDA, 'Country Report: Malta – Detention of Vulnerable Applicants' (n 196).

¹⁹⁵ Global Detention Project, 'Marsa Initial Reception Centre' (n 194).

¹⁹⁶ CPT, *Report to the Maltese Government on the visit... from 17 to 22 September 2020* CPT/Inf(2020)13 (March 2021).

¹⁹⁷ AIDA, 'Country Report: Malta – Detention of Vulnerable Applicants' (n 196); Kristina Abela, 'Migrant detention numbers shrink, fears about child detainees remain', *Times of Malta* (7 February 2021)

<https://timesofmalta.com/article/migrant-detention-numbers-shrink-fears-about-child-detainees-remain.849872> accessed 11 June 2025.

¹⁹⁸ *Ibid.*

have documented cases of young people spending months behind bars while awaiting final age determination.¹⁹⁹ While Malta officially claims only seven UASCs were detained in 2023, this still ignores the many UASCs who are detained pending screening.²⁰⁰

Malta also continues to hold UASCs in the same detention facilities as adults. Until early 2022 no child-only detention space existed in Malta. The CPT noted that “*children of all ages – including infants – were locked on all of the units in very poor conditions together with unrelated single male adults,*” with no access to play or exercise.²⁰¹ In 2022 the Maltese authorities opened a small ‘Children’s Area’ in Safi Barracks but NGOs have never been allowed to inspect this space.²⁰² In the Ali Camarra habeas corpus case (2022) within the domestic jurisdiction, five boys were held with adult men for nearly two months before a court ordered their release, and only on the day before their release were three of them finally recognised as minors by AWAS.²⁰³ Similarly, the J.B. and Others v. Malta case involved six teenage minors who had been detained with adults in China House from the time of their arrival and had no access to guardianship or special care for nearly 50 days.²⁰⁴ In a particularly frustrating incident in 2023, six boys detained in China House for 50 days were only identified as UASCs when a court interim measure forced the state to improve their detention conditions.²⁰⁵

Vulnerability screening by the Agency for the Welfare of Asylum Seekers (AWAS) is also extremely backlogged. Since 2020, EUAA experts helped AWAS conduct vulnerability assessments. However, after the departure of all 22 EUAA personnel by 2023, AWAS’s Vulnerability Assessment Team was understaffed once again.²⁰⁶ NGOs also complain that AWAS issues extraordinarily little written feedback during procedural decisions. Specifically, applicants are rarely told why a vulnerability referral was declined, and AWAS often fails to highlight the applicants obvious child or disability needs.²⁰⁷ The result of this practice is that UASCs, including

¹⁹⁹ aditus foundation, *There Are Alternatives to Administrative Detention* (2023).

²⁰⁰ AIDA, 'Country Report: Malta – Detention of Vulnerable Applicants' (n 196).

²⁰¹ CPT, *Report to the Maltese Government... 2020* (n 199).

²⁰² AIDA, 'Country Report: Malta – Detention of Vulnerable Applicants' (n 196).

²⁰³ *Police v Ali Camarra* (Court of Magistrates of Malta (Criminal Judicature), 25 January 2022).

²⁰⁴ *J.B. and Others v Malta* App no 1766/23 (ECtHR, 22 October 2024).

²⁰⁵ AIDA, 'Country Report: Malta – Detention of Vulnerable Applicants' (n 196).

²⁰⁶ AIDA, 'Country Report: Malta – Reception Conditions' (n 195); AIDA, 'Country Report: Malta – Detention of Vulnerable Applicants' (n 196).

²⁰⁷ AIDA, 'Country Report: Malta – Asylum Procedure: Guarantees for Vulnerable Groups' (ECRE and aditus foundation, 25 October 2024).

those with physical or mental trauma, are kept in detention even when they clearly qualify for urgent protective status. In *A.D. v Malta* (2023), lawyers described that the minor with tuberculosis was kept in detention for four months despite a vulnerability report documenting his severe distress. The report was only made accessible to his counsel upon release.²⁰⁸ In another instance, an LGBTI minor was reportedly beaten and humiliated by cellmates while his referral case was still pending with AWAS.²⁰⁹

Collectively, these examples illustrate how Maltese institutions have treated UASCs more like adult irregular migrants than like vulnerable children with special needs. Staffing and procedural flaws such as weak screening mechanisms, delayed guardian appointments, and lack of child-specific reception procedures result in critical gaps between policy and reality. Even where laws are existing on the books, their execution has been sub-standard and exposed children to prolonged detention and neglect.

