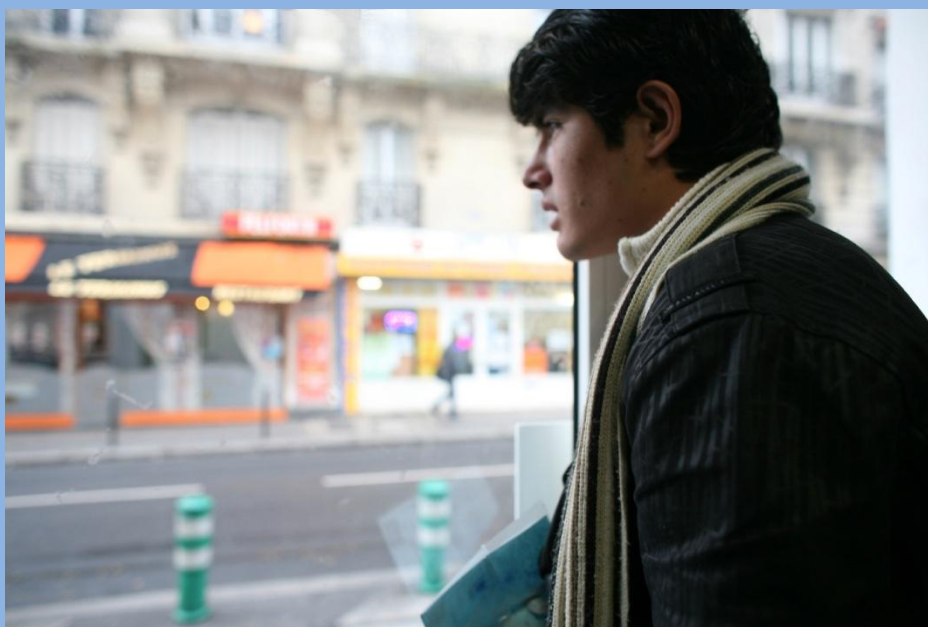


# THE RECEPTION AND CARE OF UNACCOMPANIED MINORS IN EIGHT COUNTRIES OF THE EUROPEAN UNION



Comparative study and perspectives of harmonisation

**Spain - France- Great-Britain - Greece - Hungary - Italy - Romania - Sweden**

**SYNTHESIS - OCTOBER 2010**

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*The opinions expressed in this document are those of the author and do not represent the views of the European Commission nor of its services*

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## Main abbreviations

CESEDA	Code de l’entrée et du séjour des étrangers et du droit d’asile (France)
CNDA	Cour nationale du droit d’asile (France)
DPCM	Decreto del Presidente del Consiglio dei Ministri (Italy)
DRC	Democratic Republic of the Congo
EMN	European Migration Network
HHC	Hungarian Helsinki Committee (Hungary)
MIE	Mineur isolé étranger
NGO	Non Governmental Organisation
OFII	Office français de l’immigration et de l’intégration (France)
OFPRA	Office français de protection des réfugiés et des apatrides (France)
IOM	International Organization for Immigration
RS	Refugee status
SCEP	Separated children in Europe program
SP	Subsidiary protection
SPRAR	Sistema di Protezione per richiedenti asilo e rifugiati
UE	Union européenne (European Union)
UKBA	United Kingdom Border Agency (Great-Britain)
UNHCR	United Nations High Commissioner for Refugees

## Context

For many years all European countries have been faced with the arrival on their territory of migrants of a particular type: unaccompanied minors. Even though this designation varies according to each State<sup>1</sup>, the term will be used throughout this study to refer to those children of less than 18 years of age, belonging to a country outside the European Union and unaccompanied by a legal representative.

This migratory phenomenon was identified from the 1970's in several member States and it increased during the 1990's to reach substantial numbers in recent years. Children from sub-Saharan Africa, the Maghreb, the Middle East or Asia, arrive in Europe this way every year in search of protection, of a better life, or to join a member of their family.

While this problem concerns all of the 27 Member States of the European Union, these young people will receive a very different reception and be taken care of rather differently by each individual country. This great disparity in legislation and national practice is explained by the failure to deal with this problem at the European level. Many International or Community Standards related to this subject matter are applicable to the countries of the European Union<sup>2</sup>, but this legislative context has not really helped to reduce the protection gap between the member States

Aware of the necessity to act on a supranational scale, the European Commission thus published an action plan for unaccompanied minors on May 5<sup>th</sup> 2010<sup>3</sup>. This communication addressed to the Council<sup>4</sup> and the Parliament presents in broad outline what should ensue as far as future development is concerned regarding a European policy in this area, in view of 'increased protection'<sup>5</sup>. It is in this particular context that this report is registered.

Through the analysis of legislation and practices of the eight member States (Spain, France, Great-Britain, Greece, Hungary, Italy, Romania, Sweden), the aim is to identify good practice and prescriptive needs on a European scale, in order to improve the reception and care of unaccompanied minors in the Union. Regarding its purpose and its methodology, this report is complementary to other comparative studies recently published on the subject<sup>6</sup>.

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<sup>1</sup> See below Part I

<sup>2</sup> See Annex 1

<sup>3</sup> See Annex 1  
<sup>3</sup> Action Plan on Unaccompanied Minors of the European Commission (2010 – 2014) SEC(2010)534

<sup>3</sup> Action Plan on Unaccompanied Minors of the European Commission (2010 – 2014) SEC(2010)534  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF>

<sup>4</sup> Council conclusions on unaccompanied minors, 3018th JUSTICE and HOME AFFAIRS Council meeting Luxembourg, 3 June 2010  
[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/114887.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/114887.pdf)

<sup>5</sup> "European Commission calls for increased protection of unaccompanied minors entering the EU", Press Release, 6<sup>th</sup> May 2010.  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/534&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>6</sup> See for example : EUROPEAN MIGRATION NETWORK, *Policies on reception, return and integration arrangement for, and numbers of, unaccompanied children*, May 2010, 163 p.; FUNDAMENTAL RIGHTS AGENCY, *Separated asylum-seeking children in European Union Member States*, April 2010, 52 p. ; NIDOS, *Towards a European Network of Guardianship institutions*, February 2010, 80 p.

## *Methodology*

This project, which is co-funded by the European Union's Fundamental Rights and Citizenship program, was coordinated by France terre d'asile (France)<sup>7</sup> and carried out in partnership with two non-governmental organisations : the Institute for Rights, Equality and Diversity (Greece)<sup>8</sup>, and the Consiglio Italiano per i Rifugiati (Italy)<sup>9</sup>.

Following the first conference on unaccompanied foreign minors which was held in Lille (France) in December 2009<sup>10</sup>, a questionnaire was developed jointly. Researchers from the three organisations then work between January and July 2010 in order to answer all of the questions, for each of the eight target countries. These findings were provided by documents that referred to the situation of unaccompanied minors in the countries studied, by legal provisions that govern this problem, and through the practical experience reported by front-line professionals and institutions that operate in this field.

The lack of information resources in certain countries, especially in Romania, reveals itself in this report in which the degree of analysis is therefore variable. Furthermore, the study of the situation of isolated migrant minors in the overseas countries and territories<sup>11</sup> could not have registered in the context of this project in view of the confusion that would have entailed from a comparative point of view.

Endorsing some 250 pages of answers to national surveys, this study sets out to analyse the results and to make recommendations about the principal subjects at stake in this area. This synthesis broadly outlines a full report of 160 pages available on the website of France terre d'asile<sup>12</sup>, which should be referred to for further detail. These studies will consist of, we hope, an appropriate source for all workers and more precisely the institutions of the European Union, with a view to harmonized protection based on respect of the children's rights.

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<sup>7</sup> <http://www.france-terre-asile.org>

<sup>8</sup> <http://www.i-red.eu/>

<sup>9</sup> <http://www.cir-onlus.org/>

<sup>10</sup> FRANCE TERRE D'ASILE, DEPARTEMENT DU PAS-DE-CALAIS, CONSEIL GENERAL DU NORD, *Mineurs isolés étrangers : des enfants en quête de protection – 1ères assises européennes, jeudi 17 décembre 2009 – Synthèse des débats*, March 2010, 50 p.

<sup>11</sup> For a definition of overseas countries and territories see :

[http://europa.eu/legislation\\_summaries/development/overseas\\_countries\\_territories/index\\_en.htm](http://europa.eu/legislation_summaries/development/overseas_countries_territories/index_en.htm)

<sup>12</sup> <http://www.france-terre-asile.org/childrenstudies>

## I. Knowledge of the phenomenon

To study and to best answer the different concerns raised by the issue of unaccompanied minors, it is necessary to know its volume and its definition. It follows nonetheless from the eight countries studied that the definition varies from one State to the other, while on the other hand the statistics continue to be altogether unclear.

As far as the definition is concerned, several legal common standards define the notion of 'unaccompanied minor'<sup>13</sup>. With regard to these texts the unaccompanied minor is defined by several characteristics: persons below the age of eighteen; belonging to a country outside the European Union (or stateless person); arrived in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, or left unaccompanied after they have entered the territory of Member States; not effectively taken into the care of such a person at this time. Only three studied States (Greece, Hungary and Romania) have accepted this definition into their national law. Certain States only recognize asylum seekers in terms of their own definition (Great-Britain), or, unlike the others, exclude them (Italy). Others have their own definition (Sweden), or do not suggest any definition in their national standards (France, Spain).

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<sup>13</sup>See for example: Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries; Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection (...), Art. 2f; Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Art. 2h; Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application (...), Art. 2h. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals (...), art. 2i.



**Table 1 – Overview of the definitions of unaccompanied minors**

	Designation	Definition in national law	Source
Spain	Unaccompanied foreign minor	No	
France	Isolated foreign minor	No	
Greece	Unaccompanied minor	<i>Belonging to a country outside the European Union or stateless person who has not reached 18 years of age and who enters Greek territory without being accompanied by a legal representative (....) or who has been alone after entry in the country.</i>	Law 3386/2005, art. 1
Hungary	Unaccompanied minor	<i>A foreign not having completed the age of 18 years who entered the territory of the Republic of Hungary without the company of an adult of age responsible for his/her supervision on the basis of a rule of law or custom, or remained without supervision following entry; as long as she/he is not transferred under the supervision of such a person.</i>	Law II of 2007 on entry and stay of those belonging to third countries, §2e Law LXXX of 2007 on asylum, §2f
Italy	Isolated Foreign Minor	<i>By isolated foreign minor present on national territory (...) it is understood that every minor, who does not possess Italian citizenship or the nationality of other States of the European Union, who has not presented an application for asylum, finds himself, for whatever reasons, on national territory without assistance or a legal representative or without other adults legally responsible for him according to the law in force in the Italian juridical system.</i>	Regulation concerning the missions of the Committee for foreign minors, D.P.C.M. 9.12.1999, n.535
Romania	Unaccompanied minor	<i>Minor, foreign citizen or Stateless person, who has arrived in Romania unaccompanied by either parent or a legal representative, or who is not in the care of another person according to the law, or custom, or minor left unaccompanied after entering Romanian territory.</i>	Law n° 122/2006 on asylum in Romania, art. 2.k
Great Britain	Unaccompanied asylum seeking child	<i>A child who is applying for asylum in their own right and is separated from both parents and is not being cared for by an adult who by law has responsibility to do so</i>	UKBA, Asylum Process guidance for special cases, processing application from a child, §4-2
Sweden	Unaccompanied minor	<i>A person under the age of 18 who comes to Sweden without a custodial parent</i>	Aliens act 2005-716, chapter 10 §3, chapter 18 §3 Act 2005:429 on guardians for unaccompanied minors

Thus, differences in the definitions render every attempt at harmony difficult regarding this problem. The implementation of a coherent European policy certainly implies coming to an agreement beforehand about the extent of the subject area and the terms employed.

**Recommendation n°1 - DEFINITION**

- ▶ Harmonize the definition of the term ‘unaccompanied minors’ in every country of the European Union on the basis of the definition which exists in the current European standards.

The issue of unaccompanied minors is also marked by the absence of exact statistical data.

**Tableau 2 – Statistical Data on unaccompanied minors**

	Estimate of the total number of unaccompanied minors present (P) or entered (E) on the territory				Source of the estimate	Remarks
	2006	2007	2008	2009		
Spain	3064 (P) on 31/12	4467 (P) on 31/12	5158 (P) on 31/12		→ EMN Synthesis report on unaccompanied minors <sup>14</sup>	Partial data that exclude unaccompanied minors placed in Rioja and Madrid.
		6475 (E)			→ General Council of the Spanish bar <sup>15</sup>	- Data for certain years and for certain autonomous regions are not available. - The criteria to include the minors on the statistical lists are not the same in all of the autonomous regions.
France			1092 (E)		→ Police at the borders	It concerns only the number of minors apprehended at the airport of Roissy, a non representative party of minors arriving on the territory each year.
			6000 (P)	6000 (P)	→ Estimate of the counties and of the NGOs	The absence of centralised statistics at a national level makes any precise estimate impossible. For several years, the estimate generally submitted is that there would be between 4000 and 8000 unaccompanied minors in France.
Greece			2648 (E)		→ Greek coastguards <sup>16</sup>	The absence of centralised statistics at a national level makes any precise estimate impossible.
			6000 (E)		→ UNHCR <sup>17</sup>	
Hungary		159 (E)	271 (E)		→ EMN Synthesis report on unaccompanied minors / SCEP Newsletter <sup>18</sup>	It concerns the number of unaccompanied minors applying for asylum in a year.
Italy			7797 (E) on 31.12. 2008	7042 (E) on 30.06. 2009	→ Italian Committee for foreign minors	These statistics do not take into account the minor asylum-seekers or victims of slavery, who have not been counted by the Italian Committee for foreign minors.
				4791 (E) on 31.05. 2010		
Romania				50 (P)	→ Romanian Office for immigration	
Great-Britain			5500 (E)	4200 (E)	→ Home Office <sup>19</sup>	These statistics concern the United Kingdom (Great-Britain and Northern Ireland).
Sweden			1510 (E)	2250 (E)	→ Eurostat <sup>20</sup> → UNHCR <sup>21</sup>	It concerns the number of unaccompanied minors applying for asylum during a year.

