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UNACCOMPANIED MIGRANT MINORS AND THE  
STRUGGLE FOR AUTONOMY: EXPLORING THE  
CHALLENGES OF THE LEGAL TRANSITION  
TOWARDS ADULTHOOD.

THE CASE OF ITALY

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*Qualcuno che la sa lunga  
mi spieghi questo mistero:  
il cielo è di tutti gli occhi  
di ogni occhio è il cielo intero.*

*È mio, quando lo guardo.  
È del vecchio, del bambino,  
del re, dell'ortolano,  
del poeta, dello spazzino.*

*Non c'è povero tanto povero  
che non ne sia il padrone.  
Il coniglio spaurito  
ne ha quanto il leone.*

*Il cielo è di tutti gli occhi,  
ed ogni occhio, se vuole,  
si prende la luna intera,  
le stelle comete, il sole.*

*Ogni occhio si prende ogni cosa  
e non manca mai niente:  
chi guarda il cielo per ultimo  
non lo trova meno splendente.*

*Spiegatevi voi dunque,  
in prosa od in versetti,  
perché il cielo è uno solo  
e la terra è tutta a pezzetti.*

*Gianni Rodari*



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## List of abbreviations

ASGI	Associazione Studi Giuridici sull'Immigrazione
CAS	Centro di Accoglienza Straordinaria
CEAS	Common European Asylum System
CESPI	Centro Studi di Politica Internazionale
CFR	Charter of Fundamental Rights of the European Union
CIR	Consiglio Italiano per i Rifugiati
CoE	Council of Europe
COVID-19	Corona Virus Disease 2019
CPIA	Centro Provinciale per l'Istruzione degli Adulti
CRC	Committee on the Rights of the Child
D.L.	Decreto-legge
D.Lgs.	Decreto Legislativo
D.P.R.	Decreto del Presidente della Repubblica
EC	European Commission
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EMN	European Migration Network
ENOC	European Network of Ombudsman for Children
EP	European Parliament
EU	European Union
FRA	Fundamental Rights Agency of the European Union
HRC	Human Rights Council
ISMU	Istituto di studi sulla Multiethnicità

L.	Legge
NGO	Non Governmental Organisation
OIM	Organizzazione Internazionale per l'Immigrazione
OHCHR	Office of the High Commissioner for Human Rights
SIM	Sistema Informativo Minori Stranieri
SIPROIMI	Sistema di Protezione per titolari di Protezione internazionale e Minori stranieri non accompagnati
SPRAR	Sistema di Protezione Richiedenti Asilo e Rifugiati
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nation International Children's Emergency Fund

## **Introduction**

The compound and dynamic phenomenon of migration unquestionably characterises our times and continues evolving in line with an everchanging world. The present work is dedicated to a peculiar “group” of migrants, namely Unaccompanied Migrant Minors (hereinafter UAMs)<sup>1</sup>. Within the context of international migrations, UAMs’ migration represent an increasingly significant phenomenon, both for the considerations it raises in a human rights perspective, in view of their peculiarity and fragilities, and for the urgency to find effective solutions to respond to their needs, vulnerabilities, aspirations and expectations for their life projects. UAMs decision to migrate is driven by multi-layered factors, depending on the country of origin, social, cultural background and personal or familiar aspirations. Amongst the most common motivations we must distinguish between those linked to the need to flee from persecutions and generalised states of violence, and those more simply linked to a desire for a better future. These young migrants might therefore be attracted to countries with higher standards of living and better job opportunities, especially as inequalities and differences in living standards and wage levels continue to grow.

Over the last decade, the presence of UAMs has thus increasingly affirmed as a persistent feature of international migrations towards Europe and across the world. However, at the international and European level, there is no common legal framework addressing this issue, nor common policies have been adopted by Member States to cope with UAMs’ migration phenomenon consistently.

As regards Italy, between 2014 and 2018 more than 70 000 UAMs aged 16-17 years old without any relative or adult responsible for their care arrived via the Mediterranean Sea passage. The data concerning their main age range will be a solid basis in underpinning the arguments proposed in this thesis, notably, for the necessity to consider their needs and aspirations as adolescents approaching adulthood, rather than solely as children. Indeed, the present work aims at

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<sup>1</sup> In addressing UAMs transition to adulthood considering relevant problematics in terms of legislation and measures implemented, I intend to refer to both female and male UAMs, without however forgetting the necessity to look at them according to their need and peculiarities also connected to their gender.

considering the phenomenon of UAMs' migration putting the emphasis on a too often overlooked aspect: the need to find durable solutions enabling them to pursue their life projects and search for self-realisation. Focus will be put on their transition to adulthood as a crucial passage from being legally recognised as children to being adults, during which UAMs are too often deprived of means and key instruments for their acquisition of autonomy. Starting from these premises, focus will be put on the efforts made at the international level to consider them first and foremost as children, highlighting the deficiencies that this approach entails. Most of the international attention is in fact given to their condition of children, and thus in need of protection, without fully consider the difference between an 8-year-old UAM and an adolescent UAM aged 16-17.

In analysing the general attitude towards this issue, Italy is taken as an emblematic example of how UAMs' protection is legally conceived and implemented. What emerges is – besides shortcomings and gaps in the effective implementation of the provisions – an extreme emphasis put on their condition of vulnerable children, which eventually paves the way for a scarce consideration of those approaching their transition to adulthood, resulting in a deprivation of their capacity of acting within the society. This is therefore linked to the lack of consideration of the main age-range of UAMs arriving to Europe, which puts them at the edge between being a minor and an adult, under a legal perspective. This urges to revisit UAMs' protection system, reorganising it in a way that allows for the consideration of their age and the role the time limit before turning 18 plays in the difficulties to meet the requirements the host society demands.

Hence, they face challenging legal scenarios to which they are unprepared, both from a legal and human standpoint, as they are still adolescents, but deprived of the relational networks and family support that most of the Italian adolescents enjoy.

In other words, UAMs find themselves under two often-conflicting legal frameworks, both at the international and national level: in a human rights perspective, this puts them in a particular situation, as they are protected by international and national provisions concerning the rights of the child, while being subject to the disharmonious and often unfavourable migration policies of the countries where they migrate. With this respect, we observe a general attitude in

considering UAMs as vulnerable children before they turn 18 and treating them as adult migrants once they reach the age of majority, having failed to provide them with essential means to cope with the delicate phase of the transition to adulthood, which is key for their inclusion<sup>2</sup> in the host society.

### **Research Question(s)**

One of the most distinctive character of UAMs resides in their twofold status, that is, their being minors and migrants at the same time. Under a legal perspective, the challenge that such a condition poses lays in the need to balance and properly combine the two main legal frameworks called into question when dealing with this peculiar group, that is, juvenile law and migration law. With this respect, the first question is whether UAMs are treated more as children or as migrants and how, once they turn 18 and become legally adult, their treatment as only migrants catches them “unprepared” and threatens their ability to become autonomous.

Another question pertains the extent to which their inclusion in the host society is threatened, and to what extent such threat is caused, or directly linked, to the failure of putting in place tailor-made targeted measures exclusively dedicated to UAM adolescents approaching adulthood, as opposed to the legal regime intended for adult migrants with all its multiple facets.

I tried to tailor and adapt each chapter to the research question, in order to lay the foundation and underpin the argument according to which measures to cope with the legal transition to adulthood are overlooked, both in what is enshrined in legal provisions and in what is implemented in concrete. The research question therefore concerns the need to understand to what degree the lack of due consideration of this legal passage is caused by concurrent factors, notably: (a) a substantial absence of attention in international instruments – both at the UN, EU and, even if slightly less

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<sup>2</sup> The use of the word *inclusion* is not accidental. It is intentionally used and will be used hereinafter in lieu of the word *integration* for the different connotation it has with regards to migrants’ place in the host society. In particular, while *inclusion* refers to an active participation of migrants into the society through an individual and active participation, the idea of *integration* more generally refers to the coexistence of different separated groups that do not interact constructively, but rather live separately and do not benefit from each other’s presence.

significantly, Council of Europe (hereinafter CoE) level – which treat them mostly as children, without considering the majority of them being adolescents; (b) gaps in the Italian legislation and relevant application and/or (c) the reception system in its very structure, functioning and conception – with a special focus on the contrast between the emphasis on the condition of vulnerability against the treatment as adult migrants when they become of age.

### **Research Method, purpose and scope of the analysis**

The choice of the topic of this research traces back to my well-founded interest about international migration and children rights. The choice to focus on Unaccompanied Migrant Minors is linked to the strong interest developed for this “group” during my internship at Save the Children Italy, where I supported the monitoring process of the Law No. 47/2017 to them dedicated.

I decided to take Italy as a case study, due to its geographical location, which makes it among the most concerned countries in terms of arrivals and because of UAMs’ main age range registered in this country. Besides, the choice fell on Italy because of the characteristics of its legal framework, which envisages a specific Law for the protection of UAMs, notably the Law 47/2017, introduced in the Italian legal system in 2017.

This work required me to carry out research in different fields and combine the data analysed to frame an answer coherent with the interdisciplinary nature of the research question(s). Such interrogatives demand indeed the interplay of different disciplines: the comparison between the existing legal instruments, their effective implementation and their implications within a given social context is the result of an intersection between philosophy of law and sociology of law.

This thesis, thus, is the product of a legal analysis of the existing provisions on children’s rights pertaining UAMs, starting from the international framework to the Italian legislation, notably its recent Law 47/2017. In carrying out the research, I explored the role of UAMs’ transition to adulthood in a legal perspective, trying to highlight the gaps in properly considering such a delicate phase, both in what is

enshrined in the provisions, as well as in what is actually implemented in practice. I analysed the international instruments at the UN level, starting from the UN Convention on the Rights of the Child (hereinafter UNCRC), its fundamental principles, and the relative application in Italy, on which the second and the third chapter focus. I then moved to the analysis of the data concerning UAMs' arrivals to Europe – in brief – and Italy, concentrating especially on age distribution, to underpin the argument according to which transition to adulthood represents a major and urgent issue to be tackled in UAMs protection system: the majority of them, in fact, are aged between 16 and 17 years old and thus very close to reach the age of majority. I then scrutinised existing national legal instruments and examined their effective application and implementation in reality, taking as an example the case of Italy – whose role is also emblematic since it is the only country at the European level with a Law exclusively dedicated to UAMs.

The need to both analyse the positive law dedicated to UAMs and discover how it is *de facto* implemented – and respected – induced me to adopt a hybrid method: the combination of desk research and secondary data analysis with individual interviews with key informants (professionals, activists, legal caseworkers, and jurists working in the field of UAMs protection in Italy) using a semi-structured questionnaire. This selection is necessarily limited in scope. Therefore, it is acknowledged that the present work does not intend to represent exhaustively the diversity in the Italian context regarding transition to adulthood.

The overall aim was thus to consider children's rights at stake when dealing with UAMs, but at the same time considering them as individuals very close to reach adulthood with all the implications of the interaction between juvenile law and migration law. In this perspective, it was necessary to scrutinise the legal system pertaining adult migrants and, subsequently, the practicable options of UAMs recently turned 18 years old together with the requirements and conditions they have to meet. What emerges from this consideration are the extreme difficulties faced by newly adult UAMs who often find themselves deprived of material reception measures and have instead to meet strict requirements linked to employment situation.

The research therefore aims at exploring the extent to which the transition to adulthood of unaccompanied migrant minors is considered as crucial as the issues more strictly related to their status as migrants: (a) those concerned with the reception measures proper of the initial tracing phase upon arrival and (b) those connected to the requirements to meet to regularly reside in Italy.

The objective is to prove the need to tackle UAMs' transition to adulthood adequately to their condition of newly arrived adolescents, in a country of which they often do not speak the language, in which their inclinations, competencies and aspirations are not valued. With respect to Italy, this calls for the need to revisit the existing protection system and consider transition to adulthood as crucial, providing for means and ability to cope with the delicate legal and personal transition. Further, the idea is to frame a system of rules which do not let them fall in irregularity because unable to meet strict employment requirements incompatible with their actual possibilities, but rather is able to assure fundamental rights and freedoms.

### **Structure of the thesis**

Overall, the structure of the thesis is conceived to divide the work in thematic areas, giving answers to different questions and provide a comprehensive and exhaustive argument.

Overall, Chapter I seeks to examine which is the relevant international framework and which are the aspects prioritised when it comes to deal with UAMs both as children and migrants and, accordingly, which phase is given more attention between first reception and transition to adulthood. Chapter II focuses on Italy, exploring the presence of UAMs on the territory, its new Law and the position of transition to adulthood in its main dispositions. Chapter III concentrates on the problems of the Law in its implementation and how difficulties in effectively apply it negatively affect the proper path towards adulthood. Chapter IV investigates the implications of such difficulties in the implementation and the consequences of the lack of due attention on the transition to adulthood, linked either to the emphasis put on the condition as vulnerable children (before) and as migrants (after).



More in detail, Chapter I focuses on the international legal framework concerned with UAMs, observing its fragmented nature and the lack of a harmonious system to address this issue. Notably, I focused on the UN CRC and its application in Italy, together with the fundamental principles and their relevance to UAMs. The second section of the first chapter illustrates the European legal framework, concentrating on both the EU level, focusing on the Common European Asylum System (hereinafter CEAS), the work of the Council and the Parliament, as well as on the CoE level, briefly touching upon the relevant jurisprudence of the European Court of Human Rights (hereinafter ECtHR).

Chapter II aims at giving an overall picture of the situation of UAMs in Italy, focusing both on their presence explained through figures and indicators, comparing different trends in different years and on the reception system's functioning for UAMs. Further, the chapter focuses on the Italian legislation addressing UAMs protection, notably the Law No. 47/2017, its provisions and the path that brought to its introduction in the Italian legal system.

Chapter III concentrates on the state of the art of the Law 47/2017 and the main problems in its implementation, also inevitably considering the impact of the Covid-19 pandemic on its functioning and related consequences. Most of the attention is put on the discrepancy between what is enshrined in the Law and what is actually implemented, highlighting the main consequences on UAMs' lives, especially on their acquisition of instruments to enable them to be autonomous.

Chapter IV's aim is to draw some conclusions as well as stimulate new inputs, on how the problems in the implementation together with the lack of due attention on the phase of transition towards adulthood affect UAMs capacity to become autonomous and their possibility to acquire means and competencies crucial in this passage. In this chapter, the failure to give the necessary consideration to the transition to adulthood and the path towards autonomy is linked to the concept of vulnerability. Vulnerability becomes the justification of protective and short-sighted actions aiming at "defending" UAMs from a concrete danger, while depriving them of the means that would enable them to conduct a life autonomously. The proposed approach here refuses the idea of the enhancement of vulnerability resulting in the "abandonment" to the condition of migrant, and

stresses the need of a long-term perspective able to provide UAMs with competencies and skills expandable in the future, together with the need to consider them as a peculiar group and, accordingly, dedicate to them a favourable rule system in which they do not receive the same legal treatment as adult migrants. In arguing in favour of this approach, the chapter provides for an emblematic example of good practices and positive outcomes for UAMs involved in projects aimed at the creation of enriching skills and abilities that can be useful to the socio-employment inclusion of UAMs and thus in the process of autonomy acquisition.

# I. UNACCOMPANIED MINORS IN THE INTERNATIONAL LEGAL FRAMEWORK: CHILDREN, ADOLESCENTS OR MIGRANTS?

According to the United Nations High Commissioner for Refugees (UNHCR) “an unaccompanied child is a person who is under the age of eighteen, unless, under the law applicable to the child, majority is attained earlier and who is “separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so”.<sup>3</sup> The definition provided by the Committee on the Rights of the Child in its *General Comment No. 6*, states that unaccompanied minors “are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so”.<sup>4</sup> Again, according to the EU Qualification Directive, an unaccompanied minor is a “minor who arrives on the territory of an EU Member unaccompanied by the adult responsible for them by law or by the practice of the EU Member State concerned, and for as long as they are not effectively taken into the care of such a person; or who is left unaccompanied after they have entered the territory of the EU Member State.”<sup>5</sup> All these definitions give us a clear image of the situation of in which UAMs find themselves and the necessity for tailored measures and norms to address their specific needs, primarily as children who are deprived of their family care.

At the international level, UAMs have no specific instrument or convention protecting them and setting common standards and legal frameworks, rather their

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<sup>3</sup> UNHCR, *Guidelines on Policies and procedures in dealing with Unaccompanied Children Seeking Asylum*, Geneva, 1997, p. 1. Available at: <https://www.unhcr.org/3d4f91cf4.pdf>

<sup>4</sup> Committee on the Rights of the Child (2005): General Comment No. 6, *Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6 of the 1st September 2005, paragraph 7.

<sup>5</sup> European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26, art. 2.

condition as vulnerable persons is addressed by the relevant law applicable to them which is mainly derived from the UN Convention on the Rights of the Child and the work of the Committee on the Rights of the Child. Overall, what emerges from the analysis of the major international documents concerned with UAMs is the prominence conferred to their rights as they arrive to the country of destination – which are however often and systematically violated – rather than to their need to have a voice in determining their life and ambitions in a long-term perspective. This is also mainly due to the general attitude in considering all UAMs as children, without distinguishing between those who are, as a matter of fact, children, and those who are adolescents and thus, approaching the age of majority.

At the European level, the major problem of the protection of UAMs concerns the lack of uniformity and coordination among relevant bodies and institutions as well as within the European Union and amongst its Member States. Such a fragmented framework leaves room for violations of fundamental rights due to negative practices and lack of common operational standards that guide both the first phase of reception of UAMs and the provision of the necessary means to ensure them the full realisation of their life projects.

What emerges is a situation where the lack of a coherent international legal framework contributes to the creation of uncertainties, inefficiencies and shortcomings in States' legislations and practices, with no common standards to follow when dealing with UAMs' inclusion in their society after they become adults. The urgency to promptly respond to the arrival of these minors at the Mediterranean shores – which also shows the weaknesses and lack of coordination of the migration policies at the European level – seems to overshadow the issue of their long-term life projects and the need to ensure them the means to build a life without being trapped in the obstacles related to the condition of migrant children. It seems the tendency at the international level is to consider them as children, ignoring the major age trends, which instead show the majority of them are aged between 16 and 17 years old, and thus approaching the legal age of majority in almost all European States. Transition to adulthood and the right to *development* seem thus not as critical as the need to see their age assessed or return them to their

country of origin, and are considered as secondary issues, not only in chronological terms.

Indeed, at the UN level, also the work of the UN Human Rights Council (HRC) seems to almost entirely dedicate its attention to the urgency of coping with UAMs rights as children, while documents addressing the phase of the transition to adulthood are very rare to be found. A brief mention is made in the 2016 HRC Report “Global issue of unaccompanied migrant children and adolescents”<sup>6</sup>, which in the final part, at the Recommendations section, calls for the need to “continue to care for unaccompanied migrant children in the country of destination, to support their transition to adulthood in that country”.<sup>7</sup>

In the first section of this chapter, I will examine some relevant document produced at the UN level, starting from the most important principles and provisions of the UN CRC relevant to the condition of UAMs. With this respect, I will dwell on the approach adopted by the Committee on the Rights of the Child in addressing the four CRC principles and their pertinence to UAMs. In line with the purpose of this work, I will further examine the Italian situation with regards to the implementation of the UN CRC in the country and the recommendations made by the Committee on the Rights of the Child. In the second section of the chapter, I will elaborate on the European legal framework, considering both the relevant work of the CoE and the developments at the EU level with regards to UAMs. What will emerge is the difference in the approach in the European context, where, if we see some efforts made at the CoE level, we do not observe the same tendency at the EU level, where emphasis is put on aspects linked to migration control.

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<sup>6</sup> Human Rights Council (HRC), *Global Issue of Unaccompanied Migrant Children and Adolescents and Human Rights*; Report of the Human Rights Council Advisory Committee, 7–9, U.N. Doc. A/HRC/33/53, 2016.

<sup>7</sup> *Ivi*, paragraph 98, let. (n).

## 1. The UN Convention on the Rights of the Child and the General Comment No. 6

The United Nations Convention on the Rights of the Child<sup>8</sup> (CRC) was adopted and opened for signature, accession and ratification by General Assembly resolution 44/25 on 20<sup>th</sup> November 1989 and entered into force on 2<sup>nd</sup> September 1990. It is the most widely ratified human rights convention in history: to this date, 196 countries ratified it, while the United States of America is the only United Nations member that has not ratified it.<sup>9</sup> The last country to have ratified it is Somalia, in 2015.<sup>10</sup> Italy ratified the CRC on 5<sup>th</sup> September 1991.

The 27 Member States of the European Union have therefore all ratified the CRC and committed to the protection and respect of children's rights to be implemented in their national legislations. It is however worth noticing that the extraordinary positive effects connected to the ratification of this Convention are mitigated by the widespread use of reservations. The instrument of reservations is widely abused by some countries whose aim is to limit the scope or pose conditions on some articles, and thus on rights. To date, almost 40 countries have posed reservations of different nature to the UN CRC and its Optional Protocols.<sup>11</sup>

The Convention identifies principles and obligations for the States parties aimed at the protection of "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".<sup>12</sup>

The UN CRC does not specifically deal with the issue of Unaccompanied Minors, nevertheless, some relevant principles are enshrined in the Treaty as well as documents such as General Comments<sup>13</sup> to the Convention were produced and are

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<sup>8</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3 [hereinafter CRC].

<sup>9</sup> OPIC Ratification Trends, [website] <http://opic.childrightsconnect.org/ratification-status/> (accessed 13/11/2020).

<sup>10</sup> United Nations Treaty Collection, *Convention on the Rights of the Child* [website], [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en) (accessed 13/11/2020).

<sup>11</sup> *Ibid.*

<sup>12</sup> CRC, Art. 1.

<sup>13</sup> According to the OHCHR Glossary of technical terms related to the Treaty Bodies, General Comments are "a treaty body's interpretation of human rights treaty provisions, thematic issues or its methods of work. General comments often seek to clarify the reporting duties of State parties

a fundamental legal reference for UAMs' protection. Indeed, the most significant document concerned with UAMs is the *General Comment No. 6* of the Committee on the Rights of the Child, called *Treatment of unaccompanied and separated children outside their country of origin*<sup>14</sup>. Its declared objective is to “draw attention to the particularly vulnerable situation of unaccompanied and separated children, “...” ensuring that such children are able to access and enjoy their rights; and, to provide guidance on the protection, care and proper treatment of unaccompanied and separated children based on the entire legal framework provided by the CRC”.<sup>15</sup> Besides specifying that the guidelines contained in the *General Comment* are to be applied equally to both unaccompanied and separated children<sup>16</sup>, the *General Comment No. 6* affirms that State obligations under the Convention must apply within the borders of a State and must therefore include those children attempting to enter the country's territory and, thus, under the State's jurisdiction. The rights and obligations enshrined in the Convention must be available to all children, either national or non-national, asylum seekers, refugees or migrants. The *General Comment* further concentrates on fundamental principles relevant to the condition of unaccompanied and separated migrant children, notably the *non-discrimination* principle, the *best interest of the child* principle, the *right to life, development and survival* and the *right of the child to express her/his views freely*, which are all respectively reflected in Article 2, 3, 6 and 12 of the Convention.

In the following section I will elaborate more on the applicability of such principles to the situation of Unaccompanied Minors and their contribution to the development of the relevant international legal framework.

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with respect to certain provisions and suggest approaches to implementing treaty provisions. Also called "general recommendation".

<sup>14</sup> Committee on the Rights of the Child (2005): General Comment No. 6, *Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6 of the 1st September 2005. [hereinafter CRC General Comment No. 6]

<sup>15</sup> CRC General Comment No. 6., paragraph 1.

<sup>16</sup> The General Comment No. 6 provides definitions to distinguish between *unaccompanied children or minors* and *separated children*, indicating that while the former are children who have been separated from both parents and other relatives and are not being cared for by an adult who is legally responsible, the latter are children who have been separated from both parents, but not necessarily from other relatives and can therefore be accompanied by other adult family members.

## **1.1 The four general principles of the CRC and the non-refoulement: relevance to the condition of UAMs**

### *Non-discrimination Principle*

Article 2 of the UN CRC sets up a non-discrimination obligation for every State party. This principle's aim is to ensure States respect and guarantee to every child the rights enshrined in the Convention "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".<sup>17</sup> The character of this provision is both positive and negative. Indeed, Article 2 of the Convention exhorts States parties to put in place all the possible measures to grant access to these rights without any form of exclusion, and to protect the child from any kind of punishment or discrimination related to her/his parents, legal guardians or family members' actions or opinions. In the *General Comment No. 6*, the Committee on the Rights of the Child underlines the pertinence of this principle for UAMs, confirming the prohibition of "any form of discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum seeker or migrant".<sup>18</sup> The Comment also stresses a worth-making clarification: "this principle, when properly understood, does not prevent, but may indeed call for, differentiation on the basis of different protection needs such as those deriving from age and/or gender." This aspect is fundamental to understand the peculiar condition of unaccompanied and separated children and the need to respond to their specific needs. With this respect, emphasis is put on the need for individual assessments rather than collective ones, when dealing with measures concerning public order, which have nonetheless to be proportional, based on the law and never applied on a collective basis.<sup>19</sup>

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<sup>17</sup> CRC, Art. 2.1.

<sup>18</sup> CRC General Comment No. 6, paragraph 18.

<sup>19</sup> *Ibid.*



### *Best Interest of the Child Principle*

Article 3 of the UN CRC deals with the principle of the best interest of the child, identified as a primary consideration in all actions concerning children, either in private or public institutions, courts of law, administrative authorities or legislative bodies.<sup>20</sup> According to the Committee on the Rights of the Child's *General Comment No. 6*, this principle acquires even more relevance for the case of UAMs: it must indeed be respected in every decision affecting the child's life and its displacement cycle, in the search of short or long-term solutions.<sup>21</sup> The Comment further develops on the need to accurately assess the child's identity, that is her/his "nationality, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs"<sup>22</sup>, while making sure this assessment process is carried out in a friendly and safe atmosphere by qualified trained professionals.<sup>23</sup> The appointment of a guardian is also regarded as a key step to ensure the best interest of the unaccompanied or separated child, especially when linked to asylum procedures or other administrative or judicial proceedings, where they should also be provided with a legal representative.<sup>24</sup>

As proof of the prominence of the best interest of the child principle, the Committee on the Rights of the Child also dedicated to it the *General Comment No. 14, on the right of the child to have his or her best interests taken as a primary consideration (2013)*.<sup>25</sup> In this document, the Committee described the best interest principle as a threefold concept: a substantive right of every minor, a fundamental, interpretative legal principle and a rule of procedure.<sup>26</sup> Indeed, according to Article 3.1 of the Convention, it "creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court".<sup>27</sup> Nevertheless, the definition of this

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<sup>20</sup> CRC, Art. 3.

