

CHILDREN CAST ADRIFT



**THE EXCLUSION
AND EXPLOITATION
OF UNACCOMPANIED
MINORS (UAMs)
IN GREECE, SPAIN
AND ITALY**

COMPARATIVE REPORT

ELINA SARANTOU
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Preface

According to data published by international humanitarian organisations, more than half of any refugee population are children. Making up a significant part of those children are unaccompanied minors (UAMs), who arrive in countries of first entry without their parents or guardians, making them a highly vulnerable population group. In such a sensitive and urgent social issue, the political leaderships are required to promptly respond with concrete solutions.

This report is the comparative outcome of three national studies in Greece, Spain and Italy. Each study provides information regarding the protection of unaccompanied minors in the European South and offers a critical account of the policies (on a national as well as European level) and their implementation. Regretfully, what is discernible is that the way that the policies are implemented practically leads to the social exclusion of the children, and their subsequent exploitation, leading to their inability to exercise their rights.

The research *Children Cast Adrift* relies on interviews with professionals working directly with UAM, as well as policy papers, regulations and legislation, and records testimonies on the effects of social exclusion and the partial and ineffective child protection systems on the life of minors.

Initiated in July 2017, this project was concluded in November 2018. It was funded by the Rosa Luxemburg Stiftung–Office in Greece and coordinated by the Athens-based NGO STEPS, with the scientific input of the Greek Council for Refugees (GCR) and of HIAS Greece. The research teams in each of the three focus countries collected and analysed the national data, while the comparative analysis of the data was conducted by the Greek research team.

Many people and organizations have directly or indirectly contributed to this project, and we are grateful to all of them. Without their contribution, everything would have been a lot more difficult.

Electra Alexandropoulou - Project Manager RLS
Ilektra Apostoli - Research Project Coordinator - Steps

[1]

The research

[1.1] Introduction

In 2015 and 2016, an estimated 2.3 million third-country nationals entered the European Union (EU),¹ with 1,377,349 in total arriving in Greece, Italy and Spain. The overwhelming majority (1,030,173) crossed the Greek-Turkish maritime border.²

The number of unaccompanied or separated children (UASC) arriving in the EU also dramatically increased. In 2017, some 20,000 UASC arrived in Europe. Of these, 19,663 entered Europe through the three main gateways: Spain, using the Western Mediterranean sea route; Greece, transiting through the Eastern Mediterranean route from Turkey, mostly via sea; and Italy, using the Central Mediterranean sea route. Despite the fact that overall child arrivals in 2017 decreased by 67% compared to 2016, the proportion of UASC increased from 34% in 2016 to 60% in 2017.³

Additionally, in 2016 the EU's law enforcement agency, Europol, revealed that at least 10,000 UASC had disappeared in Europe.⁴ Given the mismanagement by and restrictive policies of European governments, UASC often suffer from violence, exploitation and trafficking as well as from physical, psychological and sexual abuse.

It has been coined as a “crisis” of numbers but is predominantly a “crisis” in reception management. Still struggling in the wake of the longest and most serious economic crisis in the EU's history, Greece was not ready to face the huge inflows of refugees and migrants of recent years and has had to adjust legislation and establish additional reception services to manage this new reality. Italy and Spain, on the other hand, seem to face a different reality. Though the numbers of third-country nationals using the particular routes are extremely high as well, the nationalities of UAMs seeking protection differ drastically. Though Greece mainly receives children from

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1. European Parliament, EU Migrant Crisis: facts and figures, <http://bit.ly/2JtbkTz>. All sites accessed on 25 January 2019 unless otherwise stated.
 2. UNHCR, Refugees and Migrants Sea Arrivals in Europe, <http://bit.ly/2HaCL3e>.
 3. UNICEF, UNHCR and IOM, Latest statistics and graphics on refugee and migrant children: Latest information on children arriving in Europe, <https://uni.cf/2lhFYx3>, accessed December 2017.
 4. European Parliament, MEPs discuss fate of 10,000 refugee children that have gone missing, <http://bit.ly/2QMjE2l>, 20 April 2016.

countries that have suffered war and its long-lasting consequences (Afghans and Syrians are the two major nationalities, followed by Pakistanis), Spain and Italy seem to accommodate children primarily from neighbouring countries escaping a difficult and even at times impossible life.

Being displaced involves not just a change of physical location but a dislocation of many aspects of normal life, a violent disruption in the individual's sense of "belonging".⁵ Unaccompanied minors – mostly, in our case, adolescent boys – are particularly susceptible to physical, mental and social isolation during this, hopefully transitional, period of their lives. Families are divided, social relations are broken, education is disrupted and children are called upon to make a dangerous journey on their own.

[1.2] Research goals and methodology

The MedMinors research project compiles data on UAMs, documents the services, policies and practices followed by relevant institutions concerning their social inclusion – or lack thereof – as well as examines the malpractices leading to their exploitation in the first countries of entry into the EU. The project responds to the need to understand how and to what extent national and European legislation and policies and, most importantly, their implementation, socially exclude UAMs and prevent them from exercising their rights in practice.

The current project focuses on three of the main European front-line protagonists of the current crisis: Greece, Italy and Spain.

From 2016 to 2018, Greece, in particular, saw a larger percentage of UAM in comparison to the overall population of new arrivals than Italy and Spain. In 2017, children made up 14% of arrivals in Spain (with no statistics available on the number of UAM among them); in Italy, 15% of the overall arrivals were children, the overwhelming majority (15,779 children, or 91%) of them UAM; in Greece, 37% of the arrivals were children, 13% of them (1,458 children) UAM.⁶

5. Sarah Maguire, "Putting adolescents and youth at the centre," *Being Young and Out of Place*, special issue, *Forced Migration Review* 40 (August 2012).

6. UNHCR, *Refugees and Migrants Arrivals to Europe in 2017*, <http://bit.ly/2Kt76vY>.

For the purposes of this study, the research team conducted in-depth interviews using a semi-structured questionnaire. Data collection was conducted between January 2018 to June 2018 in Greece, Italy and Spain, with a focus on specific regions in each country. Interviews with professionals were carried out for Greece in Athens, Lesbos and Chios; for Italy, in Rome, Catania, Vittoria and Ventimiglia; and for Spain, in the Basque Country, Andalusia, Madrid and Catalonia. These regions were selected as they present the highest numbers of migrant children. Primary data was gathered from interviews with 85 professionals, including lawyers, doctors, psychologists, social workers, educators, pedagogues, guardians, interpreters, caretakers, cultural mediators, activists and street workers directly involved in the protection of UASC within the three countries.

[1.3] **Research presentation**

For the purpose of this research, three national reports regarding the respective countries have been compiled, offering an in-depth analysis of the provisions, services, as well as the practical implementation of policies and additional practices, in each country.

The comparative report attempts to summarise the major findings of the national reports regarding child protection in the three countries as well as outline the major areas of concern in them, according to the particularities of each. Similarities and differences are highlighted while the full list of recommendations for each country, as well as general recommendations for all, supplements the image that emerges from the national reports.

[2]

Legal framework: common obligations

On the one hand, all three countries, as members of the UN human rights system, EU and Council of Europe, share the same international obligations; on the other, national legislation plays a pivotal role in child protection, regulating major protective institutions such as guardianship and foster care.

In particular, on the regional level all three countries have ratified the European Convention on Human Rights and several accompanying protocols, and are under the jurisdiction of the European Court of Human Rights while, on an EU level, they subscribe to the European Charter of Fundamental Rights, the Common European Asylum System (CEAS)⁷ and other relevant regulations.⁸

On the national level, children and childhood in general are protected by constitutional provisions (Greece, Spain) while multiple provisions for national institutions for guardianship (Greece, Spain, Italy) or other relevant child-protection bodies can be found in the relevant civil codes and other legislation.

7. Regulations and Directives composing the EU acquis on asylum: CEAS consists of five major pieces of legislation: 1. Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast procedures directive); 2. Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection (recast reception conditions directive); 3. Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast qualifications directive); 4. Regulation (EU) 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the member state responsible for examining an application for international protection lodged in one of the member states by a third-country national or a stateless person (Dublin III Regulation); 5. Regulation (EU) 603/2013 of 26 June 2013 on the establishment of Eurodac for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the member state responsible for examining an application for international protection lodged in one of the member states by a third-country national or a stateless person and on requests for the comparison with Eurodac data by member states' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European agency for the operational management of large-scale IT systems in the area of freedom, security and justice (Recast Eurodac Regulation).

8. Directive 2008/115/EC of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals (returns directive).

[3]

Current protection system

The analysis of the child protection systems in place in all three countries highlights their inefficiencies and insufficiencies in enabling minors to access protection and safety in a child-friendly, simple, substantial and stable manner.⁹ Regardless of legal provisions, in practice the systems, though generous and extensive, do not really offer a substantial durable solution to the majority of minors – including inclusion in the host countries – but, rather, provide temporal solutions that do not permit them to build an actual plan for the future. It is characteristic that in Spain and Greece, any option to remain or benefit from any social support appears to be automatically and immediately withdrawn upon reaching adulthood, rendering meaningless all previous efforts. It is of no surprise that the majority of professionals are in despair at the lack of a future for the majority of UAMs in the host countries.