<sup>14</sup> European Migration Network, *op. cit.*, note 6.

<http://emn.sarenet.es/Downloads/download.do;jsessionid=7E751C48A6C5DDB03F386117613319E4?fileID=1020> (Accessed on 15.07.2010)

<sup>15</sup> GENERAL COUNCIL OF THE SPANISH BAR (CGAE), neither illegal nor invisible. Realidad jurídica y social de los Menores Extranjeros en España” [“Neither illegal nor invisible. Juridical and social reality of the foreign minors in Spain”], 2009, p. 27. [http://www.unicef.es/contenidos/1002/informe\\_infancia\\_inmigrante\\_UNICEF\\_CGAE\\_2009.pdf](http://www.unicef.es/contenidos/1002/informe_infancia_inmigrante_UNICEF_CGAE_2009.pdf) (Accessed on 17.10.2010).

<sup>16</sup> Cited in “UNHCR alarmed by detention of unaccompanied children in Lesbos, Greece”, 28<sup>th</sup> August 2009 <http://www.unhcr.org/print/4a97cb719.html> (Accessed on 20.07.2010).

<sup>17</sup> UNHCR, *Observations on Greece as a country of asylum*, December 2009, p. 12. <http://www.unhcr.org/refworld/docid/4b4b3fc82.html> (Accessed on 20.10.2010).

<sup>18</sup> EUROPEAN MIGRATION NETWORK, *Policies on reception, return and integration, arrangements for, and number of unaccompanied minors in Hungary*, 2009, p. 14, et SEPARATED CHILDREN IN EUROPE PROGRAMME, *Newsletter n°33*, April 2010.

<sup>19</sup> Cited on the site of Children’s Legal Centre for 2008, and for 2009 in “Where do the children seeking asylum to the UK come from?” *The Guardian*, 8 June 2010, <http://www.guardian.co.uk/news/datablog/2010/jun/08/child-asylum-seekers-data-uk> (Accessed on 20.07.2010).

<sup>20</sup> <http://epp.eurostat.ec.europa.eu/portal/page/portal/population/data/database>

<sup>21</sup> UNHCR, *Baltic and Nordic Headlines, A summary of asylum and refugee-related stories in regional media*, 25/02/2010.

The problem of absence of reliable statistics reappears again when it is a matter of appreciating the profile of unaccompanied minors in different countries. The hands-on experience of the non-governmental organisations and the few data available at local or national institutions allow nonetheless for certain tendencies to be disregarded concerning the nature of unaccompanied minors present in the eight studied countries.

A very large majority (between 80 and 95%) of young people found in these countries are male and are between 15 and 17 years of age. Although in the minority, young people less than 15 years old and girls, are also present. Contrary to age and gender, the nationalities of unaccompanied minors vary discernibly by country. With regard to adults, Afghanistan represents a country of origin particularly represented in several countries. Young Moroccans are very present too, especially in Spain, but also in France and Italy. Finally, geographical proximity leads naturally to finding lots of minors originally from Eastern Europe in Italy and Hungary.

#### **Recommendation n°2 – STATISTICAL DATA**

- ▶ Put in place an organized method of collecting information by the establishment of a unique tool for the collection of statistical data useable in each country, enabling an apt comparison at the European level
- ▶ Include and differentiate in this statistical tool all categories of unaccompanied minors, whether it is a matter of asylum seekers, victims of trafficking or even children taken into care by supervision and protection services. This tool should, moreover, contain at least statistics regarding age, nationality, language and gender of the minor.
- ▶ Ensure that personal data is imperatively protected whilst using this statistical tool, in accordance with the European rules in force and with the cooperation of the organisations and institutions qualified in this domain.

Generally, it seems today to be very difficult to define the phenomenon of unaccompanied minors in each of the countries and all the more so according to the European scale. Faced with the dispersal of sources and interlocutors, it thus appears necessary to put in place benchmark institutions in this field in every country and to ensure coordination at European level.

#### **Recommendation n°3 – NATIONAL COORDINATION**

- ▶ Entrust the coordination and the follow-up of the problem of unaccompanied minors in every State to a national independent institution, capable of collecting the data and creating a suitable resource regarding all areas touching upon the situation of unaccompanied minors.

#### **Recommendation n°4 – EUROPEAN COORDINATION**

- ▶ Designate a unique interlocutor at European level to ensure the coordination and the follow-up of the problem of unaccompanied minors in the European Union.

## II. Application of migration policies to unaccompanied minors

As the European Commission recalls in its action plan for unaccompanied minors, “*It is fundamental to ensure that (...), regardless of their immigration status, citizenship or background, all children are treated as children first and foremost*”<sup>22</sup>.

The status of foreigner resides, however, predominantly in the areas of access to territory, of right of residence and of removal, where the migratory policies of the States can sometimes undermine the imperative of the overriding consideration of the best interest of the child.

### *A. Access to territory*

The issue of access to territory is not subjected to the same attention according to the countries. The different approaches are not solely due to the geographical situation of the States, all the studied countries being confronted with migratory movements coming from third countries to the European Union.

In Sweden, the minors are generally found on the territory. In case of arrest at the border, they are authorized to enter the territory in order to be issued with the application of general procedures<sup>23</sup>.

In Great-Britain, when the representatives of the UKBA discover an unaccompanied minor who has entered the territory illegally, they conduct an interview with him of which the objectives are unclear, between protection of the child and clarification of the conditions of illegal entry<sup>24</sup>. The minors are not detained nor driven back to the border if their minority is proven<sup>25</sup>.

In Spain, the access to land is refused for foreigners, adults and children, who are stopped at airport borders, land borders (in particular between the enclave of Ceuta and Melilla) or ports, when they cannot present the necessary documents to enter. The Spanish authorities consequently send them back to the country they came from applying a legal enactment intended for adults<sup>26</sup>. No precise data could be collected about these practices.

<sup>22</sup> Action plan on Unaccompanied minors of the European Commission, *op. cit.*, note 3, p. 3

<sup>23</sup> On the social protection on the territory, see below Part VI.A

<sup>24</sup> During their exchanges with the members of the NGO Refugee and Migrant Justice, those responsible at UKBA would have given contradictory versions of the main objective of this interview : it sometimes concerned “ *maintaining effective control of the borders* ” and other times “ *determining the needs of protection of the child at the beginning of his transfer to the social services* “. Correspondence dated the month of July 2009 cited in REFUGEE AND MIGRANT JUSTICE, *Safe at last? Children on the front line of UK border control*, March 2010.

<sup>25</sup> On the age determination, see below part V. A.

<sup>26</sup> Article 60 of the organic Act relative to the status of foreigners indicates that foreigners who, at the border, are not authorized to enter the territory of the country will be returned to their point of origin as soon as possible. If the return has been delayed for more than seventy-two hours, the authority who will take the decision to address the judge with the final instruction in order to decide the place where they will be held until their return.

In France, the law allows for foreigners who are not permitted to enter the territory, or who are waiting to enter, to be detained in 'the waiting area', a transition area between the international zone and French territory<sup>27</sup>. Certain unaccompanied minors are driven back when getting off the plane, during gateway controls, applying the principle of responsibility of the transporter enshrined especially in European law<sup>28</sup>.

A minor can equally be redirected from the waiting area in case of non-admission to the territory. Around 30 % of unaccompanied minors arriving on the territory by air are driven back<sup>29</sup> without real guarantee of welcoming conditions upon return home.

Whilst waiting for this refoulement or admission to the territory, the minors are detained in an area in which they are deprived of their liberty, situated in buildings in the airport zone for a duration of up to 20 days<sup>30</sup>, but the average duration of deprivation of liberty of minors varies between 2 and 3 days. French law allows the designating of one person, called an *ad hoc* administrator, in charge of representing and assisting the minor in all procedures relative to his entry to the territory<sup>31</sup>. This situation in the waiting area has been subject to criticism by the Committee on the rights of the Child<sup>32</sup> and the Committee against Torture of the United Nations<sup>33</sup>.

In Hungary, the framework of return by assurance of guarantees in the home country is valid in the context of access to land as in the measure of removal<sup>34</sup>. The Ukrainian associative agents would have observed an approximate number of 20 unaccompanied minors driven back by the Hungarian authorities to the Ukraine during 2009<sup>35</sup>. It still remains difficult to draw up general conclusions from this, because not many cases are looked at directly.

While Hungarian law forbids the detention of unaccompanied minors on the basis of entry or illegal stays<sup>36</sup>, every foreign minor who has to be driven back is temporarily taken care of by child protection services on the territory. A provisional guardian is designated for each minor, but his role is limited to supervising the procedures that do not permit in practice to challenge the refoulement<sup>37</sup>.

In Italy, whilst the legislation forbids forced removal of the minor<sup>38</sup>, there exists no corresponding enactment concerning the refoulement at the border. Like the adults, the children can in theory benefit from the principle of non-refoulement, because of risks of persecution that would entail return, but this principle is not always put into practice, because the child is not always capable of approving his wish to ask for asylum and can come up against difficulties of recognition of his minority.

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<sup>27</sup> CESEDA, Article L221-1

<sup>28</sup> Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, Official Journal n° L 239 of 22/09/2000 p. 0019 – 0062, art.26.

<sup>29</sup> In 2008, that concerned 341 minors, or 31, 2 % of minors placed in the waiting area. During the first semester of 2009, 101 minors were "picked up", or 28 %. Interministerial group work on unaccompanied minors, *Project Report, Conclusion and summary*, October 2009, 189 p. 35.

<sup>30</sup> CESEDA, art. L 222-2. This duration can on exception reach 30 days if the minor draws up an application for asylum during the final days of the placement.

<sup>31</sup> *Ibid.*, article L 221-5.

<sup>32</sup> COMMITTEE ON THE RIGHTS OF THE CHILD, *Examination of the reports presented by the party States when applying article 44 of the Convention, Final observations - France*, 51<sup>st</sup> session, 22nd June 2009, CRC/C/FRA/CO/4, §86b.

<sup>33</sup> COMMITTEE OF THE UNITED NATIONS AGAINST TORTURE, *Final observations - France*, 44<sup>th</sup> session, CAT/C/FRA/CO/4-6, 14th May 2010, §25.

<sup>34</sup> On removal in Hungary, see *below* part II. C.

<sup>35</sup> Contact with Hungarian Helsinki Committee, 03.05.2010.

<sup>36</sup> Act II of 2007, *op.cit.*, §56-1.

<sup>37</sup> HUNGARIAN HELSINKI COMMITTEE, *Asylum seekers' access to territory and to the asylum procedure in the Republic of Hungary, Report on the border monitoring program's first year in 2007*, 2008, p. 37.

<sup>38</sup> Art. 19 of T.U 286/98 Point 2 § a

In Romania, the only legal enactments concerning access to land of unaccompanied minors cover asylum and are protective. Certainly, the unaccompanied minors are exempt from the application of the asylum procedure at the border and are guaranteed immediate access to the territory<sup>39</sup>.

In Greece, the issue of access to land does not cover a specific make-up, forced removal of minors at the border being put into practice according to the same conditions as on the territory. This situation will therefore be developed in the part of the report dedicated to forced removal<sup>40</sup>. It should be pointed out however that the specialized NGOs state immediate expulsions without procedure, nor registration in the region of Evros, at the border with Turkey<sup>41</sup>.

#### **Recommendation n°5 – REFOULEMENT AT THE BORDER**

- ▶ Forbid refoulement of unaccompanied minors at the time of their access to territory

#### **Recommendation n°6 - DETENTION**

- ▶ Forbid every detention of unaccompanied minors linked to their foreigner status, including whilst accessing the territory.

#### **Recommendation n°7 – LEGAL REPRESENTATION AT THE BORDER**

- ▶ Designate without delay a legal representative in order to accompany the minor upon arrival to the territory.

#### **Recommendation n°8 – ACCESS TO PROTECTION**

- ▶ Set up services at the border that permit juridical and social orientation, cultural intermediation and interpretation for unaccompanied minors.
- ▶ Assure unconditional access to social protection in mainstream law for unaccompanied minors upon their arrival at the border in order to assess their situation and to take a decision that respects the rights of the child.

## ***B. Right of residence***

In all of the studied countries and in accordance with the international and community standards governing the right to asylum, all the minors who have expressed a wish for asylum are authorized to remain on the territory of the Member State during the processing of their application<sup>42</sup>. For children who don't apply for asylum, some States recognize a right to stay for all unaccompanied children but it is possible for children to be in an illegally situation in some others States. The administrative

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<sup>39</sup> Law n° 122/2006 on asylum

<sup>40</sup> See *below* part II. C.

<sup>41</sup> Thomas Hammarberg, Commissioner for human rights of the Council of Europe, Report following his visit to Greece of 8<sup>th</sup> to 10<sup>th</sup> December 2008. February 2009. § 16  
<https://wcd.coe.int/ViewDoc.jsp?id=1412853&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679> (Accessed on 03.08.2010).

<sup>42</sup> Council directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member States for granting and withdrawing refugee status, art. 7; UN Convention relating to the Status of Refugees, adopted on 28<sup>th</sup> July 1951 in Geneva, art. 33.

situation of the children when they reach adulthood equally constitutes an important role, because the ongoing education during minority can not only be limited to a short-term perspective<sup>43</sup>.