5.3.3 Thematic Gap Analysis

Through a HRBA lens, Malta's legal system contains progressive language but systemic gaps in realization. On paper, the Minor Protection Act embeds rights to representation, care, and minimum conditions for detention, yet in practice children are often deprived of these protections. Furthermore, while BIC should be a primary consideration in all matters related to UASCs, immigration authorities routinely delay even notifying the guardian agency regarding the arrival of new UASCs, thereby compromising the application of BIC. Procedurally, even access to effective remedy is lacking and domestic courts also have no mandate for the fast-track review of detention. Furthermore, children are not given meaningful agency even at age-assessment hearings where they seldom have legal aid or interpreters.²¹⁰ The findings of the ECtHR in *A.D.* and *J.B.* underscore that Maltese practices violated precisely the norms that a HRBA demands such as presumption of minority, prompt judicial safeguards and humane conditions.²¹¹ All of this demonstrates that key HRBA principles such as procedural fairness and child participation are

²⁰⁸ *A.D. v Malta* App no 39688/21 (ECtHR, 17 October 2023).

²⁰⁹ AIDA, 'Country Report: Malta – Reception Conditions' (n 195); AIDA, 'Country Report: Malta – Detention of Vulnerable Applicants' (n 196).

²¹⁰ *ibid.*

²¹¹ *A.D. v Malta* (n 210); *J.B. and Others v Malta* (n 207).

rarely met in Malta's treatment of UASCs. This points to a glaring normative gap between Malta's stated commitments and daily operations.

When considering the baselines established by the CPMS, which emphasize family and community-based care, safe environments, and psychosocial support, Malta's practices are even more starkly lacking. CPMS explicitly holds that detention of children should only be used as a measure of last resort and that any deprivation of liberty must be strictly necessary for protection and never for administrative convenience. Malta's routine use of closed detention centres for children runs counter to the least restrictive environment standard embedded in these guidelines. Furthermore, while the existence of Dar il-Liedna may align with the CPMS goals of providing a staffed and child-friendly home, it must be noted that most UASCs spend a preliminary period in a standard detention centre with no child-tailored services.²¹² Moreover, CPMS emphasizes providing age-appropriate care, psycho-social support, and opportunities for play and learning. These needs were clearly unmet for detained children in China House or Safi, as the CPT report noted and J.B. found.²¹³ NGOs also note an almost total absence of child-friendly activities or counselling in detention.²¹⁴ The CPMS is clear in the fact that holding an unaccompanied minor in a concrete cell with no schooling and negligible medical attention is a last-resort failure of obligations and not even an exceptional allowance. Overall, where CPMS would require a proactive search for alternatives to detention and integration measures, Maltese authorities treat children like ordinary adults until their minority can be proven. The consistent failure of Malta to meet even the minimum standards in child protection is emblematic of the regional failure of prioritizing BIC in child protection procedures.

When viewed through the lens of Bowlby's developmental theory, Malta's detention practices for UASCs, particularly the prolonged placement of children in closed reception facilities such as China House, pose a direct threat to children's developmental integrity. The institutionalisation of minors in isolated environments without consistent adult care figures, meaningful routines, or psychosocial support structurally impedes the stabilising relational environments essential to their

²¹² AIDA, 'Country Report: Malta – Reception Conditions' (n 195); AIDA, 'Country Report: Malta – Detention of Vulnerable Applicants' (n 196).

²¹³ CPT, *Report to the Maltese Government... 2020* (n 199); *J.B. and Others v Malta* (n 207).

²¹⁴ AIDA, 'Country Report: Malta – Reception Conditions' (n 194); AIDA, 'Country Report: Malta – Detention of Vulnerable Applicants' (n 196).

developmental recovery following displacement.²¹⁵ The evidence from previously mentioned ECtHR case law also demonstrates that these children are not only denied access to continuous caregiving relationships but are also frequently subjected to extended uncertainty and social isolation. This further disrupts the emotional development required for secure attachment. The state's failure to prioritise immediate placement into care settings, despite knowledge of a child's age or vulnerability, intensifies the risk of long-term psychological harm. This is especially true for those who have experienced pre-migration trauma or perilous journeys on their way to Malta.

