

UNACCOMPANIED MINOR MIGRANTS

1. Who are these migrants and why they flew to Europe?

In the beginning of the 1990's the European Union have become a desirable destination for these young migrants. This has emerged as a specific phenomenon potentialized by freedom of circulation throughout the European Union which was aggravated by economic asymmetries and also by the differences of development through countries across the world.

These minors usually came to the European Union in order to escape conflicts, wars, generalized poverty, social instability, negative perspective of the future and also due to the fact of having a premature sense of responsibility. Moreover, migration was also seen as a way as improving their future as well as their socio-economic conditions.

There is, however, a discrepancy between the rights which migrants are entitled to and the effective protection they receive while remaining in a foreigner country which has a direct impact on their dignity and human rights.

The purpose of this paper is to explore the differences between legal mechanisms created to protect these migrants and the reality that they are exposed to. We intend to develop system fragilities in order to have a fresh perspective in what measures could be adopted to accomplish an effective protection.

In fact, these migrants came to the European Union for multiple reasons but when they did it, they certainly expected a better life than the one they had in their home countries.

Firstly, we will start to approach who are these migrants, the stories behind their faces, and the reasons why they were forced to escape their own country. Then we will take a general approach on what fragilities they are exposed to and finally we will try to discover how were their lives affected by the covid 19 pandemic.

Unaccompanied and underage migrants are children who came, mainly to the European Union, without their parents or legal representants in hope of better life perspective. Statics prove that more than half of the refugee who escape to the European Union are underage people, which means they are under 18 years old.

Many of them don't begin their journey alone. It usually starts with a family plan but most of them are teared apart from their parents, siblings, etc, during the hard days of their escape.

When they arrive to Europe many of them stay at refuge centers before having the opportunity to re-start their lives. There are lots of countries which are willing to receive these migrants, especially those who have a privileged location such as Greece and Italy, closer to the Mediterranean Sea.

However, the European Union does not dispose the means to properly receive all the people who came hopping for a better life. Unprepared migration politics could compromise, not only the social cohesion of the destination country but also the lives of thousands of people.

For example, unaccompanied and underage migrants are firstly seen as migrants rather than children which can become a problem constricting their rights. This is aggravated by the fact that most unaccompanied minors flew to Europe illegally increasing the risk of exploitation and abuse.

Due to the lack of effective migrant measures *“many children live in situations of increasing vulnerability and instability as victims of trafficking and exploitation networks or simply surviving on their own, sometimes by committing illicit or unlawful activities. Despite the completion of various research studies on this issue, this reality remains broadly unidentified”*.¹

Therefore, migration politics should take into consideration a variety of subjects such as sanitary conditions, job opportunities, school programs and social measures in order to protect these migrants of exploitation, poverty, sickness as well as to allow them a fair opportunity of integration.

In order to achieve that the European Member States should outline an internal policy that takes into account their best interests in immigration, integration and asylum.

¹ UNACCOMPANIED MINORS IN THE EU, p. 8.

In regard, the Union Members have drowned a common strategy in the last 20 years, in order to approach their internal policies. In July 17th 2008, The European Council has approved the European pact on immigration and asylum.

Furthermore, by the end of 2020, it was approved a new pact that was meant to be a compromise between responsibility and solidarity.

2. Legal Instruments

Firstly, in regard to the human rights article 3th of The Universal Declaration of Human Rights states that “*Everyone has the right to life, liberty and security of person*”.

It's important to state that there is a United Nations High Commissioner for Refugees (UNHCR), based in Switzerland created in 1950, which intended to protect refugees in any country as well as establishing long-term solutions for this problematic.

Indeed, this organization works to ensure that any citizen, in case of need, can exercise the right to ask for and receive refuge, and, if he wishes, return to his country, while also endeavoring to make countries aware that they must give protection to these unprotected and weakened beings.

Regarding the European Convention on Human Rights (ECHR) this is a legal instrument which protects the rights of the people living in countries that belong to the Council of Europe.

This Convention was founded after the Second World War to protect human rights and the rule of law, and to promote democracy. It was designed to protect basic rights of anyone within their borders including their own citizens and people of other nationalities.

Indeed, this Convention aims to protect some fundamental rights including the obligation to respect human rights, the right of life, the prohibition of torture and human slavery, as well as we the right not to be discriminated against these rights, as it is stated in article 14th.

