Europe of Migrations: Policies, Legal Issues and Experiences

Edited by
Serena Baldin
and Moreno Zago

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Experiences of Migration

The Common European Asylum System and the Social Emergency of Unaccompanied Foreign Minors

SERENA BALDIN, MORENO ZAGO[*]

1. INTRODUCTION

Asylum is a form of protection given by a State on its territory to persons escaping persecution. Historically, many ancient peoples recognized a sort of religious immunity or privilege that could be regarded as the precursor to the present right to asylum. In the past, certain places or buildings were inviolable so that persons could find refuge and enjoy protection from their pursuers. In those cultures, surrounded by superstitions and taboos, violation of a refuge was considered a sacrilege against the deity (Cherubini 2015, 1 ff.). Nowadays, in many European countries asylum is guaranteed by both constitutional provisions and international obligations. After a brief explanation of the progressive assimilation of the constitutional concept of asylum to the refugee status regulated by the 1951 Geneva Convention, that has as a consequence the restriction of the potential beneficiaries of the asylum, the following Sections intend to date back to the EU milestones in the ambit of the Common European Asylum System (CEAS) from

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the legal point of view (§ 2) and to put forward the present EU proposals elaborated to strengthen the asylum system in the Member States (§ 3). Subsequently, the phenomenon of unaccompanied foreign minors in the EU will be analysed (§ 4), pointing out the main aspects of "The Action Plan on Unaccompanied Minors" (§ 5), and the contributions that sociologysts and other experts can give in order to emphasize the importance of an approach that enables these minors to understand the new cultural references and to be understood with their own cultural heritage and their own experiences (§ 6).

In a nutshell, an asylum seeker is anyone who has fled persecution in her/his home country and is seeking safety in another country, but has not yet received any legal recognition or status related to the asylum. Each State may select the specific criteria useful in order to grant asylum to migrants. Several European countries specify in their respective constitution the requisites aliens must have in order to obtain asylum, as to be persecuted for their political opinion or activity in the defence of rights and freedoms (Bulgaria, art. 27.2; France, art. 53.1; Germany, art. 16A; Slovakia, art. 53; Slovenia, art. 48), or to be denied the right to exercise their democratic freedoms (Italy, art. 10.3), and in one case the constitution also paves the way for other grounds not indicated in the document (France, art. 53.1). In other cases there is only a mere referral to a statute (Poland, art. 56.1; Romania, art. 18.2; Spain, art. 13.4), or there are clear references to international and European agreements (Germany, art. 16A). Conversely, few constitutions point out the reasons for not granting asylum, i.e. having being prosecuted for non-political crimes and activities contrary to the fundamental principles of international law (Croatia, art. 33, recalling art. 14 of the Universal Declaration of Human Rights), and having violated the fundamental human rights and freedoms (Slovak Republic, art. 53).

Italy and France represent interesting examples of the distorsion of their respective constitutional concepts of asylum in light of the international obligations (on the Geneva Convention see below in this Section). In Italy, a foreigner who is denied «the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law» (art. 10.3 Const.). Constitutional asylum has two characteristics that distinguish it from the instrument regulated in the Geneva Convention. Firstly, its reason for justification is solely the impediment of the right to exercise the democratic freedoms. Unlike other constitutions and international agreements, it is not necessary to have been persecuted or to be at risk of persecution in the event of the return to situations where the life and freedom of an asylee would be under threat. This broad provision, granting a right to aliens who come to countries that deny fundamental freedoms, a subjective right that can be claimed before a court, is thanks to some founding fathers who were opponents of the Fascist regime and experienced the value of international protection (Cosimo 2004, 49). Moreover, the reference to the freedoms recognised in the Italian Constitution is due to the consideration that other countries might

not have a long bill of rights, or it may not be effective. Secondly, the core of the right to asylum is given by another two rights: the right to entry and the right to reside in Italian territory (Benvenuti 2007).

Since the introduction of the Constitution in 1948, Italy has never passed an act to implement the constitutional provision. This does not imply a complete lack of protection, because the Court of Cassation declared the direct applicability of the right to asylum on behalf of any civil court (Court of Cassation, I civil law section, April 9th 2002, no. 5055; see also Olivetti 2008, 162 ff.). Hence, the right to asylum «is not only a right to apply, but it is also a right to be granted asylum when the specified conditions are met, even in the absence of a law governing the exercise of that right» (Nascimbene 2011, 230). In parallel to the very limited use of asylum in practice, partly because Italy has never been a country of immigration until the Eighties, there has been a systematic distortive reference to international refugee status instead of constitutional asylum in the normative system, starting with the first piece of legislation related to immigration only adopted in the Nineties. The act no. 39 of 1990 on «Urgent norms in matter of political asylum, entry and residence of the extra-communitarian citizens and regularisation of the extra-communitarian citizens and stateless people already present in the territory of the state» consists of an unique article devoted to «Refugees», where reference is made to the Geneva Convention and the related procedures for the asylum application are defined. The only matter being that the category of the beneficiaries of the conventional asylum is more restrictive than that of the beneficiaries of constitutional asylum. Even the subsequent piece of legislation follows this very imprecise linguistic approach producing undeniable legal effects (for further considerations, see Nascimbene 2011, 229 ff.; Grasso 2012, 1537).