**Table 3 – The right of residence for unaccompanied minors**

	<b>Right of residence</b>	<b>Possibility of illegality of stay</b>
<b>Spain</b>	The minors can ask for a residence permit, upon application to the establishment that exercises guardianship, nine months after their taking into care by the services for protection and once it has been recognized that repatriation is impossible.	<b>NO.</b> The taking into care by social services renders the stay of the unaccompanied minors legal.
<b>France</b>	The unaccompanied minors are necessarily in a legal situation on French territory and the obligation to obtain a right to remain is not applicable to them.	<b>NO.</b>
<b>Greece</b>	Only few minors who have filed an application for asylum or who have been taken into care by a social service are in a legal situation on the territory.	<b>YES.</b> The huge majority of unaccompanied minors do not have access to application for asylum or to social protection and are therefore in an illegal situation on Greek territory.
<b>Hungary</b>	The application for asylum of minors can result in the granting of the status of refugee (identity card for duration of 10 years) or the allocation of subsidiary protection benefit (re-examination of the situation every 5 years). A humanitarian residence permit of duration of one year can also be issued in certain cases to those who cannot benefit from the status of refugee or from subsidiary protection. The minors who do not ask for asylum can also obtain this permit to remain.	<b>YES.</b> A minor who has not applied for asylum or has not obtained any status following his application can be in an illegal situation.
<b>Italy</b>	Every unaccompanied minor found by the authorities is awarded a residence permit for minority during the necessary duration to accomplish searches on his family ties. While the Committee for foreign minors decides not to go ahead with repatriation, the minor is awarded a residence permit for placement. Finally, the minors who entered the territory three years ago and who were inserted into an integration project can be issued with an integration permit.	<b>NO.</b> All minors benefit from the right of residence on Italian territory. An exception, which is marginal in practice, applies, however, in case of threat to national security and public policy.
<b>Romania</b>	The minors can be awarded a right to remain following their application for protection with regard to asylum.	<b>NO.</b> The minors who do not apply for asylum or those who have been refused a status following this procedure are tolerated on Romanian territory.
<b>Great - Britain</b>	Different residence permits can be awarded to minors following the asylum application procedure (all children are asking for asylum): refugee status (5 years residence permit), subsidiary protection (5 years residence permit), discretionary leave if the return is not possible (3 years residence permit or until 17 ½ years old).	<b>YES.</b> It is possible that no residence permit is issued at the end of the asylum procedure.
<b>Sweden</b>	The minors can be awarded several residence permits following the asylum procedure: refugee status (right to remain for 5 years), permanent residence permit based on the need for protection, temporary (2 years) or permanent residence permit based on humanitarian considerations. A permit based on family ties in Sweden can also be issued.	<b>YES.</b> The minors who do not apply for asylum or those who have been refused a status following this procedure or following an application for a permit based on family ties are considered as being in an illegal situation.

<sup>43</sup> For example, the Council of Europe recommends that “Where a minor involved in the implementation of his or her life project attains the age of majority and where he or she shows a serious commitment to their educational or vocational career and a determination to integrate in the host country, he or she should be issued with a temporary residence permit in order to complete the life project and for the time necessary to do so”. Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors, § 26

## Recommendation n° 9 – RIGHT OF RESIDENCE

- ▶ Grant a right of residence on the territory for unaccompanied minors until adulthood.
- ▶ Encourage the grant of a residence permit at adulthood for young people implied in a life project that has to be conducted in the host country.

### C. *Removal from the territory*

#### **Terminological precision**

The term 'removal' will be employed here to designate all measures intending to lead the foreigner to a third country. It covers various designations according to the countries. 'Forced removal' differs from 'voluntary return' which designates here all the measures and procedures that permit the putting into practice of a return desired by the minor himself.

The unaccompanied minors can be subject to forced removal on the territory of certain States. This is prohibited in other countries, which nevertheless permit voluntary return of these children to a third country. The distinction between these notions of forced removal and voluntary return seems however close in certain cases, in which the best interest of the child appears to fade before the concern of the regulation of migratory flow. This is why forced removal and voluntary return will be studied at the same time.

The eight studied countries can be regrouped according to several models based on the analysis of the practices and legislations on the issue of removal.

<b>Removal generally based on the conditions in the country of return</b>	<b>Removal generally based on the wish of the minor</b>	<b>Union of several forms of removal</b>	<b>Removal on the same basis as for adults</b>
Italy Sweden	Spain France	Great-Britain Romania Hungary	Greece

Amongst the countries studied, only Spain has concluded bilateral agreements aimed specifically at unaccompanied minors from third countries to the European Union<sup>44</sup>.

<sup>44</sup> Agreement between the Republic of Senegal and the Kingdom of Spain "relative to the cooperation in the area of prevention of immigration of Senegalese minors, their protection, repatriation and social rehabilitation", signed in Dakar on 5<sup>th</sup> December 2006. Agreement between the Kingdom of Spain and the Kingdom of Morocco "relative to the cooperation in the area of prevention of illegal immigration of unaccompanied minors, their protection and their planned return", signed in Rabat on the 6<sup>th</sup> March 2007.



**Table 4 – Outline of the removal of unaccompanied minors**

	Forced removal	Voluntary return
<b>Spain</b>	No deportation is applicable to unaccompanied minors, but they can be subject of 'repatriation'. This possibility, considered as family reunion, is studied in a manner of utmost importance from the moment of the taking into charge of the minor. A precise procedure must be put into place comprising the hearing of the minor, in order to examine if the guarantees of return are reunited. In practice, the possibility offered since the end of 2008 to the minor to contest his repatriation in front of a tribunal (decision of the constitutional tribunal of 22nd December 2008) has led to a halt of returns.	
<b>France</b>	No measure of forced removal can be pronounced against an unaccompanied minor.	Voluntary return can be decided by the judge for children, who makes his decision upon educational evaluation that has been presented to him as well as the hearing of the minor.
<b>Greece</b>	The minors can be subjected to forced removals according to the same conditions as adults.	There is no procedure of voluntary return.
<b>Hungary</b>	The deportations of unaccompanied minors are possible if 'an adequate protection is assured' in the country of return.	The legal representative of the minor can coordinate and evaluate the suitability of a return on the same basis as forced removal. Voluntary return is organised in cooperation with the country of origin and with material support from IOM.
<b>Italy</b>	The deportation of an unaccompanied minor is not possible, apart from reasons relating to threat to national security and public policy, upon decision of the tribunal for minors. The Committee for foreign minors can nevertheless decide to put an 'assisted repatriation' into practice after a complete procedure of evaluation but that does not necessarily take the wish of the minor into account.	
<b>Romania</b>	The forced removal of a minor is possible, subject to the identification of the parents or members of the family who have given their consent. In practice, no forced removal has, however been implemented.	Voluntary return is possible as for adults, but no specific procedure concerns the minors.
<b>Great-Britain</b>	The law authorises the authorities to remove unaccompanied minors. However, conditions of adequate taking into care in the country of origin are still strived for by the authorities and the difficulty of guaranteeing these conditions prevent forced removals of unaccompanied minors in practice.	Procedures for voluntary returns are implemented through IOM programs.
<b>Sweden</b>	While a decision of removal is in force, an official of the Migration board presents the minor with two options open to him, namely voluntary or forced return. In both cases, it is the evaluation of the conditions of return (identification of the family) and not the wish of the minor that is the determining factor.	

**Table 5 – Statistical data on forced removal of unaccompanied minors**

	Number of removals (outside EU)			Country of return	Source	Type of removal
	2007	2008	2009			
<b>Spain</b>	27	10		Morocco, Romania	General Council of the Spanish Bar	Forced removals and voluntary returns
<b>France</b>	36 from 2003 to 2009			Armenia, Afghanistan, China...	Office français de l'immigration et de l'intégration (OFII)	Voluntary returns
<b>Greece</b>						
<b>Hongrie</b>	1 (From 2004 to 2007)	1	2	2009 : Kosovo	University report (2007) ; IOM (2008) ; Menedek (2009)	Voluntary returns
<b>Italie</b>	1	2 (nov. 2008)			Italian Committee for foreign minors <sup>45</sup>	Forced removals and voluntary returns
<b>Roumanie</b>						
<b>Grande-Bretagne</b>			8		IOM	Voluntary returns
<b>Suède</b>	32	46	49	2009 : Iraq (17), Somalia (16)	Swedish Migration Board	Voluntary returns
		30	10	Burundi, Ghana, Iraq, Mongolia, Togo, Turkey, Belarus, Uzbekistan	Swedish Migration Board	Forced removals

<sup>45</sup> EUROPEAN MIGRATION NETWORK, National point of contact in Italy, second report EMN Italy, unaccompanied minors, assisted return, international protection, Editions Idos, March 2010, p. 31.

The procedures for removal are extremely variable from one country to the next, and sometimes lack clarity at the centre of one country. Whilst the institutions of the European Union plan to encourage the return of unaccompanied minors back to the country they came from<sup>46</sup>, this policy runs up against several obstacles which explains in part the low number of returns put into practice. Alongside the material and financial difficulties of organising a return, the inconsistency with international law and more precisely the United Nations Convention on the rights of the Child<sup>47</sup> is added. This text enshrines the right to live with one's parents<sup>48</sup>, but it imposes above all the fundamental principle that all decisions should be taken in the best interest of the child<sup>49</sup>. Besides, it is quoted in the Convention that the right of the children to maintain relations with their parents is itself inoperative "if this is not in the best interest of the child"<sup>50</sup>. The charter of fundamental rights of the European Union also requires that "In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration"<sup>51</sup>.

Although this notion of best interest in the child is subject to interpretation, the putting into practice of removals in most of the countries studied shows an absence of consideration of this demand, which is imposed nevertheless on all States. The plans put forward by Sweden<sup>52</sup> and Great-Britain<sup>53</sup> aimed at encouraging returns by the financing of reception centres in the countries of origin of the minors (Afghanistan, Iraq...) equally seem to be in contradiction with this fundamental principle.

On the one hand these return policies do not take into consideration the opinion of the child himself, criteria however routinely cited in the analysis of the content of this notion of best interest of the child<sup>54</sup>, included sometimes in national law<sup>55</sup>. The Committee on the rights of the Child states, moreover, 'the expressed opinion' by the child amongst criteria of evaluation of the best interest of the child in a return process<sup>56</sup>.

On the other hand, the protection in a reception centre in the country of origin is generally limited in time and place, the guarantees of security and well-being of the child not being assured apart from at the centre of the establishment and during the time of placement. The best interest of the child must however apply long-term, applying to the situation of the child "in relation to his future"<sup>57</sup>. The placement of unaccompanied minors in the reception centres, secure of course and offering ongoing

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<sup>46</sup> Action plan, *op. cit.* note 3, p. 13, "5.1. Return and rehabilitation in the country of origin"; Conclusions of the Council on unaccompanied minors, *op. cit.* note 4, §27s.

<sup>47</sup> Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entry into force 2 September 1990

<sup>48</sup> *Ibid.*, article 9.

<sup>49</sup> *Ibid.*, article 3.

<sup>50</sup> *Ibid.*, article 9.3.

<sup>51</sup> Charter of Fundamental Rights of the European Union, (2000/C 364/01), art. 24.2.

<sup>52</sup> See for example : "Sweden plans Afghanistan orphanages", *The Local*, 25<sup>th</sup> March 2010, <http://www.thelocal.se/25722/20100325/>

<sup>53</sup> See for example "UK to deport child asylum seekers to Afghanistan", *The Guardian*, 7<sup>th</sup> June 2010.

<sup>54</sup> It is frequently acknowledged that article 3 and article 12 of the Convention – the right, for the child, to freely express his opinion – are complementary and should consequently be applied at the same time. See for example UNHCR, "Guidelines on Determining the Best Interests of the Child", May 2008 - <http://www.unhcr.fr/4b151b9f2d.pdf> (Accessed on 27.07.2010).

<sup>55</sup> In the British *Children Act* of 1989 for example, it is indicated that the well-being of the child and the definition of his superior interest by each jurisdiction should depend on several elements amongst which "the wishes and the opinions of the child in question". [http://www.opsi.gov.uk/acts/acts1989/ukpga\\_19890041\\_en\\_2](http://www.opsi.gov.uk/acts/acts1989/ukpga_19890041_en_2) (Accessed on 27.07.2010).

<sup>56</sup> COMMITTEE ON THE RIGHTS OF THE CHILD, *General comment N°6*, CRC/GC/2005/6 (2005), Treatment of unaccompanied and separated children outside their country of origin, §84

<sup>57</sup> ZERMATTEN J., "L'intérêt supérieur de l'enfant", International Institute for Children's Rights, 2005, p. 22 - [http://www.dei-france.org/lettres\\_divers/2009/interet\\_superieur\\_enfant.pdf](http://www.dei-france.org/lettres_divers/2009/interet_superieur_enfant.pdf) (Accessed on 27.07.2010). About this notion in the long term, see also UNHCR, "Guidelines on Determining the Best Interests of the Child" (*op. cit.* note 34) which evoke a "durable solution".

education, but settled in a political and social context that does not offer any future perspective, is equally contrary to the notion of life projects defined by the European Council<sup>58</sup>. The situation on the subject of safety, of security and other factors, notably socio-economic, awaiting the child on his return, is also set as a condition by the Committee on the rights of the Child<sup>59</sup>.

Finally, the simple identification of a family could not replace a true evaluation of best interest of the child, which should be subject to an examination concerning a whole group of criteria and not only on the simple presumption that family life is in the interest of the child. The fact of immediately sending a child back to his family when they have been found can also have the effect of inciting the minor to block family ties, an element which is nevertheless essential for the construction of a coherent life project.

Thus, the return policies recently put into practice in the studied countries should be reviewed and the encouragement of such orientation on the European scale expressed by the Commission<sup>60</sup> and the Council<sup>61</sup> should be made clear in order not to infringe on the fundamental principle of respect for the best interests of the child.

#### **Recommendation n°10 – FORCED REMOVAL**

- ▶ Prohibit forced removal of all unaccompanied minors. The status of foreigner should not prevail over that of the child who imposes a detailed analysis of the solution, taking his best interest into account. Where the notion implies taking the opinion of the child himself into account, only voluntary returns should be possible. The hypothesis of reunifying of the family within the European Union should be examined systematically. The wish of the child should be recognized by a tribunal, which could also be taken to court automatically. An appeal by the child himself should also be possible.