Article 14th provides that all of the rights and freedoms set out in the Act must be protected and applied without discrimination. The enjoyment of the rights and freedoms set forth in the European Convention on Human Rights and the Human Rights Act shall be secured

without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.²

The European Court on Human Rights has, however, interpreted this concept rather broadly. This concept covers both direct and indirect discrimination; The Court does not require the violation of any article of The European Convention on Human Rights for article 14th be applied.

It is, instead, sufficient that the facts at issue fall within the ambit of a provision of the ECHR or of its additional protocols. Indeed, Protocol 12 extends this prohibition to cover discrimination in any legal right, even when that legal right is not protected under the Convention, so long as it is provided for in national law.

Furthermore, the International Convention on the Rights of the Child, approved in 1989, takes in light the child- specific needs and rights. This instrument was signed by 196 countries and it's the most widely adopted international legal document.

There are four principles that were the base of the CRC and that should be taken into consideration especially while regarding Unaccompanied Minor Migrants. These are: nondiscrimination, devotion to the best interests of the child, survival or development, and respect for the views of the child.

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Firstly, the defense of the child's best interests must be the guiding principle of all border guards and must be the fundamental principle for the creation and application of laws regarding this matter.

² <https://www.equalityhumanrights.com/en/human-rights-act/article-14-protection-discrimination>

Moreover, children's particular needs should be, at all times respected, which implies that their migration programs and goals are respected and that these children may benefit from the safe environment that they were trying to achieve, in the beginning of their journey.

The right of family reunification is established at article 9th of the CRC and it's seen as an extension of human dignity which means that countries that receive these migrants have an increased obligation to collaborate in the process of reunification. Indeed, the CRC perceives the right of a child being raised by his or her parents within a family or cultural grouping as a fundamental right. As the European Court said, in the *Rahimi vs. In Greece*, family reunification must in any case apply to members of the nuclear family, that is to say, the spouse and the minor children.

Not only that, but the CRC potentiates the full development of the child's personality, abilities and talents to the fullest potential as it foresees children as right bearers and not only subjects of adult's charity. Children are intitled to their independence, as it's state in article 5th of the CRC.

Finally, according to these values, article 24th of the CRC states that all children are entitled to have access to non-discriminatory health care as well as to benefit from special measures and assistance.

Bearing this in mind, States should require measures to ensure the effectiveness of these rights without discrimination, granting the same protection to nationals and non-nationals citizens.

Ensure that every child has the right to grow up in a safe and inclusive environment is also a great pillar of United Nations Children's Fund. In this sense, UNICEF has developed an important role assuring the well-being of any child, focusing on the disadvantaged children, such as refugees. Adopts measures in order to provide the better start of life, trying to relieve suffering in emergency situations or where are threatened, because no child should be exposed and be a victim of violence, exploitation or abuse. To this end, it works to meet urgent needs, helping with shelter, water, hygiene items, blankets, among others off borders and fields.

However, this situation is particularly worrying if we think that children essentially depend on their parents to have access to health care, and can become a main issue

regarding young migrants who flew illegally to the European Union and don't have the access to basic sanitary conditions.

Regarding them, UNHCR endeavors to guarantee their protection, through the guaranteeing of rights and programs that meet their needs and development, such as the effort to ensure that all children are saved in the place where they are found; access to health services when unaccompanied or separated from their families or psychosocial support so that they can start their lives over

This situation was especially aggravated by the covid 19 pandemic which we will approach on the last chapter of our paper.

3. The impacts

It is quite obvious unaccompanied refugee minors (URMs) are a group of human beings highly exposed to several serious risks.

As if this wasn't enough, they remain forgotten in researches, studies, interventions and the view of the general population.

In which concerns to particular problems they face, it is important to remind that URMs have specific physical, psychosocial and psychiatric health cares.

Beyond all the usual needs of a child, URM, who have been forced to leave their countries, burden many cumulative traumatic life events and difficult living conditions, which can adversely affect their well-being status.

Furthermore, we have to consider that they were separated from their family or friends and they can also have to face an extremely hard journey to Europe. In some cases, their family and friends were murdered.

These incredibly traumatic episodes, when they are forced to leave their countries, include experiences of war, political or ethnic persecution, torture, imprisonment and, as we previously mentioned, the murder of relatives and friends.