In France, the right to asylum is regulated by art. 53.1 Const.: «The Republic may enter into agreements with European States which are bound by undertakings identical with its own in matters of asylum and the protection of human rights and fundamental freedoms, for the purpose of determining their respective jurisdiction as regards requests for asylum submitted to them. However, even if the request does not fall within their jurisdiction under the terms of such agreements, the authorities of the Republic shall remain empowered to grant asylum to any foreigner who is persecuted for his action in pursuit of freedom or who seeks the protection of France on other grounds». This provision was inserted in the text in 1993, after a constitutional ruling of the Conseil constitutionnel on the recognition of the fundamental right to obtain asylum as stated in the preamble of the Constitution of 1946, to which the preamble of the Constitution of 1958 expressly refers (Décision 92-325 DC of 12th August 1993). On that occasion, a reference to agreements with European States in this field was also made. Constitutional asylum is conceived both as a right of the individual and as a right of the State. This instrument would seem more restrictive than the conventional asylum because the former is referred to persons who must be involved in ac-

tivities in favour of freedoms (Lambert et al. 2008, 18). But the grant may also be justified on other grounds not formally specified, and this represents a form of «discretionary asylum» left in the hands of the State, completely free to grant asylum to whom it wants. Similar to the path followed by Italy, as a matter of fact the French constitutional asylum is an obsolete solution. Furthermore, the Act no. 98-349 of 1998 regarding the entry and residence of immigrants and the right to asylum, in force until 2003, regulated both the constitutional and the conventional asylum, without making any procedural distinction between these two instruments; a practice that is still prevalent today (Rescigno 2011; Lambert et al. 2008, 19 ff.).

International protection derives from art. 14 of the 1948 UDHR, that asserts: «1. Everyone has the right to seek and to enjoy in other countries asylum from persecution. 2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations». In relation to the right to seek asylum, the drafting history of art. 14 demonstrates that this mechanism is not an effective right belonging to non-nationals, but rather a "gracious" concession entirely depending on the willingness of the State. Not the right to obtain asylum, but the right «to seek and to enjoy» asylum is affirmed in the Declaration: it was only perceived as a right to leave a country to escape persecution. It implies that States are not obliged to grant asylum or to take into consideration the request. For this reason, it has been said that art. 14 UDHR is «artificial to the point of flippancy» (in this sense Sir Lauterpacht, quoted by den Heijer 2012, 142). Likewise, the 1967 UN Declaration on Territorial Asylum asserts that the right to seek and to enjoy asylum is without prejudice to the sovereignty of States (art. 2.1).

Nonetheless, the principle laid down in art. 14 UDHR was of particular importance for the 1951 Convention relating to the protection of refugees (the so called Geneva Convention or Refugee Convention), where standards for the treatment of refugees are defined. As stated in this document, only persons facing persecution or having a well-founded fear of persecution in their country of citizenship and/or residence for reasons of race, religion, nationality, membership of a particular social group, or political opinion, and also those unable or unwilling to return to that State, are considered refugees (art. 1.A.2; see Chetail 2014, 24 ff.). Among the obligations which are crucial to achieving the goal of the Geneva Convention is the respect of the principle of non-refoulement, that is the duty not to return refugees to any country where they would be at risk of persecution (art. 33). Thus, refuge is understood as a protection against refoulement, and from which is also derived a sphere of rights, including access to courts, healthcare, public education, labour and social security.

Hence, even if constitutional asylum is different from refugee status, there has been pointed out the emergence of a trend regarding the EU institutions, and consequently diffused among its Member States, that has blurred this distinction by overlapping the refuge to the asylum, thus using the term asylum improperly

for the category of refuge in accordance with the Geneva Convention (Gil-Bazo 2015, 4; Grasso 2012, 1498 ff.). In other words, international and European obligations have "neutralised" the distinctiveness of the constitutional right to asylum, making it a redundant, almost obsolete concept (Lambert et al. 2008, 17).

2. The Common European Asylum System

According to the 1985 Schengen Agreement, an asylum seeker is any alien who has lodged an application for obtaining recognition as a refugee in conformity with the Geneva Convention and in respect of which a final decision has not yet been taken. The same approach characterised the so called Dublin Convention (Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities) signed in 1990 and the successive legal developments in this field. In order to prevent asylum shopping, i.e. the practise that occurs when asylum seekers move around EU countries in search of the best conditions to apply for asylum, the Dublin Convention established that an asylum claim would be assessed once, generally by the country of first entry. To summarise, in the EU perspective the difference between the legal status of an applicant for asylum (an asylum seeker) and that of a refugee consists in the fact that the first is a person who has sought protection as a refugee, but whose claim has not yet been assessed.

An EU policy on asylum has progressively emerged since the entry into force of the Treaty of Amsterdam in 1999 (Zagato 2006): Title IV concerned immigration and asylum and provided the passage from the third to the first pilar, from the intergovernmental to the communitarian level (arts 61-69). Member States agreed to create a common European asylum system to proceed with the harmonisation of their legislation setting up a legal framework defining common minimum standards ensuring fairness, efficiency and trasparency in these matters (Toscano 2013, 9). Since 2000, also art. 18 of the Charter of Fundamental Rights of the European Union mentions the right to asylum, making reference to the rules of the Geneva Convention on refugees and the associated Protocol. It has been underlined that the mention in the Charter of the right to asylum in addition to the prohibition of refoulement implies the recognition of the autonomous meaning of asylum as individual right, and that art. 18 may be conceived as a vehicle for invoking other Charter rights (den Heijer 2014, 522).

Following the Treaty of Amsterdam, the European Council envisaged a common European asylum system during the special EU Summit meeting in Tampere in 1999, affirming the principle of non-refoulement and ensuring that nobody would be sent back. Currently the CEAS consists of a legal framework covering all aspects of the asylum process and providing a common minimum standard for the treatment of asylum seekers on behalf of its Member States. Its core is founded on the mutual trust principle, namely that the national authori-

ties where an asylum seeker submit the application for the refugee status are required to transfer the applicant back to the Member State responsible under the rules. Other CEAS's main pillars are: legislative harmonisation, reinforced practical co-operation, enhanced solidarity, and the strategic development of the external dimension of the system (on the case law of the European Court of Justice in this field, see Ravo 2015, 245 ff.).