#### **Recommendation n°11 – VOLUNTARY RETURN**

- ▶ Establish a clear and common procedure to the whole of the European Union for voluntary returns, comprising a complete evaluation that permits the determination of the best interest of every child, in particular with regard to guarantees of well-being brought about by the return. This evaluation should concern at the same time the family environment or the child protection services, but equally the social, economic and political environment of the country, as well as the risks of social exclusion to which the minor could fall victim. It would be able to depend upon the diplomatic representations of the countries and of the Union in the third countries, along with a network of improved NGOs. The initial wish of the child should constitute a primary consideration at the start of the return procedure. Finally, a follow-up plan should be established in order to ascertain that the protection of the child has been guaranteed by the return. In an opposite case, the possibility to reintegrate the protection services of the country of departure should be left open.

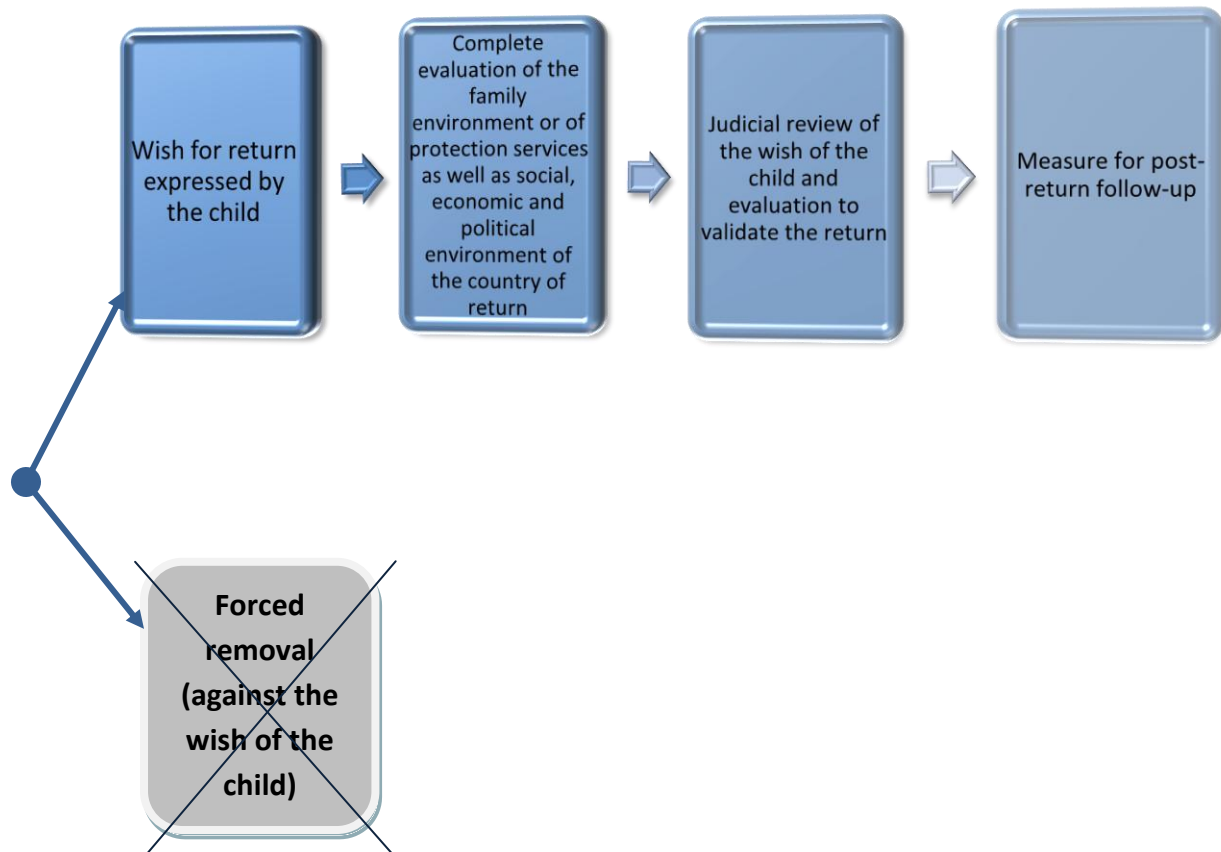
<sup>58</sup> Recommendation CM/Rec (2007)9, *op. cit.* note 42. §8.vii. "every life project should take account : (...) the situation in the host country: the political, legislative and socio-cultural context; availability of opportunities for the minor, including level and degree of support available; possibility of remaining in the host country; opportunities in terms of integration in the host country"

<sup>59</sup> Committee on the rights of the child, *op. cit.*, note 54. See also European Council, "Warning against the return of minors to dangerous zones", 18<sup>th</sup> June 2010. [http://assembly.coe.int/ASP/NewsManager/FMB\\_NewsManagerView.asp?ID=5676&L=1](http://assembly.coe.int/ASP/NewsManager/FMB_NewsManagerView.asp?ID=5676&L=1) (Accessed on 06.08.2010).

<sup>60</sup> Action plan, *op. cit.*, note 3, p. 13, "5.1. Return and rehabilitation in the country of origin "

<sup>61</sup> Conclusions of the Council, *op. Cit*, note 4, §27s.

## Procedure of removal respecting the rights of the child



### III. Asylum and international protection

Like adults, children who are victims of persecution are protected by the member States of the European Union on the ground of the Geneva Convention on refugees aimed at “*every person having a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion*”<sup>62</sup>. European standards adopted with a view to putting this right of asylum into practice at European level have brought about provisions aimed at unaccompanied minors in the directives mentioning ‘reception’<sup>63</sup>, ‘qualification’<sup>64</sup> and ‘procedure’<sup>65</sup>, which require the States to apply certain standards concerning the designation of a legal representative and the putting into place of procedures and specific conditions of reception.

<sup>62</sup> Convention related to the status of refugees, *op. cit.*, note 42., art. 1<sup>st</sup>.A.2.

<sup>63</sup> Directive 2003/9/EC of the Council of 27<sup>th</sup> January 2003, *op. cit.* note 13, art. 2h.

<sup>64</sup> Directive 2004/83/EC of the Council of 29<sup>th</sup> April 2004, *op. cit.*, note 13, art. 30.

<sup>65</sup> Directive 2005/85/EC of the Council of 1<sup>st</sup> December 2005, *op. cit.*, note 42. See in particular art. 17.

Table 6 – Statistical data on the applications for asylum for unaccompanied minors

	2006 Applications (total)	2007 Applications (total)	2008 Applications (total)	2009								Remarks
				Applications				Positive decisions				
				% H	% F	Nationalities	TOTAL	% RS	% SP	% TOTAL	Other protections	
Spain	17 <sup>i</sup>	15 <sup>ii</sup>	25 <sup>iii</sup>	89	11	Ivory Coast (16%) ; Guinea (11%) ; Niger (11%) ; Morocco (11%) ; DRC (11%)	19 <sup>iv</sup>					No data is available regarding positive decisions
France	571 <sup>v</sup>	459 <sup>vi</sup>	410 <sup>vii</sup>	67	33	DRC (26%) ; Afgh. (10%) ; Guinea (7%) ; Angola (6%) ; Sri Lank. (6%)	447 <sup>viii</sup>	40 <sup>ix</sup>	3	43 <sup>x</sup>		
Greece	165 <sup>xi</sup>	44	295 <sup>xii</sup>	75	25	Afgh. (25%) ; Iraq (12,5%) ; Paki. (12,5%) ; Bangladesh (12,5%)	40 <sup>xiii</sup>					No data is available regarding positive decisions
Hungary	61 <sup>xiv</sup>	46 <sup>xv</sup>	159 <sup>xvi</sup>	96	4	Afgh. (72%) ; Somalia (6%) ; Kosovo (5%) ; Molda. (3%) ; Serbia (3%)	271 <sup>xvii</sup>	16	50	66 <sup>xviii</sup>	13	Of 202 cases processed, only 38 files were examined in detail
Italy			575 <sup>xix</sup>	89	11	Afgh (21%) ; Somal. (10%) ; Eryth. (10%) ; Iv. Coast (10%) ; Ghana (5%)	420 <sup>xx</sup>	30	31	61 <sup>xxi</sup>	19	The data on the agreement for protection date from 2008
Romania				100	0	Afgh. (50%) ; Mold. (12%) ; Paki. (12%)	40 <sup>xxii</sup>					
Great-Britain	3450 <sup>xxiii</sup>	3645 <sup>xxiv</sup>	4285 <sup>xxv</sup>	88	12	Afgh. (51%) ; Eryth. (8%) ; Iran (6%) ; Iraq (5%) ; Somalia (4%)	2990 <sup>xxvi</sup>	10	1	11 <sup>xxvii</sup>	55	The minors whose age is disputed are not included in these statistics (there were 1000 for example in 2009)
Sweden	820 <sup>xxviii</sup>	1264 <sup>xxix</sup>	1510 <sup>xxx</sup>	78	22	Somal. (41%) ; Afgh. (35%) ; Iraq (5%)	2250 <sup>xxxi</sup>	5	55	60 <sup>xxxii</sup>	15	The % of agreements does not count suspended decisions (Dublin II etc.)
<b>TOTAL</b>			<b>7259</b>	85	15	Afgh. (41%) <sup>xxxiii</sup>	<b>6477</b>	20	28	<b>48</b>	20	

The sources of these statistics appear on the next page

## Table 6 - Sources

- <sup>i</sup> UNHCR, cited by the General Council of the Spanish Bar (CGAE), neither *illegal nor invisible*. *Realidad Jurídica y social de los Menores Extranjeros en España* ["Neither illegal nor invisible. Juridical and social reality of foreign minors in Spain"], 2009, 154 pages, pp. 47.
- <sup>ii</sup> *Idem*.
- <sup>iii</sup> *Ibid*. For 2008, the Ministry of Interior only counts 13 applications (see: [http://www.mir.es/MIR/PublicacionesArchivo/publicaciones/catalogo/Asilo/Asilo\\_en\\_cifras\\_2008.pdf](http://www.mir.es/MIR/PublicacionesArchivo/publicaciones/catalogo/Asilo/Asilo_en_cifras_2008.pdf) - Accessed on 09.08.2010) while the Eurostat database counts 15 (see: <http://www.ec.europa.eu/eurostat> - Accessed on 09.08.2010).
- <sup>iv</sup> Spanish Ministry of Interior. [http://www.mir.es/MIR/PublicacionesArchivo/publicaciones/catalogo/Asilo/Asilo\\_en\\_cifras\\_2009.pdf](http://www.mir.es/MIR/PublicacionesArchivo/publicaciones/catalogo/Asilo/Asilo_en_cifras_2009.pdf) (Accessed on 09.08.2010). The Eurostat database counts 20 applications (see: <http://www.ec.europa.eu/eurostat> - Accessed on 09.08.2010).
- <sup>v</sup> OFPRA, *Progress Report 2009*, April 2010, p. 27 - [http://www.ofpra.gouv.fr/documents/Rapport\\_Ofpra\\_2009\\_complet\\_BD.pdf](http://www.ofpra.gouv.fr/documents/Rapport_Ofpra_2009_complet_BD.pdf) (Accessed on 09.08.2010).
- <sup>vi</sup> *Ibid*.
- <sup>vii</sup> *Ibid*.
- <sup>viii</sup> *Ibid*. p. 27.
- <sup>ix</sup> This percentage corresponds to a projection of the decisions made by OFPRA of first resort, which are the only available detailed statistics, applied to the global agreement rate including the CNDA.
- <sup>x</sup> Global rate of decisions of first resort (OFPRA) and appeal (CNDA). The rate of positive judgements of first resort was merely 22.9% in 2009.
- <sup>xi</sup> UNHCR, *Unaccompanied Minors Seeking Asylum in Greece*, April 2008, p. 21. <http://www.unhcr.org/refworld/docid/48abd557d.html> (Accessed on 10.08.2010).
- <sup>xii</sup> Eurostat database (see: <http://www.ec.europa.eu/eurostat> - Accessed on 09.08.2010).
- <sup>xiii</sup> Eurostat database (see: <http://www.ec.europa.eu/eurostat> - Accessed on 09.08.2010).
- <sup>xiv</sup> *Id.*, and EUROPEAN MIGRATION NETWORK, *op. cit.*, p. 14.
- <sup>xv</sup> *Ibid*.
- <sup>xvi</sup> *Ibid*.
- <sup>xvii</sup> UNHCR, *Annual statistical report [for Hungary], Individual asylum application and refugee status determination*, 2009.
- <sup>xviii</sup> Office of Nationality and Immigration statistics 2009. Contact with the director of department for refugees at the ONI, 03.06.2010.
- <sup>xix</sup> Eurostat database (see: <http://www.ec.europa.eu/eurostat> - Accessed on 09.08.2010).
- <sup>xx</sup> Eurostat database (see: <http://www.ec.europa.eu/eurostat> - Accessed on 09.08.2010).
- <sup>xxi</sup> CIR Notizie, "The action of CIR for foreign asylum-seeking minors". Anno XVIII n° 11, November 2009, p.1-2.
- <sup>xxii</sup> Eurostat database (see: <http://www.ec.europa.eu/eurostat> - Accessed on 09.08.2010).
- <sup>xxiii</sup> HOME OFFICE, *Control of Immigration: Quarterly Statistical Summary, United Kingdom - Fourth Quarter 2009*, supplementary tables : *Unaccompanied asylum seeking children, applications received for asylum in the UK, and initial decisions by age at initial decision and country of nationality*, 2009.
- <sup>xxiv</sup> *Ibid*.
- <sup>xv</sup> *Ibid*.
- <sup>xxvi</sup> *Ibid*.
- <sup>xxvii</sup> *Ibid*.
- <sup>xxviii</sup> Eurostat database (see: <http://www.ec.europa.eu/eurostat> - Accessed on 09.08.2010) and contact with the association Save The Children Sweden, 03/05/2010.
- <sup>xxix</sup> *Ibid*.
- <sup>xxx</sup> *Ibid*.
- <sup>xxxi</sup> Data supplied by the NGO, Save the Children Sweden, contacted on 05.05.2010.
- <sup>xxxii</sup> Data supplied by Save the Children Sweden, contacted on 05.05.2010.
- <sup>xxxiii</sup> Eurostat database (see: <http://www.ec.europa.eu/eurostat> - Accessed on 09.08.2010).