The lack of health care is also related with the host countries sensitivity less to understand and accept the different cultural and social habits and practices that refugees bring with them. The fact of the hosts aren't able to solve this misfortune increase the disconnection

of this communities with them, which always results in a dangerous situation of discrimination. When we talk about children, every scenario become worse.

When societies and governments face these problems, it is mandatory to find global solutions involving the institutional entities to discuss and create legislation, which is the only way to guarantee that no child will suffer any kind of discrimination.³

3.1. Health Problems

Obviously, one of the main impacts on lonely children who arrive in Europe is the giant health problem they face. Health need's start right away in their home countries and they increase in the journey URM face until reach Europe, sometimes in inhumane conditions.

Besides that, these children face a complex bureaucratic asylum procedure, which can become their worst enemy. Due to their troubled experiences, they are not even in a position to demand access to care or health institutions. Also, the fact they even don't speak the language is an issue that doesn't help.

The major factor for the lack of health care that these children face is related to the adaptation to a new culture and organization of society, sometimes very slow.

There was a study⁴, including 102 unaccompanied asylum-seeking adolescents (UASA), 78 male adolescents (76.5%) and 24 female adolescents (23.5%), originated from South Asia (37.0%) and sub-Saharan Africa (29.0%), followed by West Asia (15.0%) and North Africa (13.0%), and arrived at Germany, with the age, at the time of the first medical check-up, from 12 to 18 years, that can reveal some interesting data.

According with the mentioned study, *“five males (7.0%) and one female (4.3%) were underweight”*. Furthermore, *“six males (8.5%) and two females (8.7%) were overweight, with two showing extreme overweight”*⁵, with an alarming BMI (body mass index).

³ *Health of refugee and migrant children – Technical guidance*, World Health Organization, Regional Office for Europe.

⁴ *Health status and disease burden of unaccompanied asylum-seeking adolescents in Bielefeld, Germany: cross-sectional pilot study*, L. Marquardt, A. Krämer, F. Fischer and L. Prüfer-Krämer

⁵ Quoted work, page 212.

However, it is important to clarify that these numbers aren't so bad when compared with, for example, domestic adolescents in Germany.⁶

Iron deficiency – also known as *aneamia* – was found on 17.6% of the total of UASA, “with females being twice as much affected (29.2%) as males (14.1%)”⁷.

Besides the general medicine, dental status is also alarming; it “was found to be pathological for 16 male (20.1%) and five female adolescents (20.8%)”⁸.

One of the important information that this study showed it related with consumption habits and sport activities. So, “five (8.8%) of the male UASA stated that they drank alcohol, ten (13.7%) reported smoking cigarettes and six (10.0%) to consume cannabis” and “forty-four (69.8%) males and eight (40.0%) females stated that they did sports”⁹.

In which concerns to the principal infections these children evidence¹⁰, in total, 60 of them (58.8%) had, at least, one infection (66.7% of females and 56.7% of males). However, 15.7% had at least two infections. It is also interesting because this study show us the prevalence of infections requiring treatment.¹¹

⁶ “In terms of their general health status, UASA mostly showed BMI values within the normal range. Compared to the high proportion of overweight in domestic adolescents in Germany (14.8%) [27], far fewer of the study population (8.5%) were overweight.” – Quoted work, page 215.

⁷ Quoted work, page 212.

⁸ Quoted work, page 212.

⁹ Quoted work, page 212.

Table 1 Prevalence of infections requiring treatment

Infectious diseases	Total*	n (%)
Lambliasis	83	6 (7.2)
Amoebiasis	96	6 (6.3)
Schistosomiasis†	44	8 (18.2)
Helminthic diseases	79	6 (7.6)
Helicobacter pylori	65	44 (69.2)
Tuberculosis	102	1 (1.0)
Chronic HBV infection	101	8 (7.9)

*Total number varies due to different numbers of missing values.

†Only tested if adolescent originated from endemic regions.

¹¹ “The region of origin was significantly associated with the prevalence of infections: 87.0% of UASA from sub-Saharan Africa showed infections, whereas the prevalence for the other regions varied between 53.8% for North Africans and 33.3% for West Asians (likelihood ratio: $P < 0.001$).”

The most diagnosed infection were *H. pylori* antibody positivity, with 69.2% cases, and the rarest were tuberculosis, with only 1.0% of the total.