<sup>21</sup> CRC General Comment No. 6, paragraph 19.

<sup>22</sup> CRC General Comment No. 6, paragraph 20.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> Committee on the Rights of the Child (2013): General Comment No. 14 *on the right of the child to have his or her best interests taken as a primary consideration*, CRC/C/GC/14, 29 September 2013. [hereinafter CRC General Comment No. 14]

<sup>26</sup> CRC General Comment No. 14, paragraph 6 lett. a,b,c.

<sup>27</sup> CRC General Comment No. 14, par. 6, lett. a.

principle is not sharp, and the Comment defines it as “complex”<sup>28</sup>, stating that its content must be determined on a case-by-case basis. Accordingly, it must also be considered as an interpretative tool: whenever a legal provision is open for more than one interpretation, the one granting the child her/his best interest, within the meaning of the Convention, must be privileged.<sup>29</sup> Finally, it is a rule of procedure: the possible impact of a decision on the child must always be taken into consideration, also adopting procedural guarantees. To this extent, States should not be limited to affirm that the best interest principle has been taken into consideration, but rather to show how this principle has been implemented throughout the decision-making process. To conclude, it should be added that this principle has been the subject of extensive debates and the matter of its practical application is still challenging, as the concept is blurred and vague.

#### *The child’s right to life, development and survival*

The child’s right to life, development and survival is enshrined at Article 6 of the UN CRC, which defines it as “inherent”<sup>30</sup> and requires States parties to ensure the survival and development of a child to the maximum extent possible. This principle is also affirmed in the *General Comment No. 6*, which emphasises its character as both negative and positive: while calling for the maximum protection possible against violence and exploitation, as risks to which unaccompanied children are most vulnerable and that could jeopardize a child’s right to life, survival and development, it also requests “vigilance by State parties in this regard, particularly when organised crime may be involved”.<sup>31</sup> With this respect, the Committee also calls for practical measures to be adopted and periodically evaluated to protect children from the above mentioned risks, such as the appointment of guardians, provision of information to children about the risks they may encounter, priority procedures for child victims of trafficking and establishment of measures to provide

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<sup>28</sup> CRC General Comment No. 14, paragraph 3.

<sup>29</sup> CRC General Comment No. 14, par. 6, lett. b.

<sup>30</sup> CRC, Art. 6.1.

<sup>31</sup> CRC General Comment No. 6, paragraph 23.

follow-up to children at risk.<sup>32</sup> No mention is made with regards to UAMs self-realisation and life projects.

### *The child's right to express her/his views*

Article 12 of the CRC includes the fourth general principle concerning the right of the child to express her/his views freely. *General Comment No. 6* provides for a link with the situation of UAMs, stating that in determining the measures to be adopted, the child's views and wishes should always be taken into account. To fulfil this, it is essential to deliver information to children concerning their rights, entitlements, services available, such as those enunciated in articles 13, 17 and 22(2) of the Convention<sup>33</sup>, concerning the means of communication, asylum process, family tracing and the situation in their country of origin. Children's views should also be considered in relation to the guardianship appointment as well as in care and accommodation arrangements, and legal representation. Important to allow children to express their own views is of course to communicate and inform them in a reliable manner appropriate to their level of understanding, including the possibility to dispose of interpreters at all stages of the procedure.<sup>34</sup> The right of the child to be heard is also extensively dealt with in the *General Comment No. 12* of 2009<sup>35</sup>, where the Committee asserts the fundamental right of the child to be heard in any judicial and administrative proceedings affecting her/him, emphasising the application of this provision to all cases without limitation, including unaccompanied children, asylum-seeking and refugee children and victims of emergencies.<sup>36</sup> According to the *General Comment No. 12* the child's right to be heard applies also in administrative proceedings and, with regard to UAMs, it applies in case of asylum requests and related procedures.<sup>37</sup> Even here, the child's

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<sup>32</sup> CRC General Comment No. 6, paragraph 24.

<sup>33</sup> CRC, art. 13, 17, 22.

<sup>34</sup> CRC General Comment No. 6, paragraph 25.

<sup>35</sup> Committee on the Rights of the Child (2009): General comment No. 12 *The right of the child to be heard*, CRC/C/GC/12, 20 July 2009. [hereinafter CRC General Comment No. 12]

<sup>36</sup> CRC General comment No. 12, paragraph 32.

<sup>37</sup> CRC General comment No. 12, paragraph 67.

views seem not to include those concerning life projects and aspirations, as no related mention is made.

### *Non-refoulement principle*

Although the principle of non-refoulement is not enshrined in the Convention, the *General Comment No. 6* dedicates to it a paragraph, given the relevance of this principle to the situation of UAMs. This principle entails the obligations of the State to respect International Human Rights Law obligations, in particular those deriving from Article 33<sup>38</sup> of the 1951 Refugee Convention and Article 3<sup>39</sup> of the Convention against Torture (CAT).<sup>40</sup> This implies that States “shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed”.<sup>41</sup> According to the *General Comment No.6*, such obligations have to be applied even when violations of those rights originate from non-State actors and whether they are consequence of action or inaction, assessing the risk of such violations in an accurate and gender-sensitive manner. The Comment also dwells on the issue of children at risk of harm due to under-age recruitment and participation in hostilities, referring to the State obligations deriving from Article 38<sup>42</sup> of the Convention<sup>43</sup>, affirming that these State obligations “entail extra-territorial effects and States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of under-age recruitment, including recruitment not only as a combatant but also to provide sexual services for the military or where there is a real risk of direct or

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<sup>38</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, art. 33.

<sup>39</sup> UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, art. 3.

<sup>40</sup> CRC General Comment No. 6, paragraph 26.

<sup>41</sup> CRC General Comment No. 6, paragraph 27.

<sup>42</sup> Article 38.4 of the CRC: “in accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict”.

<sup>43</sup> Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3, (entered into force 2 September 1990), Art. 38.4.

indirect participation in hostilities, either as a combatant or through carrying out other military duties”.<sup>44</sup>

## 1.2 The Italian application of the CRC relevant to UAMs

Italy ratified the Convention on the Rights of the Child in 1991, and officially adopted it with Law No. 176/1991.<sup>45</sup> Its implementation is monitored by the Committee on the Rights of the Child which periodically issues concluding observations and recommendations after consideration of the State Party’s report. Concluding observations refer both to positive aspects of a State’s implementation of the Treaty and to areas of concern where further action is needed.

In its 2019 *Concluding Observations* on the combined fifth and sixth periodic reports of Italy<sup>46</sup>, the Committee on the Rights of the Child assesses the situation of the implementation of the UN CRC in Italy, noting the efforts made for the amelioration of the protection of children’s rights in the country as well as drawing attention to some recommendations and concerns in specific areas, calling for urgent action. Notably, the areas identified by the Committee are allocation of resources; non-discrimination; education; asylum-seeking and refugee children; and children in situations of migration.<sup>47</sup> For the purpose of this thesis, I will focus on the recommendations relevant to the situation of UAMs, and the related recommendations and problematics identified by the Committee.

The Document starts by welcoming the progress made by Italy in various areas, particularly referring to the ratification of the Optional Protocols to the Convention. It also positively notices the legislative, institutional and policy measures taken to

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<sup>44</sup> CRC General Comment No. 6, paragraph 28.

<sup>45</sup> Legge 27 Maggio 1991, n. 176 (1). *Ratificazione ed esecuzione della convenzione sui diritti del fanciullo, fatta a New York il 20 Novembre 1989.*

<sup>46</sup> Committee on the Rights of the Child (2019): *Concluding observations on the combined fifth and sixth periodic reports of Italy*, CRC/C/ITA/CO/5-6, 28 February 2019. [hereinafter CRC Concluding observations]

<sup>47</sup> CRC Concluding observations, paragraph 4.

implement the Convention, in particular the adoption of Law No. 47 of 7 April 2017, on measures to protect unaccompanied foreign children.<sup>48</sup> The Committee also focuses on recommendations concerning the implementation of the general principles, notably the principle of non-discrimination, the best interest of the child and the rights to express views freely.

With regards to the non-discrimination principle and its link to the situation of UAMs, the Committee identifies some actions to be taken, particularly in relation to the need to strengthen “preventive activities against discrimination and, if necessary, taking affirmative action for the benefit of children “...” in marginalized and disadvantaged situations, such as asylum-seeking, refugee and migrant children; stateless children; children belonging to minorities, including Toma, Sinti and Caminanti children;”<sup>49</sup>

Assessing the implementation of the best interest of the child principle, the Committee urges Italy to increase its efforts to integrate, interpret and apply this principle in all regions across the country in all legislative, administrative and judicial proceedings and decisions as well as in the policies directly impacting children, with particular attention to the situation of unaccompanied or separated children.<sup>50</sup> It also calls for the development of procedures and criteria to guide all professionals in the determination of the best interest of the child and give it primary consideration, focusing in particular on “unaccompanied and separated children having arrived in the State party”.<sup>51</sup>

In evaluating the respect of the right of the child to express her/his views freely, the Committee exhorts Italy to introduce this principle in a comprehensive legal provision to efficiently ensure the respect of the right of the child to be heard without any discrimination. It also mentions the need to guarantee that the child’s opinion is taken into account following the implementation of regulations and

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<sup>48</sup> CRC Concluding observations, paragraph 3.

<sup>49</sup> CRC Concluding observations, par. 15, lett. c.

<sup>50</sup> CRC Concluding observations, par. 16, lett. a.

<sup>51</sup> CRC Concluding observations, par. 16, lett. b.

guidelines, “in particular in relation to all decisions concerning unaccompanied or separated children having arrived in the State party”.<sup>52</sup>

In the section relative to the Special Protection measures the Committee deals with the adoption of Law No. 47/2017, while deeply regretting the delay in adopting the implementation decrees<sup>53</sup> necessary for its effective application. The Committee also identifies three areas of concerns, notably with regards to (1) Law No. 132/2018<sup>54</sup> – the so-called Security Decree<sup>55</sup> – which suspended the asylum process for persons, including children, considered “socially dangerous” or convicted of a crime, abolished the humanitarian protection and reduced the system of local reception and inclusion only to recognized refugees and unaccompanied children; (2) the shortcomings in emergency, first and second-level reception centres for UAMs concerning the age assessment procedure, the lack of adequate information and social activities for children, the length of stay of children in emergency or first-level reception centres and delays in the appointment of guardians; (3) the lack of permanent and suitable resettlement options for refugees, particularly children and their families.<sup>56</sup>

The Committee then dwells further on some aspects identified in *General Comment No. 6*, notably regarding the access to asylum system, the need for appropriate and tailored reception and protection mechanisms for UAMs; for multidisciplinary and respectful age determination protocols, as well as for the prompt and accurate appointment of a guardian; and for the improvement of the data system for UAMs harmonizing the existing databases.<sup>57</sup> It is also concerned about the insufficient level of implementation of Law. No. 47/2017<sup>58</sup> and therefore urges Italy to respect

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<sup>52</sup> CRC Concluding observations, par.17, lett. a.

<sup>53</sup> The issue concerning the adoption of implementation decrees will be address in Chapter 3.

<sup>54</sup> The Security Decrees have been however recently amended, in October 2020, with the new Decree 130/2020, dealing with urgent dispositions concerning immigration and specifically aimed at modifying articles 131-bis, 391-bis, 391-ter and 588 of the Penal Code. Further details will be provided in the following Chapter.

<sup>55</sup> Decreto-legge 4 Ottobre 2018, n. 113. *Disposizioni Urgenti in materia di protezione internazionale ed immigrazione, sicurezza pubblica, nonché misure per la funzionalità del Ministero dell’Interno e l’organizzazione e il funzionamento dell’Agenzia nazionale per l’amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata.*

<sup>56</sup> CRC Concluding observations, par. 33, lett. a, b, c.

<sup>57</sup> CRC Concluding observations, par. 34, lett. a-h.

<sup>58</sup> CRC Concluding observations, par. 35.

the principle of the best interest of the child at all times as a primary consideration in all situations concerning children in the context of international migration; to produce information and legal guidance and make it available to children to inform them on their rights and freedoms, protection and assistance in a language that they understand; to strengthen measures to reduce the statelessness of migrant children; to develop regional practices for admission and stay, facilitate access to procedure for reunification with families; to review policies and practices to ensure protection to vulnerable children applying a human rights-based approach providing them with the necessary support at all stages of migration; to ensure the timely assignment of child protection authorities for the determination of the best interest of the child once an unaccompanied or separated child crosses an international border; to strengthen gender-responsive and child-sensitive referral mechanisms at borders and places of first arrival; and to ensure prompt identification at first arrival in the State party and, if unaccompanied or separated, the prompt referral to child protection authorities and other relevant services.<sup>59</sup>

Overall, the aspect concerning UAMs' transition to adulthood and their inclusion in the society in a long-term perspective seems to be overlooked, as all the recommendations and relative concerns regarding the implementation of the Convention appears to focus on the first phase after the arrival of UAMs in the country. The durable solutions identified by the Committee in its *General Comment No. 6*, indeed, mostly concentrate on family reunification, return to the country of origin, inter-country adoption, resettlement in a third country, mentioning "local integration" as a "primary option if return to the country of origin is impossible on either legal or factual grounds".<sup>60</sup> In the following section focused on the European Legal Framework, I will analyse how, although the lack of a consistent legal framework addressing the condition of UAMs is still an issue within the European landscape, the aspects related to the inclusion of unaccompanied minors in the host society and the realisation of their life project has a more prominent role – at least – in the documents produced by the different institutions involved.

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<sup>59</sup> CRC Concluding observations, par. 36, lett. j.

<sup>60</sup> CRC General Comment No. 6, paragraph 88.



## **2. The European legal framework**

The UAMs phenomenon in Europe shows structural shortcomings, especially due to the lack of coordination amongst Member States. Indeed, at the European level, there is no comprehensive framework addressing the protection of UAMs consistently and no specific framework is expressively dedicated to their condition. Rather, we observe a fragmented system with no common rules among States to respond to UAMs' protection and inclusion in the host societies. The lack of homogeneity is found both in terms of their protection, as well as – and most significantly – of their inclusion in the society after their transition to adulthood is completed. Further, it must be noticed that, while at the EU level, attention is given mainly on asylum seeker minors and related procedures rather than on measures for their inclusion and protection, more emphasis is put on aspects concerning the life of the unaccompanied minor and her or his inclusion in the host society by the CoE.

Differences in the guarantees and protections are found both at the reception level and in the access to welfare services. Normative instruments in Europe must be revised to allow an effective coordination also in terms of time in which the response to their need is provided, which is an essential element for unaccompanied minors for the effective enjoyment of their rights. With regards to this last aspect, it should be observed that a lot still has to be done for a real consideration and implementation of the child's best interest through an effective inclusion of UAMs in the host societies. It is therefore evident the urge for a concrete harmonisation of the different national provisions and an improvement of the European instruments to address UAMs' condition especially in their transition towards adulthood.

In the following section I will elaborate on the efforts made at the CoE level, with particular reference to the European Convention on Human Rights (ECHR), the work of the European Court of Human Rights (ECtHR) and on the issue of UAMs and on the EU framework and its main features in approaching this issue.

## 2.1 The Council of Europe and UAMs: the ECHR and the jurisprudence of the ECtHR on UAMs

### *The Recommendations of the Council of Europe on UAMs*

The Council of Europe's main bodies, notably the Committee of Ministers and the Parliamentary Assembly, have been working on the subject of unaccompanied minors, mainly adopting non-binding recommendations with the aim of improving Member States' actions regarding UAMs. Such recommendations can be considered as an attempt to look at unaccompanied minors from the perspective of the protection of the rights of the child and not (solely) from that of migration policies. Indeed, in the case of the CoE, it can be observed that more attention is put on durable solutions when dealing with the situation of UAMs, also in view of the prominence of their best interest. Explicative in this regard is the Recommendation *CM/Rec(2007)9* of the Committee of Ministers to Member States *on life projects for unaccompanied migrant minors*.<sup>61</sup> The Council of Europe's approach diverges from the main trends in the international framework, to the extent that it seems to focus more on aspects concerning the second phase of the migratory project, that is the minor's inclusion in the host society and the realisation of her or his *life project*. In particular, the Recommendation emphasises the need for a holistic approach on which the life project is based: this should consider several key aspects concerning the minor's life, migratory project, family environment, ambitions and expectations. In order to guarantee the possibility for the unaccompanied minor to realise her/his life project, Member States are invited to take actions to coordinate both policy and practice. It also sets out some conditions required to implement life projects, which entail that Member States provide for appropriate funding and distribution of funds.<sup>62</sup> Another important aspect looks at the need to enable unaccompanied children to implement their life project both in the host country and in the country of origin. With this respect, the

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<sup>61</sup> Council of Europe: Committee of Ministers, *Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors*, 12 July 2007. [hereinafter *Recommendation CM/Rec(2007)9*]

<sup>62</sup> *Recommendation CM/Rec(2007)9*, Section IV, paragraph 21.

Recommendation encourages the Member States to take all the necessary measures to ensure the continuity of the life project started in the host country also in the country of origin. However, it must be noticed that Member States failed to fully implement such recommendations in their policies and practices. As a result, the Parliamentary Assembly further addressed this question in its Resolution 1810(2011) of 15<sup>th</sup> of April 2011, *Unaccompanied children in Europe: issues of arrival, stay and return*.<sup>63</sup> In particular, the Assembly believes that child protection rather than immigration control should be the driving criterion to deal with unaccompanied children and calls for the establishment of fundamental conditions to achieve the child's best interest in the most comprehensive manner possible. Among these, we find the need to identify a durable solution as "the ultimate goal from the first contact with the unaccompanied child".<sup>64</sup> Further, dealing with the issue of return, the Assembly points out that return to institutional care "should not in and of itself be viewed as a durable solution"<sup>65</sup>, thus implying that the priority should always be to ensure the child's best interest and prompt actions to fulfil her or his life project. In its final section, the Assembly also calls upon the European Union to "consider proposing new legislative standards to close existing protection gaps in European Union law for all unaccompanied children, irrespective of whether they seek asylum"<sup>66</sup> and also to "ensure co-operation with countries of origin on the assessment of the child's circumstances, with a view to finding durable solutions for children on a case-by-case basis".<sup>67</sup> More recently, the CoE's Parliamentary Assembly issued the Resolution 2136(2016) of 13<sup>th</sup> October 2016, *Harmonising the protection of unaccompanied minors in Europe* following the report of the Committee on Migration, Refugees and Displaced Persons, highlighting the need to improve the protection of unaccompanied minors, harmonise the rules amongst Member States and again emphasising the utmost need

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<sup>63</sup> Council of Europe: Parliamentary Assembly, Resolution 1810(2011) of 15<sup>th</sup> April 2011, *Unaccompanied children in Europe: issues of arrival, stay and return*. [hereinafter Resolution 1810(2011)]

<sup>64</sup> Resolution 1810(2011), paragraph 5.12.

<sup>65</sup> Resolution 1810(2011), paragraph 5.15.

<sup>66</sup> Resolution 1810(2011), paragraph 6.2.

<sup>67</sup> Resolution 1810(2011), paragraph 6.10.

to treat them first and foremost as children upon arrival.<sup>68</sup> More recently, the Recommendation *CM/Rec(2019)6*<sup>69</sup> adopted by the Committee of Ministers of the Council of Europe on 24 April 2019 highlighted the urgency to deal with the situation of UAMs in their transition to adulthood and guarantee the full enjoyment of their rights in this delicate phase of their life. Notably, reference is made to access to education, employment, health care and social services, with the aim of ensuring the realisation of UAMs' life projects. Accordingly, emphasis is put on the need to enable them to actively participate in the society's life as well as in the decision-making processes. With this respect, UAMs approaching adulthood should be supported in becoming culturally, politically and socially active.<sup>70</sup> The funding of projects and programmes aimed at the creation of specific training opportunities is considered as a key step for the realisation of the above-mentioned objectives, especially through the involvement of local youth organisations also to create relevant social networks.

#### *Contents of the ECHR and ECtHR's jurisprudence on UAMs*

The rights and freedoms enshrined in the European Convention of Human Rights (ECHR) are recognized to everyone under the jurisdiction of each State Party to the Convention. This implies that children too are entitled to such rights and freedoms and that they can appeal under the same conditions of adults to the European Court of Human Rights (ECtHR). However, it goes without saying that even if children are equally entitled to the recognition of those rights and freedoms, they face some obstacles linked to their condition as minors. This is valid especially for countries where access to justice for children is still a challenging issue, since the ECtHR can be accessed as long as all the domestic remedies have been exhausted. Further, the ECtHR often stressed the need to concretely and effectively apply the provisions of

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<sup>68</sup> Council of Europe: Parliamentary Assembly, Resolution 2136(2016) of 13<sup>th</sup> October 2016, *Harmonising the protection of unaccompanied minors in Europe*, paragraph 5.

<sup>69</sup> Council of Europe: Committee of Ministers, *Recommendation CM/Rec(2019)4 of the Committee of Ministers to member States on supporting young refugees in transition to adulthood*, 24 April 2019. [hereinafter Recommendation CM/Rec(2019)4]

<sup>70</sup> Recommendation CM/Rec(2019)4, paragraph 35.

the ECHR, affirming the obligation of the State Parties not only to refrain from violate those rights and freedoms, but also to put in place all the necessary measures and actions to prevent that these are violated, thus asserting the positive obligations of the States derived from the Convention.

This principle is recalled in most of the cases dealt with by the ECtHR and the cases that will be illustrated below are mostly concerned with the failure of State Parties to intervene and prevent the violations from occurring.

The majority of the case law of the ECtHR deal with the effective implementation of the principle of the best interest of the child in all its possible declinations. The ECtHR's reliance on this principle in the decisions that will be illustrated as follows, shows how the recognition of children's rights in international and regional agreements signed by the Council of Europe enables their protection to be achieved more effectively. With regards to the specific situation of UAMs, some case law contributed to the development of the legal framework and to the amelioration of the conditions of UAMs in particular circumstances such as detention, accommodation, access to justice and reception conditions. The majority of cases therefore address issues pertaining the first phase of the migratory project of these minors and shed light on the States' failure to protect children from their fundamental rights' violations.

The *H.A and Others v. Greece*<sup>71</sup> case concerned nine unaccompanied minors who arrived at the Greek borders and were placed under “protective custody” in several police stations in Northern Greece. The detention lasted for periods ranging from 21 to 33 days and the children were then transferred to the Diavata reception centre and eventually to special facilities for minors.<sup>72</sup> For this case the Court held that there have been a violation of Article 3 of the European Convention of Human Rights (ECHR) dealing with the prohibition of inhuman or degrading treatment, on

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<sup>71</sup> *H.A. et autres c. Grece (application no. 19951/16)*, Council of Europe: European Court of Human Rights, 28 February 2019

<sup>72</sup> M. Tomasi, *The European Court of Human Rights and the Best Interests of Unaccompanied Migrant Minors: a Step Towards a More Substantive and Individualized Approach?*, International Law Blog, 2019. Available at: [https://internationallaw.blog/2019/10/10/the-european-court-of-human-rights-and-the-best-interests-of-unaccompanied-migrant-minors-a-step-towards-a-more-substantive-and-individualized-approach/#\\_ftn5](https://internationallaw.blog/2019/10/10/the-european-court-of-human-rights-and-the-best-interests-of-unaccompanied-migrant-minors-a-step-towards-a-more-substantive-and-individualized-approach/#_ftn5)

account of the conditions of the applicants' detention in the police stations, which could have likely caused them damages to their physical and moral well-being. According to the Court, Article 5 protecting right to liberty and security was also breached: indeed, the lack of time limits for "protective custody" could lead to arbitrary situations of prolonged child detention in violation of domestic law and of Article 3 of the CRC. In addition, the Court also found that the authorities did not take into account the particular condition of vulnerability of unaccompanied minors lacking to consider whether the measure taken was one of last resort.<sup>73</sup> A breach of Article 5.4 was also identified, as the right to a lawful detention speedily examined by a Court was violated: they were not put in contact with a lawyer and had not lodged an appeal on their behalf in order to interrupt their detention and be transferred to the appropriate facilities. In this vein, the Court emphasised that, even if they had had access to a review procedure, the fact that they did not have an official detainee status would have still raised significant practical obstacles regarding their possibility to challenge their detention before administrative courts.<sup>74</sup>

*Khan v. France*<sup>75</sup> can be considered a step forward towards a more substantial protection of children on the move, although still tied to a first-phase protective approach. The case involved an unaccompanied foreign minor and its precarious living conditions in a shantytown and the failure of the French authorities to execute judicial placement order and provide care for him.

In this case, French authorities were found in breach of Article 3 of the ECHR dealing with inhuman and degrading treatment: the conditions in the camps reached the threshold of Article 3 severity and their non-intervention before the decision of the Children's Judge to identify and guarantee the assistance to the children present

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<sup>73</sup> European Database of Asylum Law, *ECtHR - H.A. and others v. Greece: Greece violated Convention by placing unaccompanied minors in protective custody in police stations*, [website], <https://www.asylumlawdatabase.eu/en/content/ecthr-ha-and-others-v-greece-greece-violated-convention-placing-unaccompanied-minors#:~:text=and%20others%20v.-.Greece%3A%20Greece%20violated%20Convention%20by%20placing%20unaccompanied%20minors,protective%20custody%20in%20police%20stations&text=Moreover%2C%20the%20authorities%20had%20not,was%20one%20of%20last%20resort> (accessed 23/11/2020).

<sup>74</sup> *Ibid.*

<sup>75</sup> *Khan c. France (application no. 12267/16)*, Council of Europe: European Court of Human Rights, 28 February 2019.

in the camp represented a violation of that Article. Hence, the French public authorities did not do all that was reasonably expected of them to fulfil their obligations to take care of the UAMs. Therefore, the circumstances in which the applicant Mr. Khan lived for six months, combined with the other described facts, constituted inhuman and degrading treatment as prohibited by Article 3 of the ECHR.