From the perspective of Fineman's vulnerability theory, Malta's system operationalises vulnerability as an administrative condition rather than a factor that triggers responsive institutional care.²¹⁶ While the Minor Protection (Alternative Care) Act nominally establishes a protective regime, the state's dual delegation of child protection and immigration enforcement to AWAS results in blurred mandates and conflicts of interest. This undermines the very structures intended to support vulnerable children. Furthermore, the practice of routinely defaulting to detention pending age assessment reflects a system that treats vulnerability as a justification for containment rather than a basis for proactive state support. Malta's limited investment in community-based care models or independent guardianship structures are further examples of an institutional belief that reinforces, rather than redresses, the structural disadvantage of UASCs. This clearly elucidates that Malta falls short not only in legal compliance but also in its ethical obligations to build systems that meaningfully respond to the inherent dependency and diminished agency of UASCs.

5.3.4 Conclusion

Malta's legal framework for UASCs has evolved considerably and now incorporates explicit child-protection provisions. Normatively, the statutes and regulations mandate guardianship procedures, age-assessment safeguards, and best-interest standards. In terms of implementation however, several key obligations are not consistently honoured, and minimum standards remain an aspirational goal. Furthermore, the default operational reliance on detention where the system effectively processes children through adult-style immigration procedures runs contrary to the apparent child-centred policy. Addressing these deficits requires multi-sectoral reform. Urgent

²¹⁵ Bowlby, *Attachment and Loss* (n 23).

²¹⁶ Fineman, 'The Vulnerable Subject and the Responsive State' (n 46).

steps must include the cessation of the de facto detention of children upon arrival. Most fundamentally, Malta must shift from a migration-control mindset to a genuinely rights-based and child-centred approach that consistently puts each child's best interests first.

5.4 Comparative Synthesis

5.4.1 Insights from a HRBA

All three countries considered in this research have ratified the CRC and ECHR and have to different extents codified the BIC into domestic law. However, procedural implementation varies significantly between these countries. Italy has legally prohibited the detention of minors except under exceptional circumstances, yet in practice this protection is undermined in hotspot facilities where children are often de facto detained due to a lack of appropriate shelter or guardianship infrastructure. Greece has reformed its laws through legislation adopted in 2020 and 2022, aimed at removing police-based protective custody and introducing professionalised guardianship systems. However, enforcement of these laws remains inconsistent and significant protection gaps persist. Malta continues to apply routine detention measures for UASCs upon arrival, and this is also done frequently without individualised procedural safeguards, effective guardianship, or access to legal remedies.

Viewed through the HRBA lens, these failures indicate that none of the countries ensure procedural guarantees in a consistent, timely, or child-sensitive manner. Guardianship systems remain fragmented or subject to delay, access to specialised services is either insufficient or unavailable, and the participatory rights of children are often unrecognised in practice. ECtHR jurisprudence, including *Rahimi v Greece*, *J.B. v Malta*, and *Darboe and Camara v Italy*, has repeatedly found that these states failed to consider the BIC as a primary consideration, pointing to systemic shortcomings in respecting the status of UASCs as rights-holders.²¹⁷

5.4.2 Insights from CPMS

Under the CPMS framework, UASCs should never be detained for reasons related to immigration status, and all protection measures should be child-centred, individually assessed, and consistent with the child's developmental needs. Comparative findings across all the three countries suggest that none consistently meet these minimum humanitarian standards in operational practice. While

²¹⁷ *Rahimi v Greece* (n 86); *J.B. and Others v Malta* (n 14); *Darboe and Camara v Italy* (n 44).

Italy has invested in specialised reception facilities and developed a trained volunteer guardianship system that theoretically aligns with CPMS Standards 13 and 15, the hotspot facilities at entry points continue to operate in practice as informal detention centres without child-specific support services. In Greece, while the legal reforms have formally ended the practice of protective custody, many children continue to experience de facto detention, and the availability of psychosocial support and case management is inconsistent and unreliable. Malta presents the most significant non-compliance among the three jurisdictions as its child protection agency AWAS simultaneously performs detention and care duties, thereby violating CPMS expectations for role separation in case planning and service provision, especially under Standards 15 and 17.

Across all three jurisdictions, BID procedures are rarely conducted before or during detention. Although legal obligations nominally exist, they are not supported by the operational clarity, trained personnel, or institutional accountability needed to ensure consistent application. This indicates a structural failure by these countries to integrate humanitarian standards into practice.