Taking a look at the other infections, we can see that “a total of 19.6% of the UASA were diagnosed with parasitic infections, including schistosomiasis (13.3% with a single parasitic infection, 5.9% with multiple parasitic infections)”¹².

Additionally, “eight adolescents (7.9%) (all male) were chronically infected with hepatitis B virus¹³. One UASA was diagnosed with extrapulmonary lymph node tuberculosis. Other prevalent infections were scabies (2.9%) and malaria (1.0%).”¹⁴.

3.2. Mental health problems

Regarding mental health, they are a highly vulnerable group in comparison to the general population, even in comparison to accompanied refugee minors, whom are gathered with their family.

Unaccompanied refugee minors can assume different demographic origins, which gives them very different backgrounds. They leave their home countries for many different reasons. But what they have in common is the fact that, due to problems in their countries, they had no family system at a crucial period of development and have experienced several stressful events.

One of the hardest mental diseases is posttraumatic stress disorder, also known as PTSD. Posttraumatic stress disorder, is a set of reactions that can occur after someone has been through a traumatic event. The chance of developing PTSD depends on the type of event experienced and it is very common at some point in our lives.

“Nearly half of the UASA from sub-Saharan Africa (46.7%) were diagnosed as having parasitic infections, whereas only 13.2% South Asians and 6.7% of West Asians (likelihood ratio: $P = 0.001$) were diagnosed. Schistosomiasis was only found in adolescents from sub-Saharan Africa; 27.6% were infected. The presence of positive antibodies against *H. pylori* was significantly associated with the region of origin: Prevalences ranged between 48.0% for South Asians and up to 90.9% for sub-Saharan Africans (likelihood ratio: $P = 0.01$). Comparable results were found for the association of region of origin with the prevalence of clinical symptoms for gastritis: 60.0% of the adolescents from sub-Saharan Africa were diagnosed with clinical gastritis compared to only 6.7% of UASA from West Asia. The prevalence varied between the other regions of origin between 28.9% in South Asia and 38.5% in North Africa (likelihood ratio: $P = 0.004$).”

¹² Quoted work, page 213.

¹³ “(...) with two Afghans being in need of antiviral treatment.

¹⁴ Quoted work, page 213.

However, because PTSD is not the only mental disease, it is necessary to broaden the perspective of the mental health problem, in order to obtain long-term results and resilience plans in this vulnerable group of patients. This can be done, for example, by integrating reactions stress models and identifying and adapting the diagnostic to different personality profiles, therefore, invoking all knowledge of psychology.

In addition, it is also important to analyze the influence and demand action by legislative systems on the emotional and behavioral well-being of these children and adolescents.

For example, in *Case of Abdullahi Elmi and Aweys Abubakar vs Malta*, the applicants, who were at the time 16 and 17 years old, had to face the anxiety of not knowing for how long they would remain in custody. As the months went by, the adults that were with them were slowly released, while the minors remained imprisoned waiting for the result of the exams that prove their ages. This caused a lot of pain and anxiety, including insomnia, depression and sudden loss of appetite and had a major impact on their physical and mental health.

On the other hand, in *Case of Mubilanzila Mayeka and Kaniki Mitunga vs. Belgium*, concerning the detention of a five-year-old child, the Court had emphasised that steps should be taken to enable the effective protection of children and vulnerable members of society, including reasonable measures to prevent ill-treatment of which the authorities have or thought to have knowledge (§53). According to the Court, her very young age, her immigration status, and the fact that she was unaccompanied rendered that child extremely vulnerable, and the respondent State owed her a duty of care and protection as part of its positive obligations under Article 3 (§55).

This shows perfectly how the system went wrong the way it acted with these URM and how their failures result directly in mental health problems in these children.

In fact, when it is about children, the national authorities must take account of their best interests. Therefore family unity is an essential right of refugees, as well as, a precious element in enabling people who have fled persecution to summarize normal life (as the European Court said in *Case of Tanda - Muzinga vs. France*).

Finally, it is important to underline studies and researches are an important work to obtain a clear perspective and take conclusions about the big picture. But, unfortunately, they

may not always be 100% accurate, because when we go deeper we understand there are many children, without asylum, unidentified and unrecognized, are still far away from identifying their own mental disturbs and asking for help in accordance¹⁵. If you were a twelve years old child, living in a country you don't know, with a language you don't speak, with no parents or friends, carrying a hurricane of emotions, would you understand that you have a mental problem and would you know what to do to ask for help?