In *Rahimi v. Greece*<sup>76</sup> the ECtHR issued two Chamber judgements and reaffirmed the need to respect the double vulnerability of child asylum seekers as a primary consideration, and not just an equal consideration to other factors, such as their irregular status. The case concerned an Afghan unaccompanied minor who was placed in detention for two days after which he was abandoned to live on the streets. Although the detention lasted only 2 days, the Court found a violation of Article 3 of the ECHR considering both the extreme vulnerable situation of the applicant and the dreadful detention circumstances which he underwent. As in the other above-mentioned cases, the Court considered the negligence of the Greek authorities to take adequate care of the applicant as a violation of the obligations deriving from Article 3. According to the Court, the authorities did not consider the best interest of the applicant when they decided for his detention. It therefore concluded that the authorities did not act in good faith and the detention thus violated Article 5.1 of the ECHR which addresses the right to liberty and security. In this case the Court adopted a procedural approach with regards to the provisions of the UN CRC and the primary consideration of the best interest of the child.

We might say that this approach allows for a more substantial protection of children<sup>77</sup>, especially those in a vulnerable situation such as unaccompanied minors: indeed, on the one hand its clear advantage is that it encourages authorities to consider whether they act in compliance with international obligations concerning children and derived from the UN CRC. On the other hand, this approach does not give a concrete guidance to domestic authorities for the

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<sup>76</sup> *Rahimi c. Grèce*, (application no. 8687/08), Council of Europe: European Court of Human Rights, 5 April 2011.

<sup>77</sup> M. Tomasi, *supra* note 72.

application of the rights of the child. The principle of the best interest of the child is a vague and not sharp concept which leaves room for manoeuvre often leading to unfriendly outcomes for children.

## 2.2 The EU and UAMs

### *The EU Council and the European Parliament's Resolutions*

The EU Council resolution 97/C 221/03<sup>78</sup> of 26 June 1997 *on unaccompanied minors national of third countries* can be considered the foundation of the EU's approach towards UAMs. Although it has no legally binding force, this document is considered to be an influential reference for the development of the EU legislation as part of the Common European Asylum System, as it defines guidelines for the treatment of UAMs, especially with regards to reception, stay and return.

The European Parliament Resolution<sup>79</sup> of 12 September 2013 on the situation of unaccompanied minors in the EU starts with some general recommendations inviting States to remember that unaccompanied minors are, above all, children in potential danger “and that child protection, rather than immigration policies, must be the leading principle for Member States and the European Union when dealing with them, thus respecting the core principle of the child's best interests”.<sup>80</sup> It goes on also recalling the best interest of the child's priority over any other consideration affecting the unaccompanied minors, condemning the deficiencies in the protection of UAMs denouncing the conditions to which they are subject in some Member States. It further emphasises the need for a coherent response to the situation of UAMs, deploring the fragmentation of the norms concerning them across the continent. The Resolution also firmly regrets that child protection is significantly

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<sup>78</sup> European Union: Council of the European Union, *Council Resolution of 26 June 1997 on Unaccompanied Minors Who Are Nationals of Third Countries*, 18 March 1998, 97/C 221/03

<sup>79</sup> European Union: European Parliament, *Report on the situation of unaccompanied minors in the EU (2012/2263(INI))*: Committee on Civil Liberties, Justice and Home Affairs, 26 August 2013, A7-0251/2013. [hereinafter Report EU (2012/2263(INI))]

<sup>80</sup> Report EU (2012/2263(INI)), paragraph 1.



underfunded compared to other humanitarian sectors and concludes considering “that adequate long-term funding should in particular be secured for programmes aiming at the identification of unaccompanied minors, adequate reception, protection, the appointment of legal guardians, family tracing, resettlement, reintegration and the training of border guards and authorities”.<sup>81</sup> Once again, although calling for the consideration of the unaccompanied minor first and foremost as a child, the focus is almost entirely put on aspects concerning the first migratory phase, rather than the possible actions to be taken to ensure the long-term inclusion in the host society.

In the final section the Resolution sets out strategic guidelines to establish common standards to be followed by Member States while coping with UAMs protection. Here, the majority of the guidelines deals with the respect of UAMs’ rights within the first reception system and all the related activities such as age assessment and identification, while a small part is dedicated to the problem of transition to adulthood. Notably, the European Parliament “condemns the very precarious circumstances with which these minors are suddenly confronted when they reach the age of majority; calls on the Member States to share best practices and institute procedures for assisting these minors in their transition to adulthood; welcomes the work of the Council of Europe on this subject and calls on the Commission to include in its strategic guidelines best practices for the planning of ‘individualised life projects’ for, and with, the minor”.<sup>82</sup>

### *Common European Asylum System and UAMs*

The Common European Asylum System (CEAS) was created in 1999, following the existing emergency situation in the Balkans at that time. Since 1999, with the Treaty of Amsterdam, asylum and migration became therefore a supranational competency of the EU. The CEAS is composed of both primary and secondary legislation: the former constituted by the Treaty on the Functioning of the European Union (TFEU), the Treaty on European Union (TEU), and the Charter of Fundamental Rights of the European Union (CFR), the latter by the two *Dublin*

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<sup>81</sup> Report EU (2012/2263(INI)), paragraph 1–10.

<sup>82</sup> Report EU (2012/2263(INI)), paragraph 22.

*Regulations*, the *Qualification Directive*, the *Asylum Procedures Directive*, and the *Reception Conditions Directive*. Its original aim was to set joint standards and approach to guarantee protection for refugees and harmonise procedures that have to be fair and effective throughout the EU.<sup>83</sup> The goal was also to improve and build the current legislative framework in order to cover all aspects of the asylum process.<sup>84</sup> However, the founding principles and purposes were somehow jeopardized by the different approaches and practices, fragmented policies and divergence in the treatments of asylum seekers amongst EU Member States. This is mainly due to the current rules that grant Member States a lot of discretion in how they apply the common EU rules.

With regards to children on the move, the CEAS provides for specific provisions for minors, both accompanied and unaccompanied, mainly contained in the *Qualification Directive*, the recast *Asylum Procedures Directive*, the *Reception Condition Directive* and the *Return Directive* as the most relevant. There are also some non-legislative instruments which provide for important guidelines concerning the care, inclusion and the voluntary return of unaccompanied minors, such as the European Commission Action Plan on Unaccompanied Minors (2010-2014), the EU Agenda on the Rights of the Child (2006), the Conclusions of the Council on the protection of children in migration, the Communication from the Commission on the protection of children in migration (2017), the EU Action Plan on Integration of Third-Country Nationals (2016) and the renewed EU Action Plan on Return (2017). Therefore, no legislative instruments at the EU level exist specifically addressed to UAMs, although we can identify some relevant provisions in the above-cited documents regarding protection measures and differentiated procedure for their particular condition of vulnerability. It should be however observed that this provisions mostly concern minors applying for international protection and thus are referred to measures to be taken before, during and right

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<sup>83</sup> European Commission, Migration and Home Affairs, Common European Asylum System, [website], [https://ec.europa.eu/home-affairs/what-we-do/policies/asylum\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en) (accessed 22/11/2020).

<sup>84</sup> European Commission, *The Common European Asylum System (CEAS)*, 2016. Available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20160713/factsheet\\_the\\_common\\_european\\_asylum\\_system\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20160713/factsheet_the_common_european_asylum_system_en.pdf)

after the asylum application procedure. In the following paragraphs, details will be provided regarding specific provisions addressed at UAMs as vulnerable persons applying for international protection.

The **Dublin Regulation III**<sup>85</sup> establishes the Member States responsible for the examination of asylum applications and the relevant criteria for establishing responsibility, starting from family considerations, to recent possession of visa or residence permit in a Member State, to whether the applicant has entered EU irregularly or regularly. This Regulation dedicates some articles and a specific section to the particular condition of UAMs and the necessary criteria to follow when dealing with the establishment of a Member State's responsibility for the UAM's international protection application procedure.

Article 4 deals with the right to have all the necessary information concerning the Regulation, which has to be realized through a specific leaflet addressed at UAMs.<sup>86</sup>

Article 6.2 address the issue of the appointment of an expert and qualified representative in order to ensure the best interest of the child is primarily taken into consideration during the procedure as well as access to the relevant documents is ensured.<sup>87</sup> Article 6.4 calls for appropriate actions for the identification of the family members present on the EU territory pursuing the child's best interest.

Article 8 is entirely dedicated to the condition of UAMs and provides that, pursuing the best interest of the child as a primary criterion, if the UAM has a relative or a sibling in one of the EU Member States, that Member State is responsible of the child's treatment. It further dwells on the need to establish the Member State responsible for the UAM's application, in absence of a family member, establishing that the State responsible should be the one where the unaccompanied minor has lodged the application.

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<sup>85</sup> European Union: Council of the European Union, *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*, 29 June 2013, OJ L. 180/31-180/59. [hereinafter Regulation (EU) No 604/2013]

<sup>86</sup> Regulation (EU) No 604/2013, Art. 4.

<sup>87</sup> Regulation (EU) No 604/2013, Art. 6.2.

The **Qualification Directive 2011/95/EU** establishes criteria for the qualification of beneficiary of international protection, providing for a definition of unaccompanied minor which identifies it as “a minor who arrives on the territory of the EU States unaccompanied by an adult responsible for him/her, and for as long as s/he is not effectively taken into the care of such a person, including a minor who is left unaccompanied after s/he has entered the territory of the EU States”.<sup>88</sup> Article 31 is entirely dedicated to the special condition of vulnerability of UAMs and it enshrines that Member States should take all the necessary measures to ensure the representation of UAMs by a legal guardian or someone responsible for the care and well-being of minors; it also urges States to implement this directive ensuring that the minor’s needs are met and assessed by appropriate authorities on a regular basis; it then focuses on the criteria to follow to place minors, either with adult relatives, or with a foster family, or in centres specialized in accommodation for minors or in other accommodation suitable for minors, while always pursuing the best interest of the child in accordance with her or his age and degree of maturity. In addition, it also highlights that children have to be kept together with their siblings and changes of residence should be limited to a minimum.<sup>89</sup> The last two commas of the Article dwell on the aspect concerning tracing, notably the need for Member States to trace the child’s family members once international protection has been granted, whilst protecting the minor’s best interest. On the contrary, if the tracing has already started, Member States should continue the tracing process where appropriate, always ensuring that the collection, processing and circulation of data is undertaken on a confidential basis according to the situation of the relatives, especially if they might be at risk in their country of origin.<sup>90</sup>

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<sup>88</sup> European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26, art. 2 (1). [hereinafter Directive 2011/95/EU]

<sup>89</sup> Directive 2011/95/EU, art. 31.

<sup>90</sup> *Ibid.*

The recast **Asylum Procedures Directive 2013/32/EU**<sup>91</sup> was adopted in 2013 and was to be transposed into Member States' national legislations in 2015. It deals with the criteria to establish common procedures for granting and withdrawing international protection, pursuant to the recast Qualification Directive. Besides referring to the definition of unaccompanied children as provided for in the Qualification Directive, in Article 7.5 the Directive highlights the need for States to determine in national legislations the cases in which an unaccompanied minor should be supported and represented by an adult while lodging the asylum application.<sup>92</sup> Article 25 addresses the issue of the guarantees for unaccompanied minors more broadly, tackling different aspects relevant to the situation of UAMs. In particular, it encourages States to take measures as soon as possible to ensure that the unaccompanied minor is properly represented by a person whose interests are not in conflict with those of the child, in order for her/him to benefit from the rights deriving from the Directive's obligations and have her/his best interest primarily considered. The representative should also be given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and on how to prepare for it, while being granted that her/his representative is present at that interview with the opportunity to ask questions or make comments.<sup>93</sup> The person conducting the interview must also meet some essential requirements, notably he must be aware of the special needs of the minor while conducting the interview. During the asylum application procedure, doubts may arise regarding the age of the minor and consequent age assessment may be required. Age determination should be conducted through medical examination, but if after the medical assessment there are still doubts, he or she shall be considered as a minor. Particular attention is given to the age determination procedure, which must be conducted respecting the individual's dignity and carried out by qualified medical professionals. Furthermore, the minor and her/his representative should always be informed prior to the examination of their application, on the method of

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<sup>91</sup> European Union: Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013, OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU. [hereinafter Directive 2013/32/EU]

<sup>92</sup> Directive 2013/32/EU, Art. 7.5(b).

<sup>93</sup> Directive 2013/32/EU, Art. 25.1(b).

the examination, the possible outcomes and in a language that they can understand. The medical examination is carried out after the minor has given her/his consensus and in any case an asylum application shall not be rejected solely in reason of the minor's refusal to undergo the examination.

The **Reception Condition Directive 2013/33/EU** was adopted in 2013 with the aim of ensuring better and more harmonised standards of reception conditions in the EU. More in depth, its purpose was to guarantee access to housing, food, clothing, healthcare, education for minors and access to employment under certain conditions. Although the Directive is mainly addressed to the situation of asylum seekers, it also provides particular attention to vulnerable persons, especially to unaccompanied minors and victims of torture.

Article 11 tackle the issue of detention of vulnerable persons and of applicants with special reception needs, addressing the specific situation of minors in detention. Indeed, it specifies the exceptionality of the circumstances allowing the detention of unaccompanied minors, that should in any case be released as soon as possible. They shall never be detained in prison accommodations, but rather be provided with accommodation in institutions with personnel and facilities appropriate to the needs of a person of their age, while always be separated from adults.<sup>94</sup> Article 24 is specifically dedicated to unaccompanied minors, and even here attention is put on the appointment of a representative of which the minor should always be informed. Again, in line with the Qualification Directive, it addresses the issue concerning where and with whom the minor should be placed pursuing her/his best interest, keeping together siblings and limiting changes of residence to a minimum. It also reasserts the importance of tracing family members after the international protection application is made, as well as of the need to train those working with minors.

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<sup>94</sup> European Union: Council of the European Union, *Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, 29 June 2013, OJ L. 180/96 -105/32; 29.6.2013, 2013/33/EU, Art. 11.3.

The **Return Directive 2008/115/EC** sets standards regarding the return of third-country nationals with no legal ground to stay in the EU, to make sure it is carried out effectively and through fair and transparent procedures respectful of the rights and dignity of the people concerned.<sup>95</sup> To this end, a small section dedicated Article 10 of the Directive deals with “return and removal of unaccompanied minors”<sup>96</sup>, with a special focus on the need to primarily consider the best interest of the child, providing for due assistance by appropriate bodies before deciding to issue a return decision.<sup>97</sup> In any case, “before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of her or his family, a nominated guardian or adequate reception facilities in the State of return”.<sup>98</sup>

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<sup>95</sup> European Parliament, *The Return Directive 2008/115/EC. European Implementation Assessment*, European Parliamentary Research Service EPRS, 2020, p. 29. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642840/EPRS\\_STU\(2020\)642840\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642840/EPRS_STU(2020)642840_EN.pdf)

<sup>96</sup> European Union: Council of the European Union, *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*, 16 December 2008, OJ L. 348/98-348/107, Art. 10. [hereinafter Directive 2008/115/EC]

<sup>97</sup> Directive 2008/115/EC, Art.10.1.

<sup>98</sup> Directive 2008/115/EC, Art.10.2.





## **II. UNACCOMPANIED MIGRANT MINORS IN ITALY**

UAMs' migration to Europe has changed over time, showing features that varied across the years. Indeed, in the last years, numbers tell us that UAMs' arrivals on European shores are decreasing, but 2020 is showing the trend is changing towards the opposite direction. The peak of 2016 is far to be reached, but still, statistics reveal the increasing number of UAMs landing on our coasts in search of better life opportunities. These statistics, obtained from official data of the Italian Ministry of Interior, also show the non-emergency nature of this phenomenon and, therefore, the need to cope with migration and, more specifically, with UAMs' migration in a consistent way and through comprehensive measures oriented in the long-term.

However, the relevant legislation applicable to UAMs has always been grounded on different normative areas, that is, juvenile law and migration law. This binary component is also the cause of the emergence of applicative doubts and divergent practices amongst states and even regions of the same country, as it happens in Italy. Fragmentation is therefore present not only among member states of the EU, but also within the very same countries. Heterogeneity of practices and approaches makes it difficult to properly address the problems affecting UAMs and grant them an effective protection. The peculiarity of the condition of UAMs reveals the urgency to cope with their special needs as both children and migrants without family care. The need for an organic Law able to make the binary legislative basis converge into one harmonious system became so urgent that in 2017 the new Law No. 47/2017 was approved, making Italy the first and only country in the EU to have a specific legal instrument exclusively dedicated to the special situation of UAMs.

In the first section of this chapter, I will expose facts and figures about the arrivals of UAMs to Italy, as well as their presence in the reception system. I will focus on some relevant features of UAMs population in Italy, such as distribution per age, gender, country of origin and presence in the Italian regions. I will explore the main characteristics of the Italian Reception System and the modifications it underwent throughout the last years, due to main legal changes, as well as on its fundamental

cornerstones and functioning. In the second and last section of the chapter, I will elaborate on the Italian Legislation on UAMs, focusing on Law No. 47/2017 and its specific contents, and I will then concentrate on the effects created by the introduction of both the 2018 Security Decrees and the more recent Decree Law 130/2020, which has been officially approved by the Parliament on 18<sup>th</sup> December 2020, at the time of writing this thesis, and whose effect are thus not yet visible.

## **1. UAMs in Italy: arrivals, presence and reception system**

The migration phenomenon to Italy has different characteristics, some of which changed over time, especially in terms of the population making up the migratory fluxes. Within the percentage of migrants landing on the Italian shores, a significant proportion is represented by UAMs. Indeed, although compared to adult migrants UAMs constitute a smaller slice, their presence is worth of consideration under various perspectives. In 2019, of the total number of migrants arrived in Europe, 27% were children, 14 100 of whom were unaccompanied.<sup>99</sup>

Between 2014 and 2018, 625 009 refugees and migrants arrived in Italy by sea, of whom 70 547 were UAMs.<sup>100</sup> Although in the last years, between 2016 and 2019, the number of UAMs migrating to Italy has decreased, lately in 2020 this trend started to change, showing a substantial increase in UAMs' arrivals by sea.

In line with the purpose of this work, it is worth mentioning the age composition of UAMs arriving and present on the Italian territory, which constantly show the prominence of UAMs aged between 16 and 17 years old, who are therefore closer to their transition to adulthood and the uncertainties and difficulties that come with it.

The trend of the data that will be examined below are in line with those registered at the European level and the majority of UAMs who arrived in 2019 present almost the same characteristics in terms of age, gender and numbers.

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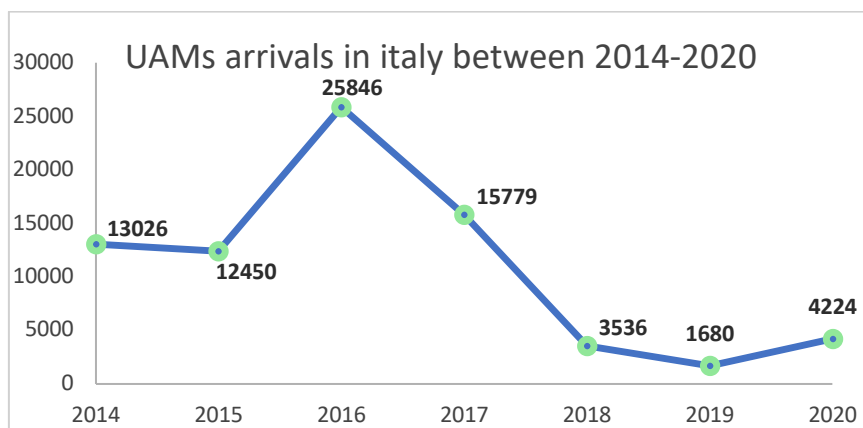
<sup>99</sup> European Commission. EUROPEAN WEB SITE ON INTEGRATION. Migrant Integration Information and good practices. 15/10/2020. [website] <https://ec.europa.eu/migrant-integration/news/amif-funding-call-2020-migrant-childrens-transition-to-adulthood>

<sup>100</sup> Fondazione ISMU, UNHCR, UNICEF, OIM, "A un bivio. La transizione all'età adulta dei minori stranieri non accompagnati in Italia", Fondazione ISMU, 2019, p. 24. Available at: [https://www.unhcr.it/wpcontent/uploads/2019/11/Report-UNHCR\\_UNICEF\\_OIM-A-un-bivio.pdf](https://www.unhcr.it/wpcontent/uploads/2019/11/Report-UNHCR_UNICEF_OIM-A-un-bivio.pdf)

A noteworthy distinction should be made with regards to the gender distribution of UAMs: indeed, UAMs migration fluxes are mainly composed by boys. However, the female component of UAMs migration phenomenon should not be forgotten, but rather, treated differently in accordance with the peculiar characteristics of this phenomenon, whose main driving force is human trafficking with sexual exploitation purposes.

### 1.1 UAMs in Italy: facts and figures

According to the Public Security Department of the Italian Ministry of the Interior, by 30 November 2020, 4224 UAMs arrived in Italy, compared to the 1434 arrived by 30 November 2019 and 3485 by 30 November 2018.<sup>101</sup> This trend shows the increase in the arrivals to the Italian shores in 2020, which represents a change if compared to the constant decrease registered since the 2016 peak, when 25 846 UAMs arrived in Italy.<sup>102</sup>



Graph 1: UAMs arrivals between 2014 and 2020 according to the data of the Ministry of Interior

<sup>101</sup> Ministero dell'Interno, Dipartimento Libertà Civili e Immigrazione. "Cruscotto statistico giornaliero Dicembre 2020". Available at: [http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto\\_statistico\\_giornaliero\\_10-12-2020.pdf](http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto_statistico_giornaliero_10-12-2020.pdf)

<sup>102</sup> Ministero dell'Interno, Dipartimento Libertà Civili e Immigrazione. "Cruscotto statistico giornaliero del 31 Dicembre 2017". Available at: [http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto\\_statistico\\_giornaliero\\_31-12-2017.pdf](http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto_statistico_giornaliero_31-12-2017.pdf)

As we can see from Graph 1, which combines data provided by different Statistic Reports of the Italian Ministry of Interior, 2020 is the first year since 2015 showing increasing numbers compared to the previous year. Indeed, after the 2016 peak, numbers started decreasing until 2019, which registered the lowest quote of UAMs arrived at the Italian shores since 2014.

Focusing on the presence of UAMs on the Italian territory, we can draw some conclusions on some relevant features of the UAMs population in Italy. According to the data gathered by the Directorate General for Migration and Integration Policies of the Italian Ministry of Labour and Social Policies, by 31 December 2020, 7080 UAMs were present on the Italian territory.<sup>103</sup>

Among the 7080 UAMs hosted in the Italian reception centres, 6828 were boys, while only 252 were girls. Compared to 2019, the trend seems to be negative, since by 30 December of that year, UAMs present on the territory were 6054, among which 5737 were boys and 317 were girls.<sup>104</sup>



Figure 1: % of UAMs divided according to gender as of 31 December 2020 <sup>105</sup>

<sup>103</sup> Ministero del Lavoro e delle Politiche Sociali, Direzione Generale dell’Immigrazione e delle Politiche di Integrazione. Divisione II. “Report Mensile Minori Stranieri non Accompagnati (MSNA) in Italia. Dati al 31 Dicembre 2020”. Available at: <https://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/minori-stranieri/Documents/Report-MSNA-mese-dicembre-2020.pdf>

<sup>104</sup> Ministero del Lavoro e delle Politiche Sociali, Direzione Generale dell’Immigrazione e delle Politiche di Integrazione. Divisione II. “Report Mensile Minori Stranieri non Accompagnati (MSNA) in Italia. Dati al 31 Dicembre 2019.

<sup>105</sup> Source: Ministero del Lavoro e delle Politiche Sociali, Direzione Generale dell’Immigrazione e delle Politiche di Integrazione. Divisione II. “Report Mensile Minori Stranieri non Accompagnati (MSNA) in Italia. Dati al 31 Dicembre 2020.

Further, it is relevant for the scope of this work, to notice the age distribution that characterises UAMs presence in the Italian reception system.



Figure 2: Age distribution among UAMs in Italy as of 31 December 2020 <sup>106</sup>

As indicated by Figure 2, the age distribution of UAMs clearly shows the massive presence of UAMs aged between 16- and 17 years old, and the general trends of previous years make no exception. Indeed, the percentage is similar also for 2019, where UAMs aged 16 years old amounted to 26,1% while those aged 17-years old amounted to 61,5%, together accounting for 87,6% of the total.<sup>107</sup>

This is valid also for the period between 2014 and 2018, when more than 70 000 UAMs arrived in Italy by sea and 90% of them were aged between 15 and 17.<sup>108</sup>

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<sup>106</sup> Source: Ministero del Lavoro e delle Politiche Sociali, Direzione Generale dell’Immigrazione e delle Politiche di Integrazione. Divisione II. Report Mensile Minori Stranieri non Accompagnati (MSNA) in Italia. Dati al 31 Dicembre 2020. Available at: <https://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/minori-stranieri/Documents/Report-MSNA-mese-dicembre-2020.pdf>

<sup>107</sup> Source: Ministero del Lavoro e delle Politiche Sociali, Direzione Generale dell’Immigrazione e delle Politiche di Integrazione. Divisione II. Report Mensile Minori Stranieri non Accompagnati (MSNA) in Italia. Dati al 31 Dicembre 2019. Available at: <https://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/minori-stranieri/Documents/Report-MSNA-mese-dicembre-2019.pdf>

<sup>108</sup> Fondazione ISMU, UNHCR, UNICEF, OIM, “A un bivio. La transizione all’età adulta dei minori stranieri non accompagnati in Italia”, Fondazione ISMU, 2019, p. 24. Available at: [https://www.unhcr.it/wpcontent/uploads/2019/11/Report-UNHCR\\_UNICEF\\_OIM-A-un-bivio.pdf](https://www.unhcr.it/wpcontent/uploads/2019/11/Report-UNHCR_UNICEF_OIM-A-un-bivio.pdf)

This trend is also confirmed for female UAMs, whose highest percentage (43,3%) is represented by 17-year-old girls that, together with 16-year-old female UAMs make up 64,7% of the total presence of girl. UAMs.