The CEAS is composed of a set of regulations, directives and other measures with the objective of dealing with the legal status of third country nationals, requiring the harmonisation of asylum legislation in the Member States. Legal harmonisation is a core instrument of the EU, with which it accomplishes its aims. Harmonisation implies a concern to mediate the interests of each Member State so as to avoid conflicts and clashes. It postulates an approach involving dialogue with due respect for all national perspectives, in order to preserve the diversity of the coordinated objects. This is why variable results are entirely compatible with the process of harmonisation (Boodman 1991, 701). Its scope is to introduce a set of minimum requirements or standards or principles, without any attempt to impose a uniform solution. On the contrary, unification means the voluntary or forced uniformisation of different legal systems; it requires greater sacrifices, with the aim to create specific shared rules in some form, i.e. to elimitate as much as possible the diversity in the rules of different jurisdictions (Meulders-Klein 2003, 106; Baasch Andersen 2011, 32).

At present, the Treaty on the Functioning of the EU allows the EU institutions to adopt measures which set out the standards in asylum protection, with the aim for further uniformity in this field. The measures deal with: «(a) a uniform status of asylum for nationals of third countries, valid throughout the Union; (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection; (c) a common system of temporary protection for displaced persons in the event of a massive inflow; (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status; (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection; (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection; (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection» (art. 78, para. 2).

Consequently, the EU asylum policy covers other fields than asylum seekers and refugees statutes, like temporary protection and subsidiary protection. The former garantees an appropriate status to each third country national who needs international protection. The latter applies to asylum seekers who do not qualify for refugee protection under the 1951 Geneva Convention but for whom substantial grounds have been found to demonstrate that persons concerned, if returned to their country of origin, or in the case of stateless persons, to their country of former habitual residence, would face a real risk of suffering serious

harm. Subsidiarity protection has a temporary nature, but generally those who benefit from this instrument have the same rights as the other asylum seekers.

The Tampere Programme pointed out that the CEAS should have been implemented in two phases. The first one focused on the harmonisation of national legislations, and the second one to improve the effectiveness of the protection granted (Toscano 2013, 10). Consequently, several acts setting minimum standards for asylum protection were adopted. The Regulation 2003/343/CE (so called Dublin II) replaced the Dublin Convention. It was introduced in order to avoid asylum seekers being sent from one country to another, and also to prevent abuse of the system by the submission of several applications for asylum by one person, in the meantime taking into consideration particular conditions, as the guarantee of family reunification. Joint to this act, three directives were subsequently added. The Reception Conditions Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers had the aim of ensuring that the applicants have a dignified standard of living (such as housing, health care, education) and that comparable living conditions were afforded to them in all Member States. At the same time, the directive also limited asylum applicants' secondary movements. The Qualification Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted had the aim of specifying the criteria for the qualification of asylum seekers for refugee or subsidiary protection. And the Asylum Procedures Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status attempted to ensure that all Member States introduced a minimum common framework on procedures.

Due to the increasing number of migrants and the evidence of considerable disparities in their treatment depending on the country of first arrival or of application for the status of asylum seekers, a few years after their adoption the EU had to admit that the CEAS instruments had failed to reach their objectives. This consideration led to a revision of the past legislation, taking into account the Southern countries' requests to find solutions to ensure shared responsibilities and a higher degree of solidarity between Member States. Despite dissenting voices, the EU confirmed with the Lisbon Treaty entered into force in 2009 its ambition to complete the process of inclusion of measures about asylum into common policies of the EU.

A new legislative programme for the CEAS was established at the 2009 Stockholm European Council for the period 2010-2014, with the goal to replace the previous asylum framework with a different set of rules. Consequently, the instruments in force were recast in June 2013. The Dublin II Regulation was recast by Regulation 604/2013 (Dublin III) 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. It is aimed at enhancing the effi-

ciency of the system as well as increasing the level of protection afforded to migrants subjected to the Dublin system so that refugees are not left "in orbit" with no Member State accepting responsibility for their application. The Regulation introduces a hierarchy of criteria to guide Member States in this procedure, from family considerations to possession of visa or residence permit, to whether the applicant has entered the EU irregularly or regularly. The Regulation 603/2013 on the establishment of 'Eurodac' for the comparison of fingerprints recasted the Regulation 2725/2000; it allows law enforcement access to the EU database of the fingerprints of asylum seekers under strictly limited circumstances in order to prevent, detect or investigate the most serious crimes, such as murder, and terrorism. The Directive 2013/32/EU on common procedures for granting and withdrawing international protection was adopted to recast the Directive 2005/85/EC. Its scope is to get closer national rules in order to limit the secondary movements of applicants for international protection between Member States, where such movements would be caused by differences in legal frameworks, and to create equivalent conditions for the application of Directive 2011/95/EU in Member States, on standards of 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. In particular, this Directive (so called recast Asylum Procedures Directive) aims at fairer, quicker and better quality asylum decisions. Asylum seekers with special needs will receive the necessary support to explain their claim and in particular there will be greater protection of unaccompanied minors and victims of torture. The Directive 2013/33/EU laying down standards for the reception of applicants for international protection was adopted to recast the Directive 2003/9/EC. This instrument (so called recast Reception Conditions Directive) ensures that there are humane material reception conditions (such as housing) for asylum seekers across the EU and that the fundamental rights of the concerned persons are fully respected. It also ensures that detention is only applied as a measure of last resort (Morgese 2013).

It has been noted that even in this phase of implementation of EU rules there are large-scale differences among the national legal systems and this constitutes a serious impediment to achieving a fully efficient CEAS. The main concerns regard the practical implementation of directives throughout the EU Member States. The standards vary dramatically from State to State, ranging from near perfect to non-existent procedures. As stated by many experts and scholars, asylum legislations in the EU Member States have little in common (Spijkerboer 2016). Some countries recognize almost no one as a refugee, while in other countries the majority of asylum seekers obtain asylum. In addition, judicial decisions have highlighted that the Dublin system violates fundamental rights in several respects. To sum up, the shortcomings of the CEAS and the disregard in its implementation reveal that the current harmonising approach has failed to provide a suitable legal framework.