4. The impact of COVID-19

Even though the coronavirus disease 2019 (COVID-19) pandemic has not chosen children as a direct target, it is certain that we can claim without hesitation that children are, even if indirectly, the main victims of this pandemic disease.

In fact, despite that the children have been spared by the direct mortality effects of COVID-19, the indirect impacts resulting collapsed health care systems and also exposed some structural weaknesses that can be devastating in child deaths.

In particular these impacts include “*not only not only infection- induced morbidity and mortality, but also heightened exposure to other severe risks and human rights violations, including extreme poverty and related hunger, violence, exploitation, homelessness and mental illness*”¹⁶¹⁷.

COVID-19, apparently, is forcing to take a few steps backwards on the matter of migrant children and unaccompanied minors. But is this the case? Or could COVID-19 be interpreted as a real step forward to expose and, consequently, solve a system that allegedly took some steps forward, which has proved to be purely fictitious.

¹⁵ *Mental health issues in unaccompanied refugee minors*, Julia Huemer (corresponding author), Niranjan S Karnik, Sabine Voelkl-Kernstock, Elisabeth Granditsch, Kanita Dervic, Max H Friedrich and Hans Steiner.

¹⁶ Jacqueline Bhabha, *Time for a reset: Implications for child migration policies arising from COVID-19*, in COVID-19 and the transformation of migration and mobility globally, page 1.

¹⁷ As a manifest breach of Article 37 of the International Convention on the Rights of the Child, which provides, among others, that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

Indeed, despite the purpose of the law, in matter, is to protect the unaccompanied children's best interests¹⁸ (*cf.* article 8 of the International Convention on the Rights of the Child)¹⁹, it is true that in practice it is manifestly incapable of being effective withing the States, even allowing to circumvent the law on the part of the States in the protection of those rights and guarantees of these children – that are one of the most vulnerable, if not the most vulnerable populations on the world. We tend to agree with the second consideration. COVID-19 provides an excellent opportunity for solving a sleeping (big) problem.

Indeed, because of this pandemic crisis, many of these children are living outside of their country of birth and others are living in forced displacement in their own country or abroad due to violence and conflict²⁰. Furthermore, COVID-19 forced public child protection services to interrupt their mission of protection of children, which obligated the unaccompanied children to live on the streets or in non-hygienic and non-safe environment places.

In this respect, there is a major risk that these children can be detained by immigration authorities, potentially exposing them to violence, abuse or exploitation²¹.

¹⁸ One of UNICEF's slogans are that every child, including unaccompanied children, has the right to grow up in a safe and inclusive environment. Indeed, in conformity to article 2 (number 1) of the International Convention on the Rights of the Child, states parties "*shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status*"

¹⁹ According to the children's best interests, family unity is an essential right of refugees, as well as a precious element in enabling people who have fled persecution to resume a normal life. (*Case of Tanda-Muzinga vs France*)

²⁰ Danzhen You, Naomi Lindt, Rose Allen, Claus Hansen, Jan Beise and Saskia Blume, "*Migrant and displaced children in the age of COVID-19: How the pandemic is impacting them and what we can do to Help*", Vol. X, Number 2, April-June 2020, Migrant Policy Prattice, page 32.

²¹ Danzhen You, Naomi Lindt, Rose Allen, Claus Hansen, Jan Beise and Saskia Blume, "*Migrant and displaced children in the age of COVID-19 (...)*", page 33.

It is certain that the main reason why unaccompanied minors – some of them victims of trafficking in human beings for both sexual and economic exploitation²² – come to the EU is to flee from wars and armed conflicts, poverty or natural catastrophes, discrimination or persecution. These children come to EU hoping that their tomorrow will be brightest than their past and present, looking forward to the future, expecting that it will bring more peace to their world by joining to new family members, determined to pursue access education and welfare²³.

This case leads to the unacceptable paradox that many unaccompanied minors are coming to EU to avoid the problems that they were facing – violence, abuse or exploitation – to, in the end of the day, face the same problem that cause their exit from their country of origin, but with a big difference: facing exploitation, violence or abuse, away from their homes and families, expelled to a country that is thoroughly foreign to them and without even knowing its language. Reality that is not in line with the best interest of the child principle, that, as is common knowledge, must be respected as an absolutely fundamental principal, that guides all the actions that affects, in particular, some child.