In Spain, the competencies in terms of child protection are in the hands of the different autonomous communities and cities, which are considered “public entities for the protection of minors” within their respective territories. In accordance with international, European and Spanish state legislation, as well as regional laws, a foreign unaccompanied minor is entitled to the same protection as any minor with Spanish nationality. Therefore, the tutelary body must ensure the well-being of these children, who are in a situation of greater vulnerability as they have no family in the territory in which they are located.

However, a series of irregularities, mostly regarding age assessment, the concept of legal “helplessness” and the assumption of wardship, that directly and practically impact the life of minors, subject them to constant instability and force them to search for survival tools and self-respect outside the system designed to protect them are underlined in the national report. These irregularities recreate the border logic for children even after they have entered the territory. Too often, partial and instrumentalised interpretations of the law by the responsible authorities result in children who, having passed through the system, still do not have a legal guardian or papers upon coming of age. In effect, it is as if they had never been protected and were treated as adult migrants from the beginning.

9. A full legal overview of each country can be found in the relevant national reports.

In Greece, the lack of a responsible central authority charged with child protection issues – including the best interests assessment (BIA) and best interests determination (BID) of the child and their application to provide proper individualised durable solutions/protection provisions and services – is demonstrated by the existence of several legal instruments and institutions. In addition, in the absence of an official BIA and BID procedure, child protection in Greece can be characterised as fragmentary, occasional and random, since it contains no particular aims regarding the well-being of the children in the future.

Child protection provisions are contained within more general pieces of legislation regarding specific areas (such as reception conditions and asylum procedures) or the relevant governmental services, thus scattering responsibility for their application across several public authorities.

With the child being the common element between all these authorities, guardianship is the only institution that engages all the available public services and procedures from day one. Though the guardian should and could have in the above-mentioned context a decisive and beneficial role to play, the particular national institution has an undermining and disruptive – arguably since 1996 and dangerously on occasion – effect on children’s well-being and future.¹⁰

Nonetheless, the first half of 2018 was characterised by an intensive and unprecedented legal effort to reform major and longstanding problematic institutions (such as guardianship, reception and foster care). The effectiveness and application of these reforms remain to be seen.

Apart from the ineffective institution of guardianship, the obstacles in regularising residence, time-consuming procedures, gaps in reception, misinterpretation of needs, and poor or absent representation also challenge minors’ resilience and mental strength, leading them one way or another towards the margins of society where they are susceptible to exploitation, abuse and actual harm.

10. In 1996, the law amending the Civil Code to include institutions in supporting guardianship entered into force. The law provided for several additional presidential decrees to regulate specification that would allow this amendment to be actually implemented. But the matter has remained pending since 1996 since this additional legislation was never issued. See below for relevant case studies by key informants and professionals.

[4]

General data and regional distribution

At the end of June 2018, 13,151 unaccompanied migrant minors were living in Italy, of whom 92.5% were boys and 7.5% girls. Overall, 92.8% of UASC in Italy were aged between 15 and 17, 6.4% were aged from 7 to 14 and only 0.8% aged from 0 to 6.¹¹ The majority of UASC originated in Albania (11%), the Gambia (10.3%), Egypt (9.3%), Guinea (8.8%), Ivory Coast (8.2%), Eritrea (7.2%), Nigeria (6.7%) and Mali (5.7%).¹²

In the same month, 982 girls were registered in reception facilities. Unaccompanied girls arriving in Italy are generally younger: 15.1% of them ranged in age from 7 to 14, which is considerably higher than the 6.4% of all UASC boys and girls in that age group. Of the girls, 48.3% were 17 years old.

The majority of unaccompanied girls are from Nigeria (36%), Eritrea (17.8%) and Albania (8.9%), followed Ivory Coast and Somalia. A few girls originated in the Gambia and Egypt, which are the countries of origin of the majority of unaccompanied boys.¹³

Of the 18,303 unaccompanied and abandoned children living in Italy on 31 December 2017, 90.8% were hosted in reception facilities and 3.1% living with foster families.¹⁴ Of those in reception facilities, 60.1% were in second reception facilities and 30.6% in primary reception centres. The vast majority of UASC were hosted in Sicily (43.3%), while some regions (Valle d'Aosta, Abruzzo, Trento and Bolzano, Molise) hosted a small percentage.¹⁵ The regions with a higher percentage of UASC in reception centres have remained the same over the years. In 2014, the Joint Conference between the State and the Regions struck a deal on the regional distribution of asylum seekers but failed to agree on the distribution of UASC. As it stands, each region can declare the availability of reception places for minors and receive a partial contribution from the

11. See Ministry of Labour and Social Policy, monthly report on UASC in Italy, June 2018, <http://bit.ly/318zeKz>.

12. Ibid.

13. Ibid.

14. See Ministry of Labour and Social Policy, monthly report on UASC in Italy, December 2017, <http://bit.ly/2WHVgEF>. The Ministry does not have information on the reception facilities, where about 6.1% of minors living in Italy are hosted.

15. See Ministry of Labour and Social Policy, monthly report on UASC in Italy, June 2018.

state. The lack of political agreement on this issue led to the concentration of almost half of UASC in the region of first arrival, and from 2015 and 2017 the absolute number of UASC in Sicily almost doubled.

As of 31 December 2017, 6,410 minors were registered in Spain's autonomous protection systems.¹⁶ The autonomous communities with the highest rate of arrival and reception are Andalusia, Catalonia, the Basque Country and Madrid. Within these autonomous communities, the nationality of minors varies according to the territory of origin; Spain has minors from 81 different nationalities. Most (80%) were from the Maghreb and 67% of the total were specifically from Morocco and 11% from Algeria. Although we did not have access to statistics by gender, according to recent reports 10% of the total number of UAM are girls.¹⁷

Finding statistics in Greece is cumbersome. Though some information can be garnered from the number of children requesting housing, a different number seems to emerge from the statistics provided by the Asylum Service concerning applications from children for international protection. Again, no official information exists on missing children, or on children absconding from shelters. There are also some indicators on children in street situations but the actual number remains opaque. The most reliable source is the National Centre for Social Solidarity (EKKA), which collects figures from the number of applications submitted for housing. Figures as of 15 June 2018 put the number of UAM in Greece at 3,973.¹⁸ Of these, 95.9% were boys, 4.1% girls, while 5.3% were under 14 years of age. UAMs often go undetected, particularly when they arrive from the land border with Turkey (Evros), often evading apprehension and registration by the authorities or NGOs. Thus, these figures should be treated with caution.

Of these 3,973 UAM, 1,141 resided in shelters and the remainder awaited placement: some were in protective custody (216), others in Reception and Identification Service centres in border areas (368), 177 were in camps,

16. All the information gathered in this section is based on the answers to parliamentary questions tabled by Senator María Isabel Mora Grande of the Podemos-En Com Podem-En Marea parliamentary group.

17. Save the Children, *Los más solos*, May 2018: <http://bit.ly/2QIYz9b>.

18. EKKA, *Situation Update: Unaccompanied Children (UAC) in Greece*, 15 June 2018, <http://bit.ly/2XF7zSj>.

among other asylum seekers but not in special sections, 264 in camp safe zones, 467 in hotels being used for urgent transit accommodation, 238 in other types of precarious accommodation (such as awaiting eviction, housed by/with adults, most likely of the same nationality, who are unidentified by the authorities), 690 were classed as homeless (street situation), while the type of residence was not mentioned in 412 cases. Of the 2,832 children awaiting shelter, 78 were girls and 2,754 boys. As of August 2018,¹⁹ the estimated number of minors was 3,290,²⁰ of which 2,242 were awaiting long-term accommodation, 254 in informal housing, 300 at an imprecise location, and 437 homeless. The Asylum Service states that it registered 2,352 UAMs in 2016²¹ and an additional 2,275 in 2017.²²

It is important to highlight that access to services towards integration from the moment of entry is not a linear or straightforward process. Upon entering Greece, a child can be apprehended at the border and therefore detected; depending on the area, though, this is not always the case. By managing to reach the mainland undetected by police authorities²³ or to flee border areas before placement at a shelter or an official transfer to a pre-removal centre,²⁴ a number of children have remained on the mainland completely undetected, unless they approach civil society groups on their own initiative or are apprehended randomly by the police.²⁵

19. EKKA, Situation Update: Unaccompanied Children (UAC) in Greece, 15 August 2018 <http://bit.ly/2H9wYuy>.

20. This number does not include transit spaces, which currently amount to 300 places in 10 safe zones and 550 in 12 hotels.

21. Asylum Information Database (AIDA): Greek Council for Refugees, Country Report: Greece, 2016, pp. 8-9, <http://bit.ly/3007B5Q>.