## A. Legal representation of the asylum-seeking minor

### Terminological precision

The term 'legal representative' will be employed here to designate every person whose role it is to accompany the minor at the different stages. His role, competences and expertise will be detailed for every country in which the terms of guardian, custodian, representative or even administrator intermingle without it being possible to associate a common definition.

The primary demand of European law relative to the application for asylum of unaccompanied minors relates to the representation of the minor during the procedure: a legal representative should be named whenever possible, to inform the minor and to intervene during the interview<sup>66</sup>. This

<sup>66</sup> Directive 2005/85/CE, *op. cit.*, note 42, art.17.1.

demand is mentioned in the three directives<sup>67</sup>. His designation is not obligatory in certain cases (a decision that will be taken only after adulthood has been reached, a minor has been empowered with a lawyer, the case involves a minor of more than 16 years old capable of presenting his application, or a married minor)<sup>68</sup>.

In Spain, the minor who asks for asylum is taken into regional protection services for minors beforehand. These services are designated guardians of the young people and assure his representation in all of the procedures, including the application for asylum<sup>69</sup>.

In France, the law allows for the designation of legal representatives named ‘*ad hoc* administrators’ and they are in charge of representing and assisting the unaccompanied minors during their application for asylum<sup>70</sup>. This concerns minors for whom the issue of parental authority has not yet been dealt with<sup>71</sup>, which is the case in practice for nearly all minors who apply for asylum, given that this step is generally started at the early stages of arrival. The mission of the *ad hoc* administrator becomes void “*from the moment that a measure of guardianship is pronounced*”<sup>72</sup> or at the end of the asylum procedure.

In Greece, the minors of more than 14 years of age can draw up an application for asylum by themselves if they are seen to be mature enough by the police who are dealing with their application<sup>73</sup>. Those who are less than 14 years old need to draw up their application through the intermediary of their legal representative. The attorney should thus be employed in the following sense: it is he who exercises temporary legal representation and who will name a legal representative<sup>74</sup>.

In Hungary, a provisional legal representative is designated to represent the children during the specific procedures linked to his application for asylum. The designation of the provisional legal representative is a competence of the national authorities, which find themselves in contact with the unaccompanied minor: it can consist of the Office of Immigration, of a tribunal or of the police. This appointment takes place in practice several days after the beginning of the asylum procedure. The designated adult is bound to represent the interests of the minor in the entire official asylum procedure linked to the application for asylum. He must assist at the child’s interviews with the authorities in charge of preparing his application and the signing of the statement of the interviews.

In Italy, the appointment of a guardian is compulsory in order for an application for asylum to be examined. The police office at the border or the *questura* (central police station) that receives the application immediately suspends the procedure and passes on the application to the specific tribunal deemed competent to deal with minors, so that they can name a guardian<sup>75</sup>. This guardian, appointed by the judge of guardianships, ‘will confirm’ thereafter the application for asylum and will activate yet again the procedure at the competent *questura*.

In Romania, the Romanian Office for immigration should designate as soon as possible a legal representative who will assist the minor during the asylum<sup>76</sup> procedure and will protect his interests<sup>77</sup>.

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<sup>67</sup> Directive 2003/9/CE, *op. cit.*, note 13 art. 19.1; Directive 2004/83/CE, *op. cit.*, note 13, art. 30.1; Directive 2005/85/CE, *op. cit.*, note 42, art. 17.1.

<sup>68</sup> Directive 2005/85/CE, *op. cit.*, note 42, art.17.2, art.17.3.

<sup>69</sup> Royal decree 2393/2004, de 30 de diciembre, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000”, art. 92.6.

<sup>70</sup> CESEDA art. L 751-1and decree n°2003-841 of 2<sup>nd</sup> September 2003 relative to modalities of designation and of remuneration of *ad hoc* administrators.

<sup>71</sup> See *below* part V. B.

<sup>72</sup> CESEDA, art; L 751-1

<sup>73</sup> Presidential decree 61/1999, O.G. n° 63 (A), 6<sup>th</sup> April 1999, art. 1,§4.

<sup>74</sup> Presidential decree 220/2007, O.G. n° 251 (A), 13<sup>th</sup> November 2007. See also *below* the section on legal representation, part V. B.

<sup>75</sup> Civil code, article 343s. The tribunal for minors also implements the reception of minors by a protection centre following this notification.

<sup>76</sup> Law n° 122/2006 on asylum, article 16.2.



The procedure is suspended until the representative is appointed<sup>78</sup>. Minors of more than 14 years of age can nevertheless put forward an application for asylum by themselves<sup>79</sup>.

In Great-Britain, the minors benefit from a free attorney to assist in the juridical aspects of their application. A 'responsible adult' should be compulsorily present during their hearing by the authorities; this person does not, however, possess any power to legally represent the minor. He can be chosen according to very wide criteria, the only constraint being that it does not concern a member of the authorities in charge of asylum and of immigration. This situation is echoed in the general failings of the system of legal representation of unaccompanied minors in Great-Britain<sup>80</sup>.

In Sweden, a temporary representative is designated to represent the child during the duration of the asylum procedure. He is in charge of assisting in the different stages relating to asylum, but also more generally to see to his interests during this period. The temporary representatives are chosen on the basis of voluntary participation. There is no requirement to become a temporary representative and, in principal, every person can voluntarily apply to take on this task. A quick questionnaire is carried out by the social services for each candidate, as well as an examination of previous criminal investigations and the finances of the person.

The Committee on the Rights of the Child recommended in its final observations of June 2009 to Sweden *"that efforts be strengthened to ensure the suitability and adequate qualifications of such guardians"*<sup>81</sup>.

Thus, the implementation of legal representation is assured in a very diverse way according to each country. Despite the European demand in the subject, a great diversity is observed concerning the role, the competences and the expertise of the representatives. To a larger extent, it is often global effectiveness of the system of legal representation within the framework of the application for asylum that poses a question.

#### **Recommendation n°12 – ASYLUM / Legal Representation**

- ▶ Designate without delay, for every application for asylum put forward by an unaccompanied minor, a legal representative possessing the necessary juridical competences for such an accompaniment and whose work could be evaluated by an independent national authority.

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<sup>77</sup> *Ibid.*, article 39.1.

<sup>78</sup> *Ibid.*, article 52.4.

<sup>79</sup> *Ibid.*, article 39.2.

<sup>80</sup> See below part V. B.

<sup>81</sup> Committee on the rights of the Child, *Examination of the reports presented by the party States applying the article 44 of the Convention, Final observations - Sweden*, 51<sup>st</sup> session, 26<sup>th</sup> June 2009, CRC/C/SWE/CO/4, §63.

## *B. Processing of the application*

The directive ‘procedure’ lays down in the preamble that “*specific procedural guarantees for unaccompanied minors should be laid down on account of their vulnerability*”<sup>82</sup>. The second demand of the directive ‘procedure’ concerns the protection officials: who should possess the “*knowledge of the special needs of minors*” for the interview and for the ultimate decision<sup>83</sup>. The enactments relative to the determination of age<sup>84</sup>, which have a certain influence on the processing of those who are applying for asylum, will be studied subsequently in the part of the report dedicated to this problem<sup>85</sup>.

During the examination of the application, the directive ‘qualification’ requires a taking account of “*child-specific forms of persecution*”<sup>86</sup>. It may concern, for example, forced marriage, recruitment of children soldiers or even sexual mutilation of young girls.

In Spain, the law allows for an urgent procedure for unaccompanied minors permitting the processing of the application in a period of three months<sup>87</sup>, instead of the six months anticipated for adults. In practice, however, these applications are taking more time than other applications.

In France, in the case of minors, the interview in the presence of a legal representative is systematic. The French Office of Protection of Refugees and the Stateless (OFPRA) does not have specialized officers whilst examining the unaccompanied minors, the specialization of the officials being established by geographical divisions. In these conditions, the officials therefore do not always have the necessary competences to adapt their assessment and their readiness to listen to the specific case of the minors. Finally, French jurisprudence concerning asylum has never recognized specific forms of persecution of minors.

It should also be noted that French law allows for foreigners placed in the waiting area<sup>88</sup> to be admitted to the territory ‘with regard to asylum’. This exceptional procedure has been subjected to several criticisms, notably concerning the fact that a precise line of argument is generally required while those who are applying do not have the time or sufficient material conditions to fulfil this demand<sup>89</sup>.

In Greece, in the rare cases where an interview is carried out, it takes about 10 to 15 minutes during which the police ask very general questions, tending to make the applicant say that he has migrated for economic reasons. On the whole, the failures of the Greek system for asylum, denounced many times by international authorities<sup>90</sup>, have repercussions on the children. This leads therefore to an incredibly low number (40 in 2009) of applications relative to the present number of minors, and nearly a complete lack of recognition of protection: in 2009, the overall rate for all ages was 1.1% in

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<sup>82</sup> Directive 2005/85/CE, *op. cit.*, note 42, §(14).

<sup>83</sup> *Ibid.*, art.17.4.

<sup>84</sup> *Ibid.*, art.17.5.

<sup>85</sup> See *below* part III. B.

<sup>86</sup> Directive 2004/83/CE, *op. cit.*, note 13, §(20).

<sup>87</sup> Act 12/2009, of 30<sup>th</sup> October, regulating the right for asylum and the subsidiary protection.

<sup>88</sup> On the waiting area, see *above* part II. A.

<sup>89</sup> This point was recognized in a decision by the Administrative Court of Appeal of Paris on 8<sup>th</sup> July 2010 reproaching the Minister of Immigration to have surpassed his competence by engaging in an examination exceeding the character ‘obviously unfounded’ of the application (CAA Paris, 8<sup>th</sup> July 2010, n° 09PA05719).

<sup>90</sup> See for example UNHCR, *Information note on asylum in Greece*, 18<sup>th</sup> April 2008 - <http://www.unhcr.fr/4acf41fbf.html> (Accessed on 26.08.2010).

the first instance<sup>91</sup>. If this rate is related to the 40 applications drawn up by the minors, not one minor would have been awarded protection in 2009 in the first instance.

In Hungary, the unaccompanied minors belong to the category of ‘vulnerable people requiring special treatment’, defined by the law on asylum<sup>92</sup>. By virtue of the enactments planned for these people, the application for asylum of minors should be dealt with as a priority. The law on asylum equally allows for a benevolent procedure to be applied to the unaccompanied minor asylum-seeker. This same law states in section 4-1 that “*the best interests and rights of the child shall be a primary consideration*”. Finally, in section 60-2c, it demands that attention should be given to “*acts committed in relation with the childhood of the person concerned*”, which suggests a sensitivity to the motives of specific persecution of children.

In Italy, a precise juridical framework has been adopted for the processing of asylum applications of unaccompanied minors, by adopting a directive following a circular in 2007<sup>93</sup> and several legislative decrees<sup>94</sup>. In the first place, the minor should obtain upon arrival in Italy, all the necessary information on their rights and on existing legal possibilities, in particular on the subject matter of application for asylum. In all cases, when making a decision, the territorial Commission takes age and maturity into account, the family situation of the minor, the specific forms of persecution with which the minors have been faced in their country of origin, the possibility that the minor is not aware of the situation in his country of origin and above all the fact that the minor can express his fears in a different way to that of an adult. The law foresees that the hearing will not take place in the case where the Commission considers itself to have acquired sufficient elements for a positive decision relative to the status of the refugee.

In Romania, the law for asylum adopted in 2006 states in its first articles that all decisions taken in the application of this text and concerning the minors should be made in the best interest of the child<sup>95</sup>. The applications concerning the minors are processed with ‘the highest priority’<sup>96</sup> and they cannot apply an accelerated process<sup>97</sup>. The procedure of asylum at the border also does not apply to them and they must be admitted to the territory to apply for asylum<sup>98</sup>. However, the Committee on the Rights of the Child is said to be preoccupied with its final observations in Romania in 2009 “*by the fact that (...) persons with responsibilities for unaccompanied children, including those processing asylum applications, have not been equally exposed to the same training*”<sup>99</sup>. It is therefore recommended to the State of Romania to “*Expand the training throughout the country on child-friendly interview techniques to all decision makers involved in the refugees status determination*”<sup>100</sup>.

In Great-Britain, the procedure for asylum for unaccompanied minors consists of several specifications in relation to the procedure in force for adults. The cases of these children are examined by immigration officials especially trained on issues relating to children. The examination

<sup>91</sup> Eurostat, ‘Around 260000 applicants registered in 2009’, Press release, 4<sup>th</sup> May 2010. [http://epp.eurostat.ec.europa.eu/cache/ITY\\_PUBLIC/3-04052010-BP/FR/3-04052010-BP-FR.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-04052010-BP/FR/3-04052010-BP-FR.PDF) (visité le 10.08.2010).

<sup>92</sup> The section 2k of the law LXXX of 2007 on asylum defines a ‘person requiring special treatment’ as “*a vulnerable person, in particular a minor, an unaccompanied minor, an elderly or disabled person, a pregnant woman, a single parent raising a minor child and a person who has been undergone to torture, rape or any other grave form of psychological, physical or sexual violence, who has special needs because of his/her individual situation*”.

<sup>93</sup> Directive of the Ministry of Interior and the Ministry of Justice, signed on 7/12/2006 and registered by the Court of Auditors on 07/03/2007 ; Explanatory circular of the Department for Civil Liberties and Immigration (prot. 1157) 11/04/2007.