3. Recent reform proposals

The Dublin system, that is the mechanism for allocating responsibilities to examine asylum applications, is not working as it should (in 2014, five Member States dealt with 72% of all asylum applications EU-wide; see Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration, COM(2015)240 final, 13). Currently, the EU is seeking to pursue a more coherent and fair CEAS reinforcing its set of rules and imposing their real application in each Member State in order to avoid the collapse of its policy in this field. It is also increasingly engaged in the task of moving towards an asylum system which can function effectively both in times of normal and of high migratory pressure. For these reasons, the EU is considering the idea of implementing some new strategies. Its objective is to manage better migration flows in the medium and long term moving from a situation which encourages uncontrolled migratory flows and different recognition rates of asylum seekers between EU Member States to one which provides orderly and safe pathways to the EU for third country nationals and uniform standards of legal treatment.

Recognising that there are significant structural weaknesses and deficiencies in the European legal framework on asylum in force, in 2016 the European Commission presented a set of recommendations with the aim of strengthening the CEAS, through the amendment of the Dublin Regulation. These proposals are addressed to: a) discourage secondary movements of asylum seekers and increase integration prospects of those that are entitled to international protection, adapting the CEAS to deal better with the arrival of a high number of asylum seekers through specific points of entry and ensuring a high degree of solidarity and a fair sharing of responsibility between Member States through a fair allocation of asylum seekers; b) simplify, clarify and shorten the asylum procedures, create uniform standards for protection of asylum seekers, harmonise reception conditions; c) reinforce the Eurodac fingerprint database system, to support the application of the Dublin Regulation and to facilitate the fight against irregular migration; d) make the European Asylum Support Office (EASO) a genuine European asylum agency, in order to ensure the efficient and uniform application of EU rules between Member States (see European Commission, Communication from the Commission to the European Parliament and the Council, Towards a Reform of the Common European Asylum System and enhancing Legal Avenues to Europe, COM(2016) 197 final).

It then goes on to develop an alternative approach, where regulations are preferred instead of directives, with the intent to reduce intensively the margins of discretion that Member States have in the transposition of rules on asylum. Given that regulations are directly applicable being sufficiently detailed, this will leave Member States no discretion in the implementation of the CEAS. In particular, the aim of designing a more equitable and efficient common EU procedure

should be pursued by replacing with a regulation the current Asylum Procedures Directive. As regards the harmonised protection standards and rights, asylum seekers should be able to obtain the same form of protection regardless of the Member State in which they make their application and for as long as it is needed. In order to do so, the Commission has also suggested to replace the existing Qualification Directive with a new regulation. Concerning the reception conditions, it has been proposed a reform of the current directive to ensure that asylum seekers can benefit from harmonised and dignified reception standards throughout the EU. The improvement should be affected the assigned residence to asylum seekers and the discouragement from absconding. Furthermore, it should grant earlier access to the labour market and common reinforced guarantees for asylum seekers with special needs and for unaccompanied minors.

In the meantime, opposition of many EU Member States to the idea of strengthening the CEAS is apparent. The EU political fragility in front of solidarity issues poses a serious question to its future.

4.   The social emergency of unaccompanied foreign minors

In the last years, starting from the Middle-Eastern and North-African crisis, the numbers, the provenance and the typology of minors involved in the immigration flows have changed. Situations linked to war, social and economic deprivations, better opportunities have increased the presence of unaccompanied foreign minors (Ufm). Following the Unicef's report (2016), in five years, at worldwide, child refugee numbers have jumped by 75%, 50 million of minors, more than half of the world's refugees.

For the Ismu Foundation, on the occasion of the World Day of Migrants and Refugees (January 15, 2017), over 25,000 Ufm arrived in Italy in 2016, almost twice the one recorded in the previous year. Most of them are from Eritrea (15%), Gambia (13%) and Nigeria (12%). Only 2,400 are the foreign minors arrived with their parents (Lunghini 2017a). In the first three months of 2017, as many as 24,000 immigrants reached the Italian coast, of which 2,293 were unaccompanied minors. Furthermore, from the beginning of 2017, over 150 minors drowned in an attempt to reach Italy from North Africa by sea. During the Eastern week-end, more than 8,300 people have been saved in the waters between Libya and the Italian peninsula (Lunghini 2017b).

The number of Ufm in Italy in 2016 was 17.373, 45.7% more than the previous year. The main Ufm countries are Egypt, Gambia, Albania, Eritrea and Nigeria. Taken together, these five citizenships represent more than half of the Ufm present (54.5%). At December 31, there were 6,561 unaccompanied minors unavailable, the majority of which were Egyptian (22.4%), Eritrean (21%) and Somali (19.1%) (Ministero del lavoro, 2016). In the first semester of 2016, Ufm seeking asylum in Italy were 2,416. They were from Gambia (752, over 31% of the total),

followed by Nigerians (297, 12.3%) and Senegaleses (227, 9.4%). As in 2015, a great part of minors has been offered the proposal to receive a residence permit for humanitarian reasons (58% of the total of decisions: 1.013). Refugee status was recognized at 4% of children, while subsidiary protection at 3%. Net increase compared to the previous year, however, are the lowest for whom no form of protection has been recognized (33%). On the total number of applications examined for individual nationality, in the first semester of 2016, among the top ten nationalities, which are recognized to a greater extent by some form of protection, are the Egyptian minors (85% of the total number of questions examined for this nationality) and it is always the Egyptian minors who are largely granted humanitarian protection and recognized subsidiary status, while refugee status is mainly granted to young Nigerians (Anci 2016, 94).

The definition of asylum-seeking unaccompanied minors, as stated in the Italian Legislative Decree 85/2003, refers to non EU-country nationals or stateless persons below 18 years of age who enter the national territory without being accompanied by an adult and who apply for international protection. After the involvement of the guardianship judge (giudice tutelare), the minor is entrusted to the so called System of protection for asylum seekers and refugees (Sprar). The Commission for the recognition of refugee status examines the asylum application. If the answer is positive, the Ufm will receive a residence permit for asylum reasons; otherwise, the minor may be granted subsidiary protection or humanitarian protection. This type of protection gives the opportunity to convert the residence permit for humanitarian reasons even after the Ufm has reached the age of 18 (Accorinti 2015, 64; Giovannetti 2016a).