5.4.3 Insights from Developmental and Vulnerability Theories

Bowlby's attachment theory and Fineman's vulnerability theory expose the deeper psychological and social consequences of detaining unaccompanied children. In all three countries, children in detention or quasi-detention settings are frequently placed in isolated environments, deprived of consistent caregivers, stable routines, or emotionally supportive surroundings essential for healthy development. In the Italian context, prolonged stays in hotspots and inconsistent guardian availability obstruct opportunities for secure attachment, thus delaying psychosocial stability and integration. In Greece, the high turnover of guardians and slow transfers to appropriate shelter environments increase the emotional burden on children and impede the continuity of care. Malta's approach is once again the most severe as children are often placed in detention centres like China House or Safi Barracks, where carceral conditions are inappropriate for minors, directly affecting the long-term development of minors. The institutional environment in these countries is designed for containment and not care, thereby disregarding the dependency needs of vulnerable children.

Fineman's theory highlights how state systems in these contexts operationalise vulnerability as a justification for confinement rather than as a trigger for responsive care. This is most apparent in Malta, where AWAS's dual role reinforces a protection framework that is more custodial than developmental. While Italy and Greece offer better institutional distinctions between migration

enforcement and child protection mandates, they nonetheless fall short in providing effective mechanisms that meet the psychological and developmental needs of UASCs.

5.4.4 Integrated Findings

The table below offers a detailed comparative analysis of the legal and operational approaches of Italy, Greece, and Malta in implementing the BIC principle within the context of UASC detention. It is structured around six key indicators aligned with the main research question and the three theoretical frameworks being considered in this study.

| Indicator | Italy | Greece | Malta |
|----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p align="center">Legal Framework Alignment with BIC</p> | <p>Comprehensive Zampa Law (Law No. 47/2017) explicitly prioritizes BIC, prohibits detention of UASC, mandates individual BIC assessments. Recent decrees (e.g., Law No. 176/2023) weakened certain protections, especially regarding age assessments and detention durations.</p> | <p>Guardianship Law (2018) and Law No. 4554/2018 explicitly require individual BIC assessments. Detention formally restricted under law; however, prolonged "protective custody" persists due to systemic gaps.</p> | <p>Minor Protection Act (2019) outlines BIC as guiding principle. However, no explicit prohibition on detention. Recent jurisprudence (e.g., J.B. and Others v. Malta, ECtHR 2023) reinforced inadequacy of Maltese detention practices and failure to apply BIC in practice.</p> |
| <p align="center">Operational Implementation of BIC Assessments</p> | <p>Formal mechanisms for BIC assessment established but inconsistently applied. Age assessment irregularities and hotspot practices frequently</p> | <p>Institutional procedures established but highly inconsistent due to lack of capacity and trained personnel. Prolonged "protective custody" and police station detention</p> | <p>Severe operational gaps in implementing formal BIC assessments. Detention conditions consistently fail to meet international standards.</p> |

| Indicator | Italy | Greece | Malta |
|--------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>compromise effective implementation. ECtHR judgments (e.g., Darboe and Camara v. Italy, 2022; A.T. and Others v. Italy, 2023) highlighted significant operational shortcomings.</p> | <p>remain systemic issues. ECtHR jurisprudence (e.g., Rahimi v. Greece, 2011; H.A. and Others v. Greece, 2019) repeatedly censured operational practices.</p> | <p>Institutional inertia and inadequate guardianship systems exacerbate problems. J.B. and Others v. Malta (2023) clearly illustrated failure to integrate BIC into operational practice.</p> |
| <p>Margin of Appreciation Application</p> | <p>Legal framework initially aligned closely with European standards (Zampa Law) but recent restrictive amendments exploit margin of appreciation negatively, reducing protection standards.</p> | <p>Broadly compliant legal frameworks exploited operationally due to margin of appreciation. State discretion and limited institutional accountability allow systemic violations to persist.</p> | <p>Margin of appreciation excessively leveraged to justify restrictive detention practices, severely undermining compliance with European child protection standards.</p> |
| <p>Compliance with HRBA</p> | <p>Recognizes children as rights-holders legally; however, administrative discretion and migration control priorities often override HRBA in practice, particularly in hotspots.</p> | <p>Legal framework reflects HRBA, but systematic operational failures, resource constraints, and overcrowding often lead to severe rights violations in practice.</p> | <p>HRBA severely compromised by migration control priorities and inadequate procedural safeguards. Detention practices have been strongly critiqued by international bodies for</p> |

