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**A COMPARATIVE STUDY:
UNACCOMPANIED MINORS IN
TURKEY AND GREECE**
Protected or Neglected?

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Abstract

This thesis provides a research on unaccompanied minors in Turkey and Greece. Children, who travel the borders without a family member, are in an extremely vulnerable position. Especially after the latest refugee flows, Turkey became the country hosting the most refugees in the world and Greece turned into one of the two hotspots within the EU borders. In addition to that, since these countries are the main implementing actors of the EU-Turkey Statement, their roles have gained even more importance in the protection of refugees. Within the scope of the thesis, both relevant legislations of the respective countries and implementation of the legislations have been examined to understand whether unaccompanied minors are protected or in law and practice. In order to conclude, that both legislations and their implementation of should be enhanced in both countries.

Dedicated to Berkin Elvan and Alexis Grigoropoulos; two 15-year-old boys deprived of their lives by the police, to the children who are deprived of their liberties, who are left unprotected, and also who died crossing the Mediterranean Sea

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Introduction

According to the UN Refugee Agency's Forced Displacement in 2015¹ report, the number of displaced people has reached its greatest ever, since the aftermath of that the WW II period. Currently, more than 65.3 million people are displaced all around the world and nearly half of them are children. A considerable number of the children who left their home in search of a better future could not make it and drowned on the way. Whilst some completed their journeys with their families, some of them arrived in the completely unknown territories all alone. This same report says that of the total number of displaced people 100.000 are unaccompanied minors.²

The UNHCR Guidelines on Determining the Best Interests of the Child³ defines unaccompanied minors as 'children who have been separated from both parents and other relatives and are not being cared for an adult who, by law or custom, is responsible for doing so'. As it can be understood from the definition, these children make one of the most vulnerable groups. They are children, they are refugees and they are "orphans" in a sense. Even if they are lucky enough to reach a third country, they face several problems such as dangers while entering the EU irregularly, lack of protection, lack of reception conditions adapted to their needs, gaps in inspection and monitoring, measures to prevent access to the country of destination of their choice, procedural problems in family reunification, risk of administrative detention (most probably in inappropriate conditions), risk of SGBV violence, trafficking, child labour, lack of legal advice and support, use of invasive methods to assess age with uncertain results and reliability, double exclusion etc.⁴ These

¹ The UN Refugee Agency, *Global Trends Forced Displacement in 2015*, (2016) available at: <http://www.unhcr.org/576408cd7.pdf> accessed 10 July 2018

² Ibid.

³ The UN Refugee Agency, 'UNHCR Guidelines on Determining the Best Interests of the Child', (2008) available at: <http://www.unhcr.org/4566b16b2.pdf> accessed 10 July 2018

⁴ Sona Kalantaryan, 'A Double Exclusion: Protection Gaps for Unaccompanied Minors in the EU' (MPC Blog Debate Migration, 17th May) available at:

unaccompanied minors find themselves in a daily struggle to survive and many are pushed to participate in dangerous and exploitative work, including forced begging.

Considering unaccompanied minors' vulnerability, it can be argued that the duty for the protection of the children should be treated with more caution than the sole jurisdiction of adult refugee law but unfortunately, this is not always the case. For instance, under the Article 14 of the Universal Declaration of Human Rights, unaccompanied minors can claim asylum but the states are not obliged to grant it, despite having agreed to and signed the declaration. Thus, in the end, if their claim would not have been accepted by the state, they may face deportation, just like adults, without any consideration of the best interests of the child principle which derives from Article 3 of the Convention of the Rights of the Child. Moreover, even if these children can enter to the respective countries safely, this does not at all ensure their safety, as they continue to face so many problems in the third countries as it is highlighted in the ENOC's report⁵ by stating,

Unfortunately, the risks for children on the move do not stop when they reach the country of destination. Some states do not have a system for legal guardianship for unaccompanied children, leaving these children without secure adult protection. In other countries, the appointment of a legal guardian takes too long. There are reports from various countries of violent actions by locals targeting refugee children, but also of violence between child refugees. The low proportion of girls arriving makes them a particularly vulnerable group. Many countries also report on children going missing from the reception centres, becoming at risk of being victims of trafficking

<<https://blogs.eui.eu/migrationpolicycentre/double-exclusion-protection-gaps-unaccompanied-minors-eu/>> accessed 10 July 2018

⁵ European Network of Ombudspersons for Children, *Call For the EU and European Countries to Implement a Child Rights Perspective in the Reception of Migrating Children*, (2016) available at: <https://www.synigoros.gr/resources/160211-ekthesi.pdf> accessed 10 July 2018

or exploitation. Many countries allow children to be placed in detention, sometimes for several months, in facilities that are rarely designed to be child-friendly.

Most of these children are either survivors of a conflict, war or extreme famine. They complete their journeys to their destinations already traumatized because instead of living a normal childhood at school, they are forced to grow up very prematurely and struggle in life in a way that no child should do. It is a fact that there is no replacement, or second chance to live a childhood, and it can be considered a fundamental part in the development of a human, and in shaping personality. It is of the utmost importance then, that these children who have already undergone hardship are then not marginalized, or having to deal with further problems after being relocated from their homes and families. Unaccompanied minors should be considered with special treatment and in some cases even positive discrimination. However, even though the Convention on the Rights of the Child⁶ has been ratified by almost each and every country, the majority of the national laws and regional legislations are still adult-centred.

This thesis mainly focuses on Greece and Turkey since the latest refugee influx, mostly because of the Syrian conflict, turned Greece into one of the two hotspots within the EU borders and made Turkey far leading country in hosting refugees. While Turkey currently hosts over 3.5 million refugees and 70% of them are women and children⁷, Greece, especially in and after 2015, face a flow of refugees that it has never faced in its history. Therefore, clear to see that the number of unaccompanied minors in Turkey cannot be underestimated and Greece has, as a step to EU welfare states, in other words, a very important role. Both of these countries were certainly struggling to deal with the influx at the beginning,

⁶ Convention on the Rights of the Child (adopted and opened for signature 20 November 1989, entered into force 2 September 1990)

⁷UN Refugee Agency 'UNCHR Fact Sheet' (2017) available at: <https://data2.unhcr.org/en/documents/download/60180> accessed 10 July 2018

and the situation is improving however, the progress has had negligible effects on the overall situation. If the states can fulfil their obligations and respect these children's rights apply in giving the correct provisions and considering the best interest of the child, this danger can be prevented.

Another important reason why this thesis focuses on Greece and Turkey, in particular, is the EU-Turkey Statement⁸ which entered into force in March 2016. Although the statement was announced by the Heads of Governments and States of EU and Turkey, and theoretically concerns others, in practice the two major actors of this deal are Greece and Turkey. Although it seems like the purpose of this statement is to prevent irregular migration, the statement does not only play a deterrent role refugees planning to leave Turkey but also to enable their return.⁹ Positively, vulnerable groups, including unaccompanied minors, are exempted from this deal and this exemption allows those concerned to lodge a claim for asylum in Europe. However, in December 2016, the European Commission and Greek authorities released a plan proposing to remove the safeguards.¹⁰ Thanks to the local and international organizations, the Greek Parliament has been urged not to pass it. It is likely that without the resistance and opposition from various individuals and civil society organizations, the plan would have been implemented. That is why, even though it seems like the EU-Turkey deal does not directly affect unaccompanied minors, the future of the statement is still ambiguous and worrying.

⁸ Legislative Train Schedule: Towards a New Policy on Migration, EU-Turkey Statement & Action Plan, 18 March 2016 available at: <http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eu-turkey-statement-action-plan> accessed 10 July 2018

⁹ Refugee Studies Centre, *Forced Migration Review No. 51 - Destination: Europe*, January 2016, FMR Issue 51, available at: <http://www.refworld.org/docid/56b265355322.html> accessed 10 July 2018

¹⁰ International Rescue Committee, Norwegian Refugee Council and Oxfam, *The Reality of the EU-Turkey Statement: How Greece has become a testing ground for policies that erode protection for refugees*, 2017, available at: <https://www.oxfam.org/sites/www.oxfam.org/files/bn-eu-turkey-statement-migration-170317-en.pdf> accessed 10 July 2018

The thesis poses its research question as it follows:

Are there any gaps in the legal frameworks for the protection of unaccompanied minors or are there any shortcomings in the implementation, or both?

Part I of the thesis will analyse legislations within the international, the EU and, Turkish and Greek national legal frameworks. It will be called into question whether the legislation is child-friendly enough, as well as whether the provisions relating to unaccompanied minors are adequate. Unaccompanied minors are both refugee/asylum seekers and children but it will be researched whether the displaced children are able to benefit from both of these group's rights.

Part II of the thesis will mainly use the local and international organizations' reports to understand whether the law is applied correctly or whether there are obstacles in implementing the law. Focal rights that will be examined are the rights to asylum, family unity and legal representation, health and shelter, and education since it is believed that these are the most crucial rights needed in order to be both physically and psychologically healthy individuals. In addition to these, their conditions in detention and removal centres will be also examined because deprivation of liberty may also have a huge impact on children's health. The best interests of the child will be also discussed and introduced in order to assess how different states interpret their responsibilities. It is however already defined in the UNHCR Guidelines on Determining the Best Interests of the Child¹¹ as 'the formal process with strict procedural safeguards designed to determine the child's best interest for particularly important decisions affecting the child. It should facilitate adequate child participation without discrimination, involve decision-makers with relevant areas of expertise and balance all relevant factors in order to assess the best option'. Therefore states should not diverge too far from this, but the

¹¹ The UN Refugee Agency, 'UNHCR Guidelines on Determining the Best Interests of the Child', 2008 available at: <http://www.unhcr.org/4566b16b2.pdf> accessed 10 July 2018

discrepancies between the treatments of these guidelines will be discussed.

In the conclusion, this thesis argues that both of these respective states have some gaps in their legislations and implementations.

PART I – Protection of Unaccompanied Minors in Principle

Chapter 1 – Protection of the Rights of the Unaccompanied Minors as Human Beings

In Chapter 1, the child will be considered solely as a human being, without any status or identities. Not specifically as a child or as a refugee, but as someone because human rights are universal values which are equally entitled to anyone without any discrimination; regardless of nationality, sex, colour, religion, ethnic origin, age, and language. They are also inalienable, indivisible, interdependent and interrelated.¹² These fundamental rights, including both civil and political and economic, social and cultural rights, are under the protection of international human rights law, universal treaties, customary law, regional treaties, and general principles.¹³ States which has ratified international human rights instruments are obliged to respect, protect and fulfil human rights. It means that the states cannot interfere with people's rights, and have a duty to protect people under their jurisdiction against human rights abuse and must take positive measures for the enforcement of human rights.¹⁴ Although the documents that include general provisions for the protection of the human rights, they generally do not specifically have emphasise or particularities regarding child's rights and/or refugee rights. These are the laws which apply to all unaccompanied minors since each and every one of these treaties based on non-discrimination principle and besides, the Universal Declaration of Human Rights which is non-binding *per se*, it paves the way for other laws in its lack of distinction between non-

¹² United Nations, 'What are human rights?' (*United Nations Human Rights Office of the High Commissioner*, 1 January 1996)
<https://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx> accessed 10 July 2018

¹³ Ibid.

¹⁴ Ibid.

nationals from nationals.¹⁵ Besides, for 'human rights are a set of universal claims to safeguard human dignity from illegitimate coercion, typically enacted by the state agents'¹⁶, all of the treaties which are related to human rights is related to all human beings, without excluding unaccompanied minors.

1.1 Universal Protection

The Universal Declaration of Human Rights¹⁷ (the Declaration here and after) adopted in 1948, is a universal treaty that both Turkey and Greece have signed and are bound by. This declaration recognizes civil and political, economic, social and cultural rights and, although it is not legally binding, it was adopted by a Resolution of the UN General Assembly and 'the principles contained therein are now considered to be legally binding on States either as customary international law, general principles of law, or as fundamental principles of humanity'.¹⁸ The document is a broad and all-encompassing document, therefore the rights of the unaccompanied minors are, under the protection of it. Some of the most fundamental and vital of the rights for unaccompanied minors are ensured under the declaration.

One such example of this is under Article 9, which explicitly states that no one should be subjected to arbitrary arrest. Article 12 can also be seen as instrumental into the rights of unaccompanied minors as it protects the right to privacy and family, Article 14(1) emphasises the right to seek and to enjoy asylum in other countries. In Article 25(1) it is also stated that every human has the right to a standard of living adequate for the health

¹⁵ Alice Edwards, 'Article Navigation Human Rights, Refugees, and The Right 'To Enjoy' Asylum' [2005] 17(2) International Journal of Refugee Law available at: <https://academic.oup.com/ijrl/article/17/2/293/1548262> accessed 10 July 2018

¹⁶ Alison Brysk, *Globalization and Human Rights* (University of California Press 2002) 3

¹⁷ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR)

¹⁸ International human rights law and the role of the legal professions: A general introduction

and well-being including housing and according to Article 26(1), everyone has the right to education.

The International Covenant on Civil and Political Rights¹⁹ (ICCPR here and after) is one such other document deserving of mention where universal protection laws are influential in the well-being of unaccompanied minors, that has been adopted in 1966. Both Turkey and Greece are state parties of this covenant and it applies to everyone who is under the jurisdiction of the respective countries. Even though it does not contain provisions specifically for unaccompanied minors, it has the universal element to it which once again is applied to everyone. It secures some certain rights and freedoms of unaccompanied minors which will be examined in Part II. For example, Article 9(1) says that ‘...no one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law’ and later in the article it has been stated that, ‘anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him’. Furthermore, in Article 10 (2)(b) it is emphasized that accused minors shall be separated from adults while Article 10(3) supports it by saying minors need to receive appropriate treatment according to their age and legal status. Although the right to asylum is not explicitly mentioned in this Covenant, Article 12(2) provides the right to leave any country, including his own. The rights to seek asylum and to leave any country could be likened to two different faces of the same coin in the refugee context.²⁰ Thus, the right to seek asylum is secured by Article 12(2) implicitly. Article 13 could also be relevant to the case of the unaccompanied minors since it is clearly said that if a person faces expulsion, legal representation should be provided.

¹⁹ International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

²⁰ Alice Edwards, 'Article Navigation Human Rights, Refugees, and The Right 'To Enjoy' Asylum' [2005] 17(2) International Journal of Refugee Law available at: <https://academic.oup.com/ijrl/article/17/2/293/1548262> accessed 10 July 2018

The ICCPR is a much more detailed document compared to the Declaration so in Article 14 (3)(f) it has been specified that if the person who has been taken before the court does not speak or understand the language, an interpreter should be attended for him. This Article has particular relevance in the case of refugee's considering if they are unaccompanied minors, it is highly likely they will not speak the language of the country. The rights of the children is ensured under Article 24 by stating 'every child shall have, without any discrimination as to race, colour, sex, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society, and the State'. Which again relates directly to unaccompanied minors.

In addition to the Covenant, economic, social and cultural rights are guaranteed under the International Covenant on Economic, Social and Cultural Rights²¹. Since the rights to shelter, education, and family are some of the core elements of this thesis, this covenant is quite important both for the minors and the thesis. Although there are no specific provisions for unaccompanied minors in this covenant, a number of Articles highly related to the minors and have a special importance and a special place where the protection of this group is concerned. The significance of the family for the minors clearly stated in Article 10(3) by stating

...special measures of protection and assistance should be taken on behalf of the children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set

²¹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) UNGA 2200A (XXI) (ICESCR)

age limits below which the paid employment of child labour should be prohibited and punishable by law.

As was aforementioned, unaccompanied minors are vulnerable since they can be prey for trafficking, child labour etc. Article 10, therefore, is vital in the avoidance of these consequences, as it makes known the significance of having a guardian for a child and protect him or her from exploitation. Moreover, the right to an adequate standard of living, including sufficient food, clothing, and housing has been mentioned in Article 11(1). States are obliged to provide basic standards of living to each human being under their jurisdiction to protect people's dignity as the international human rights law's primary duty is to protect human dignity. The principle of human dignity is something essential in human beings, which warrants attention and protection for the case of a person's honour and respect.²²

Another important right is the right to education which is included in Article 13. The state parties of the covenant recognize the right of everyone to education. Purposeful education is vital for minors, especially for the unaccompanied minors, to become independent adults. Besides, the type of education that has been mentioned in this specific article includes promotion of tolerance and friendship which might have an important role to protect unaccompanied minors from becoming racists or victims of racism in a society in which they might already be considered to be "aliens".

1.2 Regional Protection

Even though universal treaties protect all people's rights and guarantee freedoms, in the end, it is up to states' willingness to comply with them or

²² Jane Kotzmann and Cassandra Seery, 'DIGNITY IN INTERNATIONAL HUMAN RIGHTS LAW: POTENTIAL APPLICABILITY IN RELATION TO INTERNATIONAL RECOGNITION OF ANIMAL RIGHTS ' [2017] 26(1) Michigan State International Law Review available at: <https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1231&context=ilr> accessed 29 May 2018

not. Considering the non-binding nature of these universal treaties, when it comes to regional protection in Europe, the states take their steps more cautiously because if they violate rights of the people under their jurisdiction, the people will have the opportunity to take the case before the court/committee. Since the research focuses on Turkey and Greece, in this section rights of the unaccompanied minors will be identified under the European Convention on Human Rights (ECHR)²³ and additional Protocol No. 1²⁴, the European Social Charter (ESC)²⁵ and Charter of Fundamental Rights of European Union²⁶.

Moreover, in the Handbook on European Law Relating to the Rights of the Child²⁷ it has been stated that ‘children are holders of right, rather than just objects of protection. They are beneficiaries of all human/fundamental rights and subjects of special regulations, given their specific characteristics.’²⁸

Although the European Convention on Human Rights does not specifically mention minors or refugees, Article 1 obliges the states to secure the rights of “everyone”²⁹ and that ‘everyone’ does not exclude unaccompanied minors, however, despite the fact that most of the rights are based on the Declaration, this Convention does not contain the right to seek and enjoy asylum unfortunately. Article 3, on the other hand, includes non-refoulment principle implicitly according to Asylum and the European

²³ Council of Europe, ‘European Convention on Human Rights’ (Strasbourg 3 September 1953)

²⁴ Council of Europe, ‘Protocol No 1 To The Convention’ (Strasbourg 11 March 2014)

²⁵ Council of Europe, ‘European Social Charter (Revised)’ (Strasbourg 3 May 1996)

²⁶ The European Parliament, the Council and the Commission, ‘Charter of Fundamental Rights of the European Union’, (2000/C 364/01) (Brussels 18 December 2000)

²⁷ European Union Agency for Fundamental Rights and Council of Europe, ‘Handbook on European law relating to the rights of the child’, June 2015

²⁸ Ibid. 17

²⁹ Ibid. 19

Convention on Human Rights³⁰ which has been published by the Council of Europe.