<sup>94</sup> Decree ‘Qualification’ (Legislative decree 251/2007) and decree ‘Procedure’ (Legislative decree, n° 25/2008 modified by Legislative decree n°159/2008).

<sup>95</sup> Law n° 122/2006 on asylum, article 8.

<sup>96</sup> *Ibid.*, article 16.1.

<sup>97</sup> *Ibid.*, article 75.2.

<sup>98</sup> *Ibid.*, article 84.

<sup>99</sup> UN Committee on the rights of the child, 51<sup>st</sup> session, Examination of the reports presented by the party States applying article 44 of the Convention, Final observations: Romania, CRC/C/ROM/CO/4, 30<sup>th</sup> June 2009, §80.

<sup>100</sup> *Ibid.* §81

of the basis of the application does not only rely on, as for adults, an interview with a responsible official, but also on a written application form.

The UK Border Agency (UKBA) has provided itself with guidelines on the procedure for the examination of the applications for asylum emanating from minors, notably with the purpose of conforming to the demands of section 55 of the law on immigration of 2009 which introduces the duty for the UKBA to have regard “to the need to safe safeguard and promote the welfare of children who are in United Kingdom”<sup>101</sup>. Every asylum-seeker of 12 years of age or more should be listened to during an interview for application for asylum<sup>102</sup>. The decision of the authorities regarding the application for asylum should be made, in the opinion of the UKBA, in 35 days<sup>103</sup>.

During an audit on the quality of the decisions in the area of asylum undertaken by the Office of the Commissioner of the United Nations for Refugees in the United Kingdom, matters of concern were raised regarding the lack of preparation for the interviews, the lack of taking into account of the age and maturity of the applicant in the interviews, of inappropriate judgements concerning the credibility of the application, and the lack of taking into account of the specific motives of persecution of the children<sup>104</sup>.

In Sweden, the Aliens Act, modified in 2005, pronounces principles in favour of the children establishing that their best interest should be respected and that the children should be heard during procedures in which they are implicated<sup>105</sup>. The diversity of the elements that are mentioned during the interview shows that the latter is carried out with a true perspective of depth, but also reveals that the examination of the application of an accompanied minor is just as linked to fears of persecution presented by the minor as to his social situation. This process can be proved to be favourable to the minor but also to give way to ambiguities. If the family of the minor is found, the putting into practice of the measure of reunification of the family can take precedence over the evaluation of the necessity for protection of the child. Moreover, several institutional and associative participants insist on the necessity to better take into account the particular needs of the minors in terms of protection.

Thus, the study of the processing of the application for asylum in the eight target countries introduces a very disparate transposition of community demands on this subject. In all events and circumstances, the legislations and practices studied do not take into account the entirety of the specific needs of unaccompanied minors.

#### **Recommendation n°13 – ASYLUM / Information**

- ▶ Individually inform each unaccompanied minor in a language he understands about the procedure and the implications of the application for asylum, upon arrival at the border or upon being found on the territory.

<sup>101</sup> *Borders, citizen and immigration Act, 2009, §55*. This section introduces in the law the demands of article 22 of the Convention on the Right of the child, following the lifting of the reserve of the United Kingdom in November 2008.

<sup>102</sup> In the case of an asylum-seeker of less than 12 years of age, the authorities determine his application for asylum merely on the basis of his written application and without proceeding to an interview.

<sup>103</sup> CHILDREN'S LEGAL CENTRE, *The right to education in England: alternative report to the UN Committee of the rights of the child*, 2008, p. 9.

<sup>104</sup> *UNHCR's Quality Assurance program auditing the UK's asylum decision making (2008)*, cited in SEPARATED CHILDREN IN EUROPE PROGRAM, *Newsletter n°32*, November 2009.

<sup>105</sup> Aliens act, Chapter 1, sections 10 and 11.

#### **Recommendation n°14 – ASYLUM / Access to the application**

- ▶ Guarantee unconditional access to the application for asylum process for all unaccompanied minors, removing all steps linked to the eligibility of the application and enacting in their favour exemptions to all special procedures less favourable than general law.

#### **Recommendation n°15 – ASYLUM / Personal Interview**

- ▶ Guarantee that no decision of rejection of the application will be able to be pronounced without an interview conducted by protection officers who are specifically trained.

#### **Recommendation n°16 – ASYLUM / Child-specific forms of persecutions**

- ▶ Recognize child-specific forms of persecution during the processing of their application.

### ***C. Reception of unaccompanied asylum-seeking minors***

The directive ‘reception’ compels the States to place the asylum-seeking minors “*with adult relatives; with a foster-family; in accommodation centres with special provisions for minors [or] in other accommodation suitable for minors*”<sup>106</sup>.

In Italy, the unaccompanied asylum-seeking minors are integrated into the system of protection of asylum-seekers (SPRAR) and are therefore subject to a reception distinct from the other unaccompanied minors<sup>107</sup>. However, the SPRAR centres are not sufficient to receive all asylum-seeking minors who are consequently received in other centres for isolated minors where the available services are still not adequate. In Romania, the reception of asylum-seekers of more than 16 years of age is possible in adult reception shelters, where conditions of reception have been adapted to receive minors (separate rooms from the adult etc.). The authorities should also take into account the specific needs of the minors in the allocation of public benefits to asylum-seekers<sup>108</sup>. In Greece, several places are reserved for asylum-seekers but in notably insufficient numbers<sup>109</sup>. No places are available for girls in the reception centres for asylum-seeking minors, the latter are always directed to secure accommodation according to general law. In Hungary, a centre receives all unaccompanied minors during their application for asylum, whilst another facility takes care of those children whose application for asylum has found a favourable outcome.

In other countries, the reception is identical for all unaccompanied minors taken into care<sup>110</sup> and only a few exceptional devices are revealed. The issue of accommodation and of the taking into care of asylum-seeking minors is therefore generally, to a large extent, the same as that of the reception of unaccompanied minors<sup>111</sup>.

#### **Recommendation n°17 – ASYLUM / Reception**

- ▶ Provide reception for unaccompanied asylum-seeking minors providing specific psychological and juridical support on the basis of personal identification of needs, notably through the putting in place of specialized centres for the taking into care of these children.

<sup>106</sup> Directive 2003/9/CE, *op. cit.*, note 13 art. 19.2.

<sup>107</sup> On mainstream social protection system, see *below* part VI. A.

<sup>108</sup> NEWSLETTER, ISSUE n. 33, Spring 2010 ROMANIA, p. 19.

<sup>109</sup> Human Rights Watch, *Greece: create open centres for migrant children*, 23rd August 2009. <http://www.hrw.org/en/news/2009/08/23/greece-create-open-centers-migrant-children>

<sup>110</sup> In practice, countries like Sweden or Great-Britain that systematically direct the minors to application for asylum do therefore receive only asylum-seeking minors but according to the same conditions as national minors.

<sup>111</sup> See *below*, part VI. A.

#### *D. Implementation of Dublin II regulation*

The said 'Dublin II regulation'<sup>112</sup> has established criteria permitting the determination of which European State is responsible for every application, which can be summarized as follows: the first State which the applicant has entered is required to process the application for asylum. The putting into practice of this regulation implies a common identification of the applicants at European level, in the file Eurodac<sup>113</sup>, and procedures of transfer of the asylum-seekers between the States.

The taking of fingerprints of minor asylum-seekers of less than 14 years of age is prohibited by the regulation Eurodac<sup>114</sup>, which consequently only renders possible the application of the regulation of Dublin II for minors older than 14 years of age. As far as the latter are concerned, the only exemption allowed for by the regulation of Dublin II concerns the case where a member of the family would legally find themselves in another Member State: in this situation, it is this other State that is designated as responsible and not that where the minor has put forward his initial application, provided that this is in the best interest of the minor<sup>115</sup>.

The regulation permits, however, the States to apply more protective enactments for the minors and to process their application, thus avoiding them being sent to another country. A general enactment certainly allows for "*each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation*"<sup>116</sup>.

The Dublin II regulation therefore offers the States different options with regard to its putting into practice. One of the countries studied, France, does not at all apply the regulation of Dublin II to minors<sup>117</sup>, while others generally strictly apply the regulation to minors as well as adults.

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<sup>112</sup> Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national

<sup>113</sup> Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention

<sup>114</sup> *Ibid.*, art. 4.1 "*Each Member State shall promptly take the fingerprints of all fingers of every applicant for asylum of at least 14 years of age*".

<sup>115</sup> Council Regulation (EC) No 343/2003, *op. cit.*, note 112, art. 6; art 15.3.

<sup>116</sup> *Ibid.*, art 3.2.

<sup>117</sup> It concerns the informal but recognized practice by the Minister of Immigration who has declared in a statement in 2010 that "*France forbids itself, even though she is not bound to it by European legislation, to deliver to other Member States of the Union asylum-seeking minors, having registered their application there before their entry in France*". MINISTRY FOR IMMIGRATION, INTEGRATION, NATIONAL IDENTITY AND COOPERATIVE DEVELOPMENT, "Visit to a reception shelter for unaccompanied minors detained in Calais: Eric Besson hails success of the system put in place", 01.10.2009.

**Table 7 – Outline of the application of the regulation Dublin II for unaccompanied minors**

	Dublin II Applications	Dublin II transfers in 2009	Remarks
Spain	YES		
France	NO	0	Fingerprints of minors of more than 14 years of age are taken, but in practice no transfer is decided when it concerns minors.
Greece	YES		Greece is above all a country of first application, to which the applicants are transferred with regard to the regulation of Dublin.
Hungary	YES		According to the official statistics of the Office of Nationality and Immigration, 63 Dublin transfers were implemented in 2008 (all ages mixed). Several judgements are concerning the transfer of minors to Greece.
Italy	YES		The Italian authorities still take the statements of the minor on their age into consideration as well as an application tending to rejoin his family.
Romania	YES		A decision of the Constitutional Court of 25 <sup>th</sup> November 2008 provides supplementary guarantees in the application of the regulation Dublin II that can be applied to minors.
Great-Britain	YES	36 <sup>118</sup>	Between 2004 and 2009, 334 Dublin II transfers have been implemented for unaccompanied minors <sup>119</sup> . The transfer to Greece has been judged valid for British Court of appeal.
Sweden	YES	53 <sup>120</sup>	Transfers to Greece have been suspended since 2008 for minors. Now it is the transfer to Malta that is in question.

**Recommendation n°18 – ASYLUM / Dublin II regulation**

- ▶ Eliminate the application of the regulation of Dublin II for all unaccompanied minors, with the exception of transfers aimed at reuniting families.

<sup>118</sup> Cited in "Anger as hundreds of children deported alone under EU rules", Children and Young people Now, 22<sup>nd</sup> June 2010, [www.cypnow.co.uk](http://www.cypnow.co.uk)

<sup>119</sup> *Ibid.*

<sup>120</sup> Contact with the Immigration Office, 23.06.2010. These returns principally concerned young Somalis (17 cases, or 32%), Afghans (11 cases, 21%) and Iraqis (10 cases, 19%). It should be noted that 52 of them were registered as 'voluntary' returns.

## IV. Trafficking and exploitation

Unaccompanied minors are particularly subject to offenses of trafficking and exploitation<sup>121</sup>, because of their vulnerability. This can take the form of forced labour, of servitude or slavery, or even sexual exploitation. The taking into account of this problem implies above all identification of the victims, followed by protection in specific devices.

In the majority of studied countries, the problem of slavery of minors is to a very large extent underestimated. Despite the putting into place of police services or specialized measures of location, the procedures instigated to identify the perpetrators as well as the child victims of these offences are rare.

### Recommendation n°19 – TRAFFICKING / Identification of the victims

- ▶ Put in place specific measures and ways of permitting the identification of unaccompanied minors who are victims of trafficking.

When they are identified, unaccompanied minors who are victims of slavery are generally taken into care, where specific measures aimed at them are applied, without taking into account their particular victim status<sup>122</sup>. Only two studied countries (Italy, Romania) have applied specific measures for the taking into care of these victims.

Concerning the administrative situation of victims of slavery, a European directive of 2004 defines the conditions of the granting of rights to remain for a limited period to those individuals belonging to third countries who cooperate in the struggle against trafficking<sup>123</sup>. This text, destined to protect adults, can be applied by exemption to minors<sup>124</sup>, but this possibility is rarely exploited in the studied countries.

### Recommendation n°20 – TRAFFICKING / Protection of the victims

- ▶ Foresee specific measures assuring the unconditional taking into care of unaccompanied minors who are victims of trafficking, adapted to their needs and assuring their protection.

<sup>121</sup> On the definition of trafficking and exploitation, see Protocol of Palermo, 15<sup>th</sup> November 2000, art. 3.a.

<sup>122</sup> On social protection provided for all of the unaccompanied minors in the 8 countries, see part VI. A.

<sup>123</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

<sup>124</sup> *Ibid.*, art. 3.3.



## V. The recognition of minority and the necessity for legal representation

Numerous unaccompanied minors arrive in Europe without identity documents or with false documents. It also happens that the papers they possess are not taken into consideration by the authorities even if they are authentic. Every country therefore has made provision for methods to permit the determination of age of these young people and, to a larger extent, to reinstate their civil status. From the moment that minority is recognized, the issue of legal representation is raised: for minors who do not have legal capacity, it is necessary to designate a representative.

### *A. Age determination*

The minors whose civil status is non-existent or disputed can be subjected to procedures aimed at determining their age. This issue is important because the recognition of minority will condition the whole of the care and will determine the applicable juridical framework. Some protected minors can become foreigners without status. They will therefore not be able to benefit from any guarantees allowed for in the different legislations and will often be threatened by the measure of forced removal. Moreover, the questioning of their age can have as a consequence that all legitimacy is lost regarding other statements concerning their relations, their name or even their nationality.