| Indicator | Italy | Greece | Malta |
|----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | | violating fundamental rights standards. |
| Integration of CPMS | Legal alignment with CPMS in principle; however, practical detention conditions (hotspots, holding ships) frequently fail CPMS Standards 3, 13, and 15, especially in relation to case management and child-specific care. | Legal framework aligns with CPMS; however, chronic failures in procedural implementation (lack of case management, inadequate guardianship) demonstrate poor adherence to CPMS standards in practice. | CPMS standards poorly integrated into operational practices. Case management significantly below international humanitarian standards, with minimal child-specific care and psychosocial support available during detention. |
| Consideration of Developmental and Vulnerability Theory | Recognition of child vulnerability and developmental needs enshrined in law but severely compromised operationally. Practices of prolonged detention and inadequate age assessments undermine developmental needs as emphasized by Bowlby's Attachment Theory and | Legal acknowledgment of vulnerability present, yet practices (e.g., prolonged police detention) critically exacerbate vulnerability. Developmental and psychological harm frequently reported due to systemic operational neglect. | Formal legal recognition of vulnerability but minimal practical application. Extended periods of detention without adequate psychological, educational, or social care services significantly undermine developmental health |

| Indicator | Italy | Greece | Malta |
|------------------|---------------------------------|---------------|---------------------------------|
| | Fineman’s Vulnerability Theory. | | and exacerbate vulnerabilities. |

Table 5.2: Comparative Analysis of Legal and Operational Approaches to the Implementation of the Best Interests of the Child Principle in Italy, Greece, and Malta

The comparative findings confirm that the legal commitment to the BIC principle is not matched by implementation in any of the three jurisdictions being studied in this thesis. The gap between formal compliance and actual practice is rooted in structural factors such as weak institutional capacity, conflicting mandates, and securitised migration narratives. This supports the broader argument that realisation of the BIC in detention contexts requires more than normative alignment, especially in frontline states. It demands institutional structures and political will that embed child-centred practices. In this research, the HRBA exposes procedural weaknesses, CPMS highlights humanitarian failures, and developmental/vulnerability theories illuminate the psychosocial harms endured by UASCs. Together, they demonstrate that the practice of detention of UASCs in these frontline states is fundamentally incompatible with a child rights-centred regime.

The comparative analysis has also shown that in Italy, Greece and Malta, the BIC of unaccompanied children are frequently subordinated to migration enforcement goals. Normatively, all three states claim to protect UASCs through their frameworks. They have all ratified the CRC and ECHR, and have laws or regulations safeguarding minors. Yet evidence clearly shows that the implementation of these laws consistently fails. In all three contexts, most UASCs end up detained or quasi-detained in hotspots, police stations, and closed camps, without guardians, legal remedies, or child-friendly care. There is ample evidence illustrated in the research that clearly demonstrates how UASCs’ fundamental rights were breached in all three contexts. If unaddressed, these failures weaken the foundational moral and legal commitment that children’s best interests must be a primary consideration in all procedures.

It is evident that systemic factors drive these failures. Politically, migration control goals in these countries often eclipses child protection obligations. Institutionally, a lack of capacity among shelter places, guardians, and other trained staff, as well as bureaucratic inertia, mean laws that are comprehensive on paper do not translate to protection on the ground. Culturally, there is still a

perception in many decision-making circles that UASC arrival is a border security issue, not a child-rights issue. The convergence of detention practices across multiple scenarios within these states reveals that these are not isolated incidents but structural flaws in the reception system.

6. Conclusion and Recommendations

The fundamental aim of this research was to ascertain the extent to which the BIC principle is operationalised in the detention of UASCs within the frontline Mediterranean states of Italy, Greece, and Malta, particularly amid substantial migration pressures. Through a comparative doctrinal and socio-legal analysis incorporating the lenses of HRBA, CPMS, and developmental and vulnerability theories, this research revealed systemic shortcomings and contradictions in the practical application of the BIC principle across these jurisdictions. This chapter provides a conclusive synthesis of the thesis' core arguments and findings and suggests actionable recommendations aimed at remedying the identified gaps.

6.1 The BIC Principle Undermined

Each of the three examined countries demonstrates significant legislative and policy efforts intended to align national frameworks with international and European human rights norms. However, as this thesis has demonstrated, legal codification alone does not guarantee effective implementation. The evidence identifies critical structural deficiencies across these states, which manifest consistently in the systemic detention or quasi-detention of UASCs. This detention frequently occurs without adequate legal representation, timely or effective guardianship appointments, or child-sensitive procedural safeguards. Consequently, these frontline states systematically contravene their stated commitment to prioritising children's best interests and the legal provisions that are meant to enshrine the BIC are undermined by administrative discretion, securitised migration approaches, and institutional fragmentation.