If we briefly compare the above-illustrated data with the situation in some of the countries in Europe where UAMs arrival are the highest, we soon notice a substantial equivalence with regards to the age and sex breakdown.

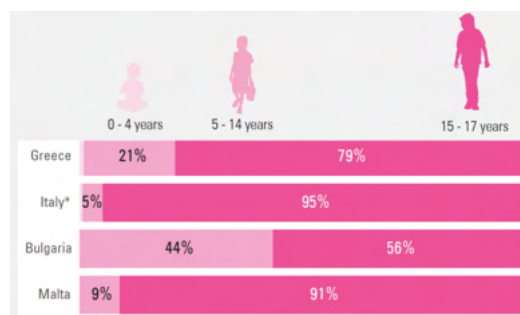


Figure 3: UAMs' Age breakdown by Country of arrival – January-December 2019 <sup>109</sup>

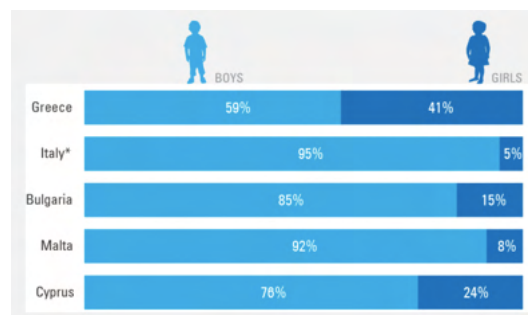


Figure 4: UAMs Sex Breakdown by Country of arrival – January-December 2019 <sup>110</sup>

Indeed, as shown in Figure 3 and Figure 4, the majority of UAMs who arrived to some of the most concerned EU countries were aged between 15 and 17 years old

<sup>109</sup> UNICEF, UNHCR, OIM, “Latest Statistics and graphics on refugee and migrant children”, 2020, [website] <https://www.unicef.org/eca/emergencies/latest-statistics-and-graphics-refugee-and-migrant-children> (accessed 10 January 2021).

<sup>110</sup> *Ibid.*

and the great majority of them were boys, although we observe a slightly higher number of girls in Greece. These data show how the trend is generally homogeneous across countries in the EU, both with regards to UAMs' age and gender.

Territorial distribution among Italian regions is not homogenous, rather there are few regions which show the highest numbers of UAMs' presence.

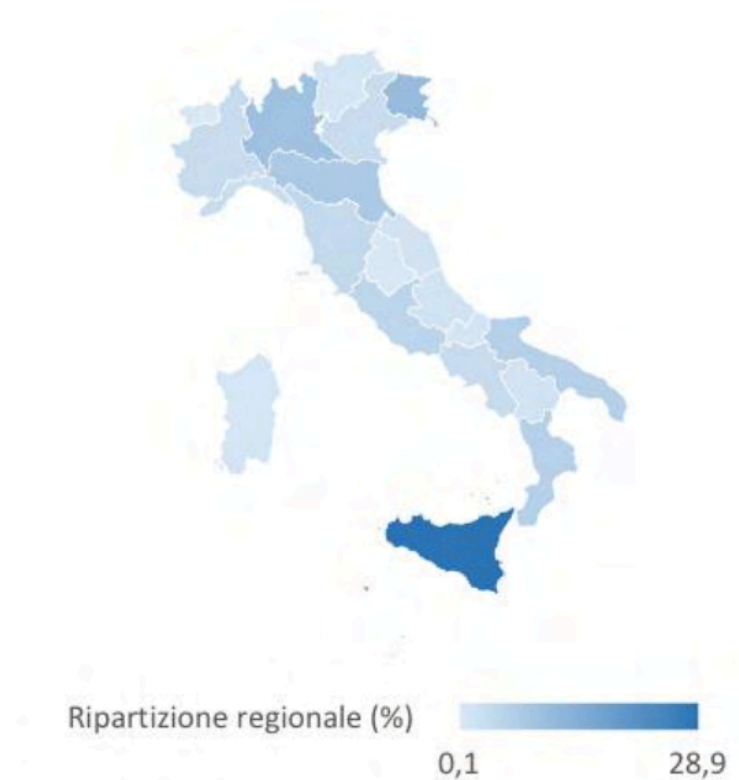


Figure 5: Regional Distribution of UAMs in Italy in %, as of 31 December 2020 <sup>111</sup>

As we can see above from Figure 5, by 30 November 2020 there were some regions which showed higher numbers of UAMs hosted, while other seems to be less

<sup>111</sup> Ministero del Lavoro e delle Politiche Sociali, Direzione Generale dell'Immigrazione e delle Politiche di Integrazione. Divisione II. Report Mensile Minori Stranieri non Accompagnati (MSNA) in Italia. Dati al 31 Dicembre 2020. Available at: <https://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/minori-stranieri/Documents/Report-MSNA-mese-dicembre-2020.pdf>

involved in the reception process. Notably, there are 5 regions identified: Sicilia, Friuli-Venezia Giulia, Lombardia, Emilia-Romagna and Calabria.<sup>112</sup>

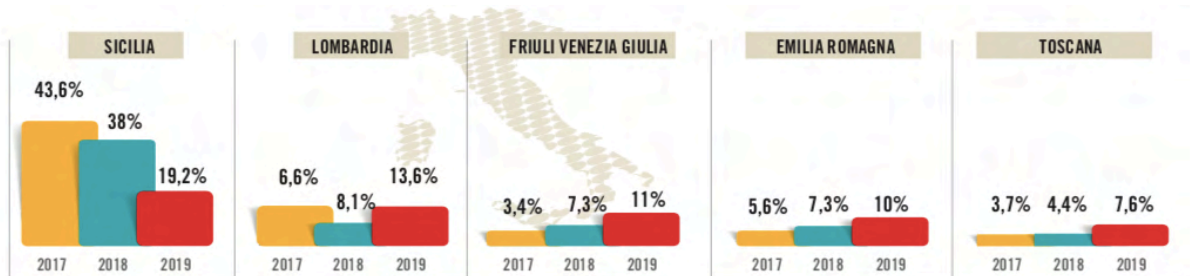


Table 1: Italian Regions with the highest percentage of UAMs on the territory<sup>113</sup>

Table 2 illustrates different trends for the three-year period 2017-2019, showing slight changes across regions throughout this period.

What emerges from the analysis of this graphic is the constant primacy of Sicily as the region hosting the majority of UAMs in Italy, with a clear gap ahead of the other regions. Although Sicily stands alone in the whole three-year period, there are some changes in the amount of UAMs received by each region depending on the year. In 2017, besides Sicily, Lombardia hosted the majority of UAMs (6,6%), followed by Emilia-Romagna (5,6%), Toscana (3,7%) and Friuli-Venezia Giulia (3,4%). As regards to 2018, Lombardia is still the first with 8,1% of UAMs on its territory, followed by 7,3% of both Friuli-Venezia Giulia and Emilia-Romagna and 4,4% of Toscana. In 2019 the distribution seems to be more homogeneous, since Sicily hosted 19,2% of UAMs, Lombardia 13,6%, Friuli-Venezia Giulia 11%, followed by Emilia-Romagna with 10% and Toscana with 7,6%.

<sup>112</sup> Source: Save the Children Italia, “Superando le barriere. Percorsi di accoglienza e inclusione dei giovani migranti”, Save the Children Italia, Roma, 2020, p. 6. Available at: <https://www.savethechildren.it/cosa-facciamo/pubblicazioni/superando-le-barriere>

<sup>113</sup> Source: Save the Children Italia, “Superando le barriere. Percorsi di accoglienza e inclusione dei giovani migranti”, Save the Children Italia, Roma, 2020, p. 6.



Considering the countries of origin of UAMs, the Monthly Report of the Ministry of Labour also highlighted the most common nationalities of UAMs arrived in Italy by 31 October 2020.

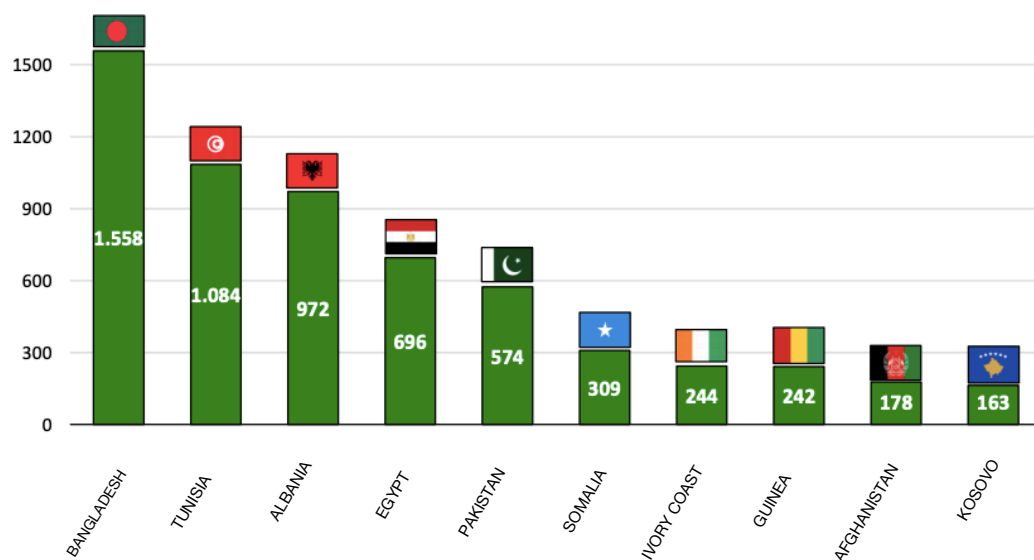


Table 2: Numbers of UAMs divided per countries of origin as of 31 December 2020 <sup>114</sup>

Table 2 shows us a consequence of the significant drop in arrivals from the central Mediterranean route, which determined a reduction of UAMs coming from African countries. Indeed, the majority of UAMs registered in Italy by 31 December 2020 came from Bangladesh, followed by the Tunisians and the Albanians. Together they count up to more than half of the total, the 51%. UAMs coming from Egypt (9,8%) and Pakistan (8,1%) also make up a significant part of the total of UAMs registered in the Italian reception system by 31 December 2020. A smaller portion is constituted by UAMs coming from Somalia, Ivory Coast, Guinea, Afghanistan and Kosovo, that together amount to 16% of the total.<sup>115</sup>

<sup>114</sup> Source: Ministero del Lavoro e delle Politiche Sociali, Direzione Generale dell’Immigrazione e delle Politiche di Integrazione. Divisione II. Report Mensile Minori Stranieri non Accompagnati (MSNA) in Italia. Dati al 31 Dicembre 2020.

<sup>115</sup> Ministero del Lavoro e delle Politiche Sociali, Direzione Generale dell’Immigrazione e delle Politiche di Integrazione. Divisione II. “Report Mensile Minori Stranieri non Accompagnati (MSNA) in Italia. Dati al 31 Dicembre 2020.

If compared to previous years, the situation seems to have slightly different features. Indeed, by 31 December 2019, the 27,7% of UAMs registered in the Italian reception system came from Albania, followed by the 8,8% from Egypt, the 8,3% from Pakistan and the % from Bangladesh. UAMs coming from Kosovo (5,4%), Ivory Coast (4,7%), Tunisia (4,6%), Gambia (4,3%), and Senegal (5,2%) represent 24,2% of the total.<sup>116</sup>

A noteworthy consideration should regard those UAMs who escaped the reception system and were therefore considered as absconded. As of December 2019, 5 383 UAMs were considered absconded, as they intentionally left care arrangements or reception facilities. However, the numbers of absconded UAMs are decreasing, which is partially due to UAMs turning 18 and thus not included in the data gathered for UAMs' reception system.<sup>117</sup>

## 1.2 The Italian Reception System for UAMs

The Italian reception system for UAMs has undergone several changes, both with respect to its denomination and also to its very structure. This last aspect is mainly due to the mutable features of the migratory fluxes from Africa and the Middle East, which significantly increased in the last decades. A role in the mutation of characteristics of the Italian reception system was also played by the normative changes introduced in the last years following the political attempts to prioritise security matters at the expense of migrants and minors' protection. The Italian reception system is called SIPROIMI, following the normative changes introduced by the 2018 Security Decree, which replaced the old SPRAR. It might be appropriate to observe that the SIPROIMI system is not specifically intended for UAMs, but it is also dedicated to adult migrants, notably to beneficiaries of

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<sup>116</sup> Ministero del Lavoro e delle Politiche Sociali, Direzione Generale dell'Immigrazione e delle Politiche di Integrazione. Divisione II. Report Mensile Minori Stranieri non Accompagnati (MSNA) in Italia. Dati al 31 Dicembre 2019. Available at: <https://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/minori-stranieri/Documents/Report-MSNA-mese-ottobre-2019.pdf>

<sup>117</sup> Fondazione ISMU, UNHCR, UNICEF, OIM, "A un bivio. La transizione all'età adulta dei minori stranieri non accompagnati in Italia", *supra* note 100 at 24.

international protection<sup>118</sup>. Indeed, SIPROIMI is the Italian acronym for Protection System for Beneficiaries of International Protection and Unaccompanied Foreign Minors, previously called SPRAR before the introduction of the Security Decree.

The SIPROIMI system is intended not only to provide food and accommodation, but rather its original aim is to deliver complementary services such as essential information, support, assistance and the creation of individual projects for the socio-economic inclusion of migrants. These are for example job placement projects through internships, vocational training and professional training aimed at the inclusion of the beneficiaries in the society. This is also valid for UAMs who are at the border between adolescence and adulthood, which, in legal terms, results in an important step from the protection deriving from being a child to the hardship of being an adult migrant. These projects are activated in cooperation with private and public subjects: indeed, the SIPROIMI network is also made of local entities and third-sector professionals that actively participate in the projects in a concerted action for the implementation of such activities. As a matter of fact, they constitute an essential contribution for the realisation of those projects that without them would often not be possible.

These inclusion activities for UAMs also entail school inclusion and Italian language acquisition, which constitutes a fundamental prerequisite for the inclusion in the labour market as well as for social inclusion in general. Personal aspirations, vocations and competencies have also to be considered for the realisation of targeted projects, which can therefore include sport as well as cultural and artistic activities.<sup>119</sup>

In Italy, expenditures for UAMs' reception are partially covered by the National Fund for Asylum Policies and Services and the National Fund for Unaccompanied foreign minors. Some projects are also financed by the Asylum, Immigration and

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<sup>118</sup> The previous SPRAR System also hosted asylum seekers and beneficiaries of humanitarian protection, indeed its acronym meant Protection System for Asylum Seekers and Refugees. This changed with the introduction of the Security Decree in 2018.

<sup>119</sup> Decreto Ministeriale 27 Aprile 2015, Allegato A. *Linee Guida per la presentazione delle domande per il Fondo Nazionale per le politiche dell'Asilo e I servizi per l'accoglienza dei Minorsri Stranieri non Accompagnati.*

Integration Fund (FAMI), provided by the EU with the aim of strengthening Italy's reception capacity and improve its protection system.

According to the Italian Legislation, the minor arriving to Italy unaccompanied has to be placed in a suitable structure meant for the reception of minors, able to provide for adequate assistance considering her/his vulnerable condition. Unaccompanied minors have to be transferred to a government reception structure upon arrival, and within 30 days they have to be placed in a second reception facility within the framework of the SIPROIMI System.<sup>120</sup> According to the existing legislation, UAMs who are temporarily deprived of a family can be placed in a foster family, always pursuing her/his best interest. When such solution is possible, it must always be preferred to the relocation in a reception facility.<sup>121</sup>

There are four different kind of reception facilities which are classified as follows:

- (a) **Ministerial *first* reception facilities**, which deal with first aid issues, identification procedures and information on rights recognised to minors upon arrival. These facilities are managed by the Ministry of Interior and according to the Law applicable, the maximum delay of stay for minors within these facilities is 30 days.
  
- (b) ***Second* reception facilities** within the SIPROIMI system framework, in which UAMs are transferred after the first reception procedures have been completed. Asylum seeker UAMs have the right to remain within these facilities after the asylum application has been lodged, even if they are 18 years old or older and will also host UAMs beneficiaries of the

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<sup>120</sup> UNHCR, UNICEF, INTERSOS, We World, Save the Children, "Il Sistema Normativo a tutela dei minori stranieri non accompagnati", *UNHCR, UNICEF, INTERSOS, We World, Save the Children*, 2019, p. 16. Available at: <https://www.unhcr.it/wp-content/uploads/2019/12/II-sistema-normativo-a-tutela-del-MSNA.pdf>

<sup>121</sup> However, it should be noticed that this is a measure dedicated to minors and thus, sometimes the administrative timing to complete the bureaucratic procedure are long and UAMs approaching the age of majority don't manage to finalise it before turning eighteen.

accompanying measures towards the age of majority envisaged by Law No. 47/2017.

- (c) **Reception facilities for minors accredited to Municipalities**, which are involved in the case of unavailability of places both in the first reception facilities and in the SIPROIMI facilities. The Municipality can cover the expenditures drawing from the National Reception Fund (FAMI).
- (d) **CAS (Extraordinary Reception Centres) for minors**, which represent a last resort in the case there is no availability also in the Municipalities' centres. These reception facilities are temporary and exclusively dedicated to UAMs over 14 years old and only for the time necessary for their transfer to the above-mentioned facilities.<sup>122</sup>

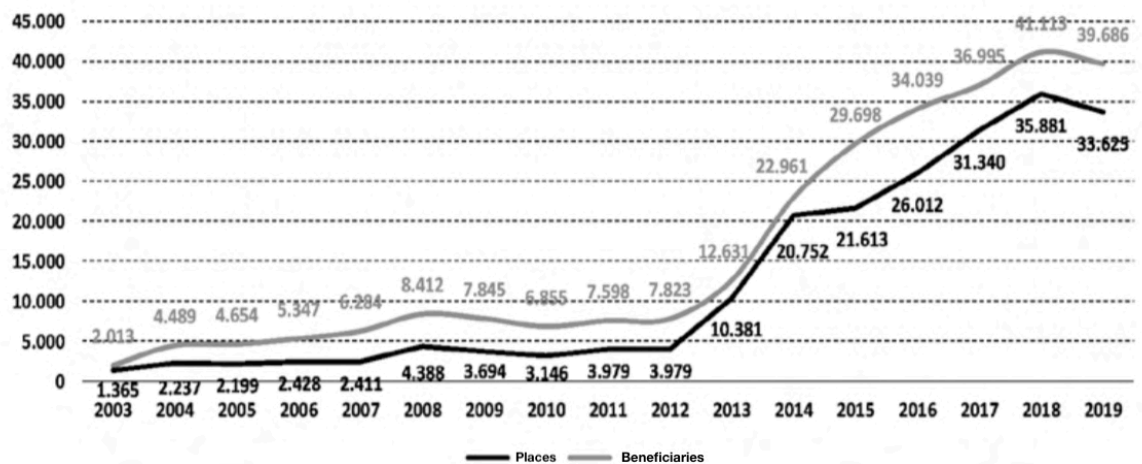
As we can see from this classification, there are *first* and *second* reception facilities, whose use depends on the migratory phase, while the kind of reception facility depends on other conditions, such as availability of places and situation of the minor – i.e., whether s/he is placed in a foster family or s/he is an asylum seeker.

According to the *Dossier Statistico Immigrazione* (Statistic dossier on Immigration) issued in 2020 by the IDOS Centre for Studies and Research, since 2013 there has been a considerable increment in terms of places and beneficiaries of the Italian reception system, notably +161% in places and +61% in beneficiaries. This increasing trend continued until 2018, while it came to a halt in 2019, when the trend started decreasing, due both to the normative changes that occurred in Italy and the reduction of places and hosted beneficiaries, as Table 3 below shows.<sup>123</sup>

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<sup>122</sup> However, the resort to these facilities is more frequent than what it should be supposed to be. These centres are not equipped for long-term permanence and sometimes do not even meet basic needs such as provision of bed linen, food, clothing and access to health care.

<sup>123</sup> Centro Studi e Ricerche IDOS, “Dossier Statistico Immigrazione 2020”, *Centro Studi e Ricerche IDOS*, Rome, October 2020, p. 159.



Graph 2: State-funded places and beneficiaries hosted in the SPRAR/SIPROIMI System, absolute values (2013-2019)<sup>124</sup>

The shrinking of available places coincided with the entry into force of the Law 132/2018, the Conversion Law of the Decree Law 113/2018. Besides establishing the new denomination of the reception system, from SPRAR to SIPROIMI, it redefined the kind of beneficiaries, without however affecting the structural features of the system which still preserves its cornerstones.

In 2019, the National Fund for Asylum Services and Policies financed 844 projects in total. Local authorities holding a project were 713, 617 of which were Municipalities. The majority of these Municipalities tend to be small-sized: the 63,5% of them has less than 15 000 inhabitants and offers 11 000 places, which constitutes almost 50% of the total.<sup>125</sup> Larger Municipalities with more than 100 000 inhabitants are 39 and cover for 28,6% of the total places available. It goes without saying that the larger the municipalities, the larger the reception capacity. The Statistic Dossier also goes further illustrating the typology of projects implemented: three out of four projects have been dedicated to the reception of the so-called ordinary categories, while one out of five has been allocated to UAMs' reception – 166 projects, that is 19,7%.<sup>126</sup> Considering the territorial distribution,

<sup>124</sup> Centro Studi e Ricerche IDOS, *supra* note 123 at 160.

<sup>125</sup> Centro Studi e Ricerche IDOS, *supra* note 123 at 161.

<sup>126</sup> *Ibid.*

half of the places available are concentrated in Southern regions, notably Sicilia is the region with maximum places offered, with 14,5% of the total. It is followed by Calabria and Puglia which cover almost 10% of the total, while Campania 8,3%. Moving to Central Italy, Lazio offers the majority of places, 10,1%, followed with a significantly inferior quote by Toscana with 4,4%, Marche 4,1% and Umbria 1,4%. Northern Italy's Regions offer around 30% of the total places and the majority of places is concentrated in the two biggest regions: Lombardia (7,2%) and Piemonte (5,9%).<sup>127</sup>

REGIONS:	TOTAL	Places for mental or physical disability	Places for UAMs	No. of local entities in charge of projects	No. of projects
ABRUZZO	637	0	92	14	17
BASILICATA	596	0	127	18	20
CALABRIA	2.959	87	204	98	108
CAMPANIA	2.677	0	307	76	80
EMILIA ROMAGNA	2.576	73	522	23	35
FRIULI VENEZIA GIULIA	320	20	0	9	9
LAZIO	2.838	20	68	38	43
LIGURIA	831	0	87	22	23
LOMBARDIA	2.302	13	292	54	63
MARCHE	1.281	13	116	21	26
MOLISE	823	0	91	26	27
PIEMONTE	1.986	26	102	38	41
PUGLIA	3.084	159	343	84	101
SARDEGNA	293	0	42	15	15
SICILIA	4.493	193	1.094	75	104
TOSCANA	1.427	43	167	30	36
TRENTINO ALTO ADIGE	372	0	17	7	8
UMBRIA	407	6	53	12	15
VALLE D'AOSTA	25	0	0	1	1
VENETO	755	0	71	20	23
<b>TOTALI</b>	<b>30.682</b>	<b>653</b>	<b>3.795</b>	<b>681</b>	<b>795</b>

Figure 6 Numbers of SIPROIMI projects across Italy<sup>128</sup>

Further, by 31 December 2019, people hosted in the Italian reception system SIPROIMI were 39 686. Among these, 85,8% is part of the ordinary projects, 2%

<sup>127</sup> *Ibid.*

<sup>128</sup> SIPROIMI, "I numeri dello SPRAR/Siproimi", [website], <https://www.siproimi.it/i-numeri-dello-sprar> (accessed 10/12/2020).

in mental health and disability projects, while 12% in those for UAMs. What emerges from the analysis of these data is that, while the total number of beneficiaries has decreased in 2019 compared to 2018, the number of UAMs significantly increased reaching 4 752 people hosted, that is, +22,6 in one year.<sup>129</sup> This phenomenon is mainly attributable to the reduction of state-financed places for the “ordinary” and “mental disorder and specialistic health assistance” categories, as well as the decrease of arrivals to Italy and the changes in the typologies of beneficiaries admitted to the reception system, as envisaged by the Decree Law 113/2018 – which prevented access to the SIPROIMI system to those who benefitted from the so-called humanitarian protection. This last aspect contributed to make UAMs’ transition to adulthood even more arduous and tricky: indeed, the majority of asylum seeker UAMs often benefitted from this kind of protection. As a result, the risks connected to the passage from *minor* to *adult* became bigger and left those counting on that type of protection without an accommodation.

## 2. The Italian legislation on UAMs

Access to fundamental rights in Italy is granted by the Italian Constitution to all individuals irrespective of their *status civitatis*, that is, their being Italian citizens regularly residing on the country’s territory. Accordingly, in theoretical terms, UAMs are entitled to these rights equally to Italian citizens. In the Italian legal system, the provisions pertaining the protection of UAMs and relevant to their condition as vulnerable persons are contained in several legislative instruments. These are the Law No. 184/1983<sup>130</sup> dealing with children’s rights to a family, notably focusing on foster care and adoption; articles 343 of the Civil Code and following, concerning minor’s legal representation; articles 32 and 33 of the Legislative Decree No. 286/1998<sup>131</sup> – the so-called *Testo Unico* on Immigration –

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<sup>129</sup> Centro Studi e Ricerche IDOS, *supra* note 123 at 162.

<sup>130</sup> L. 4 Maggio 1983, n. 184. *Disciplina dell’adozione e dell’affidamento dei minori*.

<sup>131</sup> Decreto Legislativo (D.lgs.) 25 Luglio 1998, n. 286. *Testo Unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero*.



and the related D.P.R. No. 394/1999<sup>132</sup>; article 28 of the Legislative Decree No. 251/2007<sup>133</sup>, containing provisions in the matter of reception and family investigations; articles 6.2 and 6.3, 19, 26.5 and 26.6 of the Legislative Decree No. 25/2008<sup>134</sup> on the procedure for the international protection application; articles 18, 19, 19-bis and 21 of the Legislative Decree No. 142/2015<sup>135</sup>, which for the first time introduced specific provisions on the reception of UAMs, with the aim of strengthening the existing protection instruments envisaged by the Italian legal system.<sup>136</sup> Finally, the Law No. 47/2017 is the most relevant instrument for the protection of UAMs in Italy, as it represents an innovative norm which introduced important breakthroughs to address the needs of UAMs in their migratory path.