Furthermore, Articles 5(1) and 6(1) are related to unaccompanied minors in detention and they both prevent arbitrary detention and guarantee a fair trial to the minors. Article 6(1) mentions 'interests of the juvenile', which is very important since all of the states, during the decision-making processes related to unaccompanied minors, have to consider the best interests of the child primarily. Another related Article to unaccompanied minors is Article (8), the right to respect for private and family life. Article 8(2) continues, 'there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others'. Family reunification is guaranteed to the unaccompanied minors, under this Article omitting from some rare exceptions. Moreover, even the right to education is normally under the framework of the economic, social and cultural right on the international level, the right to education guaranteed under the Article 2 of Protocol No. 1³¹. Thus, a high importance can be given to the right to education which also can be understood from its very broad definition. The protocol says that

...the right to education covers a right to access to educational institutions existing at a given time, transmission of knowledge and intellectual development but also the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or

³⁰ Nuala Mole and Catherine Meredith, *Asylum and the European Convention on Human Rights*, available at: <http://www.refworld.org/pdfid/4ee9b0972.pdf> accessed 10 July 2018

³¹ Council of Europe/European Court of Human Rights, 'Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights: Right to education' (updated 30 April 2018)

another, official recognition of the studies which have been completed for example by means of qualification.³²

Another important regional treaty is the European Social Charter. Although it is not a binding treaty and the related institution is the European Committee of Social Rights, rather than the court, it is still of a great importance and the document corresponds well with European Convention on Human Rights in the area of economic and social rights.³³ Moreover, the Charter can be seen to be protecting rights related to housing, health, education, employment, social protection, movement of persons and non-discrimination and it is the major European treaty which in turn secures children's rights.³⁴

To elaborate, Articles 7 and 10 guarantee the right of children to be protected against all forms of exploitation including child prostitution, trafficking, sexual exploitation and child labour³⁵. In addition to this, the right to a special protection against the physical and moral hazards has been also included. The states have to take measures to secure children's and young person's both physical and mental health and dignity for their present and future.

Article 17 entails similar notions by securing social, legal and economic protection of children and young persons. This special protection includes prohibition and penalising all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.³⁶ The same article, alongside with Articles 10 and 15, contains the right to education which has to be both accessible and effective.³⁷

³² Ibid.

³³ Council of Europe/The Secretariat of the ESC, 'Children's Rights Under the European Social Charter', available at: <https://rm.coe.int/1680474a4b> accessed 10 July 2018

³⁴ Ibid.

³⁵ Ibid. 6

³⁶ Ibid.

³⁷ Ibid. 9

The rights of the migrant children are under the protection of Article 19 (rights of migrant workers and their families to protection and assistance). It provides the right to children, to be reunited with their families.³⁸ The same article obliges states to provide learning both their language of origin and language of their host country.³⁹ Furthermore, the right to adequate housing is one of the most instrumental rights for not only unaccompanied but also all minors and it has been secured under the Article 31 of the charter alongside with Article 16.⁴⁰

Lastly, the European Charter of Fundamental Rights, which has been ratified by all EU member states, including Greece, contains Articles related to unaccompanied minors and 'it has been asserted that the EU Charter of Fundamental Rights marks the first time that children have been recognised in the EU as having distinct rights'⁴¹. The Charter also includes rights, which are related to migrants. Thus, even though the Charter does not specifically mention unaccompanied minors like the rest of the treaties that have been mentioned previously, since unaccompanied minors fall into the categories of asylum seeker, refugee, migrant and children, all of those rights that are mentioned in this section are there to protect unaccompanied minors.

Human dignity, as in the other treaties, is under the protection of the Charter's Article 1. It is important since the age assessment will be discussed in the second part of the research. Articles 7 and 33 contains respect for private and family life and protection of the family whereas Article 5 (1) and (3) is about prohibition on slavery and forced labour, specifically prohibition on slavery and on trafficking in human beings which is highly relevant to the fight against the commercial sexual exploitation of children⁴² and as a supportive Article, Article 32 prohibits child labour. As

³⁸ Ibid. 12

³⁹ Ibid. 13

⁴⁰ Ibid. 3

⁴¹ Steve Peers and Angela Ward, *The European Union Charter of Fundamental Rights* (Hart Publishing 2004) 323

⁴² Ibid. 324

previously mentioned, unaccompanied minors are very vulnerable to any kind of violence and exploitation. Therefore, it is very important having these type of explicit Articles which do not leave anything up to interpretation.

Moreover, Article 14 contains the right to education and Article 35 secures access to health care. In addition to all above, the EU Charter of Fundamental Rights contains a special right related to unaccompanied minors which cannot be found in any other treaties on the European level⁴³. It is the right to asylum. According to Article 18, it is a qualified right and it says '[t]he right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention ... and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union ...'. Additionally, Article 19 of the Charter includes the prohibition to return a person to a situation where he or she has a well-founded fear of being persecuted or runs a real risk of torture or inhuman and degrading treatment or punishment (principle of non-refoulement).⁴⁴

Another special and progressive thing about the EU Charter of Fundamental Rights is its accession to the European Convention on Human Rights. The EU is not a signatory to the Convention yet⁴⁵. Therefore, according to the law, individuals cannot file a complaint about the EU before the European Court of Human Rights. However, the Lisbon Treaty⁴⁶ contains a provision mandating the EU to join the ECHR as a party in its own right and Protocol 14 to the Convention amends the Convention to allow this accession to take place.⁴⁷

⁴³ European Union Agency for Fundamental Rights and Council of Europe, 'Handbook on European Law Relating to Asylum, Borders, and Immigration', 2014 available at: <http://fra.europa.eu/en/publication/2013/handbook-european-law-relating-asylum-borders-and-immigration> 21 accessed 10 July 2018

⁴⁴ Ibid.

⁴⁵ Ibid. 22

⁴⁶ European Union/European Parliament, 'Treaty of Lisbon', (OJC 306) (adopted 17 December 2007, entered into force 1 December 2009)

⁴⁷ European Union Agency for Fundamental Rights and Council of Europe, 'Handbook on European Law Relating to Asylum, Borders, and Immigration', 2014 available at:

Although international treaties do not provide full protection for unaccompanied minors, they secure some certain and significant rights of these children and set an example of rules for the states' national legislations.

CHAPTER 2 – Refugee, Child and Alone: Weaknesses and Strengths in the Protection of Unaccompanied Minors

Chapter 2 involves unaccompanied minor-specific provisions both on international and regional levels. It is debatable whether the international law, soft law instruments, and regional legislation are adequate to protect unaccompanied minors. Thus, the provisions that are related to unaccompanied minors will be remarked upon. This chapter will be divided into two sections, respectively involving refugee protection and a child's rights framework.

Given the definition of the unaccompanied minor and bearing mind the fact that they are 'aliens', unaccompanied asylum-seeking minors face double exclusion. Therefore, the assertion that they should benefit from both refugee and child rights and from certain measures that have specifically been taken to protect specifically unaccompanied minors can be made. To investigate further, The 1951 Refugee Convention and 1967 Protocol⁴⁸ (*the Convention here and after*), General Comments, UNHCR Handbooks and Guidelines related to unaccompanied minors, the Common European Asylum System (CEAS) which is the current legislative framework of the EU will be included in the analysis and the relevant Council of Europe instruments will be mentioned briefly.

2.1 Unaccompanied Minors and Refugee Protection

A concerning number of minors travel thousands of kilometres between international borders, mostly accompanied but sometimes alone, to seek

<http://fra.europa.eu/en/publication/2013/handbook-european-law-relating-asylum-borders-and-immigration> accessed 10 July 2018

⁴⁸ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention)

protection. Both during the migratory process and sadly, within the borders of the countries that they have reached, they face too many obstacles which render them even more vulnerable. It is even at the stage of seeking asylum that the question of ‘whether or not a child qualifies for protection as a refugee under the *Convention*’ brings another level of vulnerability.⁴⁹ Erika Feller states during her ‘Protection Rule of Law 60 Years On’ Speech that

The protection needs of children remain a paramount concern but have not always been sufficiently prioritised. We are worried that many asylum systems are not ‘child-friendly’, take no account of the special circumstances of child applicants, and legitimate the automatic repatriation of children, without resort to established protections, such as best interests of the child determinations’.⁵⁰

The status of the refugee is the core of the asylum procedure and for essential in gaining the acknowledgment recognition of the claim to international protection. Although the challenges and hardships that children who are mostly unaccompanied, encounter both in the qualification processes and the asylum processes have been highlighted and clarified the adequate provisions have not yet been adopted by the States.

Refugee Convention and Other Soft-law Instruments

The Convention is the most significant international instrument in terms of recognition of the status and rights of the refugees. Article 1 of *the Convention* contains the definition of the concept of refugee. According to this Article, a refugee is someone ‘who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.’ Although *the Convention* applies to anyone, regardless of age, the definition does not contain any extra provisions for

⁴⁹ Jason M. Pobjoy, *The Child in International Refugee Law* (Cambridge University Press 2017) 7

⁵⁰ E Feller, Assistant High Commissioner – Protection, UNHCR, ‘Rule of Law 60 Years On’ (Statement, 61st Session of the UNHCR ExCom, 6 October 2010) 3

the minors⁵¹ which may let States interpret *the Convention* through an ‘adult-focused lens.’⁵² Another problem pertains to the non-existence of a consensus on the definition of asylum which would specify the level of protection. This is of paramount importance for the minors, especially for those who are unaccompanied considering their vulnerability. There are several different definitions of asylum: for instance, the Institute of International Law defines asylum as ‘the protection that a State grants on its territory or in some other place under the control of its organs to a person who comes to seek it’.⁵³ Guy Goodwin-Gill and Jane McAdam, on the other hand, describe asylum not only as ‘protection granted to foreign nationals against the exercise of jurisdiction by another State’ but also, in a broader and more fundamental sense, as ‘protection against harm, specifically violations of fundamental rights.’⁵⁴ Matthew Price claims that ‘asylum should be reserved for those exposed to serious harm because they *lack political membership*’⁵⁵ and adds that ‘asylum confers a *political good –membership*’⁵⁶. O’Sullivan and Stevens, on the other hand, suggest that ‘recipients of temporary protection are simply given permission to remain in the country for a period of time. This is of interest given increasing use of temporary protection, temporary residence permits and ‘humanitarian protection/right to remain’ by asylum host States which may give only limited rights of protection’.⁵⁷

Not having a clear and universally accepted definition of asylum makes the protection of the vulnerable groups, including unaccompanied minors,

⁵¹ Jason M. Pobjoy, *The Child in International Refugee Law* (Cambridge University Press 2017) 3

⁵² Mary Crock, *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection: A Study of Laws, Policy and Practices in Australia* (Themis Press 2006) 244.

⁵³ Institute of International Law, ‘Asylum in Public International Law’ (Bath Session, 5th Commission, September 1950) art 1.

⁵⁴ GS Goodwin-Gill and J McAdam, *The Refugee in International Law* (Oxford University Press) 2007

⁵⁵ ME Price, *Rethinking Asylum: History, Purpose, and Limits* (Cambridge University Press) 2009

⁵⁶ Ibid.

⁵⁷ Maria O’Sullivan and Dallal Stevens, *States, the Law and Access to Refugee Protection: Fortresses and Fairness*(Hart Publishing 2017) 7

more difficult on both international and national levels. In addition to the lack of a common definition, there are no specific references to children in *the Convention*⁵⁸ although it is certain that children, but mostly unaccompanied children, need special protection. Due to the lack of general consensus regarding an accepted definition for protection, protection may have different meanings in different States. In 1950, Ad Hoc Committee on Statelessness and Related Problems⁵⁹ put the emphasis on unaccompanied minors as Pobjoy mentions in his book

The observer for the IRO expanded on the Director-General's observation with the rather curious statement that the inclusion of 'unaccompanied minors' in the *IRO Constitution* 'purported mainly to give priority assistance to this group, i.e. physical assistance with regard to care and maintenance, repatriation and resettlement' and that '[t]he Director General doubts the continued usefulness of including this group in the Convention and the mandate of the High Commissioner who will be concerned with international protection only.'⁶⁰

Although it has been emphasized years ago, it is still very unlikely to encounter the term 'unaccompanied minor' almost in any crucial international treaty. On the other hand, the importance of the protection of unaccompanied minors has been highlighted in non-binding instruments such as the UNCHR Handbook and Guidelines, General Comments etc, which makes these soft-law instruments profoundly valuable.

To begin with, the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status (the Handbook here and after), which has been published in 2011, contains lots of reminders and recommendations for the States. Although *the Convention* does not include the principle of family unity, the handbook states that 'the principle

⁵⁸ References to children in the *Convention* are related to their parents.

⁵⁹ E/AC.32/L.16 (1950).

⁶⁰ Jason M. Pobjoy, *The Child in International Refugee Law* (Cambridge University Press 2017)

of family unity operates in favour of dependants and not against them' and when it comes to protection of the unaccompanied minors, provisions have to be taken for tracing of the family. However, sometimes the right to family unity may not comply with the best interests of the child principle since the parents or other family members 'might have subjected abuse or neglect' or they might have been involved in persecution. If so, then provisions for guardianship and adoption should be taken.⁶¹

The Handbook also makes clearer that unaccompanied and separated minors are highly vulnerable to trafficking with the purpose of irregular adoption. Their families may or may not know the situation. Therefore, considering the best interests of the child, the family should be involved in the process.⁶² It also should be always kept in mind that as these children belong to a vulnerable 'social group' they may be subjected to sexual exploitation.⁶³ Furthermore, since not all the children have an adult with them who can represent them legally, the States should bear in mind the fact that unaccompanied minors may not always approach law enforcement officials or express their fear/complaint as adults due to their age. Thus, officials may not take them seriously⁶⁴ and put these children in a theoretically invisible position. In addition, another UNHCR Guideline reminds that unaccompanied minors are entitled to have qualified legal representatives free of charge and these representatives should be trained and should support the child during the process.⁶⁵

⁶¹ UN Refugee Agency, 'UNCHR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status', 2011, 36-168 available at:

<http://www.refworld.org/docid/4f33c8d92.html> accessed 10 July 2018

⁶² Ibid. 139

⁶³ Ibid. 143

⁶⁴ Ibid. 160

⁶⁵ The UN Refugee Agency, 'UNHCR Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of the Refugees', 2009, 26 available at: <http://www.unhcr.org/50ae46309.pdf> accessed 10 July 2018

Another significant guideline by the UNHCR has been published in 1997 and is still valid. This guideline has been written specifically for the unaccompanied asylum-seeking children. According to the guideline, States should not refuse the access of unaccompanied minors to their territory because of the minor's vulnerability and once these arrive, a legal representative should be provided immediately.⁶⁶

Furthermore, it should always be kept in mind that they might have had 'additional' experiences while living in the host country. Thus, a network should be established between various agencies and individuals to make sure that unaccompanied minors are identified so that assistance, with regard to fields such as health care and education, would be provided as soon as possible.⁶⁷ It can be somewhat easy for these minors to fall under discriminatory action due to their vulnerability since they do not have a guardian to protect them, it is likely for them to face discrimination and the hands of public officials, law enforcement officers, and those in positions of authority. However, authorities should be wary of not forgetting the principles of non-discrimination, in order to keep in mind the best interests of the child.⁶⁸

Moreover, a vast majority of these children arrive in their destination without any documents and documentation is vital for them to be recognized. Sometimes States fail during the registration process. Therefore, the guideline explicitly states that 'unaccompanied children should be registered through interviews. In addition to the initial registration of basic biographical data, the dossier should include a social history of the child which should be compiled over time and must accompany the child wherever there is a transfer of his/her location or care arrangements. Efficient documentation of the child, his/her story, and all relevant information will help to ensure that subsequent actions are

⁶⁶ The UN Refugee Agency, 'UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum', 1997, 5 available at: <http://www.unhcr.org/3d4f91cf4.pdf> accessed 10 July 2018

⁶⁷ Ibid. 6

⁶⁸ Ibid.

taken in the best interests of the child.⁶⁹ During these interviews information about their families or other people important to the child, child's life in the previous country, the environment where the child was found, child's health condition and medical history, educational background, child's mental and emotional development and age identification should be noted.⁷⁰ Both the interviewers and interpreters should be skilled and well trained and the children should be informed about the procedure considering his/her age. In addition to that, all the collected information must be kept confidential for the well-being of the minors.⁷¹

Another aspect is that children who are seeking asylum should not be kept in detention, which is unfortunately not always the case (see 2.5.1.). Furthermore, if there is nothing to do but to detain the child, then the conditions should not be prison-like and the States should do anything they can do to release them as quickly as possible and their rights to health and education should never be taken away from them since they can benefit from these rights as national children.⁷²

A very important exception has been underlined by the same guideline under the headline of 'Refugee Status Determination for Unaccompanied Children'. It states that the priority should be given to the unaccompanied minors considering their special needs and vulnerability for the refugee status applications but apart from that, more importantly, the guideline explicitly states that

Although the same definition of a refugee applies to all individuals regardless of their age, in the examination of the factual elements of the claim of an unaccompanied child, particular regard should be given to circumstances such as the child's stage of origin, and their significance to the legal concept of refugee status, as well as his/her special vulnerability. Children may manifest their fears in

⁶⁹ Ibid. 6-7

⁷⁰ Ibid.

⁷¹ Ibid. 8-9

⁷² Ibid. 10-11

ways different from adults. Therefore, in the examination of the claims, it may be necessary to have greater regard to certain objective factors and to determine, based upon these factors, whether a child may be presumed to have a well-founded fear of persecution.⁷³

This emphasis is quite important considering the fact that there are no specific provisions in *the Convention* for the unaccompanied minors as if their level of vulnerability is deemed the same as the of an accompanied child or even with that of an adult.