Concerning the phenomenon of Ufm, significant relevance must be given to the Dublin III Regulation. It determines which State is responsible for examining an asylum application, normally the State where the asylum seeker first entered the EU. Asylum applications in Europe in 2016 were 1,204,300. Germany is the country with more requests in absolute terms and in comparison of population: 722,000 applicants, 63% more than in 2015. In Italy, applications were over 123,000, or 47% more than in 2015. In 2016, the territorial commissions examined over 90,000 applications, and for 60% of the cases the results was negative (Ismu 2017)

In order to avoid their disappearance and a negative impact on their well-being, the country responsible for examining the asylum requests of minors should be the one where the most recent application has been made, in order to avoid unnecessary movement, except when the transfer aims to reunite families. The Dublin Regulation has to be revised. The proposed changes to article 3 of the Dublin Regulation intend to exclude certain types of applications from the procedure, namely: applicants coming from a country of first asylum; a safe third country; a country that is listed in the EU common list of safe countries of origin; and asylum applicants considered for serious reasons a danger to the national security or public order of the Member States, or who have been forcibly expelled for the above reasons.

The European agency of fundamental rights (Fra 2016b, 13) suggests to excluding children (and also applicants listed as vulnerable) in need of special procedural guarantees from admissibility and accelerated procedures. «Asylum procedures must allow for sufficient time to assess and respond to such specific needs; otherwise, Member States would not comply with the duty to provide the protection and care necessary for a child's well-being as required by Article 24 of the Charter of Fundamental rights of the European Union. The two weeks and one month timeframes envisaged in article 24 (1) of the proposed recast Dublin regulation will raise serious challenges in this regard». Furthermore, the «EU legislator should allow a rejection of an asylum application as inadmissible or through an accelerated procedure only after having examined the rules to protect unaccompanied children and promote family unity included in Articles 8 to 11 of the current Dublin regulation». The right to respect for private and family life, guaranteed by art. 7 of the Charter of Fundamental Rights of the European Union and by art. 8 of the European convention on human rights, requires that any restriction to this right be justified in each individual case. Even if, according to Eurostat, between 2008 and 2014 only 6,672 transfers were requested and 2,087 made based on family and dependency criteria, for those who were transferred, the Dublin Regulation resulted in an important tool to uphold the right to family life and the rights of the child.

Most of Ufm in Europe are minors who arrive with specific migration projects, with well-defined family expectations and with very strong parenting and reference networks. Often, they do not trust to reach their target destinations following official channels and, therefore, they take the trip illegally. Many of them disappear after identification and assignment to a host community for choice or because they fall into the network of criminal organizations. The Bulgarian Ombudsman highlighted the risk of unaccompanied children being subjected to trafficking and smuggling, problems with appointing children's representatives, and the lack of efforts to organize protected spaces (Fra 2016a). The European Intelligence Agency Europol denounced the disappearance of at least 10,000 unaccompanied minors after their arrival in Europe. In Germany, the Federal criminal police reported that 4,749 unaccompanied minors were missing (2016). In Sweden, the coastal town of Trelleborg reported the disappearance of 1,000 of the 1,900 minors who had arrived in September 2015. In Italy, there are 6,135 minors reported to the Ministry of labor for getting away from the host structures (2015) and 5,200 in the six months of 2016 (Fcapp 2016). For the Ecpat Uk and Missing People (2016), nearly 30% of all United Kingdom child trafficking victims and 13% of unaccompanied children disappeared from care services. Illegal work, sexual exploitation, market, drug, kidnapping, trafficking, smuggling and begging are possible reasons and for this it is urgent to introduce child-specific training on child trafficking, unaccompanied children and missing.

A study of Terre des hommes-Child relief foundation carried out on the disappearance of Ufm underlined that the disappearance of minors from institutions

is not a marginal or rare phenomenon: the percentage can reach 50% (Terre des hommes-Child relief foundation 2010, 11). All professionals reckon that most of the "disappearances" occur very shortly after the minors are taken into care by the institution. The term disappearance seems to be inappropriate, as for some operators this would call for the initiation of a judicial investigation; a very small minority of these people consider the disappearance to be simply the minor's free choice. Some operators recognize their direct professional responsibility in the phenomenon; the principle of actively searching for a minor who has disappeared from an institution is very rarely implemented, in contrast to the immediate search which is initiated when a national child disappears.

The study coordinated by Missing children Europe (2016) identified four possible areas for intervening: prevention of the disappearance, response of institutions to the disappearance, approach to the missing child who has returned, operator training. The prevention means an accurate assessment of the risk of the minor going missing at the moment of initial reception and a response by the security forces where the child has gone missing. The disappearance of an Ufm does not have the same priority and the same attention as that given to non migrant citizens. Furthermore, the minors found involved in criminal activities, are not always treated as victims. This has a negative impact on the welfare of children and often puts them at risk of a relapse. A personal talk with a trained professional is considered the most effective way to gather the necessary information not only for the development of a proper care plan for the child but equally for investigations into criminal organizations.

5. Policies and practices for unaccompanied foreign minors

Following the Directive 2011/95 of European Commission, the unaccompanied foreign minor is classified «as the minor who arrives in the Member State unaccompanied by an adult responsible for them whether by law or by practice of the Member State concerned, or until the moment that the minor is actually entrusted to such a person. The term includes the minor who is abandoned after entering the territory of the Member States». In 2011, the Council of Europe stated that «a child is first and foremost just a child, and then a migrant». In consideration of that, the EU Agency for fundamental rights (Fra 2017) in the last monthly data collection on the migration situation, underlined some critical situations, i.e.:

– In Sweden, Ufm are increasingly anxious about the results of age assessments and their chances of staying in the country when they turn 18. Reports of deteriorating mental health and suicide attempts among Ufm reflect this.