22. Asylum Information Database (AIDA): Greek Council for Refugees, Country Report: Greece, 2017, pp. 8-9, <http://bit.ly/2H9viA5>.

23. As has been repeatedly observed for populations crossing the land border with Turkey in northeastern Greece, the Evros region in particular.

24. It should be clarified that not all border areas have pre-removal centres. Moreover, in those that do exist, capacity is often exceeded. While protective custody may be ordered in such cases, minors remaining in open spaces usually manage to flee undetected.

25. See Greek national report under 5.2 Reception possibilities for UAMs.

[5]

**Age assessment as
a requirement
for protection:
the real border**

Age assessment is a pivotal procedure that determines the minor's route to protection and long-term integration. All three countries have procedures in place that examine whether the third-country national claiming he or she is a minor is indeed in a place where he or she can benefit from the protection procedures in place, notwithstanding their declaration. Age will determine from the first moment of arrival the rights that the person will enjoy (reception, social support in Spain; permission to remain in Italy) as well as actual protection from being returned to an unsafe country, regardless of nationality (the border procedure in Greece, according to the EU-Turkey statement). All three countries seem to apply age-determination procedures immediately upon arrival, though not all three in an automatic and general manner.

Bearing in mind that the best interest of the child must be prioritised in any procedure affecting a minor's life, any person claiming they are a minor should be given the benefit of the doubt and treated as such until the assessment procedure is completed. In practice – and though relevant legal provisions exist – minors are not given the benefit of the doubt and are treated as adults until otherwise proven. The dire consequences are not only related to living conditions and the dangers related to trafficking and exploitation but also to the further elongation of procedures, causing increased insecurity and, in essence, leading minors to identify irregular routes to protection.

Furthermore, the implementation of the prescribed age-assessment procedures has been severely criticised not only due to their often elusive results and Eurocentric character (each of the three countries provides ample examples) but also at times because of their highly intrusive character, as in Spain where strikingly degrading – if not inhuman – procedures seem to be the practice.

Specifically, in Italy, law 47/2017 clearly defines the procedures to be implemented to assess the age of a minor arriving in Italy without identification documents: the judicial authorities can request a social and medical age assessment when well-founded doubts exist concerning age, using a multidisciplinary approach involving a professional and, if needed, cultural mediator. In theory, minors should be informed about the objectives, method and consequences of the procedure. If doubt persists, the person shall be treated as a minor. The decision concerning age is adopted by the judicial authority and it shall be made known to the child and/

or the guardian, who can appeal it. However, a year after it was introduced, the new procedure has only been partially implemented: In some hotspots, it has been reported that age assessment is carried out using the previous process, which is based on X-ray examinations, and at the request of the police, not the judicial authority. X-ray examinations have proven ineffective as the age range determined is too broad (two years) and it does not take into account psychological, social and other medical issues.

Similarly, Spain follows the framework protocol for UAM which stipulates an age test to corroborate that the migrant is a minor (under 18). This proof of age is necessary in order to grant the declaration of “helplessness” and subsequent guardianship by the tutelary body of each administration with this power. Thus, although article 190.2 of the Regulation of Organic Law 4/2000 states that an age-determination test should only be initiated in the case of undocumented minors, the protocol establishes its own definition of “non-documentation” in which passports, birth certificates, consular identity cards, letters, etc., issued by the authorities of the countries of origin are not considered valid proof of national identity. The prosecutor’s office denies the validity of the documentation and systematically subjects all unaccompanied foreign minors to intrusive age-assessment procedures, including full-body exposure, genital examination, computed tomography (CT) of the medial end of the clavicular epiphysis (Schmeling’s stages). The problem here is not only the systematic intrusiveness of these methods, but that results have been heavily questioned by the scientific community for their lack of accuracy. The conclusions drawn by the Forensic Working Group for Age Assessment of UAMs and ratified by the directors of the Spanish state institute of legal medicine established that the determination of age through the estimation of bone maturity and dental mineralisation is a method prone to large margins of error.²⁶ The Raíces Foundation, which has highlighted the systematic violation of rights that the age-determination procedure has imposed for years in Spain,²⁷ has also denounced the protocol.²⁸

26. Ombudsman of Catalonia, Resolución sobre el proceso de determinación de la edad de los menores extranjeros inmigrantes no acompañados, 2011, <http://bit.ly/31i223w>.

27. Raíces Foundation, Sólo por estar solo: informe sobre la determinación de la edad en menores migrantes no acompañados, 2014, <http://bit.ly/2XErpK7>.

28. The Raíces Foundation issued an appeal to the Supreme Court, which denied it in a judgment dated 31 January 2018 without considering the challenges to the proto-

In Greece, age assessment occurs upon arrival in the first reception facility and its outcome determines the procedures that follow with regards to representation, international protection and detention. Unaccompanied minors are also excluded from the prescribed border procedure²⁹ that could lead to a fast return to Turkey.³⁰ Age also determines if the Dublin Regulation applies in a particular case and what appropriate articles need to be invoked in order to approve and process an application for reunification with one's family in another EU member state.

The Asylum Service also registers information on minors' identity and age as provided by the Reception and Identification Service (RIS) and as declared by the applicant on the mainland if no identification took place in an RIS. Should doubts arise regarding the age of the applicant throughout the asylum procedure (first and second instance of examination), an age-assessment procedure is also available,³¹ which provides for an interdisciplinary procedure, as previously described, and similar procedural guarantees and safeguards, such as the right to challenge the outcome of the assessment as well as representation during the procedure. The identification registered earlier with the Asylum Service can also be corrected in the event of a wrongful registration by providing original documentation (such as national identification papers or a passport) issued by the country of origin.³²

col: 1. The definition of an undocumented child: The protocol includes minors with documentation from their countries of origin, passports and birth certificates issued by their respective embassies and consulates in this category; 2. The lack of guarantees in the age-determination procedure: The protocol violates the right to be heard and the right to legal assistance; 3. The regime of impregnability of the public prosecutor decrees: The decrees that determine the age of most of these children is irretrievable; 4. The regulation of medical tests for determining age: The protocol supports the systematic performance of age tests.

29. Article 60, Law 4375/2016.

30. Article 45, Law 4375/2016.

31. Article 45, Law 4375/2016, referring to Joint Ministerial Decision (JMD) of the Minister for Interior and Administrative Reconstruction and the Minister for Health, 16 February 2016 (Greek Government Gazette, B 335).

32. Article 43, Law 4375/2016.

[6]

**Obtaining legal status:
quality of procedures and
children in legal limbo**

The three national reports outline the major differences regarding the legal status of children, their ability to obtain a residence permit as well as the possibility to be reunited with their family.

While all three countries have a framework enabling minors to access some sort of legal status, minors experience severe delays in practice. In addition, the legal requirements are often impossible to fulfil, meaning many minors anticipate failure from the beginning. Both factors leave children in limbo. Anticipation and insecurity force them to consider illegal and unsafe routes. Depriving minors of a permanent legal status is acknowledged as one of the most persistent obstacles to inclusion in all three countries. Poor representation and the deprivation of social care are also common and pertinent issues.

In Italy and Spain, migration law seems to accommodate the children's needs and specify the procedures to be followed. However, the requirement that minors provide passports or other original documentation from the country of origin represents an unnecessary obstacle that they are not often able to overcome.

In Greece, on the other hand, permission to remain due to minority or any other temporal status does not exist. The asylum route seems to be, in practice, the only available option for UAMs since regular migration provisions are ineffective even for adults. While this is suitable for the majority of the current population group in Greece, where the majority of minors originate from countries highly affected by war and conflict, the problem persists since recognition rates remain low and several nationalities are completely excluded from applying.

In Italy, UAM have the right to obtain a residence permit as underage migrants, and this allows them to remain in Italy until the age of 18.³³ UASC and UAM have the right to seek asylum in Italy under the Geneva Convention on Refugees and European directives³⁴ as transposed in Italy by Legislative Decree 142/2017. UASC and UAM are considered vulner-

33. Article 32 of the Consolidated Law on Immigration (Legislative Decree 286/1998) and Article 28, Decreto del presidente della Repubblica (DPR) 394/1999, if the conditions are not met to issue a residence permit for other reasons.

34. See Directive 2013/33/EU laying down standards for the reception of applicants for international protection. See also Directive 2013/32/EU on common procedures for granting and withdrawing international protection (recast procedures directive).

able persons and the best interest of the child must be a primary consideration during the procedures for obtaining international protection. They shall submit applications for international protection on their own behalf or be assisted and represented by a legal representative: Law 47/2017 allows children to lodge an asylum application with the assistance of the legal representative of the reception centre, without waiting for a guardian to be appointed, a process that may take several months.

According to Spain's national report, the fact that migrant minors are subject to general immigration law poses obstacles in terms of protection and inclusion, since it complicates requirements and places them in a position of vulnerability.