All soft-law instruments, more or less, have the same recommendations and comments on the protection of the unaccompanied minors. In addition to aforementioned suggestions, Inter-Agency Guiding Principles on Unaccompanied and Separated Children has three complementary actions which are *responsive action*, *remedial action* and *environment building* for the protection of unaccompanied minors. These actions, respectively, suggest the needs for authorities should take immediate steps to stop patterns of abuse, restore dignified living conditions and create an environment by respecting for the rights of the minors.⁷⁴

Unaccompanied Minors in Common European Asylum System

The Common European Asylum System sets the agenda for *the Convention*. However, one of the biggest gaps of *the Convention*, as aforementioned, is that it does not contain any child-specific provisions. Although arguing that the EU policies are also adult-biased would not be too far from the truth, the Common European Asylum System, which tries to harmonize the immigration and asylum policies within the EU, includes some child-centred provisions rendering it more sensitive to the child rights. Like all European human rights instruments, the Common European Asylum System goes hand in hand with the international

⁷³ Ibid. 12-13

⁷⁴ ICRC, IRC, Save the Children, UNICEF, UNHCR and World Vision International, 'Inter-Agency Guiding Principles on Unaccompanied and Separated Children', 2004 available at: https://www.unicef.org/protection/IAG_UASCs.pdf accessed 10 July 2018

treaties. Thus, it can be said that the European Union transforms the non-binding international instruments into legally-binding ones.

This section will only focus upon the provisions related to unaccompanied minors in the second phase of the CEAS. In order to grasp these provisions, one should understand how the EU defines the concept of the unaccompanied minor.

The European Union Qualification Directive describes the unaccompanied minor as ‘a minor who arrives in the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States.’⁷⁵

Rights to International Protection and to be heard

One of the most crucial rights of the unaccompanied minors is their right to international protection. Article 7 (3) of the Asylum Procedures Directive⁷⁶ provides this right by saying

Member States *shall* ensure that a minor has the right to make an application for international protection either on his/her own behalf, if he/she has the legal capacity to act in procedures according to the national law of the Member State concerned, or through his/her parents or other adult family members, or adult family members, or an adult responsible for him/her, whether by law or by national practice of the Member State concerned, or through a representative.

This article applies to both accompanied and unaccompanied minors but the reference to ‘legal capacity’ is ambiguous. Hence, it is unclear whether the article lets the child to make his/her application individually or not. On the other hand, Article 7 (4) which refers to Article 10 of Returns

⁷⁵ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011

⁷⁶ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013

Directive⁷⁷, which obliges the Member States to consult ‘appropriate bodies’ before the return decision of unaccompanied minor and adds that these bodies ‘have the right to lodge an application for international protection on behalf of an unaccompanied minor’.⁷⁸ In addition to these, the protection of unaccompanied minors has been secured by the Recitals 18 and 27 of the Qualification Directive. While Recital 18 puts emphasis on the best interest of the child, Recital 27 contains, *inter alia*, ‘when the applicant is an unaccompanied minor, the availability of appropriate care and custodial arrangements, which are in the best interest of the unaccompanied minor, should form part of the assessment as to whether that protection is effectively available’.

After the claim for the international protection, the most significant right is *the right of the child to be heard* to get the accurate information and to take valid measures in accordance with the best interest of the child. The Asylum Procedure Directive’s Article 2(n) defines the concept of representative but the definition is rather vague.⁷⁹ However, Article 25 (Guarantees for Unaccompanied Minors) extends the qualifications of the representative by adding that the person ‘shall perform his or her duties in accordance with the principle of the best interests of the child and shall have the necessary expertise to that end’. Additionally, the same article underlines that the person who will conduct the interview should have ‘the necessary knowledge of the special needs of the minors’. Although the recast version of the CEAS is more progressive in terms of the right of the child to be heard, Smyth argues that ‘considered on its own merits in the light of the normative requirements of the right, it cannot be said to be in compliance’.⁸⁰

Rights to Protection, Care, Security, Shelter, Family, and Education

⁷⁷ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008

⁷⁸ Ciara Smyth, *European Asylum Law and the Rights of the Child* (Routledge 2014) 62

⁷⁹ *Ibid.* 129

⁸⁰ *Ibid.* 137

Once the child lodges his or her claim, he or she should benefit from *the right of the child to protection and care*. The idea behind this right aims to serve the best interests of the child which contains the obligation ‘to ensure to the child such protection and care as is necessary for his or her well-being’.⁸¹ Before providing special protection, however, the eligibility of the minor has to be identified.

The recast Reception Conditions Directive offers no new tools for the identification of the unaccompanied minors. Article 22 (Assessment of the special reception needs of vulnerable persons) includes the unaccompanied minors and Article 22 (1) stresses that ‘the assessment shall be initiated within a reasonable period of time *after* an application for international protection is made’. As Smyth argues ‘it is necessary to identify the unaccompanied minor before that point or conceivably an application for international protection will not be made’.⁸² The European Commission Action on Unaccompanied Minors⁸³ explicitly states that

Wherever unaccompanied minors are detected, they should be separated from adults, to protect them and sever relations with traffickers or smugglers and prevent (re)victimisation. From the first encounter, attention to protection is paramount, as is early profiling of the type of minor, as it can help to identify the most vulnerable unaccompanied minors⁸⁴.

In addition to this, the Commission knows and admits that there is a gap between the detection of the unaccompanied minors and the triggering of the CEAS. Hence, the Action Plan states that

The EU should adopt higher standards of protection for unaccompanied minors by completing negotiations on the revision of the asylum *acquis* and by adopting comprehensive legislation on

⁸¹ Article 3 (2) CRC, Article 24 (1), EU Charter of Fundamental Rights

⁸² Ciara Smyth, *European Asylum Law and the Rights of the Child* (Routledge 2014) 167

⁸³ Communication From the Commission to the European Parliament and the Council, ‘Action Plan on Unaccompanied Minors (2010-2014)’, COM(2010)213 final, (Brussels, adopted 06 May 2010) available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/action_plan_on_unaccompanied_minors_en_1.pdf accessed 10 July 2018

⁸⁴ *Ibid.* 9

trafficking on human beings and sexual exploitation of children. The commission will ensure that EU legislation is correctly implemented and, on the basis of an impact assessment, evaluate whether it is necessary to introduce targeted amendments or a specific instrument setting down common standards on reception and assistance for all unaccompanied minors...⁸⁵

It is questionable why the CEAS does not present any improvements for the identification process of the unaccompanied minors whereas the Action Plan is quite clear about it. On the other hand, Articles 23 and 24 of the Reception Conditions Directive offers alternative protection to the unaccompanied minors. However, although Article 23 (c) states that *safety and security* of the minors should be considered, there is no reference to the monitoring function for the places where unaccompanied minors have been settled. In addition to these, Article 22 provides the access to a special reception for the vulnerable persons and according to the Article 21's General principle the category of 'vulnerable persons' contains unaccompanied minors. Although the Qualification Directive does not include a special provision for the unaccompanied minors under the Article 30, it is clear that all 'beneficiaries of international protection have access to healthcare under the same eligibility conditions as nationals'. Moreover, the Reception Conditions Directive contains several provisions related to the right of the child to an adequate standard of living. The Chapter III of the Reception Conditions Directive is, however, all about the reduction or withdrawal reception conditions but there is 'no exemption for unaccompanied minors'.⁸⁶ Another important provision which has been undertaken in the Qualification Directive is that Article 31 (5) is the right of the child to a family. With this article, the Member States are obliged to trace the family of the unaccompanied minor to protect minor's best interest.

⁸⁵ Ibid. 9, 10

⁸⁶ Ciara Smyth, *European Asylum Law and the Rights of the Child* (Routledge 2014) 204, 206

The right to education is crucial for both children's present and future. Article 14 of the Reception Conditions Directive is for the minors' right to education. Even though this provision does not specifically mention unaccompanied minors, the article applies to all children. The most important provision under this article, this research argues, is that 'access to the education system shall not be postponed for more than three months from the date on which the application for international protection was lodged by or on behalf of the minor'. However, sometimes the asylum process can take more than a year considering the fact that the EU has a total of 423,880 pending asylum applications currently.⁸⁷ Although the number is decreasing year by year, the figure is still concerning. Thus, it is usually unknown when exactly the international protection is lodged by an unaccompanied minor and consequently, his/her right to education might be violated indirectly although it has been secured. Therefore, for the well-being of the unaccompanied minors, this provision should be revised.

Detention

Last but not least, detention of the minors is another big issue when it comes to application. The Reception Conditions Directive contains four articles related to the detention of the beneficiaries, which denote the grounds for detention (Article 8), guarantees for detained persons (Article 9), conditions of detention (Article 10) and detention of vulnerable persons and persons with special needs (Article 11). These 'provisions are cross-referenced'⁸⁸ in the Asylum Procedures Directive⁸⁹. While Article 9 states that the detention should last as short as possible, Article 11 (3) contains a special provision for unaccompanied minors,

Unaccompanied minors shall be detained only in exceptional circumstances. All efforts shall be made to release the detained unaccompanied minor as soon as possible. Unaccompanied minors shall never be detained in prison accommodation. As for as

⁸⁷ EASO, *Latest Asylum Trends – April 2018*, available at <https://www.easo.europa.eu/latest-asylum-trends> accessed 10 July 2018

⁸⁸ Ciara Smyth, *European Asylum Law and the Rights of the Child* (Routledge 2014) 229

⁸⁹ Article 26

possible, unaccompanied minors shall be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age. Where unaccompanied minors are detained, Member States shall ensure that they are accommodated separately from adults⁹⁰.

In her book *European Asylum Law and the Rights of the Child*, Smyth argues that

Article 11 (3) relating to the detention of unaccompanied minors is a double retrograde step: first, from the text of the amended Commission proposal in 2011, which provided that unaccompanied minors could only be detained in ‘particularly exceptional cases’ and second, from the text of the original Commission proposal in 2008, which exempted unaccompanied minors from detention altogether.⁹¹

Another point that Smyth has drawn attention to is the uncertainty of the presence of the institutions provided with personnel and facilities.⁹² If there are no such institutions then the question is raised of where these minors will be accommodated. Unfortunately, it has not been specified. Another issue is that there is no specific definition for the representative of the unaccompanied minor when he or she is a detainee. However, Article 11 (2) states that the minor’s best interests must be a primary consideration for the Member States. Thus, this article and the given definition of representative (Article 2(j)) can be read and interpreted together. It is obvious that the role of the representative is significant for the unaccompanied minor who has been detained.

Council of Europe on Unaccompanied Minors

With its independent bodies and monitoring mechanisms, the Council of Europe has the notion of safeguard for the rights and freedoms of the people of Europe. Recommendation on Life Projects for Unaccompanied

⁹⁰ Article 11

⁹¹ Ciara Smyth, *European Asylum Law and the Rights of the Child* (Routledge 2014) 230

⁹² *Ibid.*

Migrant Minors⁹³, Life Projects for Unaccompanied Migrant Minors: A Handbook for Front-line Professionals⁹⁴, Protecting Children Affected by the Refugee Crisis: A Shared Responsibility⁹⁵ and finally Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019)⁹⁶ contain important reminders and recommendations for the protection of both accompanied and unaccompanied refugee/migrant minors. They refer only to the Member States but also to the people who work with these certain group of children in accordance with European Convention on Human Rights and other relevant European treaties. The general idea is more or less the same in each document. The Member States should comply with the international and European law, always remember that unaccompanied minors are children and a child is a child. They should never overlook the best interests of the child principle, whilst take particular measures for the protection of unaccompanied minors considering their vulnerability, train their staff who would work with unaccompanied minors, and trace the family of the unaccompanied minors for their well-being. Although the absence of a universal enforcement instrument to secure the States' commitment to the international law causes a chaos in the international arena, regional organizations like the Council of Europe sets some standards and monitors the Member States and gives advice afterwards.

2.2 A Child's Rights Framework

The UN Convention on the Rights of the Child is the most widely ratified international human rights treaty. It contains 39 articles with three complementary protocols⁹⁷ and all of them apply to all children without any

⁹³The Committee of Ministers, 'Recommendation CM/Rec(2007)9 of the Committee of Ministers to Member States on life projects for unaccompanied minors', 2007

⁹⁴ Council of Europe, 'Life Projects for Unaccompanied Migrant Minors: A Handbook for Front-line Professionals', 2010

⁹⁵ Protecting children affected by the refugee crisis: *A shared responsibility*' Secretary General's Proposals for Priority Actions, 2016

⁹⁶ Council of Europe, 'Action Plan on Protecting Refugee and Migrant Children in Europe' (2017-2019), 2017

⁹⁷ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts (2000); Optional Protocol to the Convention on the Rights of

discrimination. The treaty has been ‘recognized as a critical milestone in the legal protection of children’.⁹⁸ In his book, *The Child in International Refugee Law* Pobjoy argues that

First, the *Convention on the Rights of the Child* might be invoked as a procedural guarantee to inform the refugee determination process. The *Convention*⁹⁹ is silent on the procedures that a state should implement in designing a domestic system of refugee status determination. In contrast, the CRC comprises a number of provisions that may inform the determination process, including the principle that a child has a right to express views freely and to be heard in any judicial or administrative proceedings affecting her. Second, the CRC might be drawn upon as an interpretative aid to inform the interpretation of the Convention definition.¹⁰⁰

For instance, *the Convention*, when it comes to family reunification and access to education is not very efficient, but the Convention on the Rights of the Child’s Article 22, even though the right to asylum has not been established clearly in it, provides a wide protection for refugee and asylum-seeking minors by stating that,

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other

the Child on the Sale of Children, Child Pornography (2000); Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (2012).

⁹⁸ GS Goodwin-Gill, ‘Unaccompanied Refugee Minors: The Role and Place of International Law in the Pursuit of Durable Solutions’ (1995) 3 *International Journal of Children’s Rights* 405.

⁹⁹ It refers to the 1951 Refugee Convention and 1967 Protocol

¹⁰⁰ Jason M. Pobjoy, *The Child in International Refugee Law* (Cambridge University Press 2017)

international human rights or humanitarian instruments to which the said States are Parties.¹⁰¹

This Article is, in fact, important in terms of protection of the asylum-seeking and refugee minors since it also reminds the obligations of the States vis-a-vis other human rights instruments. In addition, the Convention on the Rights of the Child does not include any general limitations which would allow the States to 'suspend certain rights in time of emergency'.¹⁰² Thus, the treaty secures rights and freedoms of children better than adults. Notwithstanding, there are still some gaps in the Convention on the Rights of the Child when the issue is unaccompanied minors. Article 20, for example, is about the protection of children without families and states that these children are 'entitled to special protection and assistance' and 'alternative care'. However, it 'mandates no specific solution'.¹⁰³

Nonetheless, this treaty is so unique compared to other international instruments as Pobjoy argues,

The obligations enshrined in the CRC can be categorised in the following way. First, the treaty reaffirms many of the core principles contained in the UDHR, the ICCPR, and the ICESCR, and applies these principles directly to children. In contrast to the ICCPR and the ICESCR, the CRC is unique in that it covers the full spectrum of civil, political, economic, social and cultural rights in a single instrument. Second, the CRC strengthens the nature of a State's obligations to children, such that in some circumstances children will be eligible for greater protection than adults. Most significantly, the CRC does not permit derogation from any of its provisions at any time, including wartime situations. And in contrast to the ICESCR, the CRC does not allow developing states to limit the

¹⁰¹ Article 22 (1)

¹⁰² G S Goodwin-Gill, 'Unaccompanied Refugee Minors: The Role and Place of International Law in the Pursuit of Durable Solutions' (1995) 3 *International Journal of Children's Rights* 411.

¹⁰³ *Ibid.* 413

extent to which economic rights would be guaranteed to non-nationals. Third, the CRC introduces a number of rights specifically tailored to children. This includes the right for a child to participate in any decision involving them and a requirement that the best interests of the child be a primary consideration in any actions involving children. There are also express provisions on the abduction and trafficking of children, the role of parents, guardians and the state in the upbringing and development of children, harmful traditional practices, the right to engage in play and recreational activities, child labour, sexual exploitation and the recruitment of children into armed forces.¹⁰⁴

In addition to this rhetoric, the UNCRC's General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin¹⁰⁵ clearly delineates to the Member States how to apply the Convention on the Rights of the Child to the unaccompanied minors. Since it is the most relevant document to the unaccompanied minors, the rest of this chapter will focus on CRC/GC/2005/6 with references to the Convention on the Rights of the Child.

The Non-Discrimination Principle

The first principle mentioned in the Convention on the Rights of the Child can be found in Article 2 and it prohibits any form of discrimination. Com. RC extends the meaning and states that '...it prohibits any discrimination on the basis of the status of the child as being unaccompanied or separated, or as being a refugee, asylum-seeker or migrant'.¹⁰⁶ The same paragraph also adds that the States should take measures in order to prevent the stigmatization of unaccompanied or separated children.

¹⁰⁴ Jason M. Pobjoy, *The Child in International Refugee Law* (Cambridge University Press 2017)

¹⁰⁵ UN Committee on the Rights of the Child (CRC), 'General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin', 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html> accessed 10 July 2018

¹⁰⁶ Com. RC, General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", *UN Doc. CRC/GC/2005/6 (2005)*, para. 18

Furthermore, policies or measures which relate to the public order and which concern unaccompanied minors should be lawful and proportional. Thus, such measures are ‘never’ to be applied to a group; they should be ad hoc.