But this principle is far from being complied with, and we just need to look at the evidence to be convinced or just look at the effects of COVID-19, namely exposing the several weaknesses of the unaccompanied minors' international legal system, to be even more convinced of that.

Presently, among the fact that many UN agencies were forced to interrupt aid operations designed to assist unaccompanied foreign migrant children, living millions of these children with a (more) uncertain path ahead, also the rules that entry into force to prevent the virus from spreading, some of which further eroding the unaccompanied minors' security²⁴.

²² Unaccompanied children include children forced to escape conflict, persecution or environmental calamity, but also include children forced leave inhuman and degrading conditions, whether because of poverty, lack of expectations, familial abuse or other pressures, JACQLINE BHABHA, page 2.

²³ Communication from the commission to the European parliament and the council, Action Plan on Unaccompanied Minors (2010-2014),

(<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDE>)

²⁴ Danzhen You, Naomi Lindt, Rose Allen, Claus Hansen, Jan Beise and Saskia Blume, “*Migrant and displaced children in the age of COVID-19 (...)*”, page 33.

Indeed, the most serious effect of COVID-19 is the decline of geographic mobility into and throughout the Union, accompanied by the closing down of the borders of EU²⁵.

In this matter, unaccompanied minors, who came in search of asylum or family reunification, see their travel (*rectius*, life) frozen. As JACQUELINE BHABA²⁶ pointed out, with the borders of EU closing down, the unaccompanied children were forced to stay on risk-prone areas and dangerous places or to look for dangerous alternatives by seeking a shelter to stay²⁷. For instance, in the United Kingdom, the vulnerability of these children was exacerbated by the post-Brexit legal issues, whose rights may be strongly affected or even destroyed, while still waiting to be granted asylum²⁸. On the United States of America, the government has used the COVID-19 as the basis to prevent migrants and unaccompanied children from lodging complaints about their situation²⁹.

As we have noted before, *“the pandemic is exacerbating pre-existing vulnerabilities and lack of access to services – meaning migrant and displaced children will be disproportionately affected and suffer long after the public health crisis ends”, these children can be affected in four dimensions: poverty, survival and health, access education and welfare*³⁰.

One of the big concerns by the United Nations in this matter is due to the fact of rehousing unaccompanied children, who already suffered, before this pandemic crisis, but whose situation has been aggravated by the closure borders.

On the other hand, it is necessary to understand that one of the most worrying consequences of COVID-19 is the extremely abject conditions that these children lives, particularly in refugee camps and other humanitarian shelter settings, situation that

²⁵ JACQUELINE BHABA, page 2.

²⁶ JACQUELINE BHABA, page 2

²⁷ As JACQUELINE BHABA, page 2, has noticed, in the United Kingdom there are reports of vulnerable unaccompanied children in a hostile environment, some suspected of being victims of human trafficking for the purpose of work in conditions of slavery and forced labour.

²⁸ University of Liverpool, “Lives on Hold: Our Stories Told” – The Legal and Social Impacts of Covid-19 on Young Unaccompanied Asylum-Seekers in England.

²⁹ JACQUELINE BHABA, page. 3.

³⁰ Danzhen You, Naomi Lindt, Rose Allen, Claus Hansen, Jan Beise and Saskia Blume, *“Migrant and displaced children in the age of COVID-19 (...)”*, page 34.

already existed – and known by the authorities – before the pandemic crisis, but whose conditions were undermined by the decline of geographical mobility³¹.

Although this pandemic crisis has had a tremendous adverse impact on the lives of unaccompanied minor, it's fairly certain that, on the one hand, this crisis has successfully exposed the legal and social fragilities in this area and, on the other hand, COVID-19 may trigger the legal system restructuring by adopting measures to enhance the efficiency and effectiveness to the legal rights of unaccompanied children, as provided by the letter of the law.