– In the Slovakian detention Centre at Medve ov, the police did not initiate an age assessment of detained people claimed as minors and they treated them as adults.

- In Greece, on March 2017, there were 891 children on the waiting list to be referred to the National center for social solidarity for accommodation.

- In Melilla, Spain, there are more than 540 Ufm, including some one hundred sleeping in the streets; many are not registered and have no access to child protection, education or healthcare services.

- In Germany, a government report highlights the lack of trained staff and adequate accommodation facilities in some municipalities and the extreme stress that affected many children.

- In the Netherlands, the physical and mental health of so-called rooted children was at risk when children and their families were returned after a long asylum procedure. In addition to developing physical and mental problems, these children lack knowledge of the language of their country of origin, have no social connections, have no plans for the future, live in poverty and, because of their otherness in behavior, are considered outsiders by the local community.

For every child, there is a specific world behind, a direct or indirect migratory path, a different situation in the arrival. Concerning the last point, Unicef (2016) stressed that they often face discrimination and xenophobia, living at high risk of exploitation and social exclusion. A refugee minor is five times more likely to be out of school than a non-refugee minor is and when he/she is able to attend school, he/she often encounter unfair treatment and bullying. In general, Ufm suffer of low level of schooling and educational opportunities, poor housing conditions and generalized lack of access to any protection service (Delbos 2010; Valtolina 2014; Giovannetti 2016b; Momo 2014; Prandelli 2015; Tomasi 2016).

The Ufm phenomenon has received particular attention at European level. With "The Action Plan on Unaccompanied Minors" (2010), the EU addressed the need to prevent the hazardous migration of these children and, once arrived, to ensure their protection with long-lasting interventions. The Plan proposes three level of actions to increase the overall protection.

a) Prevention of unsafe migration and increasing protection capacities in non-EU countries:

- Address root causes of migration and create safe environments for children to grow up in their countries of origin by integrating the issue of unaccompanied minors into development cooperation (poverty reduction, education, health, labor policy, human rights and democratization and post-conflict reconstruction).

- Identify and protect potential victims of trafficking in human beings through targeted awareness-raising activities and training in countries of

origin and transit to children, their families and any other people that are (or will most likely be) in contact with them.

- Develop child protection systems that link services across all social sectors to prevent and respond to risks of violence, abuse, exploitation and neglect of children, to support children who are not in the care of their families and to provide protection to children in institutions.

- Finance protection programmes in non-EU countries (projects that include at least education facilities, medical care and information on minors' rights and on procedures) to prevent minors from embarking on dangerous journeys to the EU to seek international protection.

b) Increasing protection by procedural guarantees and other measures:

- Appoint a representative for all minors from the moment they are detected.

- Separate minors from adults to protect them from traffickers or smugglers and, thus, prevent (re-)victimization.

- Provide appropriate accommodation (detention should only be used in exceptional situations).

- Create common guidelines on age assessment and family tracing.

c) Finding durable solutions.

- Develop innovative partnership solutions with countries of origin and transit for the return and reintegration of unaccompanied minors (when in the minor's best interest and by prioritizing voluntary return).

- Grant refugee or subsidiary protection status to unaccompanied minors falling under these categories and assist in their integration into the host society (minors who cannot be returned and who do not fall under these two categories should be granted appropriate legal status and given accommodation – national rules apply for the granting of residence permits).

- Resettle to the EU unaccompanied minors who are refugees in non-EU countries if, after a careful assessment in collaboration with the Unhcr and relevant civil society organizations, no other durable solution is available.

The EU Commission reaches to include as many actors as possible: the countries of origin, transit countries, civil society organizations and international organizations. Together with the European Agenda on migration (2015), the Plan develops a strategy to protect Ufm rights, especially those who have disappeared. In Italy, the legislative decree 142/2015, Rules for the reception of foreign children, represents a further step forward concerning the reception and protection

of Ufm. According to the decree, the child must always be listened in order to identify its experience and assess the risk as possible victim of trafficking but also to investigate the possibility of the child to be reunited with family members who may be present in another EU country. Moreover, operators dealing with children should receive special training and guardians must have the skills needed to do their duties and perform their tasks in accordance with the minor's best interests.

The European Parliament resolution of September 12, 2013 recalls that: an unaccompanied minor is above all a child who is potentially in danger and that child protection, rather than immigration policies, must be the leading principle for Member States and the EU when dealing with them, thus respecting the core principle of the child's best interests. The recent Italian statute 47/2017, Regulations about measures to protect unaccompanied foreign minors, called Law Zampa, can be described as the first European law that consider migrant children first and foremost children. It introduces important principles for Ufm:

– An organic and specific reception system with facilities dedicated to the first reception-identification of minors (where the maximum residence time is halved: from 60 to 30 days) and the subsequent transfer to the second reception system in centers that adhere to Sprar. The law also promotes the development of family foster care as a priority way of reception compared to staying in structures.

– Homogeneous standards for age detection and identification with the presence of a cultural mediator during the interviews.

– The protection of the child's interest through: the establishment of clearer rules for the guardians with the establishment of a register of voluntary guardians by the juvenile courts.

– The right to health and education is enshrined in the law. As regards the right to health, enrollment in the National health system and on education, the introduction of specific apprenticeships and the possibility of acquiring the final qualifications of the courses even when, at the age of majority, there is no longer a residence permit.

– The right to be listened to for unaccompanied foreign minors in the administrative and judicial proceedings (even in the absence of the guardian) and legal assistance, at the expense of the State.
The research of Accorinti (2015, 70-72) for the European migration network on the policies and practices on unaccompanied minors in Italy underlines some important recommendations that could be applied on European level in order to solve the fragmented interventions.

– Informal network of support. The network of countrymen or relatives without a legal residence permit exerts a strong influence on Ufm lives. A signifi-

cant proportion of children for whom a guardianship case for Ufm is opened have, in fact, been present within the territory of the State for a long time. It is necessary to understand with whom, for how long, doing what and why they decide to rely on institutional guardianship at a given moment.