The Best Interests of the Child Principle

Another important and probably the most known principle is the best interests of the child principle in Article 3 of the Convention on the Rights of the Child. Although the concept is confusing and vague according to some scholars¹⁰⁷, it would not be completely wrong to say that the concept is the core of the children’s rights and the current soft-law instruments prevent any misinterpretations¹⁰⁸. Article 3 (1) states 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.” Com. RC extends the borders of the concept for unaccompanied minors by adding that this principle must be respected in all stages of the displacement cycle and during the decision-making processes which would have a fundamental impact on unaccompanied or separated child’s life.¹⁰⁹ This principle applies under any circumstances related to children. Thus, ‘all refugee law that is applied to children, and not just the child-specific provisions thereof, falls within the scope of the best interests principle’ so it can be interpreted that refugee law must not only give references to the best interests principle but must itself be in the best interests of the child.¹¹⁰ Additionally, this determination also requires ‘a clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background,

¹⁰⁷ For further comments on the concept of the best interests of the child, see Stephen Parker, ‘THE BEST INTERESTS OF THE CHILD PRINCIPLES AND PROBLEMS’ [1994] 8(1) International Journal of Law and Family 26-41

¹⁰⁸ See further, UNHCR, ‘Guidelines on Determining the Best Interests of the Child’, 2008; Com. RC, General Comment No. 14, ‘The right of the child to have his or her best interests taken as a primary consideration’, *CRC/C/GC/12 (2013)*

¹⁰⁹ Com. RC, General Comment No. 6, ‘Treatment of unaccompanied and separated children outside their country of origin’, *UN Doc. CRC/GC/2005/6 (2005)*, para. 19

¹¹⁰ Ciara Smyth, *European Asylum Law and the Rights of the Child* (Routledge 2014) 34

particular vulnerabilities and protection needs’ and it also includes the ‘access to the territory’.¹¹¹

The Right to Life, Survival, and Development

Article 6 of the *Convention on the Rights of the Child* protects and secures the right of the child to life, survival, and development. Although the idea of the right to life is not different than the other instruments, the link between survival and development emphasises the positive obligation of the States. As previously mentioned, unaccompanied and separated minors are vulnerable to several risks such as trafficking and exploitation which would affect their survival and development seriously. Thus, the obligation of the States under this article is to protect children-in-migration from any harm and to take special and fast measures including ‘priority procedures for child victims of trafficking, the prompt appointment of guardians, the provisions of information to children about the risks they may encounter, and to provide follow-up.’¹¹²

The Right of the Child to be heard

Another important principle, the right of the child to express views and be heard, has been included in Article 12. The States have to take into account children’s wishes and views at any stage, including during the asylum procedure. To get the accurate wishes and views of the child, the child should be well-informed in terms of ‘communication, asylum process, family tracing and the situation in their country of origin which have been included in Articles 13, 17 and 22 (2).’¹¹³ Further to this, during the information process the authorities should consider the level of maturity and the capacity of understanding of the children and in fact should include interpreters.

The Principle of Non-refoulement

¹¹¹ UN Committee on the Rights of the Child (CRC), ‘General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin’, para. 20, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html> accessed 10 July 2018

¹¹² Ibid. para. 23-24

¹¹³ Ibid. para. 25

The non-refoulement principle is the most significant and core principle of the refugee law. Almost each and every international treaty secures the right of the asylum seekers, refugees or migrants that would prevent the expulsion of them if there is a possibility of persecution or a risk to their life and freedom awaits them. Articles 6 and 37 of the Convention on the Rights of the Child secure this principle and additionally, Com. RC functions as a guideline to identify risks regarding 'age and gender-sensitive manner' and underlines the fact that 'insufficient provisions of food and health services' are also risks to the child.¹¹⁴ In addition to that, the reference to *other* human rights or humanitarian instruments in Article 22 (1) is very crucial since, as aforementioned, this principle is the cornerstone of the protection of refugees. Furthermore, the relevance to the other treaties also secures and protects the rights and freedoms of the detained unaccompanied children.

Confidentiality and Durable Solutions

Article 16 of the *Convention on the Rights of the Child* contains the right to privacy of the child. This principle involves respect for the others rights who are related to unaccompanied minors, especially their families in the country of origin. Safety, well-being and the best interests of the child should always be the priority.

Additionally, as it is mentioned in all complementary soft-law instruments and the necessity of durable solutions has been underlined in the General Comment No. 6 as well. Efforts should be made to find durable solutions without any delay for the well-being of the unaccompanied minors. Child's wishes and views should be taken into seriously during this process too. Furthermore, the idea of durable solutions involves family reunification. Therefore, the States should trace the families of unaccompanied minors as quickly as possible considering the best interests of the child. Moreover, if the child would stay in the host country then integration practices should be conducted by the authorities as soon as possible,

¹¹⁴ Ibid. para. 27

'based on a secure legal status'.¹¹⁵ However, although the measures for durable solutions should be taken as soon as possible, the child might not be ready for these solutions. As Goodwin-Gill puts perfectly,

There is no moment, for example, at which the refugee child in flight suddenly becomes ready for a durable solution; on the contrary, as the child will not postpone his or her growth or development, so the need to implement elements of a durable solution is immediate.¹¹⁶

Chapter 3 – Unaccompanied Minors in Domestic Law

Although the international and regional legislations seem pretty adequate - on the other hand very open to interpretation, for the protection of unaccompanied minors, it is extremely important to have concrete safeguards on the national level as well. This is the reason for the focus of chapter 3: national legislations of the respective countries. There is no supra-state executive mechanism when it comes to international refugee law. Therefore this leaves the action down the political will of Member States to comply with the international law. Thus, the sovereign States are responsible for the realisation of the international human rights law in their own legislation. To protect the rights of the people under its jurisdiction, the States should transpose international human rights instruments to their own legal systems. As Lord Bingham had put it,

Times have changed. To an extent almost unimaginable even thirty years ago, national courts in this and other countries are called upon to consider and resolve issues turning on the correct understanding and application of international law, not on an occasional basis, now and then, but routinely, and often in cases of great importance.¹¹⁷

3.1 Greek Law and Transposition of the EU Asylum Law

¹¹⁵ Ibid. para. 89

¹¹⁶ G S Goodwin-Gill, 'Unaccompanied Refugee Minors: The Role and Place of International Law in the Pursuit of Durable Solutions' (1995) 3 *International Journal of Children's Rights* 415

¹¹⁷ Lord Bingham, 'Foreword' in S Fatima, *Using International Law in Domestic Courts* (Hart Publishing, Oxford, 2005)

Greece is one of the two hotspots, with Italy, within the EU borders regarding refugee flows due to its geographical position. Thousands of people have been crossing the Aegean Sea from Turkey to Greece, which is considered to be one of the most dangerous routes to reach Europe safely, which may or may not bring better-living conditions.

In 2016, Greece has enhanced its national legislation by transposing the recast EU Directives into its national law. That was a very progressive and significant step in terms of protecting and respecting rights of the refugees. The *M.S.S. v Belgium and Greece*¹¹⁸ judgement had a huge impact on it for ‘Greece committed to reform its asylum system’¹¹⁹. For the focus of this thesis is unaccompanied children, some parts of the law will be omitted and only the parts of the law of the Law 4375/2016 related to this specific group of minors will be analysed.

Due to the focus of this thesis on unaccompanied minors, it would first be useful to clarify how the Greek Law defines the concept of unaccompanied minor before deepening the discourse regarding the legislation. Article 34 (k) of Law 4375/2016¹²⁰ defines unaccompanied minor as “a person below the age of 18, who arrives in Greece unaccompanied by an adult who exercises parental care on him/her according to Greek legislation and for as long as such parental care has not been assigned by law and exercised in practice, or a minor who is left unaccompanied after he/she has entered Greece”. The definition is the same as the EU’s description, therefore, the meaning is not restricted nor derogated which is firstly a very positive part of this discourse.

¹¹⁸ *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, available at: <http://www.refworld.org/cases,ECHR,4d39bc7f2.html> accessed 10 July 2018

¹¹⁹ Regulation 604/2013/EU of the European Parliament and of Council of 29 June 2013

¹²⁰ Law 4375/2016 on the Structure and Operation of the Asylum Service, The Appeals' Authority and the Reception and Identification Service, the establishment of a General Secretariat for Reception, the transposition into Greek legislation of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) and other provisions', available at: <http://www.refworld.org/pdfid/573ad4cb4.pdf> accessed 10 July 2018

However, the UN Refugee Agency states that an average of 190 unaccompanied minors arrive in Greece each month.¹²¹ According to Asylum Statistics of Asylum Service, in 2017, there were 2,275 unaccompanied minors in Greece and only 3.9 % of them applied for asylum.¹²² This is either because they are not informed by the authorities correctly regarding their right to asylum or they simply did not prefer to stay in Greece, remained silent and planned move ahead to other European countries through illegal migratory routes. Therefore, despite the just and unadulterated transposition of the EU asylum law is a progressive step, the unaccompanied minors are still remaining invisible in Greece. A majority of unaccompanied minors enter the EU countries without any documents. As a small note, undocumented third-country nationals are labelled as irregular migrants or sometimes even worse, 'illegal' as they have officially committed a crime. This labels do not unfortunately exclude unaccompanied minors.

According to the Article 14 of the Law 4375/2016, once the people who enter the territory 'without complying with the legal formalities', should be transferred immediately to the Reception and Identification Centre where their liberty restricted. There is no special provision for unaccompanied minors in terms of not to restricting their liberty. The deprivation of liberty is painful even for the adults. So, one may ask, whether these centres are detention centres or reception centres.

Moreover, Article 14 (5) provides that the authorities have to ensure that the respective persons live under decent conditions, have access to health care, should be informed about their rights, have the access to legal assistance etc., and if the person belongs to a vulnerable group, particularly unaccompanied minors (Article 14 (2)), then special care (medical screening and psychosocial support) shall be ensured according to the Article 14 (8). Furthermore, the relevant institutions should be

¹²¹ UNHCR, 'Regional Refugee and Migrant Response Plan for Europe: January to December 2017', 2016 available at:

<https://data2.unhcr.org/en/documents/download/52619> accessed 10 July 2018

¹²² Source: Asylum Service, Asylum Statistics, December 2017

informed but in practice things are not going that way since the under-identification of the vulnerable people still a big problem¹²³. The following paragraph of the Article continues with a provision for unaccompanied minors stating that if the authorities cannot be sure whether the person is a minor or not, an age assessment procedure should be applied and until the end of the process the person 'shall be considered to be a minor and shall receive the relevant treatment'. Application of this provision is as previously mentioned in the introduction, debatable as it will be challenged in the Part II of the thesis with by using the recent independent reports. Moreover, Article 17 (11) serves as a reminder to the authorities to appoint a guardian or representative to unaccompanied minors. This is regulated by the relevant presidential decree¹²⁴ and the Decision of Ministers¹²⁵ shall. Despite the absolute and self-evident nature of the law, which leaves little room for interpretation, according to the European Council on Refugees and Exiles' report there are 'no guardians are appointed permanently'¹²⁶ -so they cannot be registered. Therefore, the 'asylum procedures cannot be initiated'.¹²⁷ This is also a big obstacle for the family reunification which would be realized under the Dublin III Regulation¹²⁸. Article 27 is called Establishment and Staffing of the Directorate for Reception and it involves special provisions for unaccompanied minors. According to Article 27 (a) (aa), accommodation needs of unaccompanied minors should be met. However, it does not specify a time period for that. Considering the vulnerability these group of children, a period of time should have been given so the measures will be taken with some urgency.

¹²³ See for further: European Council on Refugees and Exiles, *The implementation of the hotspots in Italy and Greece - A study*, December 2016, available at:

<http://www.refworld.org/docid/584ad1734.html> accessed 10 July 2018

¹²⁴ Presidential Decree 114/2010

¹²⁵ Ministerial Decision 1982/16.2.2016 (Official Gazette, B' 335)

¹²⁶ European Council on Refugees and Exiles, *The implementation of the hotspots in Italy and Greece - A study*, December 2016, available at:

<http://www.refworld.org/docid/584ad1734.html> accessed 10 July 2018

¹²⁷ Ibid.

¹²⁸ Regulation 604/2013/EU of the European Parliament and of Council of 29 June 2013

The Article continues by stating that accommodation facilities should be adequate, comply with the European legislation, contain the minimum standards etc. Article 27 (c) secures unaccompanied minors' rights to legal and adequate representation, appropriate living conditions, and family reunification within the scope of Directive 2013/32/EU if it is possible.

In general, this whole Article is directed towards the staff who work in the reception centres. In almost each and every paragraph, it is stated that the staff should 'study'. Nevertheless, how and where to study has not been identified or defined and it does not include any staff trainings. Since the unaccompanied minors are considered as one of the most vulnerable and disadvantaged groups, personnel who work with them should have been trained for the minors' both physical and psychological health. The aforementioned staff are also responsible for monitoring. Unfortunately training for the monitoring staff has not been provided.

Another problematic Article is the one related to detention. Article 46 (10)(b) of the Law 4375/2016 contains a special provision for unaccompanied minors. It states that

Minors who have been separated from their families and unaccompanied minors shall not be detained, as a rule. Only in very exceptional cases, unaccompanied minors who applied for international protection while in detention according to the relevant provisions of Law 3386/2005 and Law 3907/2011, may remain in detention, as a last resort solution, only to ensure that they are safely referred to appropriate accommodation facilities for minors. This detention is exclusively imposed for the necessary time for the safe referral to appropriate accommodation facilities and cannot exceed twenty-five (25) days. When, due to exceptional circumstances, such as the significant increase in arrivals of unaccompanied minors, and despite the reasonable efforts by competent authorities, it is not possible to provide for their safe referral to appropriate accommodation facilities, detention may be prolonged for a further twenty (20) days. Minors who have been

separated from their families and unaccompanied minors shall be detained separately from adult detainees. When minors are detained, they shall be given the possibility to occupy themselves with activities, including games and recreational activities appropriate for their age.

One of the problems with this provision is that the example given as an 'exception'. Although it also states that the detention must be the last resort, the increase in arrivals of unaccompanied minors is being considered as an exception, therefore the State should provide other accommodation alternatives in order not to apply 'the last resort'. Due to their vulnerability and need for special care, obligation of the States is to guarantee a proper accommodation for these children, not to detain them. This is a priority as the EU asylum law underlines it several times in different treaties. In addition to this, the duration that has been set for the detention is very long, as within this 45 or 25 days the child's psychology could be affected badly.

Another issue is that the Article does not contain safeguards for the minors' right to education in the detention centres. Thus, it would not be wrong to say that the right to education of these minors is being violated when they are detained. Both for the children's well-being and future, it is unacceptable not to provide them educational facilities. This is against the best interests of the child principle and additionally, this fundamental right has been secured by both the international and regional treaties.

Moreover, the best interests of the child principle has a strong tie with the family reunification. Law 4376/2016 underlines the best interests of the child and family reunification several times in accordance with the Dublin III Regulation. Although the main purpose of the Dublin III Regulation is to 'establish the Member State responsibility for the examination of the

asylum application'¹²⁹, it contains several Articles related to right to family of unaccompanied minors¹³⁰.

Before deepening this discourse, it should be kept in mind that the regulation is a binding legislative and must be applied across the EU.¹³¹ Thus, every Member State, including Greece, should comply with it for these measures are 'default'. Moreover, it has been already stated in the Article 1 (4)(d) of Law 4376/2016 that 'Department of the Dublin National Unit shall ensure the implementation of Regulation 604/2013'. To enjoy the right to family, one *should be* recognized as an asylum seeker under the CEAS. Considering the best interests, it is questionable whether this complied with of the child principle.

When the international law or the regional legislation cannot respond, the domestic law steps in and bypasses the other instruments for more accurate decisions on behalf of the beneficiaries. However, Article 36 (c) of Law 4376/2016 repeats the Dublin III Regulation by saying 'the application for international protection shall be deemed lodged as of the date of its full registration' and adds that 'applications for international protection of unaccompanied minors shall always be examined under the regular procedure' (Article 45(7)).

This means that if the applicant could not proceed the full registration, he or she cannot claim family reunification, even if he or she is an unaccompanied minor. Since there are no special provision for unaccompanied minors and they are treated as adults under this Article, it is suspicious whether the best interests of the child principle is being applied or prioritized here. It can be called into question whether this treatment consolidates the best interests determination. The same question can be raised here, whether these legislations are really child-friendly enough or not.

¹²⁹ European Commission Migration and Home Affairs: https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en accessed 10 July 2018

¹³⁰ See further: Recital 13 and 14, Article 8 (1)(2) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=en> accessed 10 July 2018

¹³¹ European Union, Regulations, Directives and other acts, available at: https://europa.eu/european-union/eu-law/legal-acts_en accessed 10 July 2018

3.2 Turkish Law and Challenges

Turkey has ratified the 1951 Refugee Convention with the *optional geographical limitation* pursuant to Article 1B of the Convention.¹³² Consequently, 'the application of the Refugee Convention for Turkey has been limited to 'persons who have become refugees as a result of events occurring in Europe'.¹³³ Hence, Turkey has created its own mechanism in 1994¹³⁴ and under this mechanism, 'the non-European applicants then had to register with the local foreigners' police and comply with reporting obligations in order to be eligible for resettlement in a third country with the help of the UNHCR conducting refugee status determination interviews with the registered non-European asylum applicants.'¹³⁵ This dual system, however, has been abolished and now only organ which is in charge of registration procedures etc., is Directorate General of Migration Management and its branches in the provinces of Turkey, called Provincial Directorate of Migration Managements which is a progressive and positive step since having a dual system is complex and confusing for children. To extend the scope of protection regarding refugees, Turkey has enacted its first asylum law (Law 6458)¹³⁶ in 2013.

Article 3 (m) defines unaccompanied minor as 'a child who arrives at Turkey without the attendance of an adult who by law or custom is responsible for him/her or, is left unaccompanied after entry into Turkey, unless he/she is not taken under the active care of a person responsible or him/her'. Although the aim of this New Law is to guarantee a broader

¹³² Turkey has ratified the 1967 Protocol in 1968.

¹³³ Cavidan Soykan, Access to International Protection: Border Issues in Turkey. in Maria O'Sullivan and Dallal Stevens (eds), *States, the Law and Access to Refugee Protection: Fortresses and Fairness* (Hart Publishing 2017) 69-70

¹³⁴ The 1994 Regulation on Procedures and Principles related to Mass Influx and Foreigners Arriving in Turkey either as Individuals or in Groups wishing to Seek Asylum either from Turkey or Requesting Residence Permits with the Intention of Seeking Asylum from a Third Country, 30 November 1994, 94/6169, the Official Gazette 22127.

¹³⁵ Cavidan Soykan, Access to International Protection: Border Issues in Turkey. in Maria O'Sullivan and Dallal Stevens (eds), *States, the Law and Access to Refugee Protection: Fortresses and Fairness* (Hart Publishing 2017) 70

¹³⁶ Law No. 6458 of 2013 on Foreigners and International Protection [Turkey], 4 April 2013, available at: <http://www.refworld.org/docid/5167fbb20.html> accessed 10 July 2018

protection to the asylum seekers and refugees, unfortunately once again it does not contain adequate provisions for the unaccompanied minors.