Practitioners deem the lack of an avenue to regularisation, or the long drawn-out procedures for issuing identification documents required for it – which very often exceeds the nine months prescribed in the relevant legislation – as a critical issue.

The consequences of these unnecessary delays are enormously negative for the social and economic integration of UAMs: for UAMs, the difference between obtaining a residence permit before adulthood and not succeeding to do so before turning 18 is crucial: in the latter case, they are unable, among others, to benefit from the permit renewal conditions available to the former while many remain on the street.³⁵ Public institutions often blame procedural lags on the delay of the children's families or consulates of their country of origin in issuing their passport.

In Greece, legislation does not provide for any type of residence or temporary protective regime for unaccompanied minors during adolescence. Minors need to avail of the options provided in the asylum procedure in order to obtain refugee status, subsidiary protection status or permission to reside on humanitarian grounds,³⁶ with all three forms of residence status granting the right to work, education and social security under the same or similar prerequisites as Greek and EU nationals residing in Greece. Minors granted with international protection are additionally entitled to the same benefits they had as applicants, i.e., representation,

35. Save the Children, *Los más solos*, May 2018.

36. The permission to reside on humanitarian grounds is only granted after referral by the appeals authority. Information on the exact procedure can be found in the national report.

schooling, accommodation.³⁷ Furthermore, the authorities are obliged to take into consideration the views of the child.

Access to the asylum procedure on the mainland has been problematic since 2013. A system for granting appointments for registration through Skype was inaugurated in 2014, but access still remains difficult. At the same time, in 2017 appointments secured through Skype were deemed as pre-registration appointments,³⁸ with the waiting period for UAM asylum applications lasting a year or more in many cases between their first-instance interview with the asylum authorities and full registration.³⁹

All the professionals interviewed, as well as representatives of national agencies and organisations, criticised the quality of decisions regarding UAMs.⁴⁰ Troublesome similarities appear in all decisions rejecting the claims of minors. Procedural shortcomings (the absence of a guardian, proper legal representation and aid during the procedure), as well as substantial ones regarding refugee status determination (the lack of any mention or evaluation of the child's best interest, an obvious lack of knowledge concerning particular forms of child persecution in general and in their countries of origin in particular, or proper evaluation of a minor's credibility), make it almost impossible for UAMs undergoing the

37. Article 32 of Presidential Decree 141/2013 being almost identical to Article 19 of Presidential Decree 220/2007.

38. Asylum Information Database (AIDA): Greek Council for Refugees, Country Report: Greece, 2017, pp. 36-39.

Pending applications at first instance for full registration: 31 December 2017

Length of pending procedure	Number
<6 months	24,905
6-9 months	4,146
9-12 months	3,237
>12 months	4,052

39. For example, applications of UAMs registered during 2017 were scheduled for examination several months later. By the end of August 2018, appointments for interviews for the asylum procedure were fully booked until 2020. Most of these minors will have reached adulthood by the time their asylum claim is examined.

40. Network for the Rights of Children on the Move and Greek Children's Ombudsman. See also the Network for the Rights of Children on the Move, annual report, January 2017-January 2018, <http://bit.ly/2Q242aU>. An English summary is available at <http://bit.ly/2Hab7Db>.

procedure on their own to obtain international protection status, with children of Syrian nationality being the only exception.

Lengthy procedures, the tendency to reject the claims of UAMs of particular nationalities even at the second instance, the lack of their best interest assessment in the reasoning of decisions, as well as the fact that the Appeals Authority in practice does not refer cases for humanitarian status to the Ministry of Interior, has resulted in more and more minors finding themselves in a state of limbo for extremely long periods of time, while it is probable that many will remain in the same situation even after having reached adulthood. This brutal reality was noted and the issue was raised repeatedly in 2017 at several occasions and by several NGOs participating in the Network for the Rights of Children on the Move, a network created and supported by the Children's Ombudsman.⁴¹ In November 2017, at the regional meeting of European Ombudspersons for Children held in Athens, the Secretary General of the Ministry of Migration Policy accepted that a legislative solution should be found concerning the legal status of UAMs whose applications for asylum were rejected by the authorities. To date, however, no actual efforts have been made in this direction.⁴²

41. Ibid.

42. Safeguarding and protecting the rights of children on the move: the challenge of social inclusion, Regional meeting of European Ombudspersons for Children (ENOC), Athens, 13–14 November 2017, meeting summary, <http://bit.ly/2LAiecF>. A shorter version is also available in English (see pp. 5-6), <http://bit.ly/2HaXWlz>.

[7]

Family reunification

Though the right to family reunification is acknowledged in all three countries, the legal status of children dictates different procedures to be followed in order to realise this right. While common EU obligations also exist, there are particularities in each country.

Council Directive 2003/86/EC of 22 September 2003 (transposed in Italy by Legislative Decree 160/2008, and in Greece by Presidential Decree 131/2006) on the right to family reunification establishes the procedure by which minor beneficiaries of refugee status can be reunited with members of their family who reside outside of the EU in the territory of the host member state. In Greece, however, there are no known cases where this particular procedure has been implemented. Legal professionals deemed the procedure as “impossible” for all persons with refugee status, regardless of age, due to several practical and substantial impediments imposed by the Greek authorities. Italy and Greece are also obliged to locate family members under the Recast Reception Directive,⁴³ which they have transposed into their national legislation.

In Italy, additional procedures exist under national legislation (migration law) granting the right to family reunification to third-country nationals residing lawfully in the state. The National Committee for minor migrants, in accordance with Article 33 of Legislative Decree 286/1998, is also responsible for locating family members of children in their countries of origin or in third countries, in cooperation with national and international organisations, and can also adopt decisions concerning voluntary return, with the aim of protecting and granting family unity, in accordance with the principle of the child's best interest.⁴⁴ The results of hundreds of family inquiries carried out every year in Italy⁴⁵ show that there are very few successful cases because, in order for them to be accomplished, the child must agree, the family must be available to welcome the child back, social services and the juvenile judge must be in agreement, and the ministry must authorise it. It is a long and difficult process.

In Greece, on the other hand, family reunification in practice can be achieved only in another member state through the Dublin Regulation, which

43. Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection (recast procedures directive).

44. See Decree of the President of the Council of Ministers, 9 December 1999, n. 535, <http://bit.ly/2wBlpXd>.

45. Family inquiries are requested by the courts, by local authorities, and even by the Dublin unit.

is widely applicable and the most common procedure to be followed among Greek practitioners.⁴⁶ Unfortunately, in 2017 member states changed their practices concerning the acceptance of reunification claims, as well as the transfer of successful claims, leading to a backlog of hundreds of persons pending transfer in the following year, a situation that had not been resolved at the time of writing. Germany, in particular, being the primary receiver of family reunification claims, began a very strict, and at times legally unjustifiable, application of the regulation, leading to the massive increase in the rejection rate of cases that would have been accepted only a few months earlier,⁴⁷ as well as to hundreds of persons being stranded in Greece for more than a year after they had received permission to travel, since Germany unilaterally placed a limit on the number of persons transferred every month, invoking administrative reasons.⁴⁸ These practices were and continue to be exhausting for UAMs and the professionals assisting them, since no one knows when they will travel, placing everyone in an impossible situation.

The Dublin procedure is being compromised in both Italy and Greece by the extreme difficulties in accessing, and the long duration of, the asylum procedure, circumstances which are deemed as decisive factors in minors absconding and attempting to reach their relatives through irregular and, therefore, dangerous ways.⁴⁹

46. In 2016, Greece communicated 4,886 outgoing Dublin requests, the majority of which were “take charge” claims for family reunification reasons, out of which 699 concerned UAMs with family members abroad and 451 involved dependency and humanitarian reasons. In 2017, nearly twice as many claims (9,784) were communicated, of which 7,606 were on family reunification grounds. The particular number of claims in 2017 based on Article 8 is not available. For the purposes of this report, claims on humanitarian grounds are also important. The humanitarian category includes all the cases that are beyond the three-month time limit and many refer to UAMs as well, though the exact number is not provided. More than half of these take-charge claims were addressed to Germany. See Asylum Information Database (AIDA): Greek Council for Refugees, Country Report: Greece, 2016, update, pp. 49-50, <http://bit.ly/3007B5Q> and Asylum Information Database (AIDA): Greek Council for Refugees, Country Report: Greece, 2017, update, pp. 53-54, <http://bit.ly/2H9viA5>.

47. Asylum Information Database (AIDA): Greek Council for Refugees, Country Report: Greece, 2017, update, p. 56 (Dublin Procedure).

48. *Ibid.*, pp. 57.

49. Interview with E., legal consultant (June 2018).

[8]

Reception systems: poor case management

Each respective national report contains an outline of the reception systems in Greece, Italy and Spain, as well as their quality and efficiency.⁵⁰ Unfortunately, no specific data emerged from the interviews conducted in Italy. Despite the fact that securing a safe environment is the first step to be taken when deciding where to place a UAM, the national reports highlight insufficient and poor reception services and conditions, which are even harmful in cases, in Greece and Spain. A major issue that surprisingly came up repeatedly in the interviews conducted in Spain and Greece was the extremely poor case management by service providers within reception premises, which was also mentioned as one of the reasons for children absconding and turning to the streets.