The law stemmed from the need to fill a normative void, the absence of a pertinent law able to address the peculiar situation of UAMs from a comprehensive point of view, which could overcome the binarity of the legal frameworks – that is, immigration law and juvenile law – that interfered with an effective protection of UAMs. Central was also to incorporate fundamental international principles deriving from the UN CRC, to strengthen the protection system being able to respond to UAMs’ needs accurately and adequately.<sup>137</sup> The main problems concerned the identification procedures, which too often led to incorrect assessment and the wrong recognition of minors as adults; inadequate reception conditions of both those waiting for accommodation and those already living in reception

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<sup>132</sup> Decreto del Presidente della Repubblica (D.P.R.) 31 Agosto 1999, n. 394. *Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell’immigrazione.*

<sup>133</sup> D.lgs. 19 Novembre 2007, n. 251. *Attuazione della direttiva 2004/83/CE recante norme minime sull’attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta.*

<sup>134</sup> D.lgs. 28 Gennaio 2008, n. 25. *Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato.*

<sup>135</sup> D.lgs. 18 Agosto 2015, n. 142. *Attuazione della direttiva 2013/33/UE recante norme relative all’accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale.*

<sup>136</sup> Save the Children Italia, *supra* note 112 at 10.

<sup>137</sup> A. Anzaldi, T. Guarnier, “Il sistema dell’accoglienza. Viaggio nel mondo dei minori stranieri non accompagnati: un’analisi giuridico-fattuale”, *Fondazione Lelio e Lisli Basso Issoco*, Vol. I, 2014, p. 67. Available at: [https://legale.savethechildren.it/wp-content/uploads/wpallimport/files/attachments/P\\_GtIJ\\_wqDU1STAU\\_ntMW9A==.pdf](https://legale.savethechildren.it/wp-content/uploads/wpallimport/files/attachments/P_GtIJ_wqDU1STAU_ntMW9A==.pdf)

facilities and the consequent need to create a national reception system with common standards; the lack of financial resources and the need to provide the National Fund for UAMs' reception of adequate and safe resources; delays in the appointment of guardians and not properly trained guardians.

## **2.1 The Law No. 47/2017: scope of application and the need for a Law**

Law No. 47/2017<sup>138</sup> *Provisions on protective measures for unaccompanied children in Italy* was approved on 7<sup>th</sup> April 2017 and entered into force on 6<sup>th</sup> of May 2017. This Law was promoted by Save the Children and other organisations committed to the protection of children's rights, on 25<sup>th</sup> July 2013 in a first formulation which was opened for public consultation at the Italian Parliament in October 2013.<sup>139</sup>

The Law is also known as Zampa Law, bearing the name of its first signatory, the Deputy Sandra Zampa. The Draft Law was first approved by the Chamber of Deputies' Commission on Constitutional Affairs and then approved by the Chamber itself in October 2016 and by the Senate in March 2017. It was finally approved on 29<sup>th</sup> March 2017 and published in the Official Bulletin on 21<sup>st</sup> April 2017.

Law No. 47/2017 is the first Law in Europe exclusively dedicated to the situation and the protection of UAMs, addressing their specific condition and needs. Indeed, Italy is currently the only EU Member State with a specific law dedicated to the protection of UAMs.

Its approval represents the last stage of a long path made of normative changes aimed at coping with the shortcomings of the weak protection system for UAMs. This normative innovation is the result of a process of acknowledgement of the peculiar condition of UAMs both due to their condition as children and as foreign nationals. The introduction of a tailored and specific law thus stemmed from the

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<sup>138</sup> L. 7 Aprile 2017, n. 47. *Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati*. [hereinafter L. 47/2017].

<sup>139</sup> Save the Children Italia, *supra* note 112 at 10.

need to fill the gaps of a system that was conceived for a time when migratory fluxes occurred in different circumstances and had different characteristics. Notably, the recurrent problematics that characterised the protection system until the introduction of the Law No. 47/2017, concerned the lack of harmonization, that is, of uniform procedures for the identification and age assessment of UAMs; the length of stay in the first-reception centres which hindered the inclusion path of the UAMs, as well as the long delays in the appointment of a guardian and, more generally, the lack of guarantees and protection of fundamental rights, such as the right to education, health, the right to be heard and to legal assistance.

This Law is the result of a long advocacy effort and represents the first attempt in Europe to create an organic legal system to protect those children migrating without the care of family members responsible for them. It can be seen as a groundbreaking legal instrument which explicitly places Italian children on the same level of unaccompanied minors. Although this innovative normative instrument can be considered a remarkable effort towards a more inclusive and attentive protection of the category of UAMs, in the next chapter I will explain why these efforts are somehow jeopardised by the existing practices and the lack of effective and homogeneous implementation.

## **2.2 Contents of Law No. 47/2017**

The Law No. 47/2017 is composed of 22 articles which address different aspects concerning both the first stages of the migratory trajectory and the process of inclusion through the recognition of fundamental rights to which UAMs should be equally entitled.

Article 1 of Law No. 47/2017 defines its scope of application and its target, identifying UAMs as holders of the rights concerning children's protection and enjoying equal treatment with Italian and European children. What emerges as a primary feature is therefore the substantial equivalence in the entitlement to rights of Italian children and UAMs.

Article 2 provides for a definition of unaccompanied minor, which is described as “a minor present in the territory of the State who has neither Italian nor EU citizenship, who finds him/herself, for any reason, in the territory of the State or who is otherwise subject to the Italian jurisdiction, without any assistance and representation by his parents or other adults legally responsible for him according to the applicable Italian laws”.<sup>140</sup>

Article 3 affirms the absolute prohibition of refoulement, stating that unaccompanied minors cannot be rejected at the border in any case.

Article 4 of the Law establishes new rules with regards to the reception system, notably specifying the need to place UAMs in first aid and reception facilities adequate to their condition of minors, reducing from 60 to 30 days the minimum of the stay within the reception facilities and to 10 days the delay within which the identification must be carried out.

Article 5 deals with identification procedures: it affirms that, once the unaccompanied minor has come in contact with the authorities or social services, the first interview has to be carried out by qualified personnel and with the presence of a cultural mediator to identify the minor’s personal history and her/his protection needs. It further establishes that, should there be any doubts concerning the age declared by the minor, the Public Prosecutor’s Office of the Juvenile Court may arrange for social and health examinations to be carried out to assess it.<sup>141</sup> The socio-health age assessment shall be carried out in a suitable environment and adopting a multidisciplinary approach, using the least invasive methods possible and always making sure the minor is informed of the results of the assessment in an appropriate manner, consistent with her or his age, maturity and level of literacy.<sup>142</sup> However, where, even after the social-health age assessment, doubts remain on the minor age, the latter is presumed for all legal purposes.<sup>143</sup> Article 6 addresses the issues of family tracing activities, which have to be implemented for every unaccompanied minor. In particular, in case family members suitable for

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<sup>140</sup> L. 47/2017. Art. 2.

<sup>141</sup> L. 47/2017. Art. 5.4.

<sup>142</sup> L. 47/2017. Art. 5.7.

<sup>143</sup> L. 47/2017. Art. 5.8.

taking care of the minor are identified, this solution shall be preferred to the relocation in the reception facilities.

Article 7 deal with foster family, considering it as a priority to the placement in the reception facilities. Article 8 tackles the issue of assisted and voluntary return, which takes place only when the family reunification in the country of origin or in a third country is deemed to correspond to the best interest of the minor, and after the minor and her/his guardian have been heard.

Article 9 illustrates the institution of the National Information System for Foreign Minors (SIM) on unaccompanied foreign minors and the Social File (*Cartella Sociale*), which, following the interview, is compiled by the qualified personnel of the reception facility, and whose aim should be to collect information and elements useful for determining the best long-term solution in the best interest of the unaccompanied minor and accompany him in its inclusion path.

Article 10 deals with the consequences of the prohibition of the refoulement, stating that, where the law provides for the prohibition of refoulement or expulsion, the *Questore* shall issue a stay permit: either for minor age or for family reasons.

Article 11 establishes the conditions for the creation of a list of voluntary guardians, which according to the Law, had to be established in each juvenile court within 90 days from its entry into force and in which properly trained citizens can enrol to take on the protection of one up to three unaccompanied minors.

Article 12 describes rules concerning the protection system for asylum seekers, refugees and unaccompanied foreign minors – previously called SPRAR system, and then turned into SIPROIMI system after the entering into force of the so-called Security Decree<sup>144</sup> – thus including the reception of UAMs in the related facilities.

Article 13 specifically addresses the issue of UAM's transition to adulthood, dealing with the *prosieguo amministrativo*, that is, accompanying measures towards the age of majority and long-term inclusion measures. In particular, it establishes that, when an unaccompanied foreign minor, at the age of majority, needs a prolonged support aimed at the success of the inclusion pathway and the

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<sup>144</sup> The former SPRAR system, now called SIPROIMI, consists of a network of so called second reception centres, meant for asylum seekers and beneficiaries of international protection. Its aim is to centralise the coordination of these reception facilities which were previously managed locally and to contribute to the social and economic inclusion of these kind of migrants.

acquisition of autonomy, the Juvenile Court can dispose the assignment to the Social Services, in any case not beyond the twenty-first year of age.

Article 14, 15 and 16 deal with fundamental rights to which UAMs are entitled, notably: right to health, right to education, right to be heard during proceedings and right to legal assistance. Article 14 foresees the registration of the minor in the National Health Service even in the cases pending the residence permit and the guardian's appointment. It also establishes the absolute right to education, which should be implemented through the activation by the relevant Institutions of the measures to favour the fulfilment of compulsory education, including the realization of specific projects aimed at promoting tailor-made apprenticeship programmes (problem of funds not envisaged by the law). Article 15 emphasises the need to ensure psychological assistance to the minor, especially in every state and degree of the procedure, assured by the presence of suitable persons indicated by her/him. The unaccompanied minor has therefore the right to participate in all the judicial and administrative proceedings, through the presence of a legal representative, and to be always heard with regards to the procedures that directly affect her/him – the presence of a cultural mediator must always be ensured.

Article 16 tackles the issue of the right to legal assistance: indeed, the minor has always the right to be informed of his right to appoint a legal counsellor when involved in a judicial proceeding, also through the appointed guardian or the holder of the parental responsibility.

Article 17 deals with the issue of minors who are victims of trafficking, as individuals entitled to special protection due to their serious condition of vulnerability. This article establishes a specific assistance programme that ensures adequate reception conditions and psycho-social, health and legal assistance, providing long term solutions even beyond the achievement of the age of majority.<sup>145</sup>

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<sup>145</sup> Together with the Law No. 47/2017, several specific provisions regulate the issue of trafficking of human beings in Italy, among which art. 18 of the Legislative Decree 286/1998, the Legislative Decree 24/2014 and the Law 199/2016, which all foresee targeted measures exclusively dedicated to boy and girl victims of trafficking.

Article 18 is concerned with asylum seeker minors, who, according to this provision, are entitled to free legal assistance when applying for international protection, identifying not only the guardian, but also the person in charge of the reception facility – when a guardian has not been appointed yet – as the person responsible of the care of the minor.

Article 19 addresses the intervention of protection associations in the proceedings affecting the minor, which can participate in the proceedings and request the annulment of unlawful acts before administrative courts.

Article 20 promotes Italy's closest cooperation with other States, through bilateral agreements and the financing of development cooperation programmes in the countries of origin, with the aim of harmonizing existing practices regulations concerning the protection of UAMs, adopting an integrated approach to ensure effective protection and fulfilment of the best interest of the minors.

Article 21 perhaps represents the most controversial article of this Law, behind which lay much of the problematics related to its effective implementation: indeed, the article deals with financial provisions. Article 21 comma 3 affirms that no new or greater burdens shall arise for public finance with respect to the application of this Law. This provision inevitably affects an effective implementation and the successful improvement of the protection system, being tied to the impossibility of disposing of financial means necessary for the amelioration of the protection system thereof.

Article 22, the last article of Law No. 47/2017, concludes with some adjustment provisions, stating that within one month from the entry into force of the Law, the Government shall make the necessary changes to the regulations referred to in the Decree of the President of the Republic No. 394 of 31 August 1999, and referred to in the Decree of the President of the Council of Ministers No. 535 of 9 December 1999.<sup>146</sup>

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<sup>146</sup> L. 47/2017. Art. 22.

### 2.3 The effects of the Security Decrees on the Law 47/2017 and the novelties of the Decree Law 130/2020

The Decree Law 113/2018<sup>147</sup> – the so-called Security Decree – was introduced in the Italian legal system in 2018, entered into force on 5<sup>th</sup> October 2018 and was converted into Law 132/2018. This norm represents a step backward with regards to the changes it caused both to the reception system and in shrinking inclusion possibilities for migrants in terms of requirements and conditions for the obtainment of residence permits. With regards to UAMs, the Security Decree was not intended to specifically address their situation, however, some of its provisions directly affected them. Notably, although the Decree does not contain restrictive measures explicitly focused on UAMs, its content negatively impacted both their status and inclusion path, especially in the delicate phase of their transition to adulthood. In particular, the above-mentioned provisions concerned mainly 4 areas: the abolition of the so-called humanitarian protection;<sup>148</sup> the exclusion of asylum seekers from the SIPROIMI reception system; the increasing employment of the Extraordinary Reception Centres (CAS), despite their emergency nature and the sole presence of basic services; the impossibility to activate the registration at the Register Office for asylum seekers. Indeed, before the entry into force of the Security Decree, the majority of asylum-seeking unaccompanied minors obtained a residence permit for humanitarian reasons<sup>149</sup>, the so-called *humanitarian protection* – in the first six months of 2018, humanitarian protection was granted in 74% of the decisions of the Territorial Commissions concerning international

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<sup>147</sup> Decreto-legge (D.L.) 4 Ottobre 2018, n. 113. *Disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica, nonché misure per la funzionalità del Ministero dell'interno e l'organizzazione e il funzionamento dell'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata.*

<sup>148</sup> The residence permit for humanitarian reasons was issued after consulting the Territorial Commission for the Recognition of International Protection in view of the existence of “serious grounds” of humanitarian nature, such as health reasons, age, famine, human-induced environmental threats or natural disasters, and political instability, episodes of violence or lack of family strings in the country of origin. It had a two-year duration and could be renewed and also converted into an employment permit.

<sup>149</sup> This was valid also for most of the unaccompanied girls who arrived in Italy as victims of trafficking, some of whom, although this kind of protection is not expressively addressed to this particular condition, were granted this type of permit once they turned eighteen. For further deepening, see: [https://s3.savethechildren.it/public/files/uploads/pubblicazioni/piccoli-schiavi-invisibili-2019\\_0.pdf](https://s3.savethechildren.it/public/files/uploads/pubblicazioni/piccoli-schiavi-invisibili-2019_0.pdf)



protection application.<sup>150</sup> This explains why, following the abolition of the humanitarian protection, thousands of UAMs saw their asylum application rejected by the Territorial Commission.

The Decree Law 113/2018 also had a negative impact on specific provisions of the Law No. 47/2017. In particular, it caused a generalised uncertainty with regards to the different cases linked to the *prosieguo amministrativo* – that is, the set of accompanying measures towards the age of majority and long-term inclusion measures to be implemented in situations that require a prolonged support for the acquisition of autonomy. Further, the Security Decree abolished the so-called *silenzio-assenso* (tacit consent): this principle was envisaged by Law No. 47/2017 and entailed that, in the process of the residence permit's request, where no answer by the Directorate General for Migration and Integration Policies was received within the 30 days delay, silent was deemed to be a positive answer and, thus, the Police Headquarters had to issue the residence permit – in the presence of other necessary requirements. The Security Decree repealed the relevant provision, dealing with the application of the *silenzio-assenso* principle in these proceedings.<sup>151</sup> This resulted in the impossibility of ensuring the conversion of the residence permit for minor age, when the opinion is not given explicitly.<sup>152</sup> Another problem caused by the introduction of the Decree Law 113/2018 has been the rule according to which the residence permit for asylum seekers – that is, the temporary residence permit given to those pending their asylum request – does not represent a valid qualification for the registration at the Register Office. As a consequence, many Municipalities started impeding this registration for asylum seekers causing important limitations in the exercise of some of their fundamental rights. Indeed, such registration represents the necessary precondition for the issuing of the residence permit and the identity card and, consequently, for the enjoyment of all those essential public services such as health and social assistance, or the grant of

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<sup>150</sup> ASGI, INTERSOS, “Quali percorsi per i minori non accompagnati in seguito all’abrogazione del permesso per motivi umanitari?”, *ASGI, INTERSOS*, 12 December 2018, p. 2. Available at: <https://www.asgi.it/wp-content/uploads/2018/12/Scheda-Percorsi-dei-MSNA-in-seguito-allabrogazione-del-permesso-per-motivi-umanitari.pdf>

<sup>151</sup> *Ivi*, p. 8.

<sup>152</sup> Save the Children Italia, *supra* note 112 at 12.

financial allowance or subsidies. Further, this impediment hinders asylum seekers' access to job opportunities and internships, which all require the possession of an identity card and compromises the inclusion process of UAMs which are beneficiaries of these projects.<sup>153</sup> The provision dealing with the denial of registration at the Register Office has been deemed to be in contrast with most of the constitutional norms, notably with Article 3 of the Constitution enshrining the equality of all citizens before the law, especially with reference to the section addressing the responsibility of the State to remove all the social and economic obstacles which limit citizens' freedom and equality.<sup>154</sup>

When we talk about Security Decree it is appropriate to decline it in plural terms, since the Decree Law No. 113/2018 was followed by the Decree Law No. 53/2019<sup>155</sup>, the so-called Security-bis Decree. It was converted into Law 77 on 8<sup>th</sup> august 2019 and it was concerned with the rescue operations in the Mediterranean and the arrivals at the Italian coasts, thus including UAMs' arrivals as well. According to this norm, the Minister of the Interior may provide for the limitation of entry, transit or stop of ships in the territorial waters for public order and security reasons<sup>156</sup>, thus closing Italian ports to NGO vessels that assist migrants and to prosecute their crews for "facilitating illegal immigration".<sup>157</sup> With this respect, and with regards to UAMs precisely, Law No. 47/2017 provides for specific conditions and protection measures to be considered before deciding for the refoulement of an unaccompanied minor. In particular, this rule refers to Article 31.4 of the above-mentioned Legislative Decree No. 286/1998: it affirms the possibility to expel the minor after having verified that this does not result in a risk of great damages for the child. However, it further stresses the prominence of her/his best interest in every decision that affects him, including in the considerations concerning migration control, thus affirming the absolute prohibition of rejection at the

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<sup>153</sup> Save the Children Italia, *supra* note 112 at 12.

<sup>154</sup> *Constitution of the Italian Republic*, 22 December 1947. Art. 3.

<sup>155</sup> D.L. 14 Giugno 2019, n. 53. *Disposizioni urgenti in materia di ordine pubblico e sicurezza*.

<sup>156</sup> D.L. 14 Giugno 2019, n. 53. Art. 1.

<sup>157</sup> European Parliament, Parliamentary Questions, [website], [https://www.europarl.europa.eu/doceo/document/E-9-2019-002537\\_EN.html#:~:text=Decree%2DLaw%20No%2053%20of,for%20'facilitating%20illegal%20immigration](https://www.europarl.europa.eu/doceo/document/E-9-2019-002537_EN.html#:~:text=Decree%2DLaw%20No%2053%20of,for%20'facilitating%20illegal%20immigration) (accessed 26/11/2020).

border.<sup>158</sup> Nevertheless, in the last two years, several episodes during rescue operations were registered concerning the application of the best interest of the child and the absolute prohibition of refoulement with regards to UAMs. These events raised a lot of concern among the international community, indeed, some of these provisions were found in breach of International Law and it was also perceived at the European level, in particular by the European Network of Ombudspersons for Children (ENOC). On 24 April 2019, ENOC produced a comprehensive declaration addressed at the Italian national authorities, issuing several recommendations. Notably, they focused on the need to ensure safe disembarkation and reception procedures to be quickly carried out to guarantee prompt access to fundamental rights of migrant children; to adequately and rapidly protect all children on the move, either accompanied or unaccompanied, upon their arrival in internal waters, in compliance with international, European and national legislation; to ensure the full and effective implementation of all the rights enshrined in the UN CRC, notably right to equality, to life, to development, to family, to education and to health. All these rights shall be guaranteed through adequate reception and on the basis of their best interest, to be assessed on a case-by-case basis after having heard them and promptly disposed the appointment of a guardian and considered the adoption of durable solutions; to consider UAMs as minors and carry out age assessment examinations through a holistic approach and only when reasonable doubts arise about their minor age.<sup>159</sup>

More recently, on 21 October 2020, the Decree Law 130/2020 was approved and entered into force on 22 October 2020. Its conversion into Law is still ongoing, since it was approved by the Chamber of Deputies on 9 December 2020 and still has to pass to the Senate to vote it. This Decree Law amended some of the worst provisions of the Security Decrees and, although there are very few aspects concerning UAMs, we can observe some relevant changes, such as the introduction of new convertible residence permits among which the residence permit for minors'

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<sup>158</sup> D.Lgs. 25 Luglio 1998, n. 286. Art. 3.1, lett. a.

<sup>159</sup> European Network of Ombudsmen for Children, "ENOC Statement on the situation of children on the move on rescue vessels in the Mediterranean", 24 April 2019. Available at: <http://enoc.eu/?p=2390>

assistance.<sup>160</sup> Further, the Decree Law foresees the prohibition of refoulement not only for those who risk torture, but also inhuman and degrading treatments and violation of the right to a private life in the country of origin. The new norm also modified the limitations and prohibitions concerning the navigation of NGOs' vessels in the Mediterranean. Indeed, the Ministry of Interior can still limit or prohibit the entry and transit in territorial waters of such vessels, but it is also envisaged a derogation in the case they are carrying out rescue operations after having communicated it to the relevant authorities of their flag state. For what concern the reception system, the Decree Law 130/2020 renovated the SIPROIMI system which replaced the SPRAR system and was introduced by the Security Decree, although its characteristics still reminds of the previous SPRAR system.

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<sup>160</sup> D.L. 21 Ottobre 2020, n. 130. *Disposizioni urgenti in materia di immigrazione, protezione internazionale e complementare, modifiche agli articoli 131-bis, 391-bis, 391-ter e 588 del codice penale, nonché misure in materia di divieto di accesso agli esercizi pubblici ed ai locali di pubblico trattenimento, di contrasto all'utilizzo distorto del web e di disciplina del Garante nazionale dei diritti delle persone private della libertà personale.*

### **III. STATE OF THE ART OF THE LAW 47/2017: PROBLEMS IN THE IMPLEMENTATION OF THE PROVISIONS AND IMPACT OF COVID-19**

In 2020, the first three years passed since the entry into force of Law No. 47/2017. However, difficulties and problems linked to its effective implementation still persist, especially in some areas of application which present the most challenging issues. This chapter will focus on them, as well as on the analysis of the most urging problems in the implementation of the Law, mainly putting the emphasis on all those aspects affecting UAMs in their transition to adulthood, those who are thus approaching the age of majority or have just reached it. Although if compared to the international legal framework, UAMs' main age range seems to be taken more into consideration, the Italian legislation and its relative application present some issues to be addressed. In particular, the approach at the Italian level tends to "protect" UAMs while they are minors, failing to dedicate to them a specific framework once they turn 18, applying to them the same discriminative criteria of the intended for adult migrants. We can therefore say that the treatment as *migrant* eventually prevails. Indeed, existing problematics in the effective application of the Law directly affect the inclusion path of UAMs, whose negative outcome or interruption is most likely to compromise and shrink the possibilities to remain in Italy and pursue their life projects.

In the first section of this chapter, I will elaborate on the problems related to the application of the Law No. 47/2017 and the discrepancy between what is enshrined in its provisions and what is actually implemented and operated on the territory. In so doing, I will start tackling the issue of the implementation decrees, that is, the regulations that have to be adopted to allow the effective implementation of the provisions, without which some areas of application remain uncovered. I will then address the shortcomings of the reception system, especially with regards to the practical implications of the Security Decree and the failure to give full and homogenous application to the *prosieguo amministrativo*, that is, the set of

accompanying measures for UAMs in their path towards autonomy after they become of age and some conditions subsist to require it. As a consequence of the facts explained in the previous sections, the last paragraph of this part will dwell on the lack of territorial homogeneity in the reception of the provisions and the different practices amongst regions and even Municipalities, which result in divergent forms of protection and outcomes of the inclusion paths of UAMs. The last section of this chapter will examine the devastating effects of the Covid-19 pandemic on UAMs as a particularly affected group and will explain how they were negatively impacted by it. Notably, emphasis will be put on the role Covid-19 had in exacerbating and worsening problematic situations and existing inequalities in the enjoyment of rights and freedoms, which were especially hindered for UAMs – both for those who just arrived in Italy and those who have been long accommodated in the reception centres. After a brief analysis of the dispositions adopted to cope with the outbreak of the pandemic, this section will focus on its impact on specific rights and freedoms of UAMs essential for their inclusion in the society, enshrined both at the international level and in the Law No. 47/2017.

### **1. Discrepancy between legal provisions and their implementation: shortcomings and lack of homogeneity**

Most of the problematics connected with the effective implementation of the Law No. 47/2017 are due to the mutability of UAMs' needs across time and the inability of the system to cope with such changing nature, as well and most importantly to the discrepancy between the final aim of the Law and the technical timing of the administrative action in addressing the most urging issues.<sup>161</sup>

Another major problem is linked to the lack of financial support for the implementation of the Law, as enshrined in Article 21 which states that “no new or greater burdens shall arise for public finance with respect to the application of this

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<sup>161</sup> Alessandra Cornice, Alfredo Rizzo, “La tutela dei minori stranieri non accompagnati. Un confronto tra fonti internazionali, europee e recenti dispositivi dell’ordinamento italiano”, *INAPP Papers*, n. 22, Rome, 2019, 3-31, p. 22. Available at: [https://oa.inapp.org/xmlui/bitstream/handle/123456789/548/INAPP\\_Cornice\\_Rizzo\\_Tutela\\_minori\\_stranieri\\_non\\_accompagnati\\_IP\\_22\\_2019.pdf?sequence=1&isAllowed=y](https://oa.inapp.org/xmlui/bitstream/handle/123456789/548/INAPP_Cornice_Rizzo_Tutela_minori_stranieri_non_accompagnati_IP_22_2019.pdf?sequence=1&isAllowed=y)

Law”. Such provision makes it easier to understand the possible problems in terms of effective implementation of the Law, which are however not solely due to the lack of national funds. Indeed, legislative gaps are also found, with respect to the implementing decrees and the need to cover areas of application that otherwise remain uncovered.