The first provision is under Article 59 (ç) which is related to services that are provided in removal centres. Like all other instruments, it has been stated that the best interests of the child should be taken into consideration and unaccompanied minors should be separated. In addition to that, contrary to the Greek Law, Article 59 (d) states that the Ministry of National Education should take measures and secure children's right to education during the period of time they may spend in the removal centres.

Furthermore, Article 66 is all related to unaccompanied minors and it states that the best interest of the child should always be the primary consideration (yet the best interests principle has not been defined), and Child Protection Law No. 5395¹³⁷ (this law does not include *any* provision for unaccompanied minors) shall apply immediately. This article is very important since it prohibits the detention of the unaccompanied minors. In addition to these, the same Article also sets rules for accommodation and says that the child's opinion should be taken into account. Asking about child's view means that the child sees as a right-holder which is quite positive.

Additionally, Temporary Protection Regulation¹³⁸ also includes a significant provision for unaccompanied minors which is debatable considering the best interests of the child. Article 49 (2) of this Regulation states that family reunification procedures for children who are identified to be unaccompanied shall be immediately initiated without *waiting for the request of the child*. The best interests of the child principle does not imply that each and every child should be reunited with his or her family. On the contrary, sometimes reunification could be against child's best interests.

¹³⁷ Law on Child Protection No. 5395, 03 July 2005 available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680470946> accessed 10 July 2018

¹³⁸ National Legislative Bodies / National Authorities, *Turkey: Temporary Protection Regulation*, 22 October 2014, available at: <http://www.refworld.org/docid/56572fd74.html> accessed 10 July 2018

The child may face sexual or/and physical violence, other forms of persecutions, religious practices which may cause deformation on his or her psychological integrity etc, in his or her family. Thus, as a right-holder, a child always needs be asked about his or her wishes.

A unique and special feature of Turkish Law, in its consideration of unaccompanied minors, is that there is a special directive, the Directive on Protection of Unaccompanied Minors¹³⁹, which regulates the methods and principles related to services and rights which unaccompanied minors can benefit from.

Article 5 (1) of the Directive quite interesting. This paragraph states that after consulting child's views and wishes, the child can be accommodated with a family which has the same origins as the child. The Article does not include any detail of the State's supervision afterwards. Even if the child wishes to stay with complete strangers assigned to them, there is no guarantee for the security of his or her freedoms. Besides, as mentioned previously, and a common theme in the provision for unaccompanied minors, the child may again face exploitation in many different ways. If this Article would be applied, then regular supervisions by the Ministry for Family and Social Services should be made with regards to best interests of the child principle.

Article 6 (ç) is also problematic considering the best interests of the child determination. This Article is about identification and it explicitly states that until the age assessment process results, the minors would be settled in the reception centres or shelters according to their *physical development*. Physical development should not be only criteria since the maturity, needs etc., of the child also differs and their 'appearance' may not give the accurate information about his or her age every time.

According to Article 8 of the Regulation, unaccompanied children who are entitled to temporary protection are divided in two groups. Children

¹³⁹ Ministry for Family and Social Services, General Directorate Children Services, *Directive on Unaccompanied Minors*, No. 43774863-010.04- 152065, 20/10/2015 available only in Turkish at: <https://cocukhizmetleri.aile.gov.tr/uploads/pages/refakatsiz-cocuk-yonergesi/refakatsiz-c-ocuk-yo-nergesi.pdf> accessed 10 July 2018

between 0-12 ages are settled in the institutions and the rest in 'units'. The notion of these units has not been defined. Moreover, putting a 13 year-old child and 18 year-old young person in the same unit is against the best interests of the child principle due to their level of vulnerability, physical and psychosocial developments etc. On the contrary, a positive provision is underlined under Article 10 (ç), stating that all expenses of these children related to health care is provided under the Social Security and General Health Insurance Law No. 5110. Related to the right to access to health, Article 10 (v) adds that all the unaccompanied minors who are accepted by an institution or a unit, is vaccinated. Another reasonably positive moot point of the same Article is related to integration and it offers children free Turkish courses.

Additionally, Article 10 (ı) secures children's right to education by stating that the children who are entitled compulsory education have to be registered in schools. Article 10 (g) and (ğ) is related to their right to be informed in the language that they can understand, albeit the presence of an interpreter has not been mentioned.

With its weaknesses and strengths, the question of whether the Turkish legislation has prioritized the best interest of the child principle or not is a debatable one.

PART II – Protection of Unaccompanied Minors in Action

Chapter 4 – Access to Rights

In the first part of this thesis, more or less all relevant legal provisions with unaccompanied minors have been discussed regarding Turkey and Greece. Part II will now discuss, in the light of the recent NGO, IGO etc., reports, the implementation of the legislation, to whether ascertain whether this specific group of children can have the opportunity to access to some certain fundamental rights in reality or not. Before elaborating the discourse it should be noted that according to the UNICEF's update¹⁴⁰, the estimated number of unaccompanied minors in Greece is 3,790 and the number for Turkey is unknown¹⁴¹ which is something of concern. Considering a vast majority of these children flee from war, conflict, extreme famine or other extraordinary living conditions and along with the fact that they are arriving to the host countries, mostly -in irregular ways, it is very likely for them to reach to their destinations already traumatised. Thus, it is crucial to cater to a basic level of human needs, in order to help ease the traumas that they have been through or at least, to avoid further trauma. Unfortunately, as will be discussed, this is not always the case.

Once someone becomes a refugee, and here the term refugee includes refugees, migrants, asylum seekers, and stateless and displaced people, they are no longer a part of a community. This means that technically, they have forgone their own individual rights as a citizen of a community. In her

¹⁴⁰ National Center for Social Solidarity, *Situation Update: Unaccompanied Children (UAC) in Greece*, 15 June 2018 available at:

<https://reliefweb.int/sites/reliefweb.int/files/resources/64331.pdf> accessed 10 July 2018

¹⁴¹ It is highly concerning that neither the UNICEF nor the UNHCR know the number of the unaccompanied minors in Turkey. The Turkish State should identify this group of children and share the information with the relevant organizations. Otherwise their level of vulnerability will continue increasing. See further:

<https://www.unicef.org/appeals/syrianrefugees.html#8>

book *The Origins of Totalitarianism*, Hannah Arendt summarises this experience,

Something much more fundamental than freedom and justice, which are rights of citizens, is at stake when belonging to the community into which one is born is no longer a matter of course and not belonging no longer a matter of choice, or when one is placed in a situation of people deprived of human rights. They are deprived, not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion. Privileges in some cases, injustices in most, blessings and doom are meted out to them according to accident and without any relation whatsoever to what they do, did, or may do.

We became aware of the existence of a *right to have rights* (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation.¹⁴²

Arendt argues that one can enjoy his or her rights, only with a citizen's membership to a community, and refugees stop being a part of community once they start their journeys. In the case of children, there is even more of a fundamental breach of these rights, as they have not had as much of a chance to develop as humans to understand the rights they are forgoing, nor have they reached an age where they are recipients of many of the individual rights which adults receive. Equally, with a situation to be so dire to make the treacherous voyage which many of these children are doing, a decision has been made and thus, the care and support is a responsibility that must be placed at the hands of the authorities in receiving countries. Children, especially unaccompanied ones, are far more vulnerable than

¹⁴² Hannah Arendt, *The Origins of Totalitarianism* (Meridian Books 1958) 296-297

the adults who are on-the-move because due to not only their lack of physical development, but their lack of mental capacity to deal with such a decision and the consequences to follow. Children are not considered as the objects, but the subjects during the decision-making processes, as if they are not right-holders as adults. This is not to say that these children are not able to understand what is going on around them or that their mental capacity is not enough to form a view on which would shape their present and future. However, having already committed to making such a decision, it is often the treatment and events that follow, which on an absolute level require attention and special consideration.

Despite this, children have a right as much as adults and must be taken seriously in situations of becoming unaccompanied minors. This care must be taken so children do not become 'more deprived' of their rights comparison to adults, as their only chance is to tell their story, and with any luck, be listened to. Undocumented or not, a child has the right to have rights and to access to that rights like everyone else.

4.1 Right to asylum and non-refoulement Principle

To enjoy other rights, the first prerequisite for an asylum seeker is to be recognized by the hosting country. Thus, access to the right to asylum is crucial for the unaccompanied minors. The UN Refugee Agency is quite clear and direct in its Guideline. The Guideline says 'Each child has the right to make an independent refugee claim, regardless of whether s/he is accompanied or unaccompanied'.¹⁴³ In practice, unaccompanied minors are more advantaged than the accompanied ones when it comes to claim for a refugee status independently because the accompanied minors' claim are generally not separated from the claims of their families.

¹⁴³ UNHCR, 'Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees', 22 December 2009 available at: <http://www.unhcr.org/50ae46309.pdf> accessed 10 July 2018

The right to asylum goes hand in hand with the non-refoulement principle as the United Nations states that ‘a fair refugee status determination’ is the key element of non-refoulement principle.¹⁴⁴ In addition to that, the best interests of the child principle functions as a complementary principle to the duty of non-refoulement in the asylum context. Pobjoy underlines the importance of the States’ behaviour towards the children in asylum

The removal of a child – whether that child is accompanied or unaccompanied – without a separate consideration of the child’s eligibility for refugee status may give rise to a risk of a violation of the non-refoulement obligation that lies at the core of the international refugee protection regime, and will almost certainly infringe art 12 of the *CRC*.¹⁴⁵

Certain turns of events in the last century have led to these restricted policies against migrants and refugees; the rise of the right-wing populism across Europe, the EU-Turkey Statement etc., all of which do not help asylum seeking unaccompanied minors in Greece and Turkey, unfortunately. For instance, as it is aforementioned, after the implementation of the Statement, Greece took safeguards to protect vulnerable groups and exempted them, including unaccompanied minors. With this exemption, vulnerable groups can lodge a claim for asylum in Europe, and move freely from the islands to the mainland. However, things have started to change after some months. The EU Commission and the Greek authorities released a plan¹⁴⁶ ‘proposing to remove these safeguards’.¹⁴⁷

¹⁴⁴ UN High Commissioner for Refugees (UNHCR), *Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection*, February 2003, PPLA/2003/01, available at:

<http://www.refworld.org/docid/3f4de85d4.html> accessed 10 July 2018

¹⁴⁵ JasonM Pobjoy, *The Child in International Refugee Law* (Cambridge University Press 2017)

¹⁴⁶ European Commission, ‘Joint Action Plan on Implementation of the EU-Turkey Statement’ available at: https://www.neweurope.eu/wp-content/uploads/2017/02/december2016-action-plan-migration-crisis-management_en-4.pdf accessed 10 July 2018

¹⁴⁷ International Rescue Committee, Norwegian Refugee Council and Oxfam, *The Reality of the EU-Turkey Statement: How Greece has become a testing ground for policies that*

Thanks to the NGOs' and IOs' warning, finally the plan has not been implemented. However, it reveals the picture regarding how it is getting harder to claim and receive international protection in Europe. If the organizations were not to have opposed to that proposal, the Greek authorities may well have removed these safeguards for unaccompanied minors. Likewise, the same report states that the Greek authorities have decided not to accept the original birth certificates of the unaccompanied minors as a proof. As has been a common theme in this thesis, this information proves that things are getting harder for unaccompanied asylum-seeking minors even in proving their identity as minors. Furthermore, the process of seeking asylum for unaccompanied minors should be accelerated, yet what can be seen tells another story, as in its 2015 Country Report, the Greek Council for Refugees stated that 'unaccompanied minors are not always granted international protection and several of the applications have been rejected at the second instance'.¹⁴⁸

In Turkey, the procedure was more difficult for unaccompanied minors since there is no proper and unified asylum system. Despite the fact that according to the New Law their registration processes should have been prioritised, the process proved to be confusing and complicated for children. For example, if they were non-Syrians then they had to reach the UNHCR/ASAM(a local NGO funded by the UNHCR) offices in certain provinces such as Ankara, İzmir, İstanbul, Van etc., without being supported by the Turkish State for registration¹⁴⁹ and if they were Syrians, then they have to reach to the Directorate General of Migration Management (Göç İdaresi). Considering that they are children, have no

erode protection for refugees, 2017 available at:
<https://www.oxfam.org/sites/www.oxfam.org/files/bn-eu-turkey-statement-migration-170317-en.pdf> accessed 10 July 2018

¹⁴⁸ Asylum Information Database, *Country Report: Greece*, 2015 available at:
https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_update.iv_.pdf accessed on 11 July 2017

¹⁴⁹ Asylum Information Database, *Country Report: Turkey*, 2017 available at:
http://www.asylumineurope.org/sites/default/files/report-download/aida_tr_2017update.pdf accessed on 11 July 2018

guardians and most probably have no money at all, it was questionable whether having two different system for different nationals complies with the best interests of the child principle. Thus, not only for the unaccompanied minors but in general, to make registrations easier, this dual system has been abolished very recently. In theory, the only responsible institution is Directorate General of Migration Management, during this transition period ASAM still assists the Turkish State.

Even though the current situation is not that bright and promising for them, the same report says that the implementation of the non-refoulement principle has been improved in 2017. However, it is obvious that the general status has not been improved since the reports from 2014, 2015 and 2017 state almost the same things. In addition to that, it is a questionable issue as to whether the children are informed correctly. It could be assumed that in general they get the information from the smugglers and it is debatable whether the information is accurate or not.

In 2014, the Turkish Police Academy and the Ministry for Family and Social Services published a report¹⁵⁰ with the collaboration of IOM. According to this report, once an unaccompanied minor enters the Turkish territory, he or she has three options. The first of these options is to remain silent and to go to Europe as soon as possible by using irregular routes. The second is going to the related institute for registration and the third option is to be identified by the police officers. Since it is hard to reach this related institution and most of the children are afraid of going there because of the misinformation they received from the smugglers and since there is no functional system for the identification of these children (considering the fact that even the number of the children is not available), it can be assumed that the only 'logical' way to survive, is to be smuggled

¹⁵⁰ Ministry for Family and Social Services, Police Academy, Norwegian Embassy and IOM, *Project for Promoting Identification of Unaccompanied Minors and Best Interests of the Child Principle in Turkey*, 2014

to Europe. For they do not have too many options, they take very risky journeys which cause them to end up with activities related to human trafficking, sexual exploitation, child labour etc.

IMPR Humanitarian (an NGO) 2014 report¹⁵¹ states the procedure takes too much time, which in turn makes children leave the country through very dangerous and illegal ways. The report also underlines that sometimes the Turkish State deports unaccompanied minors before they can reach the asylum process/registration. This attitude is against both the principles of non-refoulement and of the best interests which have to be the first two vital principles the States should take into consideration before making any decisions related to unaccompanied minors. Moreover, if the minor can access to asylum and in the end, the claim is rejected, most of the time the minors are not informed by the authorities.

A representative from Mülteci-Der (Association for Solidarity with Refugees) says that

If an unaccompanied minor could not get attention from an NGO or if it is not obvious that he or she is a minor, he or she is not treated as a minor. The child either deported or faces with the removal procedure even though legal protection should be applied regardless of his or her status. However, the system is not working in that way automatically.¹⁵²

Although it seems like the legislation is adequate for the protection of unaccompanied minors, both Greece and Turkey have obvious gaps in practice. It is an obligation for the states to take the best interests of the child principle into consideration for children to access to the appropriate legal rights they deserve.

4.2 Family Reunification and Legal Representation

¹⁵¹ IMPR Humanitarian, *Statü Belirleme Sürecinde Türkiye'de Bulunan Refakatsiz Sığınmacı Çocukların Durumu*, 2014

¹⁵² Yüce Yöney, "'Refakatsiz [Mülteci] Çocuklar' Devlet Korumasında Olmalı' (*Bianet*, 10 August 2015) <https://bianet.org/bianet/cocuk/166703-refakatsiz-multeci-cocuklar-devlet-korumasinda-olmalı> accessed 24 June 2018

If the child is not a victim of domestic violence, sexual harassment or/and abuse or exploitation etc., because of his or her family members, then for his or her best interests, he or she must in the best case scenario reunite with the family if it is possible. As is discussed in the first part of the thesis; international, regional and domestic legislations are on the same line and argue that separating children from their families may increase the risk of deprivation and abuse. Nevertheless, the reunification procedures could be highly challenging for unaccompanied minors in practice.

The Dublin III Regulation is one of the most efficient tools that asylum seekers have in Greece for the family reunification. Although vulnerable persons' claims, including unaccompanied minors, have been prioritized, according to the 2017 Country Report by the Greek Council for Refugees¹⁵³ unaccompanied minors who have their families in another Member State still face problems. The report states that the system for appointing guardians is dysfunctional. Because the Public Prosecutor is responsible for the temporary guardianship of the minors and due to the amount of the applications, the NGO personnel may also be appointed as a guardian by the Public Prosecutor which is a good practice, considering the shortage of the staff, in order to prevent delays in transfers of unaccompanied minors. Although these measures have been taken, the report says that there are cases where unaccompanied minors have been waiting for almost a year to be transferred.¹⁵⁴ Another obstacle is the requirement of the consent of the relative and the documents of the relative which prove the legal status in the receiving country (e.g. asylum seeker's card, residence permit etc.). According to the information that the Greek Council for Refugees received from the Greek Asylum Service, if there is a missing document, then it is nearly impossible for the family to unite. In addition to that, only documents provided in English are taken

¹⁵³ Asylum Information Database, *Country Report: Greece, 2017* available at: https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_update.iv_.pdf accessed on 11 July 2018

¹⁵⁴ Amnesty International, *Trapped in Greece: An avoidable refugee crisis*, 2016, available at: <http://www.refworld.org/docid/571db6df4.html> accessed 10 July 2018

into account by the Dublin Units of the Member States which causes rejection of the request.¹⁵⁵ For instance, if the Greek authorities send the documents in Greek, then the request would be rejected automatically. Another recent report¹⁵⁶ drives the attention to a more challenging impediment. According to Oxfam, lawyers and legal aid groups told that unaccompanied children in the islands are registered as adults because required documents are changing constantly which increase the opportunity dramatically for family reunification under the Dublin III Regulation. The same report finds out that the Greek Asylum Service does not accept original birth certificates as an evidence anymore. Only original passports and IDs are accepted as a proof which causes discrimination against some certain nationalities. For instance, children from Pakistan cannot be issued an official ID before they turn 18. In addition to that, most of these children arrive without any documents or cannot access them for some reason. The procedure is highly complex and takes too much time. Considering the fact that the minor may turn 18 during this process, and due to that he or she may lose the opportunity, effective measures should be taken by the Greek State urgently.