– Need to provide consistent rules. A unified legislation would consolidate all rules governing the matter, in a consistent and coordinated fashion. This approach would contribute to permanently separate the legislation on foreign minors from immigration legislation in general, and from controlled flow policies, as is actually the case when these subjects turn 18.

– Local authorities as guarantors of Ufm's rights. They have the task of enforcing the rights that the law grants to minors, on behalf and under the supervision of the guardianship judge but, concerning the welfare services, their rights are not implemented because of difficulties in using such services: healthcare services to protect mental health or integration into compulsory education, or job placement services, or other leisure time and socialization services.

– Central role of the educational project. Social workers claim that they work on an emergency basis, with their job being based on providing assistance in most cases. However difficult, it is necessary to shift from an approach based on assistance to education and promotion. The child should be first and foremost considered as the holder of rights and not just a recipient of varied interventions.

– Relationship with street minors and fight the problem of missing children. In the field of social interventions, it is a common practice to report the presence of children in the street who avoid any contact with the social services. They are part of circuits of exploitation that which are hard to counter. These minors often flee the initial reception Centre after a very short time.

– Education and training. Training and employment are crucial tools for the integration of Ufm. This highlights the importance of system actions offering students aged 15-18 the possibility to attend courses conducive to the diploma or qualification.

– Cultural mediation and peer education. Multicultural and multidisciplinary teams are an appropriate way to work with Ufm. These teams often avail themselves of cultural mediators. The nature of interventions, professionalism and skills of mediators varies with the context. Analyses show that these professionals are involved mainly in emergency situations, instead of working with project teams on a regular basis.

– Coming of age, a true challenge. The path to protect Ufm on the part of local authorities is put to the test during the transition to adulthood, when many rights are lost. Job placement is fundamental to successfully address two important aspects: the residence permit (as an adult) and an independent living arrangement.

–   Girls are more vulnerable. Girls should be helped remove any obstacles they may encounter during the integration process due to mere fact of being female (besides being alone and being migrants). This extra effort should also aim at protecting them against the risk of being victims of the trafficking of human being and prostitution, and the risks connected to being alone asylum-seeking girls in their teens.

Save the Children Italy (2016, 15-16) is calling on European States to:

–   Adopt and implement an ambitious, comprehensive European action plan for all refugee and migrant children. Concrete and measurable policy initiatives must be suggested in order to provide a continuum of protection, care and support for all children on the move involved in cross-border migration, regardless of their legal status, whether it is forced or voluntary, and through all stages of their migration journey.

–   Establish a European fund for refugee and migrant children policies should be matched by resources. Funding needs to be made available to support an innovative, comprehensive operational response by the Commission and Member States both within and outside the EU and to identify proper solutions for refugee and migrant children in countries of origin, transit and destination, including access to healthcare, education and protection.

–   Harmonise better standards of protection. The reformed asylum regulations should ensure that all EU Members contribute and share responsibility for ensuring that child migrants receive similar levels of protection wherever they go, guaranteeing the strongest possible protection for children.

–   Ensure thorough assessment of the protection risks faced by children in migration. There is insufficient knowledge of the concrete protection risks faced by children in countries of destination, origin and transit.

–   Strengthen Member States' accountability. More accountability mechanisms need to be put in place to ensure that Member States comply with their legal commitments.

–   Establish and ensure more safe and regular ways to reach Europe. The EU and Members States should ensure safe and legal routes such as increased resettlement aimed at the most vulnerable, humanitarian visas, increased flexibility in family reunification processes, private sponsorship programmes, and student scholarship schemes.

–   Develop an external migration policy guided by human rights, not political interests. Migration has many drivers, and any cooperation to manage migration should take into consideration this complex and multi-faceted reality, be evidence and needs-based, and ensure that the benefits of migration are maximized and the risks are mitigated.

The main changes related to migration can be summarized in the concepts of experiential relativization and identity reconstruction (Mansoubi 1995, 42). Experiential relativization consists in the maturation of a new gaze of one's own past and beliefs. It is the experience where there is no the way of living but a way of living and the one's own history-memory is not the only possible but one of the many possible and imaginable. Migration experience, however, in the direct or indirect (i.e., experienced by parents) involvement of a minor is an element of identity laceration, which often creates a silent distress that is difficult to understand (Cnda 1997).

In the concept of identity, two dimensions are met: the psychological one – that is, the perception that the subject has of himself in relation to another – and the social one – that is, the relationship aspects. Situations of social friction occur when these two dimensions come into conflict or when the way in which each one is seen by others conflicts with the way in which each one sees him/herself or how he/she wants to propose outside (Murer 1994, 22). Thus, the status of Ufm does not exist in itself, but in the gaze of the other. In fact, the identity attributes arising from the reception group become true prescriptions that lead to identity crises that frustrate the desire for immigrant recognition by society. The clash is right on the ground of recognition as the arrival community will try to protect its identity while the immigrant community will try to protect itself by resisting domination strategies of indigenous peoples. Because who has less economic resources, decision-making, etc. – or immigrants – will suffer more, the latter are to choose between two alternatives: to distance themselves from their own group or to accept the dominance of the dominant group. These conflicting aspects are manifested not only in immigrant adults, but also in children who are faced with a completely new reality. Although these children have a higher adaptation capacity than adults, they are at risk for the lack of valid reference points. The process of rebuilding the ego becomes so difficult: conflicts of values and roles and the dissolution of goals and projects incline the positive image of self, producing anxiety, disorientation and frustration (Murer 1994, 29).

This process of destroying/reconstructing one's own identity accompanied by a process of depersonalization as a cause of the negative image that the receiving community transmits to the minor lead the latter to isolate himself or try to be assimilated to the host society. In the first case, the minor reacts with isolation and marginalization mechanisms that result in possible deviance, in strong nostalgia, in resignation attitudes that block vitality and proactivity. In the second case, there is an attempt to insert, also taking on the distinguishing features: dressing methods, food tastes, and so on (Murer 1994, 31).