Again, the Security Decree played a crucial role in negatively affecting the ordinary inclusion process of boy and girl UAMs hosted in the reception system and negatively affected their life, complicating aspects concerning their stay and possibilities to regularly reside in Italy.

Gaps in the reception system constitute a significant wound in the functioning of UAMs protection system, especially with regards to the effectiveness of training courses, internship programmes and the socio-employment inclusion of UAMs.

The *prosieguo amministrativo*'s effective implementation also presents some challenging questions, which are often linked to the lack of financial aid envisaged for the support of projects and initiatives linked to its successful outcome, to the economic condition of Municipalities that have to cover its costs, as well as to the lack of tailor-made projects aimed at the achievement of the final goal of this instrument.

Problems are also observed at the local level, especially with regards to the lack of homogeneity in the practices carried out by the Police Headquarters in setting out uniform criteria and requirements for the release, conversion or renewal of permits. This last aspect has emerged in interviews and conversations with legal caseworkers as well as with coordinators of reception centres following the legal path of UAMs accommodated in the facilities, who highlighted the divergency of the requirements encountered even across Municipalities of the same regions.

### **1.1 The problem of the “implementation decrees”**

The implementation of the Law No.47/2017 can be seen both from an operative perspective as well as from a normative one. Indeed, if problems in the

implementation are undeniably observed in the concrete application of the disposition contained in the Law, from a normative point of view, the lack of implementation of regulation and decrees it envisages represents a critical point for the effective protection of UAMs' rights.

With the terms “implementation decree” (decreto attuativo), we generally refer to a ministerial decree prescribed by a Law, which bestows its technical definition and implementation to one or more relevant Ministers, according to the subject/s and target/s of the disposition. Implementation decrees are essential measures for the concrete, effective and organic application of a Law on the territory, and the failure to adopt them entails failure in implementing fundamental aspects of the Law.

One of the most urging problems with regards to the effective application of the Law No. 47/2017 is, indeed, the adoption of the implementation decrees, needed for the effective enactment of the provisions contained in the Law. After three years from its entry into force, some specific measures are still to be adopted, causing delays in the homogeneous application of the norm. This means that entire areas of application of the Law are blocked by the lack of such implementation regulations. According to the Law No. 47/2017, the necessary measure to allow its full implementation were the following: the above-mentioned Decree of the President of the Italian Republic No. 394/1999, the Decree of modification of the Decree of the President of the Council of Ministers No. 535/1999<sup>162</sup>, the Decree approving the implementation process of the first interview ex. Article 5 of the Law No. 47/2017, and the age assessment protocol ex. Article 5 of the Law No. 47/2017. The latter is the only measure that has been approved so far, on 9 July 2020 by the States-Regions Conference.<sup>163</sup> Indeed, implementation decrees regulating aspects concerning the role of voluntary guardians such as the possibility to miss work to

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<sup>162</sup> Decreto del Presidente del Consiglio dei Ministri 9 Dicembre 1999, n. 535. *Regolamento concernente i compiti del Comitato per i minori stranieri, a norma dell'articolo 33, commi 2 e 2-bis, del decreto legislativo 25 luglio 1998, n. 286.*

<sup>163</sup> Conferenza Stato-Regioni, Repertorio atto n. 73/CU. Accordo, ai sensi dell'articolo 9, comma 2, lett. c) del decreto legislativo 28 agosto 1997, n. 281, tra il Governo, le Regioni e le Autonomie locali, sul documento recante: “Protocollo multidisciplinare per la determinazione dell'età dei minori stranieri non accompagnati”, n. 73/CU, 9 Luglio 2020.



help UAMs in specific situations like for those doing volunteering activities, have not been enacted.<sup>164</sup>

The first criticism, therefore, concerns the first interview to be held upon arrival, envisaged by Law No. 47/2017 to further the personal and family history of the minor and acquire all the necessary information for her/his protection and for the identification of an adequate reception in view of her/his best interest. To this end, Law No. 47/2017 foresaw the adoption of a Prime Minister Decree aimed at defining such procedure and identifying its fundamental stages. However, to the present day, this Decree has not yet been adopted. Its adoption is a fundamental step to allow the implementation of other provisions contained in the Law, such as those concerning Article 9, dealing with the Social File, an important tool to collect all the information acquired during the first interview and accompany the minor throughout its inclusion path. No common model, nor official standards still exist for the Social File at the moment and this hinders the proper use of such precious instrument.

Further, implementation decrees are still lacking with regards to age assessment and the *prosieguo amministrativo*. The crucial moment of turning 18 means for UAMs to cope with a delicate passage from a legal status to another, that is, from being a minor safeguarded by several protection measures to being an adult migrant and loose the set of entitlements recognised to an unaccompanied minor. For this reason, it is sometimes deemed necessary to ensure a prolonged support towards autonomy through the accompanying measures for the acquisition of autonomy and social inclusion envisaged by the *prosieguo amministrativo*. The lack of a relevant disposition enacting the relating provision means for UAMs a further complication in the realisation of their transition to adulthood, for which the *prosieguo amministrativo* often represents an essential support.

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<sup>164</sup> *Ibid.*

## 1.2 Gaps in the reception system: weaknesses and practical implications of the Security Decrees

As pointed out by the Save the Children report, UAMs' transition to adulthood in Italy is tainted by enormous obstacles and by the lack of efficient dispositions at the national level, able to guarantee an efficient inclusion pathway for UAMs.

Especially after the entry into force of the Security Decree, which abolished the so-called humanitarian protection, many UAMs had to face more difficulties. All those not meeting the criteria to obtain the international protection and counting on the possibility to obtain such alternative form of protection were left with no option but to be irregularly residing in Italy and not entitled to the accommodation in the reception facilities.<sup>165</sup> The Security Decree also changed the target groups beneficiaries of the reception system, changing from the SPRAR system – which allowed the reception of asylum seekers and refugees – into the SIPROIMI system – which excluded the asylum seekers from the group of those allowed to stay in the reception facilities. This has a direct effect on asylum seeker UAMs previously accommodated outside the SIPROIMI facilities, that cannot access it when they turned 18 and are waiting for the outcome of their application and have instead to be placed in a CAS centre.<sup>166</sup> The accommodation in a CAS centre, also considering its emergency nature, contributes to the negative development of the inclusion paths if not its abrupt termination. Indeed, CAS centres do not provide for services which are instead provided in the SIPROIMI system, such as inclusion programmes covering school enrolment, vocational training or employment inclusion activities.<sup>167</sup>

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<sup>165</sup> Save the Children blog, “Cosa cambia per i minori con il Decreto Sicurezza?”, 2018, [website], <https://www.savethechildren.it/blog-notizie/cosa-cambia-per-i-minori-con-decreto-sicurezza> (accessed 11/12/2020).

<sup>166</sup> A. Lanni, *Cambiamenti del “Decreto Sicurezza e immigrazione”*, Associazione Carta di Roma, 2018, [website], <https://www.cartadiroma.org/news/cambiamenti-del-decreto-sicurezza-e-immigrazione/> (accessed 9/1/2021).

<sup>167</sup> Elena Rozzi, “The new Italian law on unaccompanied minors: a model for the EU?”, *EU Migration Law Blog*, 2017, [website], <https://eumigrationlawblog.eu/the-new-italian-law-on-unaccompanied-minors-a-model-for-the-eu/> (accessed 13/12/2020).

We already observed how the majority of UAMs coming in Italy are boys aged between 16 and 17 years old, a condition that affects their stay in Italy making it full of uncertainty and anxiety with regards to their future after turning 18 and the consequent loss of entitlements and protection deriving from the condition of minor. Most of them come to Italy when they are 17 years old, they soon become of age and in the little time they have at disposal before turning 18 they often don't manage to complete their path towards autonomy and to be fully included in the society, both from a legal and socio-employment perspective. That is why to guarantee an extension of the support it is often necessary to activate the procedure to request the *prosieguo amministrativo*, which entails the taking in charge of the Social Services, as envisaged by Law No. 47/2017. However, the costs of the *prosieguo amministrativo* fall on the Municipalities, whose resources are shrinking, especially after the Covid-19 pandemic effects hit the national economy. Indeed, the *prosieguo amministrativo* requires the funding of autonomy paths and the support to initiatives aimed at the promotion of their social and employment inclusion.<sup>168</sup> For this reason, although once the Court has issued its decision they cannot refuse to act accordingly, some municipalities are calling on Juvenile Courts to somehow limit the granting of such measure, in view of their weak economic possibilities. It must be noted that differences occur among different regions, where the decisions concerning the *prosieguo amministrativo* depend on the willing of the Courts to allow such measure to be activated.<sup>169</sup> Further, an issue linked to the effective use of such measure is the lack of indication with regards to the reception measures to be adopted after the *prosieguo amministrativo*. Another major problem that emerged during interviews with professionals working in reception centres as well as with voluntary guardians, is the issue of the *prosieguo amministrativo*'s financial burden falling on Municipalities, which very often results in a negative tendency in granting this measure by the Juvenile Courts that know Municipalities

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<sup>168</sup> Autorità Garante per l'Infanzia e l'Adolescenza, Comunicato Stampa, *Minori stranieri non accompagnati, l'Autorità garante alle Istituzioni: attuare la legge*. Available at: <https://www.garanteinfanzia.org/sites/default/files/comunicato-stato-attuazione-legge-zampa.pdf>

<sup>169</sup> Interview with Laura Pecchioli, Vice President of the Voluntary Guardians Association of the Tuscany Region, December 2020 (on file with author).

won't be able – or willing – to finance it.<sup>170</sup> In the Municipality of Siracusa, Sicily, a problem emerged recently concerning the closure of the majority of the facilities for UAMs accredited to the Municipalities. Indeed, they used to be 13 until they recently diminished into only 2.<sup>171</sup> This caused a discrepancy between the opinion of the Juvenile Court allowing the *prosieguo amministrativo* and the opinion of the Social Services, that due to the lack of available places oppose the decision.<sup>172</sup>

The weakness of this provision is arguably the lack of financial support foreseen for its implementation, as well as for the realisation of tailor-made projects and activities aimed at the socio-economic inclusion of these young adults.

As pointed out by the Italian Authority for Children and Adolescents, it is vital to favour the allocation of financial resources to fund autonomy pathways and support the initiatives aimed at the promotion of the socio-economic inclusion of UAMs.<sup>173</sup> However, as previously observed, the inherent nature of the Law No. 47/2017 represents an obstacle to this purpose: article 21, indeed, specifies the need to avoid new or greater burden for public finance for the implementation of its provisions.

In an interview held with the Vice President of the Voluntary Guardians Association of Tuscany, what emerged is the subjective nature of the professional training and projects aimed at the socio-economic inclusion of UAMs hosted in the reception system. The type and number of projects offered depends on the single reception facility as well as on the personnel working in it and their willing and possibilities to meet requests and expectations of UAMs. That is why in these circumstances the role of voluntary guardians becomes crucial, in monitoring the proposed activities and the adequacy of the offer, as well as in the very control on the presence of projects and activities proposed. Indeed, sometimes projects are

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<sup>170</sup> Interview with the coordinator of the *Mulino di Suardi* Community in the Province of Pavia, December 2020 (on file with author); Interview with the coordinator of *Il Ponte* Community in Genoa, December 2020 (on file with author); Interview with a legal caseworker of AccoglieRete Onlus, January 2020 (on file with author); Interview with Laura Pecchioli, *supra* note 169.

<sup>171</sup> Interview with a legal caseworker of *AccoglieRete* Onlus, January 2020 (on file with author).

<sup>172</sup> *Ibid.*

<sup>173</sup> Autorità Garante per l'Infanzia e l'Adolescenza, "I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali", 2019, Gangemi Editore, Allegato 4, 6. Available at: <https://www.garanteinfanzia.org/sites/default/files/movimenti-minori-stranieri-frontiere-settentrionali.pdf>

offered by the reception facilities themselves, while most of the times it's the voluntary guardians that look for adequate projects for the minors they are in charge of and propose them to the facility.<sup>174</sup> Another problem is constituted by the requisites to meet to enrol in a professional training course: they often have to possess a middle school certificate, which sometimes it's very hard to obtain in the short-term due to language barriers and/or to the long process for the recognition of foreign qualifications.<sup>175</sup>

Further, the carrying out of the *prosieguo amministrativo* has to be periodically monitored, as if activities linked to the social inclusion of the UAM or school activities are not properly attended and results are not delivered, a decision might be issued with regards to its withdrawal and consequent suspension.<sup>176</sup> With this respect, the Social Services often engage in periodic inspections to check whether projects and activities carried out by the UAM who was granted the *prosieguo amministrativo* are attended and achieved correctly.<sup>177</sup>

In addition, major problems of the reception system for UAMs can be identified in the inadequacy of the reception facilities, in particular in the lack of tailor-made facilities for specific target groups – for example adequate for unaccompanied boy and girl victims of trafficking. Another linked issue is represented by the often-difficult cohabitation between minors and adults, which are groups with different needs and necessitate a differentiated treatment as well as separated spaces and dedicated activities.<sup>178</sup>

Another discrepancy between what is enshrined in the Law and what is actually implemented in concrete, concerns the foster care measures envisaged and promoted by it. Although this measure is strongly recommended and given priority over the accommodation in a reception centre, due to the age range of UAMs approaching the age of majority, this is often impossible. Indeed, the long

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<sup>174</sup> Interview with Laura Pecchioli, *supra* note 169.

<sup>175</sup> *Ibid.*

<sup>176</sup> *Ibid.*

<sup>177</sup> Interview with the Head of the UAMs Protection Office of the Juvenile Court in Florence, December 2020 (on file with author).

<sup>178</sup> Alessandra Cornice, Alfredo Rizzo, *supra* note 161 at 25.

bureaucratic procedures that precede the actual beginning of the foster care, together with the needs and desires of UAMs that often see it as a threat to their independence and simply are suspicious towards this possibility, compromise its effective implementation.<sup>179</sup>

The voluntary departure of the minors from the reception facilities is also a phenomenon which is more often observed, especially in the southern regions. Such departure makes them unreachable and untraceable and is often linked to their need to join their family members that managed to reach other cities or even other countries in Europe, or more simply to their willing to meet their aspirations in life. This is valid especially for those UAMs who feel not understood and unheard in their quest for autonomy which goes along with their desires, inclinations and aspirations. Indeed, we must bear in mind that UAMs are adolescents and are therefore full of dreams and troubles just like other adolescents are.<sup>180</sup> In the interview with the Vice President of the Voluntary Guardians Association of Tuscany, she talked of a young boy who wanted to become a football player, but he could not find good engagements also considering that sports club often cannot hire them due to the legal obstacles. He then decided to go to France and disappeared, although he had a guardian, and he was attending school. Some of them decide to leave because they have expectations and desires to fulfil, other just think they have found a good solution which sometimes eventually turns out not to be the right one.

### **1.3 The lack of territorial homogeneity in the reception of the provisions**

Lack of territorial homogeneity in the reception of the provisions is due to several factors. One of these is represented by the previously mentioned lack of implementation decrees, which allows for the discrepancy in the reception of the provision and their relative application. The lack of tailor-made dispositions

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<sup>179</sup> L'esperienza dell'affidamento familiare di Minori Stranieri Non Accompagnati (MSNA). [http://www.comune.genova.it/sites/default/files/affido\\_msna.pdf](http://www.comune.genova.it/sites/default/files/affido_msna.pdf)

<sup>180</sup> Interview with Laura Pecchioli, *supra* note 169.

addressing specific situations is the main reason behind dissimilarities in the practices across the Italian territory.

An example of this is the discretion adopted by Police Headquarters in establishing criteria on the basis of customary practices. In particular, the widespread custom of setting different requirements for the conversion or renewal of residence permits – especially employment and pending employment permits – often complicates for UAMs the already tricky bureaucratic path towards the obtainment of a permit, essential for the continuation of their inclusion path in the transition to adulthood.<sup>181</sup> Indeed, an example of this is the tendency of some Police Headquarters to not recognise internships as valid to renew the employment permit, and instead require a regular employment contract. Problems also occur with regards to renewal of pending employment permits: if a young adult UAM lost her/his job by the time its permit expired and needs to request its renewal, the Police Headquarters can decide whether to renew it into a pending employment permit or reject the request.<sup>182</sup> This happens due to the lack of a specific disposition addressing permit conversion criteria and the release or renewal of permits based on employment, which therefore leaves a considerable room for manoeuvre to Police Headquarters causing inhomogeneity in the practices across Italy.

Lack of homogeneity is intended also in terms of distribution of UAMs across the Italian territory which often do not respect the reception capacity of each region. The non-conformity in the distribution of UAMs across regions is one of the major obstacles to the full and effective implementation of the Law No. 47/2017. As we saw in the previous chapter, the majority of UAMs are located in Sicily, which host almost half of the UAMs present in the territory, due to its geographical position which makes it the first region for the arrivals by sea. This disproportion results in a consequent discrepancy between the number of UAMs hosted in the regions and the voluntary guardians enrolled in their Courts' list.<sup>183</sup> Indeed, four out of ten unaccompanied minors present in Italy are concentrated in Sicily. The Italian

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<sup>181</sup> Interview with a legal caseworker of *AccoglieRete Onlus*, *supra* note 170.

<sup>182</sup> *Ibid.*

<sup>183</sup> Alessandra Cornice, Alfredo Rizzo, *supra* note 161 at 25.

Authority for Children and Adolescents stated their constant presence in that regions might cause the collapse of the whole reception system for UAMs, including the role of the voluntary guardian. Aspiring guardians are distributed more uniformly than UAMs across the peninsula, while UAMs are primarily located in Sicily.<sup>184</sup>

Presence of voluntary guardians is therefore a concrete example of such territorial dissimilarities: there are regions with many voluntary guardians and others where there is not even one. In Tuscany there are, in other regions no. By 30 June 2019, 2967 voluntary guardians were selected and enrolled in the official list and the Register of the Voluntary Guardians.<sup>185</sup> Of these 2967, the majority was distributed between Rome, Turin, Catania, Palermo, Milan and Florence, where presence of voluntary guardians did not go below 200. Cities where the presence of voluntary guardians is very small are for example Messina, Taranto, Potenza and Trento, where they do not go beyond the 27 units.<sup>186</sup> The presence of voluntary guardians is sometimes disproportionate if compared with that of UAMs.

Permanence in the facilities is most of the times longer than 30 days and the presences registered in first and second reception centres do not meet the equal territorial distribution criteria. Such circumstance also contributes to the weakening of the voluntary guardians' accompanying function.<sup>187</sup>

Dissimilarities among regions are observed also in the practices: for instance, in the length of the procedures for the minor age residence permit conversion according to the region and, therefore, to the characteristics of its legal system.<sup>188</sup> Further, especially in Sicily and in the Municipality of Catania, disparities are encountered with regards to the requirements of the Police Headquarters for the conversion of

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<sup>184</sup> Autorità Garante per l'Infanzia e l'Adolescenza, *supra* note 173.

<sup>185</sup> Autorità Garante per l'Infanzia e l'Adolescenza, "Il sistema della tutela volontaria in Italia. L'attività dei garanti regionali e delle province autonome. Secondo Rapporto di monitoraggio", FAMI, 2020. Available at: [https://tutelavolontaria.garanteinfanzia.org/sites/default/files/2020-10/Report\\_corsi\\_v1.0\\_1.pdf](https://tutelavolontaria.garanteinfanzia.org/sites/default/files/2020-10/Report_corsi_v1.0_1.pdf)

<sup>186</sup> *Ibid.*

<sup>187</sup> *Ibid.*

<sup>188</sup> Save the Children Italia, "Superando le barriere. Percorsi di accoglienza e inclusione dei giovani migranti", *op.cit.*, p. 22.



the permit for minor age into another permit (for study, employment or pending employment). Indeed, in the Municipality of Catania, Police Headquarters require UAMs to be in possession of the passport, a *conditio sine qua non* for the obtainment of the new permit. With this respect, the discretion power applied by the Police Headquarters creates quite a few difficulties. Among others, the main obstacle for the obtainment of the passport has been the Covid-19 emergency, whose consequent travel restrictions impeded trips to Embassies and, in some cases, to the country of origin where passports had to be issued. This is the case of Guinea-Conakry and Ivory Coast, who are currently not releasing passports in Europe, requiring asylum seekers to travel back to their countries of origin to obtain it.<sup>189</sup>

## **2. Impact of Covid-19 on the access to fundamental rights: further complications in an already weak system**

Unaccompanied minors are an already particularly vulnerable category, and this aspect was emphasised all the more during the pandemic. UAMs' protection framework in Italy is a weak system which shows several contradictions and controversial issues that challenge UAMs' rights even during normal times. When the pandemic hit, their lives was upset and shocked just like ours were, but with different consequences on their already strong uncertainties and fears. The negative impact of the pandemic affected first and foremost their mental health, whose importance is often overlooked at the expense of the sole physical health, but which rather plays a fundamental role especially for boys and girls who are experiencing a very delicate phase of their life after having migrated so far from their country of origin. Most of UAMs accommodated in the reception centres experienced the tremendous effects of the pandemic on their already feeble psychological wellbeing, enduring tension, anxiety, mood swings and sleeping troubles mainly due to the lack of understanding of the situation and of its potential consequences on their lives. What constituted a source of distress in normal times, was

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<sup>189</sup> Interview with the coordinator of the SIPROIMI reception facility *I Girasoli* in Scordia, Province of Catania, January 2020 (on file with author).

exacerbated by the pandemic and the impossibility to predict what its consequences would be.

Lack of information and effective guidelines, as well as adequate dispositions often made it harder to cope, both for UAMs and for professionals working with them in the reception facilities. Although several dispositions were adopted following the Covid-19 emergency, with regards to the reception system and administrative issues mainly pertaining release and renewal of residence permits, some difficulties still occurred. Notably, the exercise of some of UAMs' fundamental rights enshrined in Law No. 47/2017 was severely hindered, mainly affecting their right to education, their right to health assistance as well as the right to benefit from the appointment of a guardian to enjoy emotional support and help in bureaucratic matters. Problems were reported in relation to the possibility to continue to attend school activities, which were suspended just like for Italian children. However, further complications occurred for UAMs, both for the lack of adequate equipment for digital learning activities in the reception centres and for the lack of prompt organisation of the facilities responsible for their education – which differs from the regular school path of Italian children due to several complications mainly linked to their knowledge of the Italian language and the lack of targeted projects in normal schools, although the Law enshrines their right to access schools equally. Proper access to health was also hampered, as sanitary equipment such as face masks and hand sanitisers were delivered partially or late.

The terrible effects of the pandemic affected and continue to affect the lives of UAMs who are accommodated in the reception facilities, as well as of those who find themselves in a different phase of their migratory project. Covid-19 consequences on UAMs in Italy are not entirely countable to date, but some conclusions can already be drawn on how the implications of this health emergency compromised their tough inclusion path making it even tougher.

## **2.1 Widespread effects of Covid-19: difficulties and inequalities exacerbated**

The Covid-19 pandemic had negative effects on all of us, and nobody can really say s/he was not affected by it. However, some vulnerable categories were disproportionately negatively affected by this pandemic and paid the highest price among others. Covid-19 worked as an exacerbator of existing inequalities and difficulties and worsen situations that were already complicated. This is the case of migrant children, especially unaccompanied migrants who suffered from a strong insecurity with regards to their future, which was already uncertain and full of questions with no answers. This condition of uncertainty is mainly linked to their possibilities to remain in Italy after they turn 18, which represents a decisive moment in their migratory project. Many of these unaccompanied children and young refugees have experienced – and are still experiencing as the pandemic keeps spreading – frustration, boredom, sleep problems, apathy and mood swings, following the sudden impact of Covid-19 on their studies, jobs, residence permits, proceedings and appeals.<sup>190</sup> This pandemic therefore had a double impact on the lives of these migrant children, both on their mental-health condition and on practical issues affecting their legal stay in the country of destination. Impacts on mental health are of course similar to those experienced by other people who are not necessarily migrants, but the main difference lays in the peculiar condition of susceptibility and the precariousness of their situation which makes them so exposed to such a sudden and drastic change. As we will see in the following section, several dispositions were adopted to cope with the terrible effects of the lockdown and contain the spread of Covid-19, notably addressing problems related to the blockage of the judicial activities and the need to extend the permits of stay expiring in the period of the lockdown.

As mentioned above, Covid-19 managed to make difficult situations even more challenging: language barriers that already constituted an obstacle for young migrants became the main problem for a complete understanding of the ongoing

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<sup>190</sup> Interview with Laura Pecchioli, *supra* note 169; Interview with the coordinator of the CivicoZero centre in Catania, January 2020.

situation. To give information and make the situation understandable for them became more and more essential and not always a guarantee. The peculiar condition of UAMs urges us to pay attention especially to fundamental rights particularly threatened by the effects of this pandemic. That is, right to health, to proper material reception conditions, and the need to guarantee a stability with regards to their legal status which can all be at risk today.

## **2.2 Dispositions following the Covid-19 emergency relevant to UAMs in Italy**

On 31<sup>st</sup> January 2020 the Italian Government declared the state of emergency with regards to the diffusion of the Covid-19 virus. Starting from February 2020, several dispositions were adopted and affected the lives of those UAMs living in Italy at that time.