**Table 8 – Outline of the methods of age determination for unaccompanied minors**

	Method of determination or of age	Remarks
Spain	Medical expertise, with examination of the bones, based on the Greulich and Pyle method.	The personnel who carry out the examination do not have any knowledge of the consequences. The margin of error is indicated in this report but is not necessarily taken into account in favour of the young person.
France	Medical expertise, with examination of the bones, based on the Greulich and Pyle method.	Very variable practices according to the place where the young person is taken into care. Method criticised by several national and international authorities due to its imprecision, but still in force.
Greece	The national law does not define any official method; however it allows the possibility of a medical examination.	No examination is generally practiced, but the young person whose appearance makes them look like they are less than 16 years of age are considered children while the others are declared adults by the police despite their statements.
Hungary	Medical expertise based on an examination of the bones and a paediatric examination.	While the medical procedure is scarcely practised due to its imprecision and its cost, the statements by young people are often taken into account in order to award protection.
Italy	Medical expertise, with examination of the bones, based on the Greulich and Pyle method.	Examination generally carried out by medical personnel not always qualified and not basing itself on any other consideration. The margin of error is practically never indicated.
Romania	Medical expertise.	The written agreement of the children and his representative is compulsory, but the young person is considered an adult in case of refusal. The margin of error is not taken into consideration.
Great-Britain	Evaluation based on the situation of the young person and his account, following criteria determined in a judgement of 2003 (Merton). A medical examination can be carried out, but it only constitutes an element of information in a global evaluation. The evaluation is done by the social worker in charge of the child.	The benefit of the doubt is awarded. Yet the authorities can consider that young person is an adult without submitting him to a procedure of determination of age. Hereafter, the procedure of determination lies entirely with the opinion of the social workers, which can create conflicts of interest. The result of age assessment can be appealed before courts.
Sweden	Evaluation by the Migration board, by means of an "orientation interview", which can be completed by a medical examination.	Benefit of the doubt awarded to the young people in case of a medical examination. Decision made by an official of the Migration board, without possibility to appeal, which can create a conflict of interest.

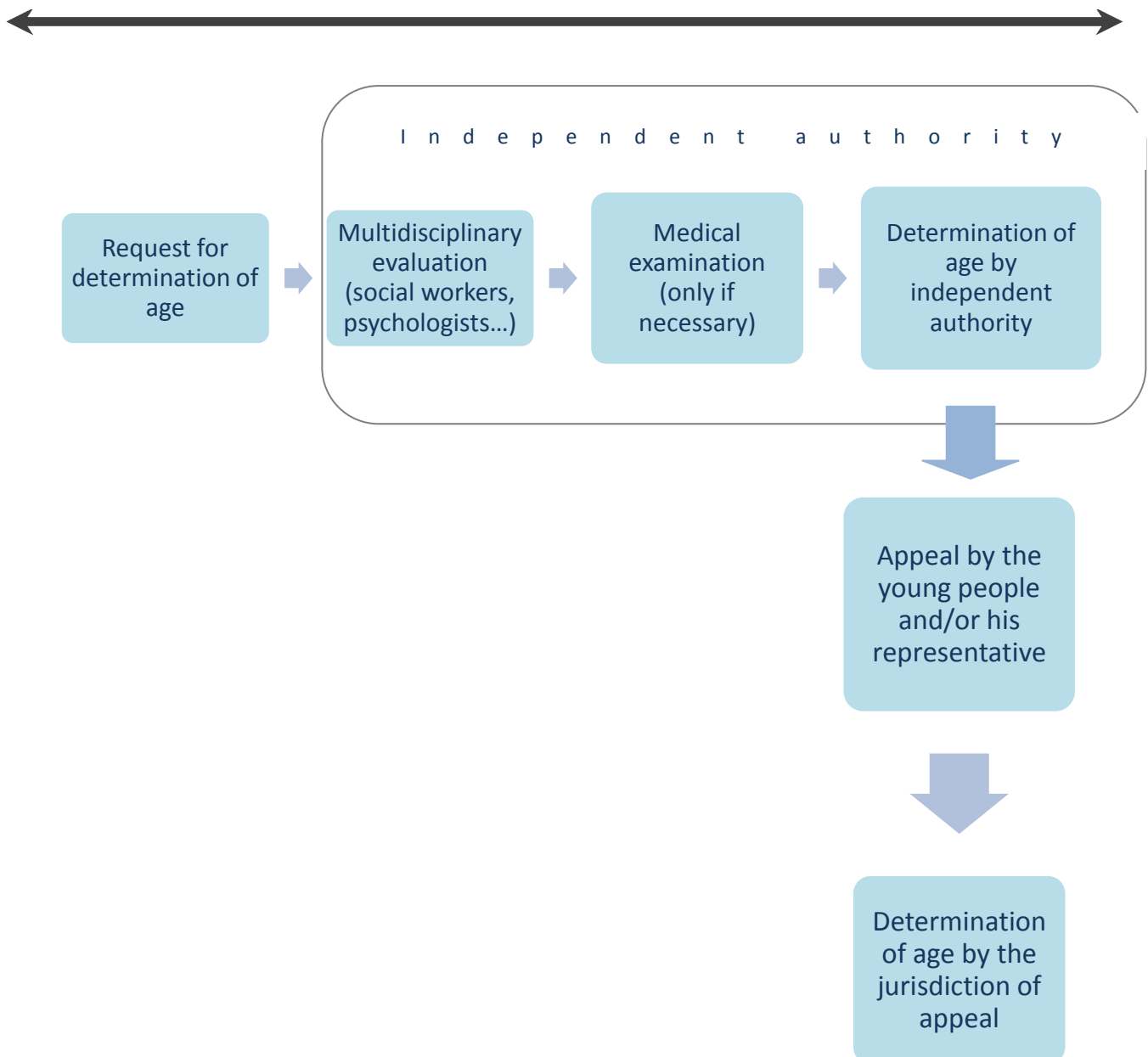
Thus, the majority of the countries determine the age by principally basing it on medical expertise (Spain, France, Italy, Romania), while others have established procedures also taking the youngster's story and situation into account (Great-Britain, Sweden). Finally, certain countries do not base it in practice on a medical examination, nevertheless provided by the law, whether this is to the benefit (Hungary) or to the detriment (Greece) of the young people.

### Recommendation n°21 – AGE DETERMINATION

- ▶ Establish a common protocol for age determination in all the States of the European Union. This protocol should provide a multi-disciplinary evaluation carried within independent authorities of the government and of the local authorities, consisting of several complementary protagonists who are trained in this subject. These decision-making bodies could ask to proceed with a medical examination, only with the consent of the minor, but this examination would only constitute one element amongst others in the process of age assessment. A possibility of administrative and juridical appeal, with ruling of litigation by the judge himself as a last resort, should be open only to the young person and to his representative in the case of contesting of the age attributed, following the putting into practice of the protocol. In every event and circumstances, the principles of presumption of minority and of benefit of the doubt should be applied during the whole of the procedure of determination of age.

### Determination procedure of age respectful of children's rights

*P r e s u m p t i o n   o f   m i n o r i t y   -   B e n e f i c e   o f   t h e   d o u b t*



## *B. Implementation of a legal representation*

The recognition of minority of a young person generally implies that he does not have legal capacity and is therefore unfit to exercise certain rights and obligations. In the absence of parents who can exercise parental authority, it is therefore imperative to put a measure of legal representation into practice in order to bring about the conclusion of different actions in the name of the child as well as the participation of the latter in juridical procedures. In this regard, the Convention on the rights of the child makes it clear, however, that the States should guarantee to the child the “*opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law*”<sup>125</sup>.

Certain States have allowed for the designation of a unique legal representative to accompany the unaccompanied minor (Spain, Italy), while there are several types of representatives in other countries (France, Hungary, Italy). Finally, legal representation falls short in two studied countries (Great-Britain, Greece).

### **Recommendation n°22 – LEGAL REPRESENTATION**

- ▶ Appoint without delay a unique representative for every person declaring themselves minor or identified as such. This representative should be independent, specifically trained on the issue of unaccompanied minors, and should benefit from material conditions that permit him to carry out his mission in full.
- ▶ Put into place in every country an independent authority aimed at supervising and evaluating the missions of the representatives.

<sup>125</sup> UN Convention on the rights of the child, *op. cit.*, note 47, art. 12.

## VI. The taking into care and integration into the territory

Separated from their parents and therefore without educational and material support, the unaccompanied minors can generally benefit from social protection within the Member States. Like other children, they should also have the right to education and to vocational training, sometimes linked to the right to work, as well as to access to health care.

### *A. Social Protection*

While the Convention on the Rights of the Child lays down that “*a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State*”<sup>126</sup>, the putting into practice of this right by the States is influenced by important disparities that can sometimes affect its effectiveness. While the legislative framework that permits the taking into care of unaccompanied minors is generally identical to that which concerns national minors who need social protection, several models of reception have been identified in the eight studied countries. Certain countries have allowed for a reception in the same conditions as general law for childhood protection (Italy, Greece, Romania, Great-Britain), while others have established a social protection that comprises specific measures, receiving all or part of the unaccompanied minors (Spain, France, Hungary, Sweden).

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<sup>126</sup> *Ibid.*, art. 20.

**Table 9 – Outline of social protection from which the unaccompanied minors can benefit**

	Social protection offered	Remarks
Spain	The autonomous communities (regions) are competent to protect the minors who find themselves on their territory.	The type of reception proposed depends on the number of received minors. If the number is important, the reception can be divided into three successive places: centre of initial reception, centre of average stay, centre of stable duration. There exist centres specifically dedicated to unaccompanied minors, managed by NGOs.
France	The taking into care is assured by the territorial services of childhood protection, following a judicial decision in relation to the child in danger.	The minors arriving in the waiting area have difficulties in accessing the protection system. On the territory, access to protection and the devices implemented are very variable according to the counties.
Greece	Only the rare asylum-seeking minors can benefit from social protection.	The number of places of reception for asylum-seeking minors is very limited.
Hungary	Upon arrival, the unaccompanied minors are directed to a reception centre dedicated to them. They then benefit from the Hungarian system of childhood protection as a child <i>“deprived of parental care or care by other members of their family”</i> .	Two centres receive the whole of unaccompanied minors, one dedicated to asylum-seekers and the other to refugee minors or beneficiaries of subsidiary protection.
Italy	On the basis of general law of childhood protection, the minors are first of all placed in a secure site in case of particular urgency for protection, before integrating the system of reception. The latter distinguishes the initial reception, which permits the evaluation and fixes the initial period of taking into charge, and the second reception where an individual path of integration is put into place.	The centres of initial and second reception are managed by Italian municipalities.
Romania	After a provisional placement allowing for the evaluation of the situation of the child, the latter is placed, in accordance with the Romanian system of mainstream childhood protection system.	
Great-Britain	From the moment they are found by the authorities, the unaccompanied minors are referred to a municipality to benefit from mainstream childhood protection system	The level of protection varies according to the legal basis of the taking into care, the latter referring to two articles of the law on childhood.
Sweden	The unaccompanied minors benefit from protection of general law compiled of an initial reception followed by durable taking into care.	The centres of initial reception are specifically dedicated to unaccompanied minors. The responsibility of the reception of unaccompanied minors lies with the municipalities.

**Recommendation n°23 – SOCIAL PROTECTION**

- ▶ Permit all unaccompanied minors to benefit from measures of social protection adapted to their needs. Provide in this regard the putting into place of specific measures dedicated to children upon initial arrival in order to best evaluate their situation, to identify their needs for protection, particularly for asylum-seekers or victims of trafficking, and to lead them in the best manner and within the shortest delay to the mainstream childhood protection system.

## *B. Schooling and vocational training*

Unaccompanied minors are often applicants for rapid integration into the countries of residence. In this regard, access to schooling constitutes a priority for them and the practice shows that they progress with great ease and their motivation allows the progression of the entirety of groups which are integrating. Many are those who also seek to work quickly, and by choice or by default, wish to sign up to a career path of vocational training.

Although these stages of schooling and professional training constitute a necessary pre-requisite for every case of integration into the society of reception, the legislations and practices of States in these domains generally allow differences to come to light in legislations and practices relating to national children.

### 1. Access to schooling

The right to education is recognized by the Convention on the rights of the child of which the signatory States recognize *“the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity”*<sup>127</sup>. The Committee on the rights of the child has interpreted this obligation as a necessity to guarantee that *“Every unaccompanied and separated child, irrespective of status, shall have full access to education in the country that they have entered”*<sup>128</sup>. The Council of Europe, but also the European Union, has stated this imperative of access to education for all children, including foreigners, in several texts<sup>129</sup>.

The putting into practice of this right appears satisfactory on the whole in all of the studied countries, the access to education being guaranteed in general. A detailed analysis, however, shows a large variety of legislations and practices regarding this subject, with important obstacles for unaccompanied minors approaching adulthood.

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<sup>127</sup> UN Convention on the rights of the child, *op. cit.*, note 47, art. 28.

<sup>128</sup> Committee on the Rights of the Child, *Treatment of unaccompanied children (...)*, *op. cit.*, note 54, §41.