Each country has various forms of so-called first reception centres, before the actual placement in a shelter for minors, including hotels, safe zones and even detention in Greece, first reception centres in Spain, and hotspots in Greece and Italy. In all three countries, minors have to remain in these locations for lengthy periods, where they face inappropriate living conditions, a high turnover of staff or a lack of holistic services. Contrary to legal provisions, foster care is not promoted in any of the three countries. UAMs are generally hosted in reception centres and have limited opportunities to be hosted in families.

The accommodation premises in the three countries reflect the heterogeneous nature of the reception systems, which differ according to the legal status of minors, region, funding mechanisms in place, body running the accommodation space and professionals staffing them.

In Greece, national legislation provides for the Reception and Identification Service (RIS), which is responsible for carrying out the identification of third-country nationals (first reception), including UAMs. The living conditions of RIS facilities in border areas have been repeatedly and highly criticised for their deplorable conditions, with the horrific situation in the Greek islands affecting children the most.⁵¹

The discrepancy between UAMs' perception of "time" and the sys-

50. See the national reports.

51. The UNHCR conducted a needs assessment of refugees in Lesbos in May 2018. The report has yet to be released (as of 20 September 2018), but a summary of its findings was presented to the Inter-Agency Working Group in Lesbos on 1 August 2018. See also preliminary observations made by the European Committee for the

tems' untimely response means that when the system is slow and complicated, minors will compensate for its shortcomings by exploring other paths. When minors are kept away from society for long periods of time, such as in cases of behaviour modification centres in Spain⁵² or in detention centres in Greece, it should be anticipated that some of them will later find themselves in scenarios such as ghettos, informal settlements, organised crime groups and labour exploitation.

The common problems highlighted by professionals working in accommodation spaces, particularly in Spain and Greece, are many. Firstly, there is the lack of, or the provision of improper and wrong, information. There is also the inability to develop relations of trust with staff ("because they do not feel they are equal in the conversation, they do not feel actively involved in their integration path"), which is sometimes due to the high staff turnover, lack of training, or the minors' knowledge that the information that he or she will provide will not be kept confidential. These problems are often exacerbated by the absence or insufficiency of cultural mediators and translators, and the lack of specialised training and specialised accommodation spaces for minors with special needs, to name a few. Professionals also mentioned the lack of activities embracing the local community and long-term integration efforts, which contributes to minors' isolation in the system, locked up in a sort of "parallel world" that does not lead to inclusion, but marginalisation. Many professionals also highlighted the lack of time and skills required in order to focus on long-term integration, in implementing activities that would open up the shelter and the children residing there to the local community, and vice versa. "There is nothing structured to foster real integration. Everything

Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), ad hoc visit to Greece, 10-19 April 2018, <http://bit.ly/2HauVXa>, and Human Rights Watch, Greece: Inhumane Conditions at Land Border, 27 July 2018, <http://bit.ly/2DZ0cdU>.

52. For some years now, protection systems have begun to include residential centres designed to specifically house "disruptive children" who are under administrative protection. The creation of these spaces responds to the fact that the tutelary bodies have been encountering a growing number of children and adolescents who could not be controlled in the "normal" centres, and who, according to dominant narrative, "generated all kinds of conflicts". More information is provided in the Spanish national report.

we do remains in a community setting; you are not able to involve people from the outside.”⁵³

Professionals also mention that minors are treated as a uniform group and are not provided with the individualised care and action plan to support their long-term integration into the host community. UAMs all follow the same standardised path and it is as if this artificial mechanism deprives them of “subjective complexity”, of their desires and expectations, their will and the personal obstacles that each minor faces. In many cases, the minor is not asked their opinion, while activities are undertaken to “tick the box”. Minors are not provided with an individualised action plan based on their needs and desires. Rather, they must follow predetermined rules and guidelines that might not be in their best interest but have been drafted collectively to secure the peaceful functioning of the shelter. On the other hand, all testimonies mention the need for an individualised action plan that will help the child realise his or her dreams, particularly for such a complex group with very particular realities.

Disciplinary rules are imposed without much explanation, and the adults they deal with – who are also used to meeting new children every day – usually limit the creation of affective bonds, as they know that the child will disappear from their lives in a short period of time. On many occasions, the fact was underlined that in many shelters staff lack a critical mind or the will to assess how and when to apply certain rules and why. Many incidents occurring in shelters, such as denying entrance to a minor who has not respected curfew hours, calling on the police to discipline children when they have been acting out, make minors even more aggressive. Institutional regulations are also mentioned as one of the underlying causes of why these children may end up absconding from the centres. It has, therefore, been suggested by many professionals that a compromise is needed between the institutional model of inclusion and minors’ expectations.

The Spanish national report states that while physical and/or psychological violence by staff working in accommodation spaces or between children themselves may occur, it is not frequent.

The geographical location of the community is also mentioned as

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53. Interview with D., legal advisor and street operator, Ventimiglia (June 2018).

clearly affecting the potential of minors. Professionals in Greece cited several examples, highlighting the importance of developing shelters outside major cities or in the suburbs to avoid exposing minors to illegal or criminal activities and in order to bring them into contact with more beneficial and positive influences. In many cases, shelters located in non-urbanised environments, where it is easier to achieve stability, have helped minors thrive. Smaller local communities are more open to receiving them and relationships are more intimate. This gives the children the opportunity to better understand the culture and language in a calmer environment as well as to concentrate on themselves in a constructive and creative manner.

Major cities, and the centre of Athens in particular, where many service providers, shelters and public services are located, seem to have a detrimental effect on minors, since all sorts of influences are available and within the minors' reach, at any time. Professionals stress the fact that the so-called "Bermuda triangle" of Omonia–Viktoria–Pedion tou Areos, the central Athens districts whose major open and public spaces are notorious for illegal, dangerous and violent incidents – should be avoided. It was also suggested that NGOs carefully consider in which area they choose to develop a shelter and to avoid precarious neighbourhoods, such as areas with a concentration of brothels.

The limited accommodation capacity and the severe difficulties in accessing long-term housing also seem to further endanger children that remain in a street situation for indefinite periods of time. In Greece, for example, the national capacity in accommodation places is estimated at one third of what is actually required to address the real needs, with the number of children times greater than the number of long-term accommodation places.⁵⁴ Therefore national capacity remains constantly exhausted. The waiting list cannot move forward unless a child absconds⁵⁵

54. The UNHCR also mentions it in Fact Sheet, Greece, 1-31 January 2018, <http://bit.ly/2VWSevY>.

55. Little has been written about abscondment from shelters. A recent report by Faros outlines proposals, similar to those suggested in this report. Namely: it recommends that shelters ensure that minimum standards are met and that basic needs are covered, including food, clothes, psychosocial support, legal aid, recreational activities and access to education and healthcare; provide correct and individualised information to children about the process for legal appointments and family reunification or

from a shelter, leaves upon reaching adulthood or is transferred to another member state.

Nonetheless Greece has positive examples of long-term accommodation, where some shelters empower minors to identify, develop and pursue their life and interests, while others are run by inexperienced staff at best, who insist on applying rules and procedures in a way that does not help minors feel welcome and respected in the so-called “home environment” that the shelter claims to be, in stark contrast to the individualised assessment of needs and approaches towards minors. Some of the worst cases mentioned by professionals involve drug abuse and the association of some residents with criminal networks.

The successful cases, involving minors accommodated in shelters utilising this opportunity to gain some stability and calmness in their life, are mainly attributed to the staff, who work fervently, at times despite the system in place, without training or supervision, to ensure minors are provided with individualised and in-depth care, as outlined in the various handbooks and guidelines available.

relocation procedures; ensure that all members of staff are aware and trained on issues of absconding; address absconding and implement sessions that inform minors of the risks of human trafficking and smuggling. For the Greek authorities and EU member states, it recommends that they provide durable lawful solutions for unaccompanied children in Greece that would present a viable option other than absconding, including integration procedures for asylum applicants in Greece, family reunification and even alternatives such as relocation, faster family reunification and relocation procedures for vulnerable groups including unaccompanied minors, provision of reliable information to unaccompanied minors on the process of their asylum claims as well as family reunification and relocation applications. See *Children on the Run: Experiences of unaccompanied minors leaving shelters in Greece*, 2018, <http://bit.ly/2Hb4zDk>.

[9]

Inclusion as a durable solution

Among the durable solutions, integration in the reception country is the next best strategy for the well-being and development of any child for which family reunification is not an option, due to the non-existence of any suitable family member either in the EU member states or in the country of origin. Even in cases where parents exist back home, states have the obligation not to reunite the child in the country of origin if the parents are not able to provide for the appropriate care and living conditions for the development of the child. The authorities must exercise extreme caution before any such attempt to return a child is made. Regardless of legal status, permission to remain and integrate derives from the state's obligation to protect the integrity, life, health and development of any child. Eminent humanitarian reasons dictate the protection and care of any child.