With the Decree Law 8<sup>th</sup> March 2020<sup>191</sup> as well as with the following Decree Law of 17<sup>th</sup> March 2020<sup>192</sup>, the judicial activities were suspended. Notably, Article 83 of the Decree Law 17<sup>th</sup> March 2020 suspended all the judicial proceedings from 9<sup>th</sup> March until 15<sup>th</sup> April, except for those proceedings regarding UAMs at the Juvenile Court. The Decree Law therefore foresaw that all the proceedings involving UAMs, such as those concerning the reception measures, age assessment procedures, and the *prosieguo amministrativo* still had to be carried out by the Juvenile Court. This term was later extended by the Decree Law 23/2020<sup>193</sup>, which established the extension of the effectiveness of expiring administrative acts and the suspension of terms of pending administrative proceedings until 11 May 2020<sup>194</sup>

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<sup>191</sup> D.L. 8 Marzo 2020, n. 27. *Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19.*

<sup>192</sup> D.L. 17 Marzo 2020, n. 18. *Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19.* [hereinafter D.L. 18/2020].

<sup>193</sup> D.L. 8 Aprile 2020, n. 23. *Misure urgenti in materia di accesso al credito e di adempimenti fiscali per le imprese, di poteri speciali nei settori strategici, nonché interventi in materia di salute e lavoro, di proroga di termini amministrativi e processuali.* [hereinafter D.L. 23/2020].

<sup>194</sup> D.L. 23/2020, art. 36.

To reduce to the minimum contacts personal contacts and interactions, a protocol was issued by the Superior Council of Magistracy in synergy with the National Forensic Council and the Automatised Information Systems Directorate General, that agreed upon a protocol for civil hearings held remotely at the Juvenile Court, as foreseen by Article 83(f) of the Decree Law 18/2020.<sup>195</sup>

The Conversion Law 24/2020<sup>196</sup>, which converted into Law the so-called *Decreto Cura Italia* (Healing Italy Decree), established the extension of the duration of third-country nationals' residence permits until 31 August 2020, while for seasonal employment permits expiring between 23 February and 31 May 2020 until 31 December 2020<sup>197</sup>. Accordingly, also terms for the request of conversion of permits from study to employment or from seasonal work to non-seasonal paid employment were shifted until 31 August 2020<sup>198</sup>. Expired health cards' renewal was extended until 30 June 2020, while identity cards expired from 31 January 2020 onwards were declared valid until 31 August 2020<sup>199</sup>.

Along with the extension of the terms for the renewal of all the residence permits, the enjoyment of the rights associated with each permit were extended too, together with the reception and stay measures in the centres. Indeed, in line with the Circular of the Ministry of the Interior of 17 March 2020<sup>200</sup>, which called for the need to avoid the diffusion of the virus COVID-19, the extension was also valid for the permanence within the reception centres for those that were no longer entitled to remain.

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<sup>195</sup> Consiglio Nazionale Forense, "Proposta di protocollo per udienze civili tramite collegamento da remoto presso il tribunale per i minorenni", 2018. <https://www.consiglionazionaleforense.it/documents/20182/677549/protocollo+udienze+minori.pdf/391e3e4a-cb6e-4d8b-a9a3-73e0fd22fae2>

<sup>196</sup> L. 24 Aprile 2020, n. 27. *Conversione in legge, con modificazioni, del decreto-legge 17 marzo 2020, n. 18, recante misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19. Proroga dei termini per l'adozione di decreti legislative.* [hereinafter L. 27/2020].

<sup>197</sup> L. 27/2020, 3-sexies.

<sup>198</sup> L. 27/2020, 2-quater.

<sup>199</sup> L. 27/2020, 17-quater.

<sup>200</sup> Ministero dell'Interno, Circolare 18 March 2020, n. 3393. *Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19.*

Another Circular of the Ministry of the Interior of 1 April 2020<sup>201</sup> urged the need to monitor the respect of the containment measures and the obligation to remain within the reception facilities “to avoid exposition to transmission for migrants hosted and for professionals, as well as to create social alarming situations due to the non-respect, by the formers, of the obligation to remain within the reception facilities”.<sup>202</sup> Migrants – both minor and adults – were also under the obligation of respecting a 14 day-quarantine upon arrival after which they could be transferred to another reception facility, upon the issuance of a health certificate. In order to adopt the quarantine measures, the Circular 3393 allowed for the creation of designed zones within the reception facilities and for some cases the power of requisition.<sup>203</sup> Article 103 of the Decree Law 17 March 2020<sup>204</sup> also established the closure of Police Headquarters’ Immigration Offices, which remained only accessible for receiving international protection applications and for expulsion procedures properly executable in accordance with the emergency situation. However, in some reported cases, the possibility to lodge the international protection application has been hindered, and many organisations, among which the Italian Council for Refugees (CIR)<sup>205</sup>, after calling for the formalisation of every dossier through the certified e-mail system, said many of these acts were frozen and postponed until further notice. The Decree Law 19/2020<sup>206</sup> was later introduced, adopting urgent measures to cope with the health emergency, allowed public administrations to hire extra-EU country nationals, holder of a regular residence permit in health facilities.<sup>207</sup>

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<sup>201</sup> Ministero dell’Interno, Circolare 1 Aprile 2020, n. 3728. *Interventi di prevenzione della diffusione del virus COVID-19 nell’ambito del sistema di accoglienza. Ulteriori indicazioni.*

<sup>202</sup> *Ibid.*

<sup>203</sup> D.L. 18/2020, art. 6.7, 6.8.

<sup>204</sup> D.L. 18/2020, art. 103.

<sup>205</sup> CIR, “L’emergenza Sanitaria Covid-19 e gli effetti sui minori stranieri non accompagnati”, 2020, p.4. Available at: <http://www.cir-onlus.org/wp-content/uploads/2020/04/Lemergenza-sanitaria-Covid-19-e-gli-effetti-sui-MSNA.pdf>

<sup>206</sup> D.L. 25 Marzo 2020, n. 19. *Misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19.*

<sup>207</sup> Camera dei Deputati Servizio Studi, *Emergenza Covid-19: le misure in materia di immigrazione*, 2020. Available at:

[https://www.camera.it/temiap/documentazione/temi/pdf/1215466.pdf?\\_1588825553154](https://www.camera.it/temiap/documentazione/temi/pdf/1215466.pdf?_1588825553154)

Finally, on 19 May 2020, the Decree Law 34/2020<sup>208</sup>, the so-called *Decreto Rilancio*, was also introduced, laying down extraordinary measures for the reception system, establishing that available places within the SIPROIMI reception facilities could be used to host people entitled to them, for a maximum delay of six months after the end of the state of emergency. Territorial Commissions also had to interrupt their work, and this entailed for asylum seeker UAMs some criticisms, especially with regards to those who turned 18 years old during the pandemic and had received a rejection of their asylum application only after they turned 18. This resulted in an impossibility for 18-year-old asylum seeker UAMs to obtain a residence permit, which blocked their inclusion path and left them legally uncovered. To overcome such an obstacle, some organisations tried to resort to the *prosieguo amministrativo* option, to allow the Social Services the prosecution of their take in charge, although this left UAMs without indications with regards to the type of reception measures available once the *prosieguo amministrativo* had been issued. Indeed, as already mentioned, the Social Services responsible for UAMs allowed for the *prosieguo amministrativo* by the Juvenile Court must allow him to extend her/his inclusion path and her/his permanence in the reception system, although the current legislation does not specify the type of assistance and measures to be taken – for example whether s/he should remain in the same facility structure or transferred to one for adults.<sup>209</sup> Another disposition was adopted, although not exclusively dealing with Covid-19-related situations. The Circular no. 168 of 20 May 2020 of the Ministry of Health drafted a collaboration agreement with the Italian Society of Paediatrics and Save the Children Italy for the education and prevention in health for children, adolescents and parents. Such an agreement represented an even more important initiative in view of the need to prevent the spread of the Covid-19 virus.<sup>210</sup>

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<sup>208</sup> D.L. 19 Maggio 2020, n. 34. *Misure urgenti in materia di salute, sostegno al lavoro e all'economia, nonché di politiche sociali connesse all'emergenza epidemiologica da COVID-19.*

<sup>209</sup> M. Lunardini, “La normativa e le basi giuridiche a tutela dei MSNA: un’analisi fra Unione Europea, Italia e Regioni”, *CeSPI*, 2020. Available at: [https://www.cespi.it/sites/default/files/documenti/approf.6\\_attuazione\\_della\\_legge\\_zampa\\_-\\_parte\\_giuridica\\_marianna\\_lunardini.pdf](https://www.cespi.it/sites/default/files/documenti/approf.6_attuazione_della_legge_zampa_-_parte_giuridica_marianna_lunardini.pdf)

<sup>210</sup> *Ivi*, p. 42.

The further extension of the state of emergency caused the release of new dispositions dealing with the conditions for the renewal and expiration of residence permits. In particular, recently on 27 November 2020 Law No. 159/2020<sup>211</sup> was introduced, laying down the automatic extension of all the residence permits until 31 January 2021. These dispositions applied to all kind of residence permits expired between 1 August 2020 and the date of the entry into force of the Law 159/2020, that is, 4 December 2020.

All these dispositions affected fundamental aspects of the reception system and its stability. First and foremost, Covid-19 related dispositions lacked punctual and timely instructions for reception facilities with regards to the most adequate measures to adopt to cope with the emergency. Among the requests of the letter sent to the Institutions by the *Tavolo Minori Migranti*<sup>212</sup> we found the need to include dispositions to guarantee the stability of the reception system and thus to avoid unnecessary relocations of UAMs and its linked risk of spreading the virus. These dispositions would have allowed both unaccompanied minors and also those who recently turned 18 to remain in those communities and centres for minors in which they were already accommodated, even after they turned 18 and until the end of the emergency. These concerns then found partial response in the adoption of the above-mentioned Conversion Law 27/2020.

### **2.3 Problems and rights denied during the pandemic: a further threat for the transition towards adulthood**

As already stated, the outbreak of the pandemic resulted in several negative effects on UAMs, especially in terms of rights denied and violated, both due to the

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<sup>211</sup> L. 27 Novembre 2020, n. 159. *Conversione in legge, con modificazioni, del decreto-legge 7 ottobre 2020, n. 125, recante misure urgenti connesse con la proroga della dichiarazione dello stato di emergenza epidemiologica da COVID-19 e per la continuita' operativa del sistema di allerta COVID, nonche' per l'attuazione della direttiva (UE) 2020/739 del 3 giugno 2020, 2-sexies.*

<sup>212</sup> The *Tavolo Minori Migranti* is a working group coordinated by Save the Children, composed by different Italian and international NGOs concerned with the protection of UAMs' rights in Italy.



unpredictable effects of such a health emergency and to the effects of the dispositions adopted to cope with it.

One of the major problems linked to the Covid-19 pandemic's effects on UAMs concerned their access to education. Law No. 47/2017 in its Article 14 enshrines the absolute right of the unaccompanied minor to have a proper education, on par with Italian children. However, their right to education has been severely threatened throughout these months, as the pandemic kept spreading. Professional training activities, internships as well as school projects and learning activities were impeded and in some cases, suspended.

Access to school for UAMs is an already challenging matter in ordinary times, and during the pandemic this issue became even more challenging. UAMs attend school differently from Italian children – due to the language barrier and the lack of tailor-made project aimed at their active inclusion in ordinary school cycles – and participate in Italian language learning activities that are usually run by the so called CPIA, that is, Centres for Adults' Education, which already in its name gives the idea of the inherent contradiction and the inadequacy of such structure for a minor.

With the outbreak of the pandemic, UAMs in Italy had suffered from its devastating effects in terms of social isolation and deprivation of learning activities essential for their development and, in their specific case, for their long-term inclusion in the host society after their transition to adulthood is completed. While talking to the Head of Unit of the Protection of Migrant Children Department at Save the Children Italy, what emerged was that their “strong risk of marginalisation and social exclusion to which they are constantly exposed has been further exacerbated, since their digital skills are often very basic, and they rarely have access to a proper digital education”.<sup>213</sup> This was added to the issue of the presence of a proper internet connection, which could not be always guaranteed by the reception facilities in which UAMs were accommodated, as well as that of providing UAMs with

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<sup>213</sup> Interview with the Head of Unit of Protection of Migrant Children at Save the Children Italy, October 2020 (on file with author).

technological devices, such as laptops and tablets, that were essential for the access to the distance learning activities.<sup>214</sup>

A worth-making distinction is that between UAMs who just arrived when the pandemic erupted and those who have been in Italy for several years. The former encountered most of the difficulties, since they spoke very little Italian, and thus had a lot of problems in approaching distance learning activities. This is mainly due to their lack of both Italian language and digital skills, which negatively affects their possibility of accessing and comprehending both digital vocabulary and the communicative code. This is what emerged from a conversation with the coordinator of a Save the Children centre *CivicoZero* in Catania<sup>215</sup>, which deal with these issues on a daily basis. According to her, due to these obstacles, many of them either could not attend distance learning school activities or had extreme difficulties in following the proposed activities. The latter, that is UAMs who were already present in Italy for a longer period, although having considerable abilities in the use of social networks, were deficient in structural elements needed to deal with digital learning and therefore, underwent significant problems due to the absence of “learning proximity”<sup>216</sup>, which is the founding element for Italian language acquisition, as well as of schooling paths in general. Furthermore, CPIA started working late as a consequence of the lack of preparedness to cope with such a sudden and unexpected situation and focused mainly on the need to reach the formal objective of the middle school final examination and the relative certificate, overlooking the substantial aim, that is the actual learning. “To date, we have boys and girls who are starting professional training courses or are thinking of starting high school and have a lot of gaps linked to the voids of their previous school phase”.<sup>217</sup> Finally, besides the dimension more strictly related to school activities,

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<sup>214</sup> *Ibid.*

<sup>215</sup> *CivicoZero* is a low threshold centre for UAMs created by Save the Children in different cities across Italy, which provide for first reception basic services such as use of showers, washing machines, clean clothes, with the aim of preventing risks connected with the street life, as well as to provide for legal and health assistance, and social inclusion activities. Today, *CivicoZero* are present in Rome, Milan, Catania, Genoa, Turin.

<sup>216</sup> Interview in Italian with the coordinator of the Save the Children center *CivicoZero* in Catania, October 2020 (on file with author).

<sup>217</sup> Interview with the Head of Unit of Migrant Children Protection at Save the Children, *supra* note 213.

important is also to consider the impact on the socialisation dimension and the relationship bonds that are created in classrooms: many boys and girls lost their motivation and enthusiasm for school and learning in general, causing a decline in their concentration ability and on the importance they put on school.<sup>218</sup>

During the pandemic, school paths, professional training courses, internships and access to employment paths in general were blocked, together with the inclusion path and job placement projects of UAMs. This situation caused – and still causes – a strong tension and anxiety among UAMs, especially in those not seeking asylum<sup>219</sup>, who knows their possibilities to regularly remain in Italy after turning 18 years old basically depend on the evaluation of their inclusion path made of both school and employment inclusion projects. The suspension of these activities therefore represents for them the loss of a fundamental chance to be allowed to regularly remain and reside in Italy.

Even more alarming is the situation of those UAMs who just turned 18 years old and already converted their residence permit for minor age into a pending employment permit (*permesso per attesa occupazione*). For them this meant to interrupt internships and job placement activities due to the health emergency and thus, once the permit expires, they will be almost certainly unemployed. A similar situation occurs for UAMs beneficiaries of the humanitarian protection that was abolished by the Security Decree: once expired, these UAMs will be asked for a regular employment contract to convert the humanitarian permit into a work permit. However, due to the Covid-19 pandemic, the majority of these young adults do not have and won't have in the near future an employment contract and, even if they are enrolled in school, they are not allowed to convert such a permit into a study permit.<sup>220</sup>

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<sup>218</sup> Interview with the Head of Unit of Migrant Children Protection at Save the Children, *supra* note 213.

<sup>219</sup> As we will see in the following chapter, the international protection application represents for them a last resort to ensure their permanence in Italy and prolong their stay in the reception facilities, as the obtainment of a regular residence permit is otherwise very complicated with the existing conditions.

<sup>220</sup> Save the Children Italia, “Superando le barriere. Percorsi di accoglienza e inclusione dei giovani migranti”, *supra* note 112 at 28.

The situation of guardianship has also been affected by the pandemic, in particular the performance of the role of voluntary guardians has been challenged. Indeed, the voluntary guardian represents for UAMs not only a leading figure for legal and bureaucratic matters, but primarily a point of reference for their emotional support in such a delicate and unstable moment.<sup>221</sup> Therefore, with all the restrictions that came with the measures adopted to cope with the pandemic, it was impossible to fulfil these support aspects and give full implementation to the right of UAMs to enjoy the figure of the voluntary guardian.<sup>222</sup>

Due to the effects of the pandemic, also the proper carrying out of the procedures for the *prosieguo amministrativo* had been – and will be – compromised. In particular, since the costs of the *prosieguo amministrativo* fall on the Municipalities, the tremendous economic impact of the Covid-19 on their funds have restricted their capacity to provide and implement all the necessary measures for the correct implementation of this provision. Further, this will most likely result in a de-prioritisation of the situation of UAMs in need of the *prosieguo amministrativo* and a consequent attempt to ask for a reduction of the issuing of the measure.

Finally, with respect to the right to health, enshrined in Article 14 of Law No. 47/2017, problems have also been experienced. Notably, the lack, delay or partial delivery of provision of protective equipment such as face masks and hand sanitisers has been observed on several occasions and reception centres across Italy. This was not a secondary problem, considering the nature of the work of those professional in the reception facilities, which not always guarantees the respect of physical distances, as well as the very structure of the centres which often accommodate a high number of UAMs and refugees.<sup>223</sup>

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<sup>221</sup> Save the Children Italia, *supra* note 112 at 30.

<sup>222</sup> Interview with Laura Pecchioli, *supra* note 169.

<sup>223</sup> *Ibid.*

#### **IV. FROM PROTECTION TO ABANDONMENT: TRAPPED AT THE BORDER BETWEEN ADOLESCENCE AND ADULTHOOD**

It might be appropriate to further stress the fact that unaccompanied minors are mostly composed of boys and – even if in a significantly smaller proportion – girls, ranging from 16 to 17 years old, this being valid both for the case of Italy as well as at the European level, as illustrated in Chapter II. This implies that minors who are migrating towards Europe are in a phase of transition from being a minor to being an adult – especially when majority is attained at 18 years old according to the applicable law. With this respect, UAMs who arrived in Europe and more specifically in Italy, have to face the consequences of the failure to properly consider them as adolescents, rather than children, and thus to tackle the delicate phase of the transition to adulthood by the Italian national legislation and not only at the international level – where this is also quite largely overlooked. This results in an uncertain legal regime for young adults who turn 18 years old and have to cope with the lack of instruments needed to deal with this phase properly.

A major issue is represented by the absence of targeted legal measures exclusively dedicated to this special category, besides the *prosieguo amministrativo*, which is not always applied in all the situations that may require it and whose effectiveness is thus not always ensured – also because of its financial burden falling on the Municipalities and thus depending on their economic possibilities.

Another aspect might be the question of the legal obstacles to which persons bearing the *status migrantis* have to face and thus, its impact on ex-UAMs who were previously under the protection related to their being children, who, from one day to another, were “abandoned” to their fate as migrants. These legal obstacles take the form of multiple scenarios they might face according to their condition in terms of employment, accommodation and age.

Overall, the problem seems to be connected to the requirements the society impose to this category, asking them to be “entrepreneurs of their own life”<sup>224</sup>, but eventually failing to provide the means to do so and instead hampering their inclusion through legal barriers which turn out to be legitimately discriminative.

In the first section of this Chapter I will elaborate on the difficulties that UAMs have to face with respect to the different legal scenarios they will encounter, and the consequent loss of rights and entitlements previously held in view of their minor age. I will then dwell on all the existing possibilities in terms of legal statuses and material reception conditions according to their situation. With this respect, I will focus on the crucial role played by the voluntary guardians in mitigating this transition, which is essential both from an emotional point of view and for the practical support in carrying out the administrative procedures required in this phase. In elaborating on the difficult aspects of the transition to the age of majority, I will concentrate on the risks that such passage entails, particularly those linked to labour exploitation and its danger when employment requirements are the ultimate source of “regularity”.

The second section of this Chapter will be instead dedicated to the implications resulted from the analysis of the application of the existing rules and norms. In particular, I will focus on the need to revisit the concept of citizenship in a more universalistic perspective, able to overcome the boundaries of an exclusive system which makes rights a scarce resource, a privilege. The concept of vulnerability here becomes part of such discourse as it is understood as an entitlement to the highest standards of protection of rights that would otherwise be threatened. With this respect, this section will focus on the need to not only put emphasis on the condition of vulnerability, but rather to confer means of autonomy in view of the very existence of such condition, and not being a form of deprivation of social capacity. The final part of this section will be therefore dedicated to examples of best practices and forms of negotiation of the transition toward autonomy, which resulted in positive outcomes for the life projects of these young migrants.

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<sup>224</sup> É. Balibar, “Citizenship and Exclusion” in *Citizenship*, (Cambridge: Polity Press, 2015), 62-82, p. 67.

## **1. The risks of a short-sighted protective system: turning 18 in an uncertain legal regime**

According to the Italian legislation, the age of majority is attained at 18 years old. At this age, UAMs have to confront with a tortuous path, both from a legal and psychological point of view. For the scope of this thesis, attention will be put in the legal implications that this turbulent passage entails.

To become autonomous generally means to find and keep a stable job, have an accommodation, manage time, economic and relational resources responsibly, as well as build or increment social networks able to support us in our daily life.<sup>225</sup> However, this turns out to be impossible, when legal obstacles and related requirements, together with the loss of rights and entitlements linked to being a child, impede the successful achievement of autonomy. The proliferation of the multitude of statuses after the age of majority is attained represents a major obstacle for the regular continuation of their inclusion path and its outcome is often negatively affected by this abrupt interruption. Depending on the accommodation arrangements established before the age of majority, UAMs will face different possibilities, and, in the worst cases, no accommodation options will be available. Even when accommodation is provided, difficulties remain, as these measures are sometimes temporary and foreseen for a short amount of time.

The role of voluntary guardians here becomes crucial to support UAMs in their legal path, and even in understanding the variety of possibilities and factors that will determine their legal status. Indeed, they serve as supervisors and monitor whether UAMs' rights are respected and exercised correctly. However, their role is limited by the actual system of rules to which UAMs are subject and often witness the problems of UAMs to cope with the legal requirements. When outcomes are not best and accommodation solutions are not envisaged by the law, suddenly falling in a situation of irregularity means to be exposed to several dangers. Among these, the risk of labour exploitation represents a concrete threat in its multiple

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<sup>225</sup> S. Caneppele, N. Pavesi. "Cosa farò da grande. La transizione nell'età adulta degli ex minori stranieri non accompagnati nella Provincia di Trento", *Transcrime*, Università degli Studi di Trento, 2011, p. 51.

Available at: [https://www.researchgate.net/publication/296211683\\_Cosa\\_faro\\_da\\_grande\\_-\\_La\\_transizione\\_nell'eta\\_adulta\\_degli\\_ex\\_minori\\_stranieri\\_non\\_accompagnati\\_nella\\_Provincia\\_di\\_Trento](https://www.researchgate.net/publication/296211683_Cosa_faro_da_grande_-_La_transizione_nell'eta_adulta_degli_ex_minori_stranieri_non_accompagnati_nella_Provincia_di_Trento)

manifestations. UAMs often find themselves “forced” to accept degrading working conditions and exploitative employers “only” to meet the required criteria for the obtainment of a regular residence permit and avoid a situation of irregularity.

### **1.1 Different scenarios according to the legal status: loss of rights and entitlements**

UAMs are entitled to a set of rights and guarantees in view of their minor age. Such condition changes upon turning 18 years old, when they shift from being *minors* to being “only” *migrants*. Under a legal perspective this entails several consequences, especially in terms of loss of rights and entitlements. Indeed, first of all they lose their right of non-refoulement, the right of non-expulsion, the right to unconditional accommodation and, more generally, the set of rights linked to being a child, such as those concerning guardianship and procedural guarantees in the asylum applications.<sup>226</sup>

Turning 18 represents a crucial moment for UAMs, not only for the delicate and important moment it signifies in one person’s life, but particularly for the legal implications this transition entails. Turning 18 means for UAMs to cross the border of childhood and leave behind all the guarantees and protections that come with the condition of minor, irrespective of nationality, religion, gender, employment situation. Crossing such border entails new rules and new legal regimes, not anymore dedicated to children but to adult migrants.

UAMs arriving to Italy as minors can be granted a residence permit for minor age or a family reason permit, the former being linked exclusively to her/his condition of minor, the latter dedicated to those UAMs in the care of an adult Italian citizen or of a foreign regularly residing adult with whom s/he lives – even only *de facto*. However, these conditions change once they turn eighteen. Indeed, the legal scenario they will face will differ depending on their legal status: for those who already obtained a form of international protection the transition to the age of

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<sup>226</sup> Fondazione ISMU, UNHCR, UNICEF, OIM, “A un bivio. La transizione all’età adulta dei minori stranieri non accompagnati in Italia”, *supra* note 100 at 41.



majority has a lower impact, as international protection grants a wide range of rights and freedoms to be enjoyed, also in terms of material reception measures, as they can still enjoy a 6 month accommodation period in the SIPROIMI centres;<sup>227</sup> those who were granted a residence permit for minor age are in a more tricky situation, both with regards to the type of residence permit and to the type of material reception measures they can enjoy. Indeed, for these UAMs, the possibilities will be to apply for a study, employment or pending employment permit, but, in all these cases, they will have to leave the reception facility and support themselves, except for those who are granted the *prosieguo amministrativo*, when some basic conditions needed for the acquisition for autonomy do not subsist; those who obtained the humanitarian protection before the entry into force of the Security Decree 113/2018, find themselves in a temporary phase, which allows them to regularly reside for two years more after turning eighteen, following which their case will be examined by the relevant Territorial Commission that will decide on the kind of permit to be issued – either a special protection permit, an international protection permit or, in some cases where the required criteria are not met, they might be denied of any form of protection. However, they can try to convert their permit into a study, employment or pending employment permit, while they can no longer be accommodated in the SIPROIMI reception facilities; even more uncertain is the condition of those who obtained a special protection permit as defined by the Security Decree<sup>228</sup>, which is not convertible into an employment permit; finally, there are those who find themselves in a legal limbo situation, as they turn eighteen while still waiting for the outcome of their asylum application. For these UAMs, although protection measures are granted until the issuance of the decision, the continuation – or beginning – of their inclusion path can be arduous, as they do not know what the response of the Commission will be and their condition might

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<sup>227</sup> Fondazione ISMU, UNHCR, UNICEF, OIM, “A un bivio. La transizione all’età adulta dei minori stranieri non accompagnati in Italia”, *supra* note 100 at 44.