In fact, one of the main problems associated to the lack of effectiveness of the law, in the particular case of unaccompanied minors, is that each Member State of the European Union defines its own rules, builds its own walls, even more so not existing any political solidarity of any of the Member States. As we had the opportunity to highlight, there is a failure of implementation, not a failure of regulation: it is clear the amount of national and international legislation in this field, but it is nevertheless that each Member State of the European Union decides according to its national rules and with its procedures, contrary to the law in force, particularly, the International Convention on the Rights of the Child. For example, although the national and international legislation prohibits the detainment of the children on the ground of their (or of their parents) immigration status, but its certain that what actually happens is precisely the opposite³². For example, as we had the opportunity to pointed out, in the *CASE OF ABDULLAHI ELMI AND AYEWS ABUBAKAR VS MALTA*: the applicants who were at the time 16 and 17 years old had to face the anxiety of not knowing for how long they would remain in custody. As the months went by, the adults that were with them were slowly released, while the minors remained imprisoned waiting for the result of the exams that prove their ages. This caused a lot of pain and anxiety, including insomnia, depression and sudden loss of appetite and had a major impact on the physical and mental health.

³¹ JACQUELINE BHABHA, page 3, also notice that the welfare of unaccompanied children has been adversely affected by significant declines in the presence of humanitarian workers, shortages in essential supplies, and dramatic reductions in personal safety and services. It notes that refugee camp without proper habitation conditions is no novelty brought by the pandemic crisis.

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It is therefore crucial to develop new procedures in line with the jurisprudence of European Court of Justice and recommendations of international entities, such as UNICEF or the Council of Europe and, most of all, establish reliable and efficient monitoring and sanctions mechanisms to prevent the constant violation of unaccompanied child's rights, to ensure that unaccompanied minors are duly protected and that Member States does not underperform the international law on unaccompanied children's field.

On the other hand, it is urgently necessary to rethink the system of authorities³² that, in each Member State, should be responsible for the reception of the unaccompanied children, in particular, their role and responsibilities, which call for a greater coordination and cooperation between the authorities of each Member State and, also, between the Member States of the European Union.

CONCLUSION

³² For example, in Portugal, there is a plan to restructure the “*Serviço de Estrangeiros e Fronteiras*”, which is one of the authorities responsible on the field of the unaccompanied children. In this respect, Ana Sofia Barros considers there is a gap in the Portuguese law with regard to the non-involvement of the national system of protection of the children on their arrival, whose intervention of the Courts is conditional upon the international request of protection (article 79, numbers 1 and 2 Asylum Law) available in https://portal.oa.pt/media/130359/boletim_ordem-dos-advogados_novembro_2019.pdf.

From the primordial of the creation of the European Union, the respect of the human rights represents the fundamentals of the construction of European cohesion and integration.

In fact, the European Union sets a collection of fundamental values, such as dignity of the human person, freedom, equality and solidarity espoused, which their Members States are committed to respect (article 2th of Treaty on European Union). Any serious and persistent violation of these values can be effectively sanctioned (article 7th of Treaty on European Union). The idea of a European Union based on cohesion and solidarity is characterized by a community that protects (or should effectively secure) pluralism and non-discrimination.

The unaccompanied minors are human beings - regardless their sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (article 14th European Convention on Human Rights and the Human Rights Act). Unfortunately, these rights have not been respected by the Member States, nor the European Union itself.

Indeed, these children, whose exit from their countries is explained by the problems that they were facing - violence, abuse or exploitation - see their hope dashed very quickly caused by a new model of slavery and labor abuse, marked by violence and terror, problems that they tried to escape, but instead it turned out to face again.

The questions arising in this context are therefore: what if these children were Union citizens? Would they see their rights protected? Would these rights be often violated? We believe not.

Among the measures that can be taken on this field, there is one measure that we strongly believe that could effectively ensure the protection of these rights: the possible obligation to all the Member States of the European Union to create, according to the principles and European Union law, in particular based on the non-discrimination principle (article 14th European Convention on Human Rights and the Human Rights Act), a system that protects all those children, whether they are or not citizen of the European Union.

Therefore, our proposition resides on protect, safeguard and guarantee the rights of the unaccompanied minors and any children that resides in the European Union or who are within its territory.

Thus, the proposal is intended to contribute to enhance the efficiency and effectiveness to the legal rights of unaccompanied children, as provided by the letter of the law.

For example, in according to Portuguese law protecting children and minors at risk, which regulates the promotion and protection of the rights of the children and minors at risk³³, applicable to children that resides in Portugal or the children who are within its territory.

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³³ Law n.º 147/99, de 01 de Setembro, article 2th.

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