In Turkey, the procedure has been accelerated compared to Greece. As previously mentioned, the Turkish authorities do not need to wait for the child's request, they start the procedure as soon as the registration has been done as the law orders. However, this thesis argues that it is still problematic not to have a unit, like the Dublin Unit, which deals with family reunification claims. Having a special unit would be very useful for faster procedures. Furthermore, even if the procedure has been prioritized by

¹⁵⁵ See further: Ibid. 55

¹⁵⁶ OXFAM, *Dear Family: How European migration policies are keeping families apart*, 19 June 2017 available at: <https://oxfamintermon.s3.amazonaws.com/sites/default/files/documentos/files/Briefing-paper-Greece-family-unity-190617.pdf> accessed 10 July 2018

law, according to the 2017 Country Report of AIDA, 'the right to family reunification has been almost entirely suspended in Turkey'.¹⁵⁷

Although there are no obstacles to benefit legal representation in the Turkish Law, when it comes to practice, the unaccompanied children face many problems. Like the rest of the people who live under the jurisdiction of the Turkish State, the unaccompanied children also need to give the procuration to his or her attorney before the notary in order to benefit right to the representative.¹⁵⁸ Moreover, if the child cannot present a valid ID or a passport then it is nearly impossible for them to give the procuration. In addition to that, children whose asylum claims have been rejected as well as not being notified about the failure of their claim, they are not informed by the authorities about their right to appeal. Furthermore, even if the child appeals, the execution would not be suspended automatically by the administrative court. This is why another claim should be filed by the child but the problem is that the administrative courts generally respond after a very long time to these kinds of claims. Therefore, the child may face refoulement before the decision has been made by the court and may be sent back to his or her country of origin.¹⁵⁹

4.3 Right to Education with Figures

In 2013, when the representative of the UN Refugee Agency stated that 'Syria now faces losing the entire generation who are without parents and bring forced into child labour.'¹⁶⁰, he was implicitly emphasising the importance of education. Schools are perhaps the best institutions to keep the unaccompanied minors away from trafficking, sexual exploitation, violence, child labour and more. Besides, receiving purposeful education does not only help them in to build a decent future but also integrate them

¹⁵⁷ Asylum Information Database, *Country Report: Turkey*, 2017 available at: http://www.asylumineurope.org/sites/default/files/report-download/aida_tr_2017update.pdf accessed on 11 July 2018

¹⁵⁸ IMPR Humanitarian, *Statü Belirleme Sürecinde Türkiye'de Bulunan Refakatsiz Sığınmacı Çocukların Durumu*, 2014

¹⁵⁹ Ibid.

¹⁶⁰ BBC News, 'Syria's 'lost generation of children' (BBC, 23 November 2013)<<http://www.bbc.com/news/av/world-middle-east-25149487/syria-s-lost-generation-of-children>> accessed 29 May 2018

into their new environment. In doing so, it decreases the chance of taking part in criminal activities and having fundamentalist ideas etc. As the UNICEF report from 2018 states

Refugee and migrant children – particularly those out of school – remain vulnerable to numerous protection risks, including isolation, discrimination, and different forms of exploitation. Years of conflict and displacement continue to have a significant impact on their psycho-social well-being which, if not addressed, will have a long-term negative impact on their development.¹⁶¹

Both in Greece and Turkey all children, without any discrimination, have the right to access to education by law but in practice, even though some important measures have been taken, not each and every unaccompanied minor has the access education.

According to a report¹⁶² which has been released in 2017, only 44% of accommodated minors in Greece were enrolled in schools. While 89% of them were enrolled in secondary education and 11% in primary education, only 46% of the accommodated children aged between 6 and 15, which is obligatory for them to attend, were enrolled in school. The report also states only 22% of them receive formal education and 18% of these children had never attended school. In addition to that, for children who are older than 15 years, the situation is even more concerning. There are no classes for older children who have not completed primary school. These children should at least, be encouraged to access the vocational schools.

Another worrying problem, which will be discussed in the following chapter, is the false age assessment. Although in theory these children are beneficiaries of the right to access to education, if they cannot be identified correctly, then they automatically lose their right to education.

¹⁶¹ UNICEF, *Turkey 2017 Humanitarian Results*, 25 Jan 2018 available at: <https://reliefweb.int/report/turkey/unicef-turkey-2017-humanitarian-results>

¹⁶² UNICEF and REACH, *Access to education of refugee and migrant children outside accommodation (open) sites Athens and Thessaloniki, Greece*, March 2017, available at: <http://bit.ly/2HXaRWH> accessed 10 July 2018

However, this does not provide a sole explanation as to why these children are not participating in education. The first reason is the language barrier. Discontinued education, which is generally caused by the language barrier, and illiteracy are still the biggest obstacles when it comes to access to education¹⁶³. In addition to that, a vast majority of unaccompanied minors do not know Greek language. Thus, it is very hard for them to keep up with the courses in Greek public schools considering the fact that there is no access to interpretation in these schools.¹⁶⁴ Another reason is that most of them wait for the result of their family reunification requests in other EU countries so they see little point in attending classes anyways.

Moreover, according to the same report, local communities do not want them in their school system. Racism and xenophobia are one of the major problems that refugees face in their everyday lives. Therefore, not only the refugee children but also local children, teachers, civil servants etc. should be educated and trained as well. Otherwise, this problem will continue to grow and the integration of the refugees will remain as a dream. Moreover, Refugee Support Aegean argues that there are no sufficient education facilities in the islands and because of the EU-Turkey Statement, some of the refugee children are trapped in the islands and have no access to education.¹⁶⁵

For Turkey, the situation is more complicated than Greece. There is no official or unofficial statistics for unaccompanied minors who enrolled in the school system but general numbers are existent. These numbers and challenges that school-age children face can give an idea. The ratio of

¹⁶³ Refugee Support Aegean, *Majority of refugee children in the Aegean Islands Hot Spots are excluded from education*, 16 February 2018, available at: http://rsaegean.org/majority_of_refugee_children_in_the_aegean_islands_hot_spots_are_excluded_from_education/ accessed 10 July 2018

¹⁶⁴ Children on the Move Network, *Access to formal education for unaccompanied children in shelters*, 2017, available at: <http://bit.ly/2tbvo6n> accessed 10 July 2018

¹⁶⁵ Refugee Support Aegean, *Majority of refugee children in the Aegean Islands Hot Spots are excluded from education*, 16 February 2018, available at: http://rsaegean.org/majority_of_refugee_children_in_the_aegean_islands_hot_spots_are_excluded_from_education/ accessed 10 July 2018

enrolment improved in years, for instance, as of September 2017, 65% of school-age children under temporary protection have been enrolled in the school system.¹⁶⁶ Although the situation is promising for Syrian children, things are not that bright for non-Syrian asylum seeker and refugee children. According to the numbers that Human Right Watch published in 2017, there were 42,221 non-Syrian school-aged refugees and asylum seekers in Turkey but there is no data on how many of them are enrolled in schools.¹⁶⁷

The complexity of the Turkish asylum system does not make children's lives easier in access to education. Even if solely being a refugee or an asylum seeker puts people in an underprivileged position, non-Syrian refugees are even more disadvantaged than the Syrian ones. A number of non-Syrian refugees, including children, lack of legal status and do not have valid documents. Under these circumstances, it is nearly impossible for them to enrol in the school system. They are automatically deprived of their right to access to education even though this right has been secured both by international law, the Turkish Constitution Article 42 and Law on Foreigners and International Protection.

However, even if a child can be registered to the school system, he or she would face a multitude of obstacles as in Greece. For instance, the language barrier is a big problem in Turkey as well. Even though unaccompanied minors who are accommodated in the State shelters can receive free Turkish language classes before they have been enrolled in school by law, not every unaccompanied minor can benefit from this opportunity. The other problem is that the Turkish educational system does not offer adaptation or catch-up classes to the foreign minors whose previous education was based on a different curriculum.¹⁶⁸ In addition to

¹⁶⁶ Grand National Assembly, *Göç Uyum Raporu*, March 2018

¹⁶⁷ Human Rights Watch, *Turkey: Education Barriers for Asylum Seekers*, 31 May 2017 available at: <https://www.hrw.org/news/2017/05/31/turkey-education-barriers-asylum-seekers> accessed 10 July 2018

¹⁶⁸ Asylum Information Database, *Country Report: Turkey*, 2017 available at: http://www.asylumineurope.org/sites/default/files/report-download/aida_tr_2017update.pdf accessed on 11 July 2018

that, some of the non-Syrian asylum seekers, including unaccompanied minors, cannot even leave the places in which they live since they do not have valid resident permits which means that they can be detained any time (according to statements of asylum seekers).¹⁶⁹ This is perhaps the reason why no attempt to enrol in school is made. Lastly, as witnesses stated, some school directors and officials from the Educational Ministry's local branches do not let children enrol in the schools arbitrarily by referring to unlawful and inconsistent rules.

4.4 Adequate Housing and Health Care

If the unaccompanied minors do not get a safe place to stay, it is very likely for them to be preys of the human traffickers, exploiters and/or smugglers and if they cannot access any health care, then both their psychological and physical health would be at stake, again increasing their vulnerability.

As of June 2018, there is, approximately, 3,790 (95,9% boys, 4,1% Girls, 5.2% <14 years old) unaccompanied minors in Greece and 2,832 of them (including 211 separated children) are still on the waiting list for accommodation. The total number of places in unaccompanied children shelters is 1,141. 368 of them, who are in the waiting list, are in the Reception and Identification Centres and 87 of them are under protective custody.¹⁷⁰ Some of them on the islands or in the police stations, some of them live on the streets.

Unaccompanied children without a shelter are simply preys of the human traffickers. It has been known that some of these children are 'willingly' selling sex at the heart of Athens only to get some food and to have a

¹⁶⁹ Human Rights Watch, *Turkey: Education Barriers for Asylum Seekers*, 31 May 2017 available at: <https://www.hrw.org/news/2017/05/31/turkey-education-barriers-asylum-seekers> accessed 10 July 2018

¹⁷⁰ National Center for Solidarity, *Situation Update: Unaccompanied Children (UAC) in Greece*, 15 June 2018 available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/64331.pdf> accessed 10 July 2018

place to sleep/spend the night.¹⁷¹ Lack of adequate accommodation still remains as a big and dangerous gap for unaccompanied minors in Greece. Besides, Doctors without Borders has released information that the lack of appropriate accommodation and specialized care for the vulnerable individuals such as unaccompanied minors is affecting the health and well-being of thousands of individuals.¹⁷² Having a proper shelter is very important for the children's health conditions, these two are interrelated. Although after the decision of *Rahimi v. Greece*¹⁷³ the European Court of Human Rights held that the Greek authorities should take adequate measures to provide unaccompanied children care and accommodation, the situation is still not at an appropriate minimum standard.

Unaccompanied minors have the right to health care as nationals by law and it is free of charge but in practice, they cannot access it very easily. One of the main problems is the financial crisis which has affected the whole population. A shortage of staff, lack of equipment and supplies etc., are concerning both for locals and foreigners.¹⁷⁴ Aside from this, the State does not supply translation service during the medical examination, there is a lack of capacity, financial and human resources and the staff of the hospitals and care centres do not always know the relevant law.¹⁷⁵

¹⁷¹ RT Documentary, *Sex, Drugs and Refugees. Syrian teenagers in Athens resort to prostitution to survive*, 19 January 2018 available at:

<https://www.youtube.com/watch?v=m4HpLitVRK8> accessed 10 July 2018

¹⁷² Medecins Sans Frontieres, *Greece in 2016: Vulnerable People Get Left Behind*, available at:

https://www.msf.org/sites/msf.org/files/report_vulnerable_people_201016_eng.pdf

accessed 10 July 2018

¹⁷³ See further: *Rahimi v. Greece*, Application no. 8687/08, Council of Europe: European Court of Human Rights, 5 April 2011, available at:

<http://www.refworld.org/cases,ECHR,4d9c3e482.html> accessed 6 July 2018

¹⁷⁴ Helena Smith, 'Patients who should live are dying': Greece's public health meltdown' (*The Guardian*, 1 January 2017)

<https://www.theguardian.com/world/2017/jan/01/patients-dying-greece-public-health-meltdown> accessed 6 July 2018

¹⁷⁵ Hungarian Helsinki Committee, *Unidentified and Unattended: The Response of Eastern EU Member States to the Special Needs of Torture Survivor and Traumatized Asylum Seekers*, May 2017, available at: <http://www.refworld.org/docid/59b155744.html> accessed 10 July 2018

The number of unaccompanied children who stay in the accommodation facilities of the Ministry for Family and Social Services and the number of children, if there is any, in the waiting list is unknown in Turkey. However, as is aforementioned, it is known that they are exempted from the Accelerated Procedure and may not be detained during the processing of their applications because the law says that they should be accommodated in the facilities which are under the authority of Ministry for Family and Social Services.¹⁷⁶ Since they are considered as 'persons with special needs', their access to accommodation has been prioritized. Furthermore, applicants below the age of 16 shall be placed in the children's shelters or other facilities under the authority of Ministry for Family and Social Services and applicants who are above 16 years of age may also be settled down in the Reception and Accommodation Centres. However, according to the Asylum Information Database's annual report, the placement of children aged 16-18 is still problematic.¹⁷⁷ In addition, living in the streets only makes them even more vulnerable to trafficking, child labour etc. The fact has surfaced Syrian girls are being sold as second wives¹⁷⁸ or they are forced to work in the textile factories of very well-known brands such as Zara, Mango, Marks and Spencer etc., where they are reported to be paid less than 1 euro per hour while they are being exposed to very hazardous chemicals¹⁷⁹. Moreover, in 2017, a deputy from the main opposition party asked for the number of the unaccompanied and missing Syrian children in Turkey. The government said that they cannot share the number of unaccompanied minors due to 'confidentiality'. However, the officials shared the number of Syrian

¹⁷⁶ Asylum Information Database, *Country Report: Turkey, 2017* available at: http://www.asylumineurope.org/sites/default/files/report-download/aida_tr_2017update.pdf accessed on 11 July 2018

¹⁷⁷ Ibid.

¹⁷⁸ Callaghan Louise, '£1,200: the cost of a Syrian refugee bride in Turkey' (*The Times*, 10 September 2017) <https://www.thetimes.co.uk/edition/world/1-200-the-cost-of-a-syrian-refugee-bride-in-turkey-tgpbgx9m6> accessed 6 July 2018

¹⁷⁹ BBC News, 'Çocuk mülteciler Türkiye'de tekstil atölyelerinde çalıştırılıyor' (*BBC*, 24 October 2016) <https://www.bbc.com/turkce/haberler-turkiye-37748847> accessed 6 July 2018

children who went missing after they had entered Turkey. The number is 1,660¹⁸⁰ and no one knows what happened to them. It is a cause of concern especially for unaccompanied minors considering their vulnerability. One of the most important measures that should be taken in all cases is to identify these children and to offer a safe accommodation.

The right to access to health of unaccompanied minors is secured by Turkish law and the latest reports show that there are no major problems for them to access to health.

4.5 Good Practices

In this last chapter, good practices related to unaccompanied minors in both Greece and Turkey will be mentioned briefly. Although it seems like both Turkey and Greece generally fail to protect unaccompanied minors, it does not mean that these countries are doing everything wrong. There are also some positive aspects.

To provide one such example, the Turkish Law on Foreigners and International Protection contains several provisions for the persons with special needs. Although the State generally fails to provide comprehensive safeguards, unaccompanied minors positively are exempted from it.¹⁸¹ Moreover, it has been said that conditions in Removal Centres and in the temporary accommodation centres are good overall.¹⁸² The esteemed human rights advocacy organization, Human Rights Watch has, in fact, asserted that Turkey had made progress where education and minors are

¹⁸⁰ Sebahat Karakoyun, 'Resmi veriler ürkütücü tabloyu ortaya koydu: 1660 Suriyeli çocuk kayıp'(*Birgün Gazetesi*, 13 July 2017) <https://www.birgun.net/haber-detay/resmi-veriler-urkutucu-tabloyu-ortaya-koydu-1660-suriyeli-cocuk-kayip-169562.html> accessed 6 July 2018

¹⁸¹ Asylum Database Information, *Country Report: Greece*, 2017 available at: https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_update.iv_.pdf accessed on 11 July 2018

¹⁸² Ibid.

concerned, by lifting legal barriers to Syrian children's access to formal education.¹⁸³

Furthermore, the simple existence of the Directive on Unaccompanied Minors is a certainly a positive measure regarding the protection provided for the unaccompanied minors. Additionally, it includes very progressive provisions, for instance, giving pocket money to the unaccompanied minors. This is not something that can be seen in international, regional or Greek legislation but Article 10 (1) (p) orders that the institutions or the unit where these children stay should provide pocket money in accordance with their pocket money limits.¹⁸⁴ The importance of such a measure comes in development, self-esteem, and independency which it fosters in these children. Having their own money and being responsible for an amount of money on their own, may seem to be something trivial but it is intensely significant for their own personal developments. Moreover, during his fact-finding mission, Ambassador Tomáš Boček wrote his report that unaccompanied children are not usually kept in police custody.¹⁸⁵ In the case of Greece, for instance, a huge development had been made by entering Ministerial Decision 92490/2013¹⁸⁶ into force. This decision has the notion of guideline for the age assessment which is very important for the identification of the unaccompanied minors.