The analysis of institutional and practical frameworks in Italy reveals that despite progressive reforms such as the landmark Zampa Law, the operational reality remains compromised since children are often subject to prolonged de facto detention in overcrowded and inappropriate hotspots. Similarly, in Greece, significant legal advancements aimed at eliminating protective custody and enhancing guardianship are undermined by inconsistent enforcement, administrative delays, and insufficient resourcing. Malta also clearly emerges with a pronounced gap between legal norms and operational realities, evidenced by routine detention practices devoid of individualised assessments or adequate guardianship. Furthermore, these State practices particularly fail the benchmarks established by the CPMS and contradict essential considerations

articulated by developmental and vulnerability theories, thereby breaching both legal and ethical obligations in their duty of care towards vulnerable UASC's.

The findings also underscore the role of structural and institutional deficiencies in perpetuating rights-infringing practices. Guardianship systems in all three countries are either inadequately staffed or functionally ineffective. Individualised BIC assessments, as required under international law, are rarely conducted before or during detention. Additionally, the lack of specialised personnel, cultural mediators, and developmentally appropriate environments compounds the failure to uphold children's rights. The research has also elucidated that the administrative default in these countries is to treat UASCs through a migration management lens rather than as vulnerable rights-holders requiring specialised protection. At the end the result is that UASCs face almost certain detention, and their vulnerability is not adequately safeguarded. In conclusion, this thesis has elucidated that the current detention practices of Italy, Greece, and Malta fundamentally contradict the BIC principle as envisioned under international human rights law.

6.2 Recommendations for Policy and Practice

To align national practices with the BIC principle, states must conduct meaningful legal and institutional reforms. First, there is an urgent need to prohibit the immigration detention of children through strict and unequivocal national legislation, which must include binding requirements to conduct individualised BIC assessments in every case, thereby ensuring that custodial measures are only considered after all alternatives have been meaningfully explored. Moreover, it is imperative that the responsibilities for child protection are structurally separated from immigration control functions. Guardianship and procedural safeguards must also be significantly strengthened through the establishment of a professional and independent agency responsible for guardianship processes. Furthermore, these guardians should have clearly defined legal mandates, appropriate training, and access to adequate resources to effectively represent the interests of UASCs. In parallel, national systems must ensure timely and effective access to legal representation for children, including guaranteed judicial review mechanisms and the facilitation of meaningful participation in all proceedings affecting them. Procedural integrity in these processes must be further enhanced by implementing multidisciplinary case management systems that integrate legal, psychosocial, and social support tailored to each child's circumstances.

A realignment of national practices with humanitarian standards is also necessary. The CPMS must be mainstreamed across all migration governance frameworks and operational protocols so as to maintain a minimum standard of care. Staff involved in child reception and migration enforcement must be trained to uphold these standards, particularly those addressing the specific needs of UASCs. Additionally, there must be a conscious policy shift toward prioritising non-institutional forms of care, including family-based and foster care, with effective monitoring mechanisms in place to assess the well-being and developmental progress of children in such settings. To further ensure accountability and continuous improvement, national authorities must establish independent monitoring bodies or ombudspersons tasked with auditing BIC compliance in policy and practice.

At the regional and EU level, coordinated action is essential to achieve systemic reform. A binding EU-wide legal framework on UASC protection must be adopted to standardise the application of the BIC principle and explicitly prohibit child detention across Member States. Additionally, an inter-state relocation mechanism can be developed to facilitate the movement of UASCs within the EU based on their best interests, considering factors such as family connections, cultural compatibility, and prospects for integration. Through such collaborative and multi-level engagement, the operationalisation of the BIC principle can potentially move from principle to practice.

6.3 Towards a Rights-Based Paradigm

As previously noted, the research has consistently shown that despite legal and rhetorical commitments to the BIC principle, the three frontline states studied here continue to fall short in ensuring that this right is meaningfully realised in the context of UASC detention. The analysis makes clear that the enduring default to detention reflects a broader failure to centre children's rights in migration governance. It also demonstrates that institutional inertia, political will, and resource constraints remain the main barriers to reform. All these factors indicate that the implementation of the BIC principle must evolve beyond mere legal conformity and be reimagined as a structural imperative within national child protection systems. A genuine paradigm shift from the securitisation of migration to the protection of children is necessary to ensure that these aspirations turn into reality. In such contexts, the international community has a duty to ensure justice for the most vulnerable. Most importantly, it is high time for all stakeholders, including

states, civil society, EU institutions, and international organisations, to reaffirm their obligations for child protection and transform the lived experiences of UASCs from that of villainization and containment to one of care, dignity, and rights realisation in the pursuit towards a more dignified society.

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