<sup>129</sup> See for example: Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries, art. 3.6 ; Recommendation CM/Rec (2007)9, *op. cit.* note 42, art.17

**Table 10 – Outline of access to schooling for unaccompanied minors**

	<b>Access to education system</b>	<b>Implementation of specific measures</b>
Spain	Minors of less than 16 years of age are matriculated in compulsory education, often with difficulties of adaptation. Minors older than 16 are directed to career paths of professional training.	Certain autonomous communities propose courses for extra linguistic teaching for foreign minors.
France	Minors of less than 16 years of age have automatic access to the education system of mainstream law. Those who are older than 16 are only admitted to the establishments within the limit of available places. In practice, many of these children are directed to pre-qualifying education.	Access centres to schooling for new arrivals and Traveller children (CASNAV) function on the territory with a view to coordinate and facilitate access of migrants to school.
Greece	The right to education in Public Schools is guaranteed for all foreign child refugees, asylum-seekers, coming from a zone of conflict, or whose status concerning the right to remain is under examination.	There exist a few courses for extra linguistic teaching for foreign minors who have newly arrived but access to these courses is difficult.
Hungary	There exists no legal obstacle to access of unaccompanied minors to the education system of mainstream law. In practice, however, few schools accept migrant children, posing them with several obstacles.	Hungarian language courses are assured by the Bicske reception centre for child refugees or beneficiaries of subsidiary protection. Selective initiatives proposing support classes exist as well.
Italy	The national regulation guarantees the right to education for all minors, without consideration of their nationality, for all levels of education. In practice, difficulties of insertion are observed for 15-18 year olds who do not possess an Italian undergraduate diploma.	Institutional structures were put into place in order to promote integration, dialogue and intercultural education. For minors from 15 to 18 years old, courses for basic literacy tuition are led by permanent territorial Centres.
Romania	The right to education is guaranteed by the law on foreigners that lays down that all minors have access to all levels of education.	Unaccompanied minors can integrate into an apprenticeship class of Romanian during a year with a view to preparing their insertion into the mainstream education system. Moreover, the NGO Save The Children has put a program of assistance into place for asylum-seekers in terms of education.
Great-Britain	The unaccompanied minors of less than 16 years of age, despite the delays of admission which are sometimes problematic, have access to the general education system. For those older than 16, an important difficulty concerns the access to secondary education due to its cost.	
Sweden	The access to education is linked to the juridical status of the unaccompanied minor. The child authorized to remain has total access to the education system with the same regard as a Swedish child. The asylum-seeking child can access it, but is not obliged to and cannot access Public Schools. The child in an illegal situation does not have access to education even if some of them go to school because there is nothing that prevents a director of an establishment from admitting them.	Numerous schools have specialized classes for the reception of young asylum-seekers.



#### Recommendation n° 24 – SCHOOLING / Access to the mainstream schooling system

- ▶ Guarantee an unconditional right to schooling for all unaccompanied minors, under the same conditions as national minors.

#### Recommendation n° 25 – SCHOOLING / Measures of educational adaptation

- ▶ To provide measures of educational adaptation in sufficient quantity specifically dedicated to unaccompanied minors, permitting them to integrate into the mainstream educational system through the acquisition of the basics required, in particular from a linguistic point of view.

## 2. Access to vocational training

Numerous unaccompanied minors of more than 16 years of age are orientated towards vocational training that permits rapid access to the labour market and is generally considered to be a means of privileged integration. In practice, this orientation can also be explained by the obstacles in accessing the mainstream educational system. However, access to vocational training can also be complicated by the demands concerning the issue of authorisation to work, necessary to gain work experience and follow apprenticeship courses generally included in these career paths.

#### Recommendation n° 26 – VOCATIONAL TRAINING

- ▶ Guarantee access to programs of vocational training under the same conditions as for national minors, by systematically granting the authorisation to work, valid at least for the duration of the course, if such an authorisation is required under national law.

## C. Access to health care

The necessity to recognize a right to healthcare for all migrants, because of the implications it may have for the host society, takes on particular importance for the children. The care that can be ministered to these young people, who are especially vulnerable and therefore more subject to illnesses or accidents, can often bring about changes in the course of their lives and their future perspectives.

This is why the signatory States of the Convention on the Rights of the Child have recognized “*the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health*”<sup>130</sup>, a right subsequently pointed out by the Committee on the rights of the child with regard to unaccompanied minors<sup>131</sup>.

The analysis of the putting into practice of this right in the studied countries generally creates a distinction between the minors whose status is consolidated (taken into care/ obtaining of the right of residence), for which access to care appears to be relatively easy, and the others for whom only emergency medical care is generally guaranteed unconditionally.

<sup>130</sup> UN Convention on the rights of the child, *op. cit.*, note 47, art. 24.

<sup>131</sup> Committee of the rights of the child, *Treatment of unaccompanied children (...)*, *op. cit.*, note 54 §46 to 49.

**Table 11 – Outline of access to care for unaccompanied minors**

	<b>Access to emergency care</b>	<b>Access to healthcare system of common law</b>
Spain	Unaccompanied minors benefit from	universal sickness cover, whatever their status.
France	All foreign minors should be able to access urgent care provided in hospitals, whatever their administrative situation.	All minors are considered to be fulfilling the condition of legality of stay, and can in this regard benefit from the Social Security system. However, this access to Social Security can be compromised or prevented in practice while the minor does not possess a document of civil status or while he has not been designated with a legal representative.
Greece	All unaccompanied minors can benefit unconditionally from emergency care.	Only rare minors placed in child protection centres can freely benefit from the national health system.
Hungary	All unaccompanied minors can benefit unconditionally from emergency care.	The asylum-seeking children have access to care, financed by the Office of Nationality and Immigration. The child refugees or beneficiaries of subsidiary protection are relieved from the mainstream system for health insurance. For these two categories of minors, the substance of the proposed benefits is identical.
Italy	All unaccompanied minors can unconditionally benefit from emergency care in hospital or at a doctor's. They also have access to measures of preventative medicine.	All unaccompanied minors in a legal situation on the territory and therefore in possession of a permit to remain should be registered with the national health service and access all provisions by full right.
Romania	All unaccompanied minors have access to health care on the same basis as Romanian children.	
Great-Britain	Minors whom have not been taken into care by the authorities can receive urgent or 'immediately necessary' treatments without charge.	All unaccompanied minors taken into care by the authorities benefit from the mainstream healthcare system. They also benefit from special offers by the municipalities of reception who are obliged to make them undergo legal medical examinations and employ a specialized nurse for this public.
Sweden	Minors not registered as taken into care by the authorities can benefit from emergency care.	Only minors who have requested an application for asylum can access the health system of common law. Access to the latter can however, for former applicants of asylum, be moderated by the fact that the responsibility of the cost depends on the regional authorities, who do not guarantee free care in all instances. Moreover, medicines are not reimbursed. The asylum-seekers can benefit from subsidies in order to reduce the costs.

**Recommendation n° 27 – ACCESS TO HEALTH CARE**

- ▶ Ensure unconditional access to the national health system, not limited to urgent care, to all unaccompanied minors present on the territory because of their particular vulnerability.

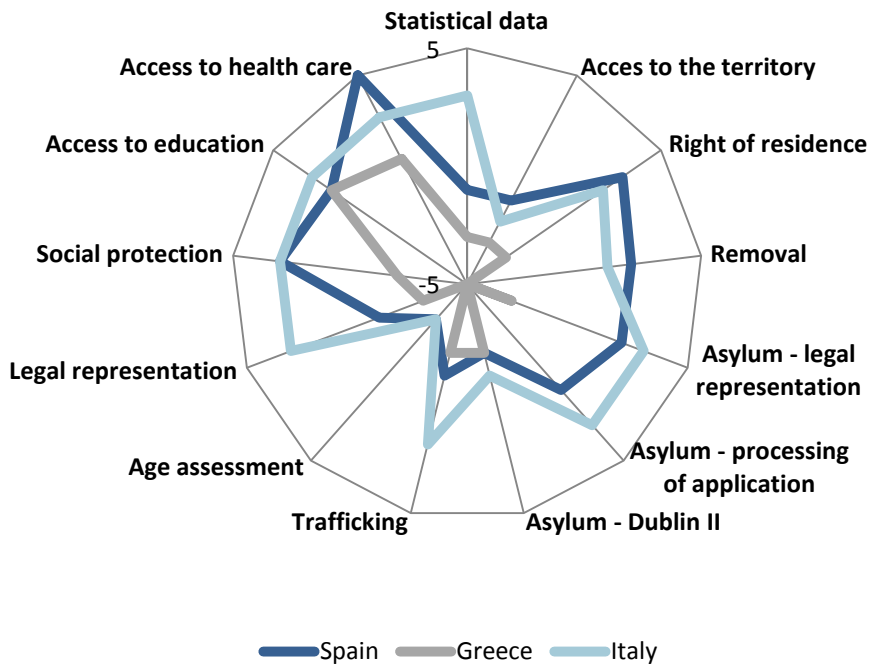
## Conclusion: A wide range of legislations and practices

The comparative study thus presents a wide range of legislations and practices concerning the reception and care of unaccompanied minors. All the issues, including the right to asylum although this issue has been subject of a process of EU harmonisation, are approached in each of the eight countries in a different manner and often separately.

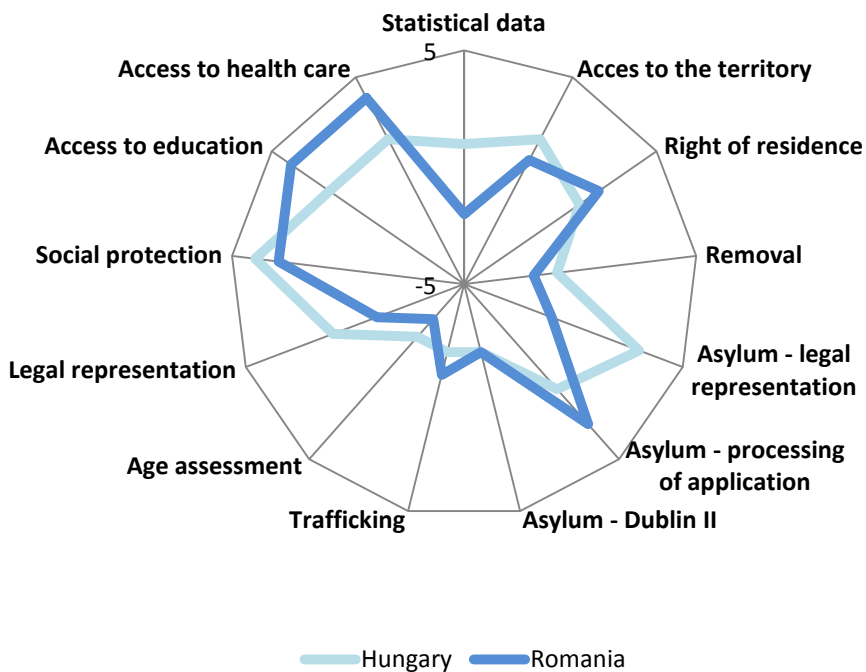
The graphs below put into perspective the result of this report with regard to a model of reception and care, based on the recommendations that have been made, founded on the European and international standards, which already exist on the subject. It provides an outline of this variable process. This establishment of a model, divided into three large regions (Southern Europe, Eastern Europe and Northern Europe) and created by a subjective estimate provided by the expert authors of this report, permits the identification of points for improvement in every country as well as the need for harmonisation at European level. The other details of its execution feature in the complete report<sup>132</sup>.

<sup>132</sup> The full report is available at <http://www.france-terre-asile.org/childrenstudies>

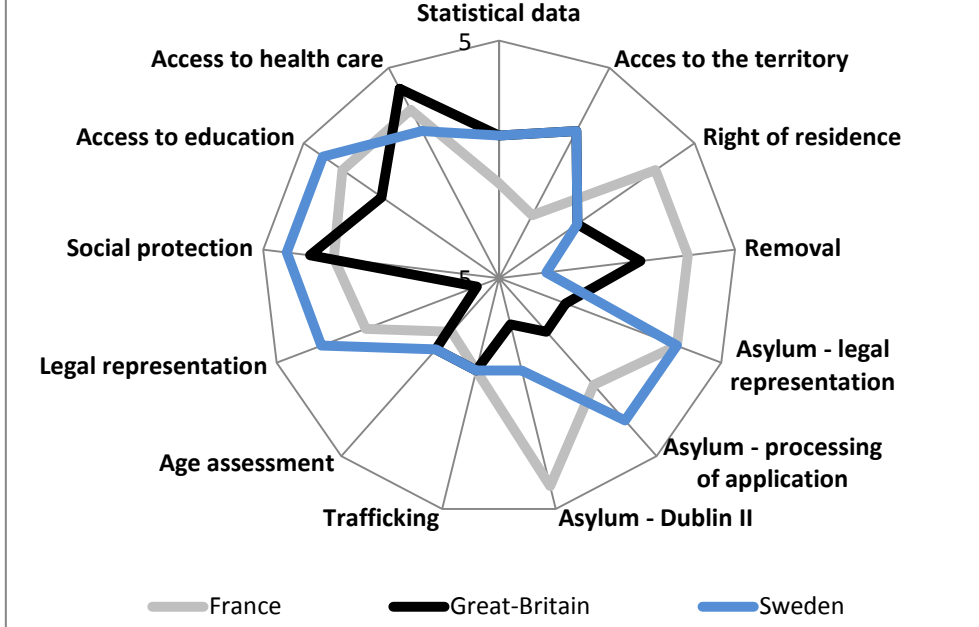
**Evaluation of the legislations and practices concerning unaccompanied children - Southern Europe**



**Evaluation of the legislations and practices concerning unaccompanied children - Eastern Europe**



### Evaluation of the legislations and practices concerning unaccompanied children - Northern and Western Europe



Thus, it appears to be essential that the European Union puts into practice a framework of common standards in order to deal with the whole of the situation of unaccompanied minors who arrive every year and who constitute part of the future of the continent. Only a text of this type, based on a high standard of protection taking into account the existing standards of protection of fundamental rights and more precisely those aiming to protect the children and the declination of these principles expressed in the recommendations of this report, will enable to reach ideals of justice, liberty and security, at the foundation of the European Union.

## Annex 1 – International and European standards

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### United Nations

- Convention relating to the Status of Refugees, adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950.  
<http://www2.ohchr.org/english/law/refugees.htm>
- Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entry into force 2 September 1990, in accordance with article 49.  
<http://www2.ohchr.org/english/law/crc.htm>
- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.  
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### European Union

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→ Art. 24
- Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention  
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- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0055:EN:HTML>  
→ Art. 2f
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0009:EN:HTML>  
→ Art. 2h, Art. 10, Art.19

- Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R0343:EN:HTML>  
 → Art. 2h
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>  
 → §(21) ; art. 30
- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML>  
 → Art. 3.3 ; Art. 10
- Council directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member States for granting and withdrawing refugee status  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>  
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