A procedure that will determine the best interest of any child on an individualised basis is imperative since this procedure will identify the proper solution, serving his or her well-being and development. As a general principle, these procedures should be available and accessible from the first moment of arrival through the competent agencies and actors.

All care arrangements from day one – securing safe and high-standard living conditions, social benefits and facilities, protection of the mental and physical health of the child, education, positive stimulation and recreation, the development of skills and talents or professional training towards future employment qualifications – are equally important for inclusion and have been repeatedly recognised as such.⁵⁶

Successful integration is defined by a continuum of protective and inclusive measures. However, what we have mapped in the European border member states is a continuum of exclusion.⁵⁷

Despite the efforts of civil society, massive funding and attempts to ameliorate the situation for minors, matters still do not work in the

56. See also: Separated Children in Europe Programme (SCEP): Statement of Good Practice (4th revised edition, 2010), <http://bit.ly/2V7WtjH>. Relevant Committee on the Rights of the Child, /General Comment (CRC/GC) 6 22, 23, UNHCR Guidelines on determining the Best Interest of the Child, May 2008.

57. Commissioner for Human Rights, Council of Europe, Greece: immediate action needed to protect human rights of migrants, 29 June 2018, <http://bit.ly/2Vp7WAp>.

smooth and timely manner necessary to ensure both the child's protection and his or her long-term inclusion in society. In talking about children's inclusion, professionals reacted with frustration and disappointment. As one psychologist summed up our own conclusions from this research: "We cannot put them through all this ordeal of consistent re-traumatisation and then say, 'Okay, now we are going to integrate you; we are not discussing integration, but reintegration. These children have already been excluded.'"

The essence of the matter, as revealed by all interviews, is that the everyday reality and treatment of children, systemic obstacles, deprivation of actual care and decent living conditions, poor case management and malpractices, force children into the margins of society, making them susceptible to all sorts of ill-treatment, abuse and exploitation. The reality proves extremely challenging for children's patience, depending on a great extent on their personal resilience, abilities, character and even luck, the final factor proving to be decisive on most occasions. Much depends on the time of arrival, the shelter a child finds itself in and, most importantly, the quality of the professionals that will surround it. Circumstances are no better for service providers. Fulfilling their duties to the children in this context becomes an ethical obligation to help a child survive, demanding of them a degree of perseverance that often comes at a great personal cost.

Regarding the long-term integration of UAM in Spain and Greece, both reports conclude that child protection systems are not inclusive. In fact, in both countries, national institutions, relevant administrative authorities and the wrongful application of the otherwise extensive legal provisions create obstacles.

Institutional strategies are not designed for minors and the professionals supporting children do not have sufficient tools or even feel that institutions may sanction critical approaches. As one professional noted: "The red line of the institution. Fear of losing my job because I talk too much, complain too much."

Most times, inclusion depends solely on a professional's personal initiative, creativity and perseverance to provide an alternative solution that benefits the child, in an individualised manner, taking the minors' voice into account. In essence, inclusion is linked to the individual factors of the

professionals in question, as well as to the internal procedures of the institution – usually NGOs – for which they work. It also depends a lot on the vision that each professional has about childhood, adolescence, UAMs, the function of education, etc.

[10]

Detention

Regardless of international human rights legislation, soft law and several international guidelines, EU law – and consequently relevant national legislation – still allows for the detention of children.

In Italy, the detention of UAMs can last a few days to several weeks, before, during and – in some cases – after identification in the “hotspot centres”.⁵⁸

In Spain, there are seven Immigrant Detention Centres (IDC), in which, as several reports in recent years state, minors have been held mainly due to conflicts in the age-assessment processes, contrary to national law. Furthermore, data on the detention of minors is very opaque, and the available information usually biased.

In Greece, pending identification procedures or/and referral to proper accommodation facilities (shelters), minors remain under a regime of “deprivation of liberty” within Reception Centres (as is the case for all persons), usually separately from the adult population.

Detention is to be avoided and used as a “last resort” for a period of time that cannot exceed 25 days, but can be prolonged for an additional 20 days, if – due to exceptional circumstances, such as a significant increase in arrivals of unaccompanied minors – a referral is not possible within the set time limit, despite the efforts of the authorities.⁵⁹ During that period children are entitled to engage in recreational activities, play-time, education and other activities suitable for their age.

If it is deemed necessary, detention takes place after the RIS authorises the “deprivation of liberty”, with the transfer of the children to the nearest pre-removal centre. Detention can also take place at any time on the mainland if an unaccompanied child is located by the police authorities, until the EKKA is able to respond. Other holding facilities, such as police cells, are not excluded for use as detention centres in the event that pre-removal centres lack the necessary capacity to “host” minors.

Though not mentioned in any relevant legislation, the detention of minors for the purpose of a safe referral occurs in facilities under the

58. See Italian Coalition for Civil Liberties and Rights, Considerazioni a cura del progetto In limine relative all'attuale funzionamento del centro hotspot di Lampedusa alla luce delle violazioni riscontrate dalla Corte nella sentenza *Khlaifia e altri c. Italia*, 27 June 2018, <http://bit.ly/2JTwwVFO>.

59. Article 14 (8) & 46 (10) a, Law 4375/2016 amended, though insignificantly, by Law 4540/2018.

police's authority, as above, but is authorised by the local public prosecutor for minors or first instance prosecutor, as "protective custody",⁶⁰ a measure based on the unlimited authority of the public prosecutor to order whatever measure is deemed appropriate and necessary for the protection of children and for an undetermined period of time. It should also be mentioned that because children are not detained for administrative purposes during this phase (i.e., for the purpose of return or deportation), the legal remedies to challenge administrative detention do not apply. These particular decisions cannot be challenged before any authority or court. The public prosecutor can only lift the protective custody if accommodation in a shelter or camp has been secured or a competent and suitable family member can prove to the prosecutor their ability to undertake the care and housing of the child.

60. A form of protective custody can be found in Greek national legislation, applicable to persons who are deemed a danger to public order or themselves (i.e., persons with mental illness, cases of intoxication, minors that have disappeared willingly or unwillingly from their caregivers) and can take place outside detention premises and until they can be returned to the care of their families (Presidential Decree 141/1991).

[11]

Representation/ Guardianship

While all three countries have widely divergent systems of representation and guardianship, none efficiently and effectively respond to the actual need on the ground: a trained and “suitable” person who will stand by the minor throughout the complicated maze of accessing protection and long-term integration in a timely, and above all, supervised manner.

In Italy, the Civil Code⁶¹ and Law 184/1983⁶² state that a guardian shall be appointed by the tutelary judge for the minor when both parents are dead or when, due to other reasons, they cannot exercise their parental responsibilities. The guardian must be “a person suitable for the role, with unobjectionable conduct, who must safeguard the child’s right to education and protection, and take into account his/her capacities, desires and aspirations”.⁶³ The judge can provide for institutional guardianship, nominating as guardians the public local authority or, temporarily, the head of the reception centre or residential facility where the child is hosted. Article 19 of Legislative Decree 142/2015 outlines the processes for the appointment of the guardian for unaccompanied migrant and asylum-seeking children. Public authorities must immediately inform the tutelary judge of the presence of an unaccompanied minor and the judge shall appoint a guardian who shall assist unaccompanied minors in all the processes related to asylum application.

Law 47/2017 states that every juvenile court shall establish a list of “volunteer guardians” selected and trained by the Regional Ombudsman for Children. The function of the voluntary guardian represents a challenge for the Italian legal system: it is as groundbreaking as it is risky. Potentially, the function is of great benefit for minors: If the system works and the voluntary guardian can guarantee a whole series of actions – approaching the health system or requesting an identity card, steps which are very difficult for a minor – this also increases the minor’s chances of being heard. “There is everything to be gained by implementing relationships, by structuring a path. As soon as you turn 18, you would have a

61. Articles 343–389 of the Civil Code.

62. See Commissione parlamentare per l’infanzia, L. 4 maggio 1983, n. 184. Diritto del minore ad una famiglia, <http://bit.ly/2Xsao62>.

63. Ibid.

lifeline should your network peter out.”⁶⁴ The idea of voluntary, one-to-one guardianship was conceived precisely to encourage the inclusion of the child, in an effort to avoid keeping them waiting for too long in an unchanging situation, locked up inside residential structures. The critical issue is that there is no effective awareness on the part of the volunteers of children’s vulnerabilities, their experiences, the migratory project and the system dynamics in which the children find themselves in.

In Spain, guardianship begins with the official legal statement of “helplessness” (*desamparo*), which can be granted by an autonomous community, that guarantees minors’ access to the relevant protection system and services. Depending on the autonomous community, the procedure can vary in terms of duration, but a maximum time limit of three months must be respected for the assumption of the guardianship by the public entity for the protection of minors, as outlined in the Minors’ Protocol.⁶⁵ Another issue related to the declaration of helplessness is that the tutelary bodies often use the family situation of the child in the country of origin to decide whether to award this status or not.