¹⁸³ Human Rights Watch, *Barriers to Education for Syrian Refugee Children in Turkey*, 2015 available at: <https://www.hrw.org/report/2015/11/08/when-i-picture-my-future-i-see-nothing/barriers-education-syrian-refugee-children> accessed 10 July 2018

¹⁸⁴ Ministry of Family and Social Services/Directorate General of Child Services, *Directive on Unaccompanied Minors*, 2015 available only in Turkish at: <https://cocukhizmetleri.aile.gov.tr/uploads/pages/refakatsiz-cocuk-yonergesi/refakatsiz-cocuk-yo-nergesi.pdf> accessed 10 July 2018

¹⁸⁵ European Union: Council of the European Union, *Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 30 May – 4 June 2016*, 10 August 2016, SG/Inf(2016)29, available at: <http://www.refworld.org/docid/58de48524.html> accessed 10 July 2018

¹⁸⁶ Ministerial Decision 92490/2013 "Programme for medical examination, psychosocial diagnosis and support and referral of entering without legal documentation third country nationals, in first reception facilities".

Chapter 5 – The Arbitrariness and Accountability

In Chapter 5, the arbitrariness of the authorities and their accountability will be discussed. These are major problems particularly regarding the identification of the unaccompanied minors. It is known that most of the unaccompanied minors travel to their destinations without any documents. That is why generally a child needs to claim that he or she is a child but this is not always the case. Sometimes they are misinformed by the smugglers, so in order not to reveal that they are children, and sometimes they hear stories about other children who have been detained and persecuted after the claim. Unfortunately, arbitrary detention is a very common phenomenon and a fact, especially in the countries which are on the migration routes. Thus, children, who have been already persecuted or experienced horrible practices in their country of origin or on the way, do not know who to trust.

5.1. Detention

Under the international law, States are obliged to consider the best interests of the child during each decision-making process related to unaccompanied minors¹⁸⁷ as it is aforementioned. The EU legislation allows detention of the unaccompanied minors only as a last resort.¹⁸⁸ While the Greek law is on the same line with the EU legislation, the Article 66 (1)(b) of the Law on Foreigners and International Protection excludes unaccompanied minors from detention in Turkey. However, in reality, the legislations are either ignored or misinterpreted.

The Greek law allows unaccompanied minors to be detained in exceptional cases and as a last resort. Unaccompanied minors can be detained for up to 25 days and if the authorities fail to transfer the children

¹⁸⁷ UN Committee on the Rights of the Child (CRC), 'CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin', 1 September 2005, CRC/GC/2005/6

¹⁸⁸ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on Reception Conditions Article 11(3)

due to some reason, then the duration can be extended up to 45 days.¹⁸⁹ Lack of adequate shelters for unaccompanied minors still a big issue for Greece and it causes arbitrary prolonged detentions which is questionable if it complies with the best interests of the child principle or not. For instance, although the protective custody has to be maximum 45 days by law, Country Report of Asylum Information Database says that in 2017, this period has reached 6 months.¹⁹⁰ In addition to that, according to the statements of the children that Human Rights Watch interviewed in 2016, conditions of the police stations do not fit children. The minors describe it as 'unsanitary, overcrowded, including dirty blankets and bugs, and lack of access to information or services such as counselling and legal aid.'¹⁹¹

Another problem is that the children are not informed about why they are kept in the detention or what will happen to them next. A 17-year-old Syrian unaccompanied minor reportedly said to Human Rights Watch 'I told them 'I am a minor and I haven't done anything. Why are you keeping me here?' but he could not get a response.¹⁹² The most striking part is that in the end he also adds that 'I feel like I have killed someone'. This shows how the psychology of these children has been affected by the detention. Considering the fact that most of these children have suffered horrific experiences that no human being should experience, keeping them in the detention centres certainly would not help them in coping with their traumas, on the contrary, it only worsens the traumas since detention may cause anxiety, stress disorder, depression etc.

¹⁸⁹ The transposition into Greek legislation of the provisions of Directive 2013/32/EC, No. 4375/2016, Article 46(10)(b) available at: <http://www.refworld.org/docid/573ad4cb4.html> accessed 10 July 2018. There are no set time limits on detention of children in protective custody.

¹⁹⁰ Asylum Information Database, *Country Report: Greece, 2017* available at: https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_update.iv_.pdf accessed on 11 July 2018

¹⁹¹ Human Rights Watch, *Greece: Migrant Children in Police Cells*, 19 July 2016, available at: <http://www.refworld.org/docid/578f7d9f4.html> accessed 10 July 2018

¹⁹² Human Rights Watch, "Why Are You Keeping Me Here?" - *Unaccompanied Children Detained in Greece*, 8 September 2016, available at: <http://www.refworld.org/docid/57d2b04b4> accessed 10 July 2018

The reports that are used previously are from 2016 and unfortunately, another report released by Human Rights Watch in 2018 does not say different things. During their research, they have found out that unaccompanied minors in detention live in unsanitary conditions, often with unrelated adults and; can be subject to abuse and ill-treatment by police.¹⁹³ Although it is known and true that the European Union Member States fail when it comes to burden-sharing and Greece is overwhelmed, detention of unaccompanied minors is unacceptable.

When it comes to Turkey, however, even finding information about the current situation related to detention of the unaccompanied minors is almost impossible. The latest report that can be reached is Council of Europe's report¹⁹⁴ which has been written in 2015 and published in 2017. Findings of this report are very similar to the ones in Greece. Dormitories are overcrowded, no activities have been offered, they have been locked for 24 hours, and they are kept together with adults which is against the Turkish Law¹⁹⁵ on Foreigners and International Protection. Another report¹⁹⁶, although it is not a recent one, includes more disturbing statements of the unaccompanied minors who have been detained. According to that report, as a meal, the only thing these children would have received was bread and cheese. Moreover, an unaccompanied child who recently has witnessed the death of one of his close relatives has been violently shoved by the police. Lastly, some of the children said that one of the police officers had a gun on him and they were very afraid.¹⁹⁷

¹⁹³ Human Rights Watch, *Asylum-Seeking Kids Locked Up in Greece*, 23 January 2018, available at: <http://www.refworld.org/docid/5a8eb0cd9.html> accessed 10 July 2018

¹⁹⁴ Council of Europe: Committee for the Prevention of Torture, *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 23 June 2015*, 17 October 2017, CPT/Inf (2017) 32, available at: <http://www.refworld.org/docid/59e5b55c4.html> accessed 10 July 2018

¹⁹⁵ Article 59 (1) (ç)

¹⁹⁶ Helsinki Citizens Assembly, *Askıya Alınmış Çocukluk: Türkiye'de Sığınma Arayan Ailesinden Ayrı Düşmüş Mülteci Çocukların Durumu, March 2010*

¹⁹⁷ According to the Regulation on Children Police, the police should keep the gun on him without make it to be seen by children Article (22), available only in Turkish at:

5.2 Identification/Age Assessment

If the child cannot be identified by the authorities correctly, then unaccompanied minors cannot benefit from the special protection. Thus, accurate identification and age assessment may be the most important and vital procedure related to unaccompanied minors. Sometimes the child may not reveal that he or she is a minor because of reasons such as misinformation, the risk of detention etc., or sometimes the authorities intentionally or unintentionally register unaccompanied minors as adults. However, regardless of the reason, it is the duty of the authorities to identify unaccompanied minors.

According to the Greek Law 4375/2016 Article 8 (2) the Reception and Identification Service is responsible for ‘registration, identification and data verification procedures, medical screening, identification of vulnerable persons, the provision of information, especially for international or another form of protection and return procedures, as well as the temporary stay of third-country nationals or stateless persons entering the country without complying with the legal formalities and their further referral to the appropriate reception or temporary accommodation structures.’¹⁹⁸ Aside from this, there is a Ministerial Decision 92390/2013 for the age assessment procedure in the context of reception and identification procedures. Furthermore, the Joint Ministerial Decision 1982/2016 provides for an age assessment procedure for persons seeking international protection before Asylum Service. However, there is no mention of unaccompanied minors under the responsibility of the Hellenic Police. Besides, there is no age assessment procedure in the national framework.¹⁹⁹

http://cocukhaklari.barobirlik.org.tr/dokuman/mevzuat_diger/emniyetgenelmudurlugu.pdf
accessed 10 July 2018

¹⁹⁸ Article 9 Law 4375/2016

¹⁹⁹ Asylum Information Database, *Country Report: Greece*, 2017 available at:
https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_update.iv_.pdf accessed on 11 July 2018

If there is justified doubt about the age of the unaccompanied minor, then

...the person is referred to the medical control and psychosocial support team for an age assessment. Initially, the age assessment will be based on macroscopic features (i.e. physical appearance) such as height, weight, body mass index, voice, and hair growth, following a clinical examination from a paediatrician, who will consider body metric data. The paediatrician will justify his or her final estimation based on the aforementioned examination data and observations. In case the person's age cannot be adequately determined through the examination of macroscopic features, an assessment by the psychologist and the social worker of the division will follow in order to evaluate the cognitive, behavioural and psychological development of the individual. The psychosocial divisions' evaluation report will be submitted in writing. Wherever a paediatrician is not available or when the interdisciplinary staff cannot reach any firm conclusions, and only as a measure of last resort, the person will be referred to a public hospital for specialised medical examinations such as dental or wrist X-rays, which will be clearly explained to him or her as far as their aims and means are concerned.²⁰⁰

However, Amnesty International revealed that the age is determined only on the basis of a dental or wrist x-ray taken at the hospitals without psychological assessment.²⁰¹ Representatives of Médecins du Monde says that unreliable methodologies risk that children are wrongly identified as adults.²⁰² In addition to that, use of X-ray should be the last method for age assessment since the child is exposed to radiation.

²⁰⁰ Ibid.

²⁰¹ Amnesty International, *A blueprint for despair: The EU-Turkey deal*, 2017 available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/EUR2556642017ENGLISH.PDF> accessed 10 July 2018

²⁰² Ibid.

In other research, 14 unaccompanied children that Human Rights Watch interviewed said that they told the authorities they were under 18 when they arrived but they were registered as adults²⁰³ which is not at all a rare occurrence. Once the registration has been done wrong, it is very hard to change it. The child has the right to appeal within 10 days but Human Rights Watch, Amnesty International and the Greek Council for Refugees stated that the appeals are generally rejected by the Reception and Identification Service because within these 10 days the one who files the appeal should provide an original ID or passport proving his or her age which should be officially translated or verified. Considering the fact that the child, most probably, has no one to call for the documents or too scared to contact the relevant embassy or the family members. Thus, it is nearly impossible for him or her to prove his or her age during this time frame.²⁰⁴ Moreover, a 17-year-old boy told Amnesty International that he has been identified as an unaccompanied minor after his arrival. However, he was given a police paper ordering him to leave the country which shows his age as 22.²⁰⁵ When they did the interview, he still did not know what would happen to him next.

Once again, the data coverage and information is lacking from Turkey, the Turkish Law on Foreigners and International Protection, on the other hand, does not include any provisions related to age assessment. However, Implementing Regulation of the law functions as a guideline. According to the regulation, if the applicant claims to be a minor but cannot prove it, then a 'comprehensive age determination, which includes physical and psychological assessment, shall be conducted by governorates.'²⁰⁶ If the

²⁰³ Human Rights Watch, *Greece: Lone Migrant Children Left Unprotected*, 19 July 2017, available at: <http://www.refworld.org/docid/5970a6844.html> accessed 10 July 2018

²⁰⁴ Ibid.

²⁰⁵ Amnesty International, *Trapped in Greece: An avoidable refugee crisis*, 2016, available at: <http://www.refworld.org/docid/571db6df4.html> accessed 10 July 2018

²⁰⁶ National Legislative Bodies / National Authorities, *Turkey: Implementation regulation on the Law on Foreigners and International Protection*, 17 March 2016, available at: <http://www.refworld.org/docid/5747fb7a4.html>

age assessment fails to detect whether the applicant is under or over 18 years old, then the applicant's reported age shall be accepted to be true.²⁰⁷ Nevertheless, neither the Implementing Regulation nor the law itself does not contain any provisions regarding the methodology. The only guideline is by the State Agency for Forensic Medicine and it does not make any references to psycho-social assessment of the person and if the test indicates an age above 17 or 18, then the applicant is deemed an adult and not granted the benefit of the doubt²⁰⁸ which is quite problematic since as it is above mentioned, physical examination or radiography data is not always accurate *per se*.

Moreover, in 2016, during his country visit, Tomáš Boček has been told that there are numerous unaccompanied children living alone in the streets. The same report says that the number of identified unaccompanied minors in Turkey surprisingly low compared to other migration destinations in Europe.²⁰⁹ It is questionable whether the number is really low or the Turkish authorities fail at identifying children.

Conclusion

Due to restricted border policies and deals that have been signed between the EU and presumed as safe countries, the number of people who are migrating irregularly has decreased in overtime but the figures are still reasonably high. According to the UN Refugee Agency's data, as of July 2018, 47, 955 people migrated by sea to Europe and at least 1,408 of them drowned to death or went missing in the sea.²¹⁰

²⁰⁷ Asylum Information Database, *Country Report: Turkey*, 2017 available at: http://www.asylumineurope.org/sites/default/files/report-download/aida_tr_2017update.pdf accessed on 11 July 2018

²⁰⁸ Ibid.

²⁰⁹ European Union: Council of the European Union, *Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 30 May – 4 June 2016*, 10 August 2016, SG/Inf(2016)29, available at: <http://www.refworld.org/docid/58de48524.html> accessed 10 July 2018

²¹⁰ Source: UNHCR, available at: <http://data2.unhcr.org/en/situations/mediterranean> accessed 10 July 2018

People, including unaccompanied minors, are continuing to risk their lives although they know they may die even before reaching their destinations. Each of these people has undergone incredible hardship in their own country of origins, and on the treacherous voyage from there. This hardship and trouble leaves human beings vulnerable in desperate need of protection. Within this group, there are groups who require an extra level of consideration, like unaccompanied minors, in need of special protection. To be a child, and a refugee should certainly class as needing further protection.

The research question of this thesis is whether there are gaps in the legal frameworks or there are any blockages in implementation or both. This thesis, through Part I and II, investigated this through discussion and concludes that there are both gaps and blockages in the legal provision for the care and protection of unaccompanied minors, and there are gaps in the implementation of current provisions.

Although both Turkey and Greece have been enhancing their legislations and trying to keep up with the international obligations, the legislations are still not adequate to protect unaccompanied minors fully. In the case of Turkey, it is needed to abolish geographical limitations towards non-European refugees, especially unaccompanied minors, to end the discrimination. On the other hand, Greece also should abolish detention of unaccompanied minors. Many unaccompanied minors are trapped in the hotspots and other detention facilities on the islands since there is no adequate accommodation in the mainland and they cannot be transferred.

In 2017, a representative from the Leros Solidarity Network said that

Due to the lack of administrative staff and adequate psychosocial support both in PIKA and the Hot Spot, the situation is deteriorating – especially with a population that is already psychologically stressed – with the result that difficulties arise. Explosions of anger, panic attacks and tendencies of self-injuries and suicide attempts are now a daily phenomenon.²¹¹

Although vulnerable groups are exempted from the EU-Turkey Statement, the horrific situation in the islands is the result of this statement. The environment and the treatment need to be child-friendly in order to protect unaccompanied minors' physical and mental health. Additionally, since there is a wealth of maltreatment, most of them try to leave Greece for better living conditions. This situation creates a chain of violence and

²¹¹ Refugee Support Aegean, 'Serious gaps in the care of refugees in Greek hotspots; Vulnerability assessment system is breaking down' (*Refugee Support Aegean New*, 17 July 2017) <http://rsaegean.org/serious-gaps-in-the-care-of-refugees-in-greek-hotspots-vulnerability-assessment-system-is-breaking-down/> accessed 10 on July 2018

exploitation because in order to leave the country they need to use irregular ways and find a smuggler, to be smuggled they need to raise money, to raise money they need to work and to be exploited. In the meantime, they may be exposed to trafficking, prostitution etc., while they cannot enjoy their childhoods and rights as citizens *and* children. Furthermore, continuing uncertainty causes anxiety and depression. Aside from this, since there are no proper services, even if these children manage to reach the mainland of Greece, they sometimes go totally undocumented and disappear.²¹²

Turkey, in particular, should and must strengthen its identification procedures, taking measures as soon as possible, and train relevant staff. Turkey is hosting almost 4 million refugees currently. Most of them are children and women so it is believed that the number of unaccompanied minors cannot be estimated, therefore remains unknown. In addition, as it is aforementioned, there are more than 1,400 missing Syrian children in Turkey. It is most likely that a majority of them are unaccompanied minors.

Moreover, unfortunately, Turkey has also failed to protect and offer a decent minimum standard of life to refugee minors who are identified. In 2015, when a high-school Syrian boy, who was trying to raise money to be smuggled to Greece, was asked about the dangers of being smuggled, he answered 'There is nothing to be done now. If we manage to survive, we continue living and if not, getting drowned in the sea is better than living under this conditions. Turkey is a Muslim country, but we have more rights in Germany.'²¹³ Similar to that, in 2015, when a 10-year-old Syrian boy, who lives in Turkey, was asked about his future dreams, he said 'I do not have a dream'.²¹⁴

The current thesis has shown that both Turkey and Greece are in a dire need to improve legislation where the provision of unaccompanied minors is concerned, must comply with the international obligations or be held accountable, and must train their staff and ensure the security of the unaccompanied minors who make up one of the most vulnerable groups in the whole world.