The European reception system provides for protection of migrant minors and Ufm represent a sort of paradox: they are at the same time minors to be protected and also migrants to be controlled. The question of Ufm is complex

and multifaceted: some of them are escaping from wars and poverty in search of a better life, others are vulnerable minors exploited by criminal networks. Anyway, each minor has his/her own story, a migration story that often changes over time. Considering the sociological and psychological aspects of Ufm who are faced with a different reality, it is necessary to keep in mind some peculiar aspects related to the status of immigrant and the consequences that this implies with reference to past and consequent experiences to this changes in the emotional development (Pinausi 2002; Giannotta 2015).

• *Emotional experiences*. The psychological balance of immigrant minors may affect traumatic experiences that have occurred in the countries of origin or on the road from the country of origin. Particular attention should be given, especially if the minor is from areas involved in war conflicts or in which there are political, social, religious, racial persecution, or dramatic economic poverty situations, or areas disrupted by natural cataclysms. In such situations, the child may have been subjected to trauma caused by situations of exploitation or deprivation, from personal or family violence, or by seeing violence to others, wartime or cataclysmic destruction. For this reason, it is emphasized the importance of understanding the reasons why a minor emigrated, in order to assess the hypothesis of bringing the signs of psychological discomfort manifested by some immigrant children to possible traumatic experiences in critical contexts of origin.

• *Cultural factors*. A particular influence in determining some of the psychological aspects of the Ufm in relation to the new social context is attributed to the comparison between the culture of origin and that of the new reality. For example, in some cultures, traditions are invested of a very important meaning and social roles, even within the family, are very well structured; in western cultures, references are much more flexible and traditions have lost much of their social relevance. Having a personality in formation, with an identity still to be structured, it may sometimes be difficult for these children to reconcile the family culture of prosperity with that proposed in school and in every context. For example, a teenager arriving in Italy can confront for the first time with mixed school classes while in his country of origin he only had classes with peers of the same sex, so he must mediate the pattern of relationships with the other sex.

• *Language aspects*. In order to allow for greater or lesser accessibility to communication with peers and the possibility of using territorial resources, linguistic factors are of crucial importance to avoid cultural and personal isolation phenomena. The aptitude with which foreign minors learn the new language, as well as age, depend on other factors, such as the similarity of the mother tongue to the second language, the time spent in the new country, the language used in the familiar environment and, in general, the opportunities for second-language stimulation outside the school context. The usefulness of the presence of cultural mediators belonging to the same ethnicity as foreign students has been recog-

nized, not only to facilitate the acquisition of language, but also to facilitate their acceptance and to prevent possible refusal.

• *Childhood culture*. One of the first aspects to consider is the possible different conception of children's rights and the culture of childhood between the country of origin and that of destination. There are realities where children's rights are not taken into account. Due to precarious socio-economic conditions, minors are required to work to contribute to the nourishment of the family, with excessive responsibility, in working conditions that are often at risk or in situations of sexual exploitation. There are realities in which the right and the duty to study are still scarcely accessible. There are realities where punishments in the form of physical or psychological maltreatment are legitimate. There are realities in which there is a strong discrimination in personal freedom for girls and boys compared to peers. For these reasons, it is crucial to understand what is the awareness of foreign children about their rights and to help them to have an adequate information on the new social and legislative reality of childhood culture. Attention to this aspect allows younger immigrants to live with the utmost serenity of the changes required by the new social reality.

• *Environmental acceptance*. Attitudes towards acceptance or refusal by the environment undoubtedly play a fundamental role in determining psychological experiences and the social inclusion of immigrant children. In particular, the lack of knowledge of minorities' cultures and the values or behaviors that regulate social relationships can lead to prejudices or misunderstandings. Difficulties of understanding between different cultures and prejudices based on stereotypes related to the area of origin of the Ufm can create the fear of being rejected only because it comes from another country, with the consequent reactions that could be the repetition of the culture of belonging and the rejection of the new one.

• *Economic conditions*. The economic chances can affect the amount of opportunity offered to the child to socialize: for example, poor availability of money can preclude a minor from participating in a school trip, going out with peers, taken part in recreational, sports or cultural activities. These aspects, which may seem marginal, are often very important for children and young people, and can create discomfort or inadequacy with respect to their home and family, especially in situations where the difference in economic resources compared to households of peers is wide.

• *Attitudes of families*. The psychological development of immigrant children is also determined by the attitudes and experiences of parents and relatives, on a personal level and towards the new cultural reality. In understanding some attitudes of immigrant children to the new cultural reality, it is necessary to consider the expectations and imagination of the parents towards this new reality: i.e. the ease with which work and accommodation in a European country can easily be found. Given that parents' attitudes also affect children's attitudes, it is impor-

tant to understand what are the expectations and fantasies that immigrant children have towards the new environment, aspects that may partly explain some of the difficulties that may arise in school and society.

In conclusion, the presence of Ufm in Europe is a reality that has significant relevance and that is an important resource, given the demographic decline. As put in evidence by White et al. (2013, 1-7), the perspectives of children and their own experience of migration are not well documented and their «lives are silenced through adultist discourses about migration decision-making and experience». Viceversa, contributions from sociology, psychology and anthropology stress the evolving capacities of children, and their right to development and participation and not only seen as passive victims (Bracalenti, Saglietti 2010; Zamarchi 2014; Rotondo 2016). To foster a harmonious development of all these immigrant minorities, it is fundamental to emphasize the importance of an approach that enables these minors to understand the new cultural references and, at the same time, to be understood with their own cultural heritage and their own experiences. Such attention is essential to avoid cultural isolation and, consequently, greater risks of psychological and social discomfort, often aroused by the fear of approaching different cultural values and favored by the difficulty of approaching to the new reality and to understand its meaning. The possibility of proposing interventions aimed at mutual knowledge of different cultures undoubtedly represents an opportunity for growth for each person and a precious tool for preventing possible forms of social marginalization.

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