After the declaration of helplessness, the minors are to be provided with the basics: clothing, food and accommodation. Guardianship is usually left to entities such as NGOs or religious institutions, which are publicly financed through tender appointments. They must cover the responsibility of protecting and promoting the child’s best interests, guaranteeing his or her access to education, legal assistance or interpretation and translation services when necessary, enabling the child’s social inclusion and providing him or her with adequate care. Concerning the specific issues relating to asylum applications, the Minor’s Protocol states that the guardians will take care of providing the minor with all the necessary information and guaranteeing him or her access to the procedure.

In Greece, regardless of a minor’s legal status, the obligation to secure legal representation through the appointment of a guardian is included in all the reviewed legislation, which refers to the public prosecutor and the national institution of guardianship prescribed by the Greek Civil Code,⁶⁶

64. Interview with I., project coordinator in a UASC facility, Rome (May 2018).

65. For the text of the Protocol, see *Boletín Oficial del Estado*, No. 251, 16 October 2014, Sec. 3, pp. 83894-83919, <http://bit.ly/2wDXbvk>.

66. Article 1589-1654 of the Civil Code.

as amended by Law 2447/1996⁶⁷ and also applicable to children of Greek nationality. The Greek guardianship system has been severally and repeatedly criticised over the years⁶⁸ and remains insufficient, requiring broad legislative amendments⁶⁹ to relieve prosecutorial authorities of their extreme caseload with UAMs and to secure actual and substantial representation of children in their everyday life.⁷⁰

The local public prosecutor acts as a temporary guardian for hundreds of children within their territorial authority until a permanent guardian is successfully nominated by the court.⁷¹ Over the years, prosecutors have struggled to realise what is required of them under the law.⁷²

After the influx of refugees and UAM to Greece that resulted in large

67. Law 2447/1996, amendment of the Civil Code concerning adoption and guardianship, Government Gazette, A 278.

68. CoE Committee of Ministers, Outcome of 1214th Meeting (DH) 2-4 December 2014 (5 December 2014). CM/Del/Dec (2014)1214, 20.

69. Law 4375/2016 provides (Article 17) for the issuance of a Presidential Decree in the future regulating the process of appointing a guardian or representative of UAMs. Article 34 explicitly provides for the capacity of the legal representative of a non-profit organisation to be appointed as a permanent guardian. Article 45 refers to Article 19 of Presidential Decree 220/2007 as to the procedure to be followed for the appointment of a permanent guardian but additionally regulates for the first time within the Greek legal framework particular obligations and guarantees for minors.

70. See Greek national report: 7. Absence of substantial representation and participation of children, p. 41, which outlines a recent submission before the ECtHR regarding the attempt to return of a minor to the West Bank, which was prevented after his guardian's (public prosecutor) decision was halted by relevant interim measures. Currently pending on the merits after communication to the parties. Application no. 34298/18, A.J. v. Greece, 22 August 2018, <http://bit.ly/2PVZqTv>. According to professionals, it is a truly an unprecedented case for Greece and one might wonder if this is indeed the first such incident, or if it is just the first that reached a court. It is a shocking case, particularly for legal professionals with long years of experience in the field of refugee protection, who describe it as an "unimaginable situation".

71. It should also be mentioned that the authority of a public prosecutor is territorial. In cases where minors change location, temporary guardians – including the responsible public prosecutor – change as well, disrupting the continuity of decisions made or actions already taken. At the same time, the consistency of decisions is not guaranteed, as every public prosecutor has unlimited authority to make decisions affecting the child's best interest on his or her own, without ever meeting the child.

72. "[S]eems that the procedures followed in order to ensure the representation and protection of unaccompanied children depends on the discretion of the prosecutor

numbers of refugees and minors residing in almost every Greek prefecture, all public prosecutors were preoccupied, many of them for the first time, with the problem of the representation and guardianship of UAMs in their areas. The practices, interpretation and implementation of the relevant provisions differ between prosecutors and prefectures, depending on the case. In practice, the prosecutor, acting as a temporary guardian by law, authorises civil society actors, particularly legal or social professionals from NGOs, to proceed with certain actions to ensure representation of the minor and access to the asylum procedure in their name (the prosecutor's). Depending on the public prosecutor and the practice within a particular prefecture, this authorisation can assume many legal forms. An unfortunate consequence of the fragmentation of available care is that, in practice, all actors implicated in case management indirectly decide the course of action for every child.

All interviewees agree on the need for one adult to act as guardian and counsel for the minor. This person should not be drawn from the temporary occasional staff of NGOs but should be a well-trained and suitable person who will support and help the minor from the moment of arrival until adulthood. New relevant legislation on guardianship neither secures the actual participation of the child in the decision-making process nor offers any opportunity for them to express their objections or challenge the relevant decisions.⁷³

and on the supporting services that the prosecutor may have at his or her disposal (such as NGOs, social services).” UNHCR, France Terre d’Asile, Save the Children and Praksis, Protection of Children on the Move: Addressing protection needs through reception, counselling and referral and enhancing cooperation in Greece, Italy and France, July 2012, <http://bit.ly/308n8k7>.

73. Though at first the significance of such a remedy, including more precise and strict guaranties securing children’s right to be heard, might not be obvious, and often remains in the sphere of theoretical discussion, one of the key informants shared a very recent case which is currently pending against Greece before the ECtHR that contains all the problematic aspects of child protection in Greece, and of guardianship in particular. It also provides an incomparable example of fragmentation of care and case management as well as the detrimental effects that inexperienced professionals can have. See n. 70.

[12]

Exploitation

Homelessness and the street situations minors find themselves in are the major factors in exposing them to exploitation. However, they are not the only ones.

In Greece, minors, in an attempt to save money or as a means of survival, may become victims of all sorts of exploitation. However, the teenagers may not understand this exploitation for what it is. Others may be victimised and tricked into becoming involved in illegal activities, but professionals underline that most of them get themselves involved in such situations willingly and without realising the possible consequences of their behaviour, not perceiving themselves as victims. Most of them maintain an illusion of being in control of the situation, something which they choose for their own benefit and can stop doing if they wish.

In Italy in 2017, the number of minors in protection who fell victim to trafficking and exploitation amounted to 200, of whom 196 were girls and 4 were boys. Of the total, 46% were sexually exploited. Of them, 93.5% were Nigerian girls between the ages of 16 and 17.⁷⁴ The victims of trafficking, particularly those from Nigeria, come directly through a system to which they are already linked. The journey to reach Europe managed by the trafficking circuit “must be redeemed by those who take them to Italy, who finance the journey. From Libya they arrive in Italy, where the organisation insiders reach them. But, first, they let them pass through the reception system, so that they can access the asylum request and the residence permit.”⁷⁵

When the girls arrive at the police station, they fill out the C3 form,⁷⁶ get a temporary residence permit, escape from the centres and reach the “madams”,⁷⁷ who then put them on the street. For years they remain tied to their madam, until they repay their debt.

All professionals and key informants interviewed in Greece were

74. See European Asylum Support Office, Rapport d'information sur les pays d'origine (COI): Nigeria Traite des femmes à des fins sexuelles, October 2015, <http://bit.ly/2Z8tZc8>. For a focused ethnopsychiatric analysis on young Nigerian girls involved in prostitution trafficking, see Simona Taliani, “Coercion, fetishes and suffering in the daily lives of young Nigerian women in Italy, *Africa* 82/4 (2012), 579-608.

75. Italian national report.

76. C3 is the asylum request form.

77. The madams mediate and control the trafficking and exploitation of girls. By “sponsoring” their journey, the madam imposes a debt that is very hard to clear.

directly or indirectly aware of minors in their care being exploited, through illegal employment, sexually or by criminal networks implicated in theft and the drug trade.

[12.1] Labour exploitation

In Greece, while a few testimonies refer to the labour exploitation of unaccompanied minors in the Northern Aegean islands, the majority of instances occur on the mainland. Professionals have noted that minors from Pakistan and Bangladesh in particular are usually unaware of the fact that they have the right to be cared for in the EU without being obliged to work. Their anxiety not to fail their families or even fear that their family might persecute them should they return empty-handed, starts them down a certain path upon arrival.

Minors work illegally in agriculture, laundries, gas stations or factories. Some testimonies say they can earn 15-17 euros a day, others much less, while there have also been cases where minors go to work – particularly in agriculture – and do not get paid at all, having to walk home from the town of Thiva after a full day's work. There are even testimonies of minors being given electric shocks because they demanded their money.⁷⁸

Depending on where they are accommodated, pocket money is given to adolescents and they can decide how to spend it. There are cases, where, due to the grave delays in receiving instalments, shelters rely on donations, including of clothes and shoes. However, the minors are at an age where they are forming their character, so their image is extremely important to them. Having to wear shoes or clothes that they do not like or which are too big for them leads them to find money for their clothes elsewhere.