²¹² Alfonso Montero, 'Thousands of unaccompanied children in Greek island camps need help' (*The Guardian*, 25 October 2017) <https://www.theguardian.com/social-care-network/2017/oct/25/thousands-unaccompanied-children-greek-island-camps-need-help> accessed 10 July 2018

²¹³ Uğur Zengin, 'Başka yol kalmadı Avrupa'ya geçeceğiz' (*Evrensel Gazetesi*, 19 October 2015) <https://www.evrensel.net/haber/261029/baska-yol-kalmadi-avrupaya-gececegiz> accessed 10 July 2018

²¹⁴ Arzu Kayaoğlu, 'Suriyeli bir çocuk: "Hayalim yok"' (*Euronews*, 24 November 2015) <http://tr.euronews.com/2015/11/24/suriyeli-bir-cocuk-hayalim-yok> accessed 10 July 2018

Bibliography:

Books:

Alison Brysk, *Globalization and Human Rights* (University of California Press 2002)

Ciara Smyth, *European Asylum Law and the Rights of the Child* (Routledge 2014)

GS Goodwin-Gill and J McAdam, *The Refugee in International Law* (Oxford University Press) 2007

Hannah Arendt, *The Origins of Totalitarianism* (Meridian Books 1958)

Jason M. Pobjoy, *The Child in International Refugee Law* (Cambridge University Press 2017)

Lord Bingham, 'Foreword' in S Fatima, *Using International Law in Domestic Courts* (Hart Publishing, Oxford, 2005)

Maria O'Sullivan and Dallal Stevens, *States, the Law and Access to Refugee Protection: Fortresses and Fairness* (Hart Publishing 2017)

Mary Crock, *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection: A Study of Laws, Policy and Practices in Australia* (Themis Press 2006)

ME Price, *Rethinking Asylum: History, Purpose, and Limits* (Cambridge University Press 2009)

Steve Peers and Angela Ward, *The European Union Charter of Fundamental Rights* (Hart Publishing 2004)

Articles:

Alice Edwards, 'Article Navigation Human Rights, Refugees, and The Right 'To Enjoy' Asylum' [2005] 17(2) *International Journal of Refugee Law* available at: <https://academic.oup.com/ijrl/article/17/2/293/1548262> accessed 10 July 2018

GS Goodwin-Gill, 'Unaccompanied Refugee Minors: The Role and Place of International Law in the Pursuit of Durable Solutions' (1995) 3 *International Journal of Children's Rights*

Jane Kotzmann and Cassandra Seery, 'DIGNITY IN INTERNATIONAL HUMAN RIGHTS LAW: POTENTIAL APPLICABILITY IN RELATION TO INTERNATIONAL RECOGNITION OF ANIMAL

RIGHTS' [2017] 26(1) Michigan State International Law Review available at:

<https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1231&context=ilr> accessed 29 May 2018

Treaties and Legislation:

Convention on the Rights of the Child (adopted and opened for signature 20 November 1989, entered into force 2 September 1990)

Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention)
Council of Europe, 'European Convention on Human Rights' (Strasbourg 3 September 1953)

Council of Europe, 'European Social Charter (Revised)' (Strasbourg 3 May 1996)

Council of Europe, 'Protocol No 1 To The Convention' (Strasbourg 11 March 2014)

Council of Europe/European Court of Human Rights, 'Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights: Right to education' (updated 30 April 2018)

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013

European Union/European Parliament, 'Treaty of Lisbon', (OJC 306) (adopted 17 December 2007, entered into force 1 December 2009)

Regulation 604/2013/EU of the European Parliament and of Council of 29 June 2013

International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) UNGA 2200A (XXI) (ICESCR)

Law 4375/2016 on the Structure and Operation of the Asylum Service, The Appeals' Authority and the Reception and Identification Service, the establishment of a General Secretariat for Reception, the transposition into Greek legislation of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) and other provisions'

Law No. 6458 of 2013 on Foreigners and International Protection

Law on Child Protection No. 5395, 03 July 2005

Ministerial Decision 1982/16.2.2016 (Official Gazette, B' 335)

Ministerial Decision 92490/2013

Ministry for Family and Social Services, General Directorate Children Services, 'Directive on Unaccompanied Minors', No. 43774863-010.04-152065, 20/10/2015

Implementation regulation on the Law on Foreigners and International Protection, 17 March 2016

Presidential Decree 114/2010

Regulation on Children Police

Temporary Protection Regulation, 22 October 2014

The 1994 Regulation on Procedures and Principles related to Mass Influx and Foreigners Arriving in Turkey either as Individuals or in Groups

wishing to Seek Asylum either from Turkey or Requesting Residence Permits with the Intention of Seeking Asylum from a Third Country, 30 November 1994, 94/6169, the Official Gazette 22127
Universal Declaration of Human Rights (adopted 10 December 1948)
UNGA Res 217 A (III) (UDHR)

Case-Law:

M.S.S. v. Belgium and Greece, Application no. 30696/09

Rahimi v. Greece, Application no. 8687/08

UN Documents:

Com. RC, General Comment No. 6, ‘Treatment of unaccompanied and separated children outside their country of origin’, *UN Doc.*

CRC/GC/2005/6 (2005), para. 18

Commission Recommendation (EU) 2016/1117

Secretary General’s Proposals for Priority Actions, ‘Protecting children affected by the refugee crisis: A shared responsibility’, 2016

The UN Refugee Agency, ‘Regional Refugee and Migrant Response Plan for Europe: January to December 2017’, 2016

The UN Refugee Agency, ‘Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection’, 2003

The UN Refugee Agency, ‘UNCHR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status’, 2011

The UN Refugee Agency, ‘UNHCR Guidelines on Determining the Best Interests of the Child’, 2008

The UN Refugee Agency, ‘UNHCR Guidelines on Determining the Best Interests of the Child’, 2006

The UN Refugee Agency, ‘UNHCR Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of the Refugees’, 2009

The UN Refugee Agency, ‘UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum’, 1997

European Documents:

Communication From the Commission to the European Parliament and the Council, 'Action Plan on Unaccompanied Minors (2010-2014)', COM(2010)213 final, (Brussels, adopted 06 May 2010)

Council of Europe, 'Action Plan on Protecting Refugee and Migrant Children in Europe' (2017-2019), 2017

Council of Europe, 'Life Projects for Unaccompanied Migrant Minors: A Handbook for Front-line Professionals', 2010

Council of Europe, The Secretariat of the ESC, 'Children's Rights Under the European Social Charter'

European Commission, 'Joint Action Plan on Implementation of the EU-Turkey Statement', 2017

European Union Agency for Fundamental Rights and Council of Europe, 'Handbook on European law relating to the rights of the child', June 2015

European Union Agency for Fundamental Rights and Council of Europe, 'Handbook on European Law Relating to Asylum, Borders, and Immigration', 2013

The Committee of Ministers, 'Recommendation CM/Rec(2007)9 of the Committee of Ministers to Member States on life projects for unaccompanied minors', 2007

Reports:

Amnesty International, *A blueprint for despair: The EU-Turkey deal*, 2017 available at:

<https://reliefweb.int/sites/reliefweb.int/files/resources/EUR2556642017ENGLISH.PDF> accessed 10 July 2018

Amnesty International, *Trapped in Greece: An avoidable refugee crisis*, 2016, available at: <http://www.refworld.org/docid/571db6df4.html> accessed 10 July 2018

Amnesty International, *Trapped in Greece: An avoidable refugee crisis*, 2016, available at: <http://www.refworld.org/docid/571db6df4.html> accessed 10 July 2018

Asylum Database Information, *Country Report: Greece, 2017* available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2017update.pdf accessed 11 July 2018

Asylum Information Database, *Country Report: Greece, 2015* available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_update.iv_.pdf accessed 11 July 2018

Asylum Information Database, *Country Report: Turkey, 2017* available at:

http://www.asylumineurope.org/sites/default/files/report-download/aida_tr_2017update.pdf accessed 11 July 2018

Children on the Move Network, *Access to formal education for unaccompanied children in shelters*, 2017, available at: <http://bit.ly/2tbvo6n> accessed 10 July 2018

Council of Europe: Committee for the Prevention of Torture, *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 23 June 2015*, 17 October 2017, CPT/Inf (2017) 32, available at:

<http://www.refworld.org/docid/59e5b55c4.html> accessed 10 July 2018

European Council on Refugees and Exiles, *The implementation of the hotspots in Italy and Greece - A study*, December 2016, available at:

<http://www.refworld.org/docid/584ad1734.html> accessed 10 July 2018

European Network of Ombudspersons for Children, *Call For the EU and European Countries to Implement a Child Rights Perspective in the Reception of Migrating Children*, (2016) available at:

<https://www.synigoros.gr/resources/160211-ekthesi.pdf> accessed 10 July 2018

European Union: Council of the European Union, *Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 30 May – 4 June 2016*, 10 August 2016, SG/Inf(2016)29, available at:

<http://www.refworld.org/docid/58de48524.html> accessed 10 July 2018

Helsinki Citizens Assembly, *Askıya Alınmış Çocukluk: Türkiye’de Sığınma Arayan Ailesinden Ayrı Düşmüş Mülteci Çocukların Durumu*, March 2010

Human Rights Watch, *Barriers to Education for Syrian Refugee Children in Turkey*, 2015 available at: <https://www.hrw.org/report/2015/11/08/when-i-picture-my-future-i-see-nothing/barriers-education-syrian-refugee-children> accessed 10 July 2018

Human Rights Watch, *Turkey: Education Barriers for Asylum Seekers*, 31 May 2017 available at: <https://www.hrw.org/news/2017/05/31/turkey-education-barriers-asylum-seekers> accessed 10 July 2018

Human Rights Watch, *"Why Are You Keeping Me Here?" - Unaccompanied Children Detained in Greece*, 8 September 2016, available at: <http://www.refworld.org/docid/57d2b04b4> accessed 10 July 2018

Human Rights Watch, *Asylum-Seeking Kids Locked Up in Greece*, 23 January 2018, available at:

<http://www.refworld.org/docid/5a8eb0cd9.html> accessed 10 July 2018

Human Rights Watch, *Greece: Migrant Children in Police Cells*, 19 July 2016, available at: <http://www.refworld.org/docid/578f7d9f4.html> accessed 10 July 2018

Hungarian Helsinki Committee, *Unidentified and Unattended: The Response of Eastern EU Member States to the Special Needs of Torture Survivor and Traumatized Asylum Seekers*, May 2017, available at: <http://www.refworld.org/docid/59b155744.html> accessed 10 July 2018

ICRC, IRC, Save the Children, UNICEF, UNHCR and World Vision International, *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, 2004 available at:

https://www.unicef.org/protection/IAG_UASCs.pdf accessed 10 July 2018

IMPR Humanitarian, *Statü Belirleme Sürecinde Türkiye’de Bulunan Refakatsiz Sığınmacı Çocukların Durumu*, 2014

International Rescue Committee, Norwegian Refugee Council and Oxfam, *The Reality of the EU-Turkey Statement: How Greece has become a testing ground for policies that erode protection for refugees*, 2017, available at: <https://www.oxfam.org/sites/www.oxfam.org/files/bn-eu-turkey-statement-migration-170317-en.pdf> accessed 10 July 2018

Medecins Sans Frontieres, *Greece in 2016: Vulnerable People Get Left Behind*, available at:
https://www.msf.org/sites/msf.org/files/report_vulnerable_people_201016_eng.pdf accessed 10 July 2018

Ministry for Family and Social Services, Police Academy, Norwegian Embassy and IOM, *Project for Promoting Identification of Unaccompanied Minors and Best Interests of the Child Principle in Turkey*, 2014

National Center for Social Solidarity, *Situation Update: Unaccompanied Children (UAC) in Greece*, 15 June 2018 available at:
<https://reliefweb.int/sites/reliefweb.int/files/resources/64331.pdf> accessed 10 July 2018

Nuala Mole and Catherine Meredith, *Asylum and the European Convention on Human Rights*, available at:
<http://www.refworld.org/pdfid/4ee9b0972.pdf> accessed 10 July 2018

OXFAM, *Dear Family: How European migration policies are keeping families apart*, 19 June 2017 available at:
<https://oxfamintermon.s3.amazonaws.com/sites/default/files/documentos/files/Briefing-paper-Greece-family-unity-190617.pdf> accessed 10 July 2018

Refugee Studies Centre, *Forced Migration Review No. 51 - Destination: Europe*, January 2016, FMR Issue 51, available at:
<http://www.refworld.org/docid/56b265355322.html> accessed 10 July 2018

Refugee Support Aegean, *Majority of refugee children in the Aegean Islands Hot Spots are excluded from education*, 16 February 2018, available at:
http://rsaegean.org/majority_of_refugee_children_in_the_aegean_islands_hot_spots_are_excluded_from_education/ accessed 10 July 2018

The UN Refugee Agency 'UNCHR Fact Sheet' (2017) available at:
<https://data2.unhcr.org/en/documents/download/60180> accessed 10 July
2018

UNICEF and REACH, *Access to education of refugee and migrant children outside accommodation (open) sites Athens and Thessaloniki, Greece*, March 2017, available at: <http://bit.ly/2HXaRWH> accessed 10 July
2018

UNICEF, *Turkey 2017 Humanitarian Results*, 25 January 2018 available
at: [https://reliefweb.int/report/turkey/unicef-turkey-2017-humanitarian-
results](https://reliefweb.int/report/turkey/unicef-turkey-2017-humanitarian-results) accessed 10 July 2018

News:

Alfonso Montero, 'Thousands of unaccompanied children in Greek island camps need help' (*The Guardian*, 25 October 2017) available at:
[https://www.theguardian.com/social-care-network/2017/oct/25/thousands-
unaccompanied-children-greek-island-camps-need-help](https://www.theguardian.com/social-care-network/2017/oct/25/thousands-unaccompanied-children-greek-island-camps-need-help) accessed 10 July
2018

Arzu Kayaoğlu, 'Suriyeli bir çocuk: "Hayalim yok"' (*Euronews*, 24
November 2015) available only in Turkish at:
[http://tr.euronews.com/2015/11/24/suriyeli-bir-cocuk-hayalim-
yok](http://tr.euronews.com/2015/11/24/suriyeli-bir-cocuk-hayalim-yok) accessed 10 July 2018

BBC News, 'Çocuk mülteciler Türkiye'de tekstil atölyelerinde çalıştırılıyor' (*BBC*, 24 October 2016) available only in Turkish at:
<https://www.bbc.com/turkce/haberler-turkiye-37748847> accessed 6 July
2018

BBC News, 'Syria's 'lost generation of children' (*BBC*, 23 November 2013)
[http://www.bbc.com/news/av/world-middle-east-25149487/syria-s-lost-
generation-of-children](http://www.bbc.com/news/av/world-middle-east-25149487/syria-s-lost-generation-of-children) accessed 29 May 2018

Helena Smith, 'Patients who should live are dying': Greece's public health meltdown' (*The Guardian*, 1 January 2017) available at:

<https://www.theguardian.com/world/2017/jan/01/patients-dying-greece-public-health-meltdown> accessed 6 July 2018

Louise Callaghan, '£1,200: the cost of a Syrian refugee bride in Turkey' (*The Times*, 10 September 2017) available at:

<https://www.thetimes.co.uk/edition/world/1-200-the-cost-of-a-syrian-refugee-bride-in-turkey-tgpbgx9m6> accessed 6 July 2018

Refugee Support Aegean, 'Serious gaps in the care of refugees in Greek hotspots; Vulnerability assessment system is breaking down' (*Refugee Support Aegean New*, 17 July 2017) available at:

<http://rsaegean.org/serious-gaps-in-the-care-of-refugees-in-greek-hotspots-vulnerability-assessment-system-is-breaking-down/> accessed 10 July 2018

Sebahat Karakoyun, 'Resmi veriler ürkütücü tabloyu ortaya koydu: 1660 Suriyeli çocuk kayıp' (*Birgün Gazetesi*, 13 July 2017) available only in Turkish at: <https://www.birgun.net/haber-detay/resmi-veriler-urkutucu-tabloyu-ortaya-koydu-1660-suriyeli-cocuk-kayip-169562.html> accessed 6 July 2018

Uğur Zengin, "Başka yol kalmadı Avrupa'ya geçeceğiz" (*Evrensel Gazetesi*, 19 October 2015) available at:

<https://www.evrensel.net/haber/261029/baska-yol-kalmadi-avrupaya-gececegiz> accessed 10 July 2018

Yüce Yöney, "'Refakatsiz [Mülteci] Çocuklar" Devlet Korumasında Olmalı' (*Bianet*, 10 August 2015) <https://bianet.org/bianet/cocuk/166703-refakatsiz-multeci-cocuklar-devlet-korumasinda-olmalı> accessed 24 June 2018

Documentary:

RT Documentary, *Sex, Drugs and Refugees. Syrian teenagers in Athens resort to prostitution to survive*, 19 January 2018 available at:

<https://www.youtube.com/watch?v=m4HpLitVRK8> accessed 10 July 2018

Other Sources:

Asylum Service, Asylum Statistics, December 2017

E Feller, Assistant High Commissioner – Protection, UNHCR, 'Rule of Law 60 Years On' (Statement, 61st Session of the UNHCR ExCom, 6 October 2010)

EASO, *Latest Asylum Trends*, April 2018, available at:

<https://www.easo.europa.eu/latest-asylum-trends> accessed 10 July 2018

European Commission Migration and Home Affairs, available at:

[https://ec.europa.eu/home-affairs/what-we-](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en)

[do/policies/asylum/examination-of-applicants_en](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en) accessed 10 July 2018

European Union, available at: [https://europa.eu/european-union/eu-](https://europa.eu/european-union/eu-law/legal-acts_en)

[law/legal-acts_en](https://europa.eu/european-union/eu-law/legal-acts_en) accessed 10 July 2018

Grand National Assembly, *Göç Uyumu Raporu*, March 2018

Institute of International Law, 'Asylum in Public International Law' (Bath Session, 5th Commission, September 1950) art 1.

Legislative Train Schedule: Towards a New Policy on Migration, EU-

Turkey Statement & Action Plan, 18 March 2016 available at:

[http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-](http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eu-turkey-statement-action-plan)

[policy-on-migration/file-eu-turkey-statement-action-plan](http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eu-turkey-statement-action-plan) accessed 10 July

2018

Sona Kalantaryan, 'A Double Exclusion: Protection Gaps for

Unaccompanied Minors in the EU' (MPC Blog Debate Migration, 17th

May) available at: [https://blogs.eui.eu/migrationpolicycentre/double-](https://blogs.eui.eu/migrationpolicycentre/double-exclusion-protection-gaps-unaccompanied-minors-eu/)

[exclusion-protection-gaps-unaccompanied-minors-eu/](https://blogs.eui.eu/migrationpolicycentre/double-exclusion-protection-gaps-unaccompanied-minors-eu/) accessed 10 July

2018

Source: UNHCR, available at:

<http://data2.unhcr.org/en/situations/mediterranean> accessed 10 July 2018

The UN Refugee Agency, *Global Trends Forced Displacement in 2015*,

(2016) available at: <http://www.unhcr.org/576408cd7.pdf> accessed 10 July

2018 accessed 10 July 2018

United Nations, 'What are human rights?' (*United Nations Human Rights Office of the High Commissioner*, 1 January 1996)

<https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>
accessed 10 July 2018