[12.2] Sexual exploitation

The sexual exploitation of unaccompanied minors is a well-acknowledged phenomenon. The various types of sexual exploitation networks for both

78. The professional mentions a video communicated to her by the victim's brother.

boys and girls in Greece have been documented.⁷⁹ These include networks involving men and women (Greek nationals) in the so-called “Bermuda triangle” in Athens (encompassing Pedion tou Areos, Viktoria Square, Omonia Square), cases involving compatriots of the minors, and sexual exploitation by other minors in shelters, etc. The frequency and severity of each case should be examined in great detail and solutions should be sought on an individualised basis.

Sexual exploitation is, however, much more difficult to examine than work-related exploitation using the methodology developed in this research, as the majority of professionals highlighted that minors do not easily discuss this matter with them.

Some are ashamed and embarrassed to open up. They also do not feel comfortable discussing this topic with persons they see as “staff”; they know that if they mention it to one member of staff, the rest of the staff in the shelter will also find out. Furthermore, the frequent staff turnover and the subsequent mobility of minors – whether of their own choice or due to the transfer from the islands to Athens or to a number of accommodation spaces – also makes the building of lasting relationships of trust, which could lead them to open up more about the problems they face, more difficult.

Others believe nothing will change even if they speak to someone, thus deepening their alienation from the child protection system in place, which leads them to trust and listen to their compatriots and friends more. Out of all the professionals interviewed, only one had a child inform her and ask for help. Again, this involved a child in a shelter on an island that was given the time to develop a beneficial relationship with its caretaker.

The only tools available to professionals in identifying such cases are awareness and observation gained through time, and long-lasting relationships of trust built with members of the local community.

79. FXB Centre for Health and Human Rights, Harvard University, *Emergency Within an Emergency: The Growing Epidemic of Sexual Exploitation and Abuse of Migrant Children in Greece*, 2017, <http://bit.ly/2RNgv33>.

[12.3] Drug abuse

There are testimonies that point to the use of recreational drugs by minors, as well as cases where they are used as drug smugglers. Sisa, in particular, is one of the most common of these drugs since it is sold very cheaply and is very easy to find in central Athens. Called the “cocaine of the poor” or “austerity’s drug of choice”,⁸⁰ its long-term side effects are insomnia, delusions, heart attacks and violent tendencies.

The main cause professionals attribute to the exploitation of minors is the need for money, starting from sums to cover basic needs – which may in some cases seem trivial from our perspective – to more substantial requirements.

How do minors see their integration?

The response to this question is only relevant for minors living in a steady and safe environment. In Greece, these environments only exist in shelters. It is impossible to speak of the integration of minors who are in precarious accommodation or homeless.

Therefore, for those living somewhere safe, their requests are education, to learn the language, to access health services, to work, the freedom to develop relationships and activities outside the accommodation and to earn pocket money.

Minors experience integration like a vulnerable excluded group. They tick all the vulnerability boxes, while they are made feel as members of a group, not as individuals.

80. “Austerity’s Drug of Choice,” Vice, 16 May 2013, <http://bit.ly/2Jbw2s3>.

[13]

Conclusions and recommendations

The mapping of the child protection framework in Greece, Italy and Spain highlights how malpractices lead minors to social exclusion and even exploitation. Since the majority of minors struggle to secure the means of survival and security in their everyday life, discussions on their inclusion seem a far-reaching luxury, turning exploitation often into a “solution”, something minors avail of themselves. However, it is interesting to note that all sections of this research on the reception and integration process for unaccompanied minors reach similar conclusions, identify similar obstacles and lead to similar recommendations.

What becomes abundantly clear is how the child protection frameworks retraumatise minors and waste their actual potential. The fragmentation of care, as well as repeated changes in environment, forces children to share their personal stories with new, different actors, again and again, exhausting them and, at times, even insulting them, since it seems to them that this repeated “torture” takes place for no apparent reason. They have been asked to share their story in such great detail, and to so many different people and bodies, that they lose faith in the possibility of any change in their lives, of being able to trust anyone. A common query from professionals is why an online system that could provide information on the child's movements, interests, needs, desires and background is not available to all relevant stakeholders so children can escape this continuous torment.

Even then, by the time these children obtain – if they even manage that – legal status, and secure and stabilise their everyday surroundings to the point of being free to focus finally on the things that will assist them in becoming an equal and independent part of society in adulthood – by participating in the educational system, undergoing vocational training, engaging in social activities and the cultivation of personal talents and skills – in the majority of cases everything will be taken away from them upon turning 18.

Recommendations for all three states

- Facilitate children requesting asylum status in accessing the procedure and offer them substantial support in making their claim, even in the absence of a lawyer or guardian;
- Offer extensive training to all staff involved in child protection issues,

including asylum service case workers, appeal committees and NGO staff, with child protection issues, specific forms of child persecution as well as ways and means to assess a child's credibility;

- Ensure that all minors, regardless of nationality, are dealt with in a child-friendly manner, offering flexibility, leniency and the benefit of doubt;
- Allocate the representation of minors through a competent guardian at all times in a simple and immediate manner. Avoid moving the child or changing his or her guardian for no significant reason;
- Enhance the coordination between the numerous actors involved in the protection of UAM, ending the fragmentation of the current protection system;
- Secure timely access to the asylum procedure;
- Provide full access for all minors to quality public health care, education and training opportunities;
- Abolish all forms of deprivation of liberty;
- Extend protection and permission to remain for young adults.

Specific recommendations for Greece

- Address legal initiatives for UAM in legal limbo;
- Offer protection status based on children's minority status, regardless of any asylum or immigration requirements;
- Provide permission to remain in the country, as well as access to all social and economic rights and services, to all children upon identification;
- Enable the renewal of residence status upon adulthood, under simple and flexible requirements, thus offering applicants the chance to build a future for themselves also as young adults;
- Refer minors to the relevant ministry for humanitarian status based on their minority status in the event of a rejection;
- Initiate legislation for procedural guarantees securing the child's participation in all procedures, as well as for the institution of a child's advocate with the capacity to represent the minor in challenging relevant decisions;
- Implement the provisions of the ministerial decisions regulating age assessment to the letter and spirit of the law;
- Maintain existing shelters and establish new ones to ensure that minors are immediately removed from border areas and detention premises of all kinds;

- Implement fully all directives transposed into national legislation;
- Address issues of possible discrimination among asylum case workers when accessing the claims of particular nationalities.

Specific recommendations for Italy

- Provide for the mandatory distribution of children on a regional basis to local authorities, in order to achieve equal distribution of UAM facilities throughout the state;
- Provide in-transit UAM support, designed for the minor migration project;
- Plan shelter centres with smaller capacities that can host both Italian and foreign UAM and UASC, as foreseen by national legislation;
- Find a compromise between the institutional model of inclusion and minors' expectations, focusing more on work integration. Create further measures to "accompany" the passage to adulthood (work orientation, university grants);
- Provide intensive training for voluntary guardians on administrative processes and inclusion;
- Monitor the effective implementation of age-assessment procedures as required by Law 47/2017.

Specific recommendations for Spain

- Terminate the intrusive age-assessment model;
- Abolish the institution of behaviour "modification centres";
- Guarantee effective judicial protection within the framework of the Child Protection Law and independent of the administration;
- Regularise and issue the declaration of helplessness to all children without delay in order to provide residency with a permit to work retroactively to the day they entered the child protection services;
- Guarantee proper assessment for children throughout the asylum processes and treat their cases accordingly and not through the regular migration law, if it is the case;
- Inform migrant children and adolescents who meet the requirements (two years of tutelage and one of residence) that they are allowed to acquire citizenship.

Recommendations to NGOs working in child protection

- Capitalise on training and securing the most experienced personal possible in providing holistic, sufficient and quality services for children;
- Support and positively supervise field workers, empowering them and guarding them through their tasks and duties;
- Ensure that staff are properly selected and trained, that each minor is treated as an individual and provided with the necessary time;
- Support children's initiatives and facilitate their participation in the everyday life activities of shelters.
- Apply rules and procedures in a manner that secures their actual goal – which is safety – and not in a generalised and blind manner regardless of the situation at hand.

Recommendations to the EU

- Provide and secure additional funding in order to increase capacity for the actual number of minors requiring quality reception conditions, in long-term accommodation facilities (shelters). Maintain existing shelters and institute new ones in order to ensure that minors are immediately removed from border areas and detention premises of all kinds;
- Simplify minor transfer procedures to EU countries throughout the family reunification right foreseen by the Dublin Regulation;
- Ensure safe passage for minors and ensure the family reunification procedure;
- Remove provisions from EU legislation for the detention of minors.

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CHILDREN CAST ADRIFT

The Exclusion and Exploitation of Unaccompanied Minors (UAMs)
in Greece, Spain and Italy. Comparative Report

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