<sup>228</sup> The special protection permit envisaged by the Security Decree (Decree Law 113/2018) is a form of protection which replaced – with other four different forms of protection – the previous humanitarian protection. It lasted one year, it allowed to work, and it was renewable as long as the possible danger in the country of origin persisted, but it was not convertible into an employment permit. With the introduction of the new Decree Law 130/2020, these conditions changed, and the permit became convertible, however, the effects are still to be seen as the Decree Law was recently approved at the time of writing.

suddenly change in case of a rejection of their application, letting them fall in a condition of irregularity. For all these reasons, UAMs in such situation are often not motivated to continue their inclusion path and are overwhelmed by the amount of uncertainty this moment involves.<sup>229</sup> Further, eighteen-year-old UAMs which were accommodated in other facilities than the SIPROIMI's have the right to remain in the facilities for minors only until they turn eighteen.<sup>230</sup>

As previously mentioned, the impact of the Security Decree on this delicate phase of transition was considerable. Even before the entry into force of the Decree, young adults who recently turned eighteen had often to face the total absence of any form of protection and support. At this age, they often do not have a job, the majority of them still have to complete the school path, and they are therefore unable to be autonomous in terms of accommodation. As the bureaucratic procedures linked to the regularisation of their stay are often complicated and the language barriers sometimes persist, they also continue to need support in carrying them out. The sudden interruption of the material reception conditions and, thus, of their inclusion pathway represents for them a hard moment, which often results in strong marginalisation and unsafe living conditions and also means to jeopardise all the economic and human efforts put for their inclusion.<sup>231</sup> All these issues were thus exacerbated by the introduction of the Security Decree in 2018, which, especially with regards to those who benefitted from the humanitarian protection, caused terrible consequences for their inclusion perspectives. Indeed, if these young adults used to have the right to be accommodated in the SIPROIMI reception facilities, with the 2018 Decree this right was removed, together with that of asylum seekers who now have to be accommodated in the CAS centres.<sup>232</sup>

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<sup>229</sup> Fondazione ISMU, UNHCR, UNICEF, OIM, *supra* note 100 at 44.

<sup>230</sup> Servizio Centrale SIPROIMI, ASGI, *La tutela dei minori stranieri non accompagnati. Manuale Giuridico per l'operatore*, Servizio Centrale SIPROIMI, Ministero dell'Interno, ASGI, 2019, p. 16. Available at: <https://www.siproimi.it/wp-content/uploads/2019/11/La-tutela-dei-minori-straniero-non-accompagnati.pdf>

<sup>231</sup> INTERSOS, "L'isola dei minori. L'accoglienza dei minori non accompagnati in Sicilia", 2019, p. 26. Available at: <https://www.intersos.org/wp-content/uploads/2019/04/Isola-dei-Minori.pdf>

<sup>232</sup> *Ibid.*

**Material reception measures for 18 years old UAMs depending on legal status and type of reception conditions during minor age**

<b>STATUS OF UAMs</b>	<b><u>18 YEARS OLD UAMs ACCOMMODATED IN THE SIPROIMI SYSTEM</u></b>	<b><u>18 YEARS OLD UAMs WHO WERE NOT ACCOMMODATED THE SIPROIMI SYSTEM</u></b>
<b>Not seeking asylum</b>	No reception measures envisaged	No reception measures envisaged
<b>Asylum seekers</b>	They can be accommodated in a SIPROIMI facility for adults until the outcome of the asylum application has been issued	They can be accommodated in a CAS for adults until the outcome of the asylum application has been issued
<b>Beneficiaries of International protection (refugee status or subsidiary protection)</b>	They can be accommodated in a SIPROIMI facility for adults for a 6 month-period	They can be accommodated in a SIPROIMI facility for adults for a 6 month-period
<b>Beneficiaries of humanitarian protection</b>	No reception measures envisaged <sup>233</sup>	No reception measures envisaged
<b>Beneficiaries of the <i>prosieguo amministrativo</i></b>	They are assigned to the Social Services of the Municipality, which sometimes grant the reception measures and sometimes don't. <sup>234</sup>	They are assigned to the Social Services of the Municipality, which sometimes grant the reception measures and sometimes don't.
<b>Ex UAMs who applied for the conversion of the permit for minor age into study, employment or pending employment permit</b>	No reception measures envisaged	No reception measures envisaged
<b>UAMs beneficiaries of "special cases" permit</b>	They can be accommodated in a SIPROIMI facility	They can be accommodated in a SIPROIMI facility

*Table 3: Overview of the reception conditions after UAMs turn 18*<sup>235</sup>

## 1.2 The role of voluntary guardians: monitoring rights in the delicate phase of the transition to adulthood

To become voluntary guardians and be included in the official list foreseen by Law No. 47/2017, candidates must meet some essential requirements. Voluntary guardians are private citizens, and they have to fulfil minimum conditions, such as having a proper curriculum, preferably with previous volunteering experience and a coherent history with the aim of the role of the voluntary guardian, also showing particular interest and commitment to the cause. Potential guardians have to swear an oath after which they can become guardians and be legally recognised as such. To become voluntary guardians and be part of the official list, candidates must attend a five-day-training course after which they have to pass a test in order to be enrolled in the Register of Voluntary Guardians. Candidates are selected and trained by the Independent Authority for Children and Adolescents which is supported by civil society organisations with expertise in children migration as well as by local institutions and other professionals.<sup>236</sup> Once they have completed their training and became part of the official list, the Juvenile Court at its discretion calls voluntary guardians and assigns an unaccompanied minor to them.

The role of voluntary guardians is a key role in monitoring that the rights of the minor are being respected and the provisions correctly implemented. Their controlling function is especially fundamental with regards to the educational and socio-employment inclusion pathways, which often depend on the availability of the projects in the reception facilities and may also depend on the level of effort put

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<sup>233</sup> The sole exception is represented by those already accommodated in the previous SPRAR system by the 5/10/2018, who, according to art. 12 of the Decree Law 113/2018, can remain in the SIPROIMI facilities until the expiration of the reception project.

<sup>234</sup> The current applicable legislation however does not specify the type of material reception measures to be implemented after the *prosieguo amministrativo* is granted.

<sup>235</sup> Source: ASGI, INTERSOS, “L’accoglienza dei minori non accompagnati dopo il compimento dei 18 anni. Scheda per i tutori e gli operatori che seguono i minori non accompagnati”, ASGI, INTERSOS 2019, p. 2-4. Available at: <https://www.asgi.it/wp-content/uploads/2019/07/Scheda-accoglienza-MSNA-dopo-i-18-anni.pdf>

<sup>236</sup> EU FRA, “Guardianship for unaccompanied children in Italy. Update after the adoption of Law No. 47 of 7 April 2017 and Legislative Decree No. 220 of 22 December 2017”, European Union Agency for Fundamental Rights, 2018, p. 2. Available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-it-guardianship-legal-update\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-it-guardianship-legal-update_en.pdf)

by the professionals working with UAMs.<sup>237</sup> Indeed, their presence is critical for the socio-economic inclusion of UAMs and to help them acquiring the necessary means to have an independent and autonomous life. However, the outcomes of the inclusion paths organised by the reception system may vary across territories, as well as across the very facilities. Dissimilarities amongst reception facilities are common and are often simply due to the difference in the people working in each centre and in charge of the activities proposed. Nevertheless, differences can also be caused by the offer of each Region and Municipality.

As their role is crucial to ensure UAMs can fully enjoy their rights, they become essential also for the request of the *prosieguo amministrativo*. Indeed, in this delicate phase of transition from being a minor adolescent to being an adult, UAMs can be helped by their voluntary guardians who can apply for the *prosieguo amministrativo* by lodging a request to the Juvenile Court which in turn requests it to the Social Services of the Municipalities. The reasons behind such request often lays in the need for the minor to complete her/his educational path, as well as the socio-employment activities, without which s/he can't become autonomous and independent.<sup>238</sup>

Voluntary guardians are also key in the carrying out of the numerous bureaucratic procedures that UAMs have to follow in order to obtain permit release, conversion or renewal. They accompany UAMs during administrative proceedings as well as for the lodging of the asylum application.

Voluntary guardians have to face the impossibility to be recognised as a legal figure after UAMs turn eighteen years old due to the applicable law. Further, they are often considered a controversial figure, whose role is not always welcomed and positively accepted by the institutions as well as by educators and professionals in the reception facilities, that often feel threatened in their roles and somehow “controlled” by them.<sup>239</sup> How they are perceived also depends on the single Juvenile Court and its attitude towards the issue of UAMs. It is already complicated when

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<sup>237</sup> Interview with Laura Pecchioli, *supra* note 169.

<sup>238</sup> *Ibid.*

<sup>239</sup> Interview with Laura Pecchioli, *supra* note 169.

Courts are helpful and positively sympathetic to the cause, it becomes even more challenging when this is not the case.<sup>240</sup>

For all these reasons, voluntary guardians are the ultimate supervisors, whose task is to monitor the quality of the services provided to UAMs in accordance with the applicable law. Voluntary guardians accompany UAMs in their transition towards adulthood and independence and together with them, they try to overcome bureaucratic and legal obstacles who often impede the complete realisation of UAMs' life projects.<sup>241</sup>

### **1.3 Danger of labour exploitation after turning 18**

Young adult migrants have to face significant problems, such as the impossibility of finding an accommodation, due to the absence of a regular employment contract, which often induces them to look for illegal and precarious living solutions. Another difficulty is represented by the length of the procedures for the recognition of the international protection for asylum seeker UAMs: the possible rejection determines the exit from the reception system once turning eighteen, even more after the abolition of the humanitarian protection, replaced by the special protection permit. These situations do not enable the socio-economic inclusion of these young migrants who recently became adult, rather they facilitate their risk of labour exploitation, often forcing them to accept irregular or illegal employments.

It is worth noticing that labour exploitation can take multiple forms and is thus a multi-faceted concept. We tend to think of labour exploitation in relation to the prostitution “industry” or the agricultural sector, where migrants harvesting strawberries and tomatoes for 15 euro per day are severely exploited at the hand of

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<sup>240</sup> *Ibid.*

<sup>241</sup> *Ibid.*

the so called *caporalato*<sup>242</sup>, without a regular contract nor guarantees. Although unfortunately these practices are still widespread, what emerged from conversations with professionals working closely with UAMs is the more often observed phenomenon of UAMs being exploited on the basis of their desperate need for a regular source of income, necessary to legalise their stay. Indeed, this is often the case with UAMs whose residence permits depend on having or not having a regular employment contract, who are forced to accept any kind of conditions to see their permit converted, renewed or released. As a result, they often refrain from rebelling or speak out against their exploitative employers. That is why the latter tend to rely on the helpless conditions of these young migrants and find expedients to take advantage of their workforce. For instance, they do this by indicating the amount of a salary on the contract, while giving them a lower amount of money in reality; again, they declare a number of working hours on the contract which does not correspond to the actual working hours done by them. This is made possible by the strong link between the existence of an employment contract and the opportunity to stay in Italy.<sup>243</sup>

Different scenarios are also possible according to the country of origin of UAMs and, therefore, to the relational network and bonds they have in Italy. With this respect, two cases can be considered emblematic: in particular, those of Albanian and Egyptian UAMs, especially if compared to UAMs coming from sub-Saharan African countries.<sup>244</sup> Indeed, Albanians and Egyptian UAMs – whose presence in Italy, as seen above, represents a significant proportion – often have a strong and rooted community of country nationals in Italy, sometimes made of relatives and friends who can provide care for them as well as accommodation and job opportunities in specific sectors where migrant communities have a strong tradition.

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<sup>242</sup> *Caporalato* is a form of illegal recruitment and exploitation of the workforce especially present in the agricultural sector across Italy, from North to South. It became a crime with the Law No. 199/2016. For further deepening, see: [https://temi.camera.it/leg17/post/OCD25-272.html?tema=temi/nuovi\\_reati\\_d](https://temi.camera.it/leg17/post/OCD25-272.html?tema=temi/nuovi_reati_d) or <https://www.infomigrants.net/en/post/28014/caporalato-180-000-vulnerable-workers-in-italian-agriculture>.

<sup>243</sup> Interview with a legal caseworker of *Accoglie Rete Onlus*, *supra* note 161.

<sup>244</sup> Interview with the Head of the UAMs Protection Office of the Juvenile Court in Florence, December 2020 (on file with author); Interview with Laura Pecchioli, *supra* note 169; Interview with the coordinator of *Il Ponte* Community in Genoa, *supra* note 170.

Although jobs and employments offered by relatives and friends of these communities are not always regular or “legal”, and might as well entail forms of exploitation, these groups of UAMs are somehow more facilitated in their process of socio-employment inclusion. On the contrary, UAMs who come to Italy deprived of social networks – as it is often the case with UAMs from sub-Saharan countries – are disadvantaged in their inclusion path and the possibilities to find a job and be able to convert or renew their permits are fewer.<sup>245</sup>

A positive example is that of the *Mulino di Suardi* Community in the Province of Pavia in Northern Italy, whose coordinator manage to follow them scrupulously, also thanks to the exiguous number of UAMs accommodated in his community (10-15) and thanks to the activities proposed, which give UAMs a concrete possibility of learning and spending the abilities acquired in the local labour market.<sup>246</sup>

## **2. From *minor* migrant to only *migrant*: double standards in the recognition of rights**

UAMs constitute a peculiar group of people that, besides being *minors*, and thus entitled to a set of protective measures in view of their condition of children – and in accordance with the international standards laid down by the UN CRC – are also *migrants*. As a result, what emerges from the analysis of both international instruments and national legislations – for the scope of this work the Italian legislation – is the often-conflicting nature of the two legislative frameworks relevant to their condition, that is, juvenile law and migration law. These competing instruments are intended for two distinct targets, however, in this specific case, we found how they are both called into question to deal with UAMs’ situation.

I tried so far to give an answer to the question regarding the transition to adulthood of UAMs by focusing on the legal implications that this passage entails. In the

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<sup>245</sup> *Ibid.*

<sup>246</sup> Interview with the Coordinator of the *Il Mulino di Suardi Community*, December 2020 (on file with author).



following section, I will try to focus on different aspects, which mainly concern the characteristics of the system in which they are inserted; how it is conceived in relation to how they are perceived as a “vulnerable” group; and what does the emphasis put on their condition of vulnerability imply in terms of acquisition of autonomy.

The questions that I seek to answer mainly regard the extent to which the emphasis on vulnerability is an empowering tool or it is instead an obstacle for their future life as autonomous individuals. What is, therefore, the limit of vulnerability, and what are the advantages deriving from its enhancement? Where does it end to leave space for autonomy and rights equally recognised to individuals? Shouldn't it be appropriate to think in a universal citizenship perspective, rather than hide behind the need for protection deriving from the condition of minor and end up discriminating the very same minors right after they are no longer minors?

Whit these interrogatives I do not intend to say that protection as children should indistinctively continue after they turn eighteen, but rather that tailor-made measures should be considered to accompany them in their acquisition of means to lead their life as autonomous individuals. This would inevitably lead to distinguish between an 8-year-old UAM – although as we profusely saw earlier, this age range represents a significantly smaller proportion – and a 16- or 17-year-old UAM and, accordingly, to not consider both as “children”. In so doing, different peculiarities and needs linked to gender, age and specific fragilities should be taken into account and the requirements of the legal regime should be framed accordingly to ensure a more open access to guarantees and rights, now limited by strict requirements and conditions often impossible to meet in the short-term.

A good example of the lack of due attention to specific aspects characterising UAMs is represented by the foster care measures envisaged by Article 7 of Law No. 47/2017. Such a provision is representative of how the major age range of UAMs present in Italy is not fully and effectively considered. Indeed, the time at disposal before turning eighteen is not always compatible with the often-long process to carry out to finalise the foster care procedure. Further, difficulties in

applying this measure can also be found in the lack of willingness by UAMs to be adopted by a family, which can be also linked to their age and search for independence.

Finally, the *prosieguo amministrativo* is unquestionably a good starting point in addressing the problem of transition to adulthood, especially when it is attained in a very short period following UAM's arrival in Italy. However, in some cases it proved not to be sufficient and I believe there is always room for improvement.

With this respect, it is interesting to see how some practices and positive experiences turned to be helpful in negotiating these boundaries and barriers and contributed to the development of abilities and competencies that proved to be essential to the self-determination and acquisition of autonomy of some UAMs.

## **2.1 UAMs' capacity of agency: vulnerability vs the struggle for autonomy**

The peculiar system of protection dedicated to UAMs both in the international framework and in the Italian national legislation identifies UAMs as a particular vulnerable group in the broader context of foreign minors' protection. In a human rights perspective, attributing the condition of "vulnerable" to an entire group of people have several implications which will be analysed as follows.

The word "vulnerability" originates from the Latin word *vulnus*, which means wound. Vulnerable thus means "being exposed to a *vulnus*", "possibility to be wounded"<sup>247</sup> and, subsequently, the inability to autonomously defend one's own rights.<sup>248</sup> This condition might originate either from a psychic condition and being therefore an "intrinsic" form of vulnerability or be a consequence of social

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<sup>247</sup> Treccani. Vocabolario Online. <https://www.treccani.it/vocabolario/vulnerabile/>

<sup>248</sup> E. Pariotti, "La specificità del paradigma dei diritti umani. Dal soggetto autonomo al soggetto vulnerabile". Università degli studi di Padova.

organisation models and affect social groups within the society and the political community.<sup>249</sup>

When we think about vulnerability, we soon think of peculiar categories of people, such as migrants, people with disabilities, minorities, women, children. These groups are all intertwined by the present possibility of injury, harm, discrimination, oppression and marginalisation to which they are exposed. This is also in view of the link between vulnerability and discrimination factors, such as those concerning nationality or sexual orientation for instance.<sup>250</sup> Consequently, within the human rights discourse, the so called “vulnerable groups” constitute the most entitled subjects to the protection of their human rights. However, according to the author, the presence of vulnerability factors should not coincide with the victimisation and the deprivation of the means necessary for an active acquisition of autonomy, resulting in the absence of capacity as social actors. Such consideration is tied to the idea that human rights’ purpose is that of empowerment, “rather than that of mere defence of an already-attained autonomy”.<sup>251</sup>

As Pariotti points out <sup>252</sup>, it is necessary to consider the major critiques to the notion of vulnerability: notably, those concerned with the risk of jeopardising the very purpose of vulnerability resulting from the indiscriminate extension of this condition and its normalisation as common to each individual. Hence, it is also vital to overcome the approach that identifies entire groups as vulnerable, as it would also lead to stigmatisation and victimisation. With this respect, contrasting vulnerability should coincide with the promotion of autonomy, where autonomy is not solely understood as the possession of means for self-sufficiency, but rather as a relational dimension within the capacity of self-determining and self-realising. Here, the idea of vulnerability is therefore opposed to that of independence, but not of autonomy as previously described. <sup>253</sup>

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<sup>249</sup> *Ibid.*

<sup>250</sup> B. Pastore, “Vulnerabilità situata e risposte alle vulnerazioni”, p.284.

<sup>251</sup> E. Pariotti, “La specificità del paradigma dei diritti umani. Dal soggetto autonomo al soggetto vulnerabile”. Università degli studi di Padova.

<sup>252</sup> E. Pariotti, “Vulnerabilità ontologica e linguaggio dei diritti”, *Ars Interpretandi*, n. 2, 2019, p. 157.

<sup>253</sup> *Ivi*, p. 160.

Further, it is of particular relevance the idea according to which the conception of the vulnerable subject be tied to a liberal tradition which identifies it as “other”, “different” and as such, most likely at risk of stigmatisation and marginalisation – as a direct effect of the protection instruments put in place for the existing condition of vulnerability.<sup>254</sup>

It is in the opinion of who writes that the relevance of all these arguments to the condition of UAMs can be found in the challenge of considering them as social actors, without neglecting their condition of vulnerability, of actual exposition to a *vulnus*, as children deprived of any form of family care. It is interesting to observe how these aspects translate into reality with regards to the situation of UAMs and the system of protection to them dedicated, what are the implications of considering them as a particularly vulnerable group of people. Turning eighteen does not make UAMs any less vulnerable, yet the approach drastically changes once adulthood is legally reached. This is especially true for the situation of UAMs in Italy: the contradictions emerging from the gap between the protective system set up for minors and the legal regime which follows once they turn eighteen is emblematic in this perspective.

The challenge is to conjugate the need to look at UAMs as a vulnerable category, due to their condition of children alone and undoubtedly in need of care and special attention, to the need to provide them with the social capacity, the means to self-realise and act within the society as autonomous individuals. In so doing, the aim should be to avoid a paternalistic approach, which would inevitably lead to stigmatisation and discrimination. It is, therefore, important not to make the mistake of victimising UAMs as subjects incapable of self-determination, but rather, as deprived of this possibility by the system – intended as a set of rules and mechanisms – of which they are part.

## **2.2 “Inequality of rights” and the “contradiction of citizenship”**

As seen above, the “protective” approach of the main frameworks addressing UAMs condition, both at the national and international level put the emphasis on

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<sup>254</sup> *Ivi*, p. 166.

the vulnerability that characterises such individuals, enhancing their condition of *children* at the expense of the long-term perspective aimed at the acquisition of autonomy. However, once they are legally considered as adult, these protections and entitlements are lost, to leave room for immigration regime rules and requirements that UAMs are often not ready to meet. On the basis of these criteria, rights and statuses are (not) recognised and leave room to what Ferrajoli calls “inequality of rights”.<sup>255</sup> Once the minor turns eighteen and is therefore legally recognised as an adult – when according to the law majority is attained at that age – and, thus, as a migrant, s/he soon has to cope with legal obstacles and loss of rights, whose enjoyment is based on exclusive conditions and requirements, often linked to employment-related issues, besides nationality.

As Balibar observed, “individuals are exhorted to behave as “entrepreneurs” of their own lives, constantly pursuing maximal efficiency, while at the same time being deprived of the social conditions that would allow them to assert their autonomy”.<sup>256</sup> This sort of double standard, which sees them as vulnerable children and in need of protection, asking the very same children to meet requirements and being autonomous once they are no longer minors, paves the way to what Balibar calls the “contradiction of social citizenship”<sup>257</sup>. As previously stressed, the challenge is to consider their capacity as social actors and confer relevant means to their self-realisation and act within the society. Though, their life often seems to be suspended in the protective system they are subjected to, to become then alone in their struggle for autonomy and self-determination. Again, Balibar affirmed that “once individuals and groups can no longer be excluded from citizenship on the basis of status or social background, they are excluded precisely *as “humans,”* as types of humans that are different from the rest”.<sup>258</sup> In this argument lays the contradiction of citizenship proper of democratic States, conceived as a privilege accorded or not accorded to individuals depending on their possibility to meet given

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<sup>255</sup> Luigi Ferratoli, *Diritti fondamentali. Un dibattito teorico* (Roma-Bari: Laterza, 2002), p. 26.

<sup>256</sup> É. Balibar, “Citizenship and Exclusion” in *Citizenship*, (Cambridge: Polity Press, 2015), 62-82, p. 67.

<sup>257</sup> *Ivi*, p. 60.

<sup>258</sup> É. Balibar, “Citizenship and Exclusion” in *Citizenship*, (Cambridge: Polity Press, 2015), 62-82, p. 79.

requisites and thus, resulting in some forms of social exclusion. Citizenship and relating rights should however not be a scarce resource driven by exclusive criteria. Nevertheless, we might say that States have the legitimate power to discriminate between *aliens* and *citizens* on the basis of established standards linked to nationality, on which they regulate access to the national territory while at the same time being tied to their obligations in terms of fundamental rights and freedoms. This might be linked to the legal construction of the non-citizen, holder of the *status migrantis*.<sup>259</sup> Such approach is arguably a “legal” discrimination based on “race”, which lets them fall in the uncertainties of a legal regime based on work-related requirements, when they sometimes only have 6 months to become autonomous and become active part of the receiving society. Once they are no more children, they soon become migrants, becoming subject to the legal, procedural and administrative procedures linked to the condition of *alien*.

Facing legal boundaries, newly adult UAMs often try to “negotiate” their regularity exploring different possibilities. Among these, asylum request is often seen as a practice to negotiate rights and the borders of citizenship. Asylum request becomes a last resort, an expedient to try to regularise their stay and overcome legal obstacles that would otherwise leave them with no options than to remain illegally or leave the country. This often happens with UAMs who are about to turn eighteen and know that applying for asylum means they will at least have the possibility to remain in the centres for the duration of the asylum procedure.<sup>260</sup> However, not everyone is willing to apply for asylum or for other forms of protection, rather they want to convert or renew their permits into study, employment or pending employment permits. Seeking protection becomes the ultimate opportunity to negotiate citizenship, to overcome the boundaries of an exclusive system, which (tries to) protect you while you’re a child and “abandons” you once you legally turn into an adult, because unable to have a stable job, a safe accommodation and all the guaranties and entitlements accorded to national citizens.

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<sup>259</sup> C. Margiotta, “Race as a category of legal analysis: scrutinizing Italian case law”, *Darkmatter Journal*, Vol. 6, 2010. Available at: <http://www.darkmatter101.org/site/2010/10/10/race-as-a-category-of-legal-analysis-scrutinizing-italian-case-law/>

<sup>260</sup> A. Elia, “Minori soli nella migrazione. Esperienze di mobilità e di radicamento tra i confini”, *Fuori Luogo*, N. 2, 2017.

### **2.3 Empowerment and alternative paths to autonomy: examples of positive practices and the importance of education**

As already emphasised, it is important not to make the mistake of victimising and stigmatising UAMs as subjects incapable of self-determination. Some positive practices show instead how their capacities and inclinations – which are still evolving as they are, after all, adolescents – can be valued and developed to make them profitable in the labour market as well as fruitful in their personal realisation. The main aspects of such practices concern the ability to combine emotional and personal bonds which result in the creation of human relationships, with the acquisition of capabilities and valuable experience.

As previously explained, the role of voluntary guardians in this process is essential for different reasons, from the practical support in the administrative and judicial matters, to the emotional care they are able to provide through the creation of new sentimental attachment.<sup>261</sup> Talking with the Vice President of the Voluntary Guardian Association of Tuscany, she explained how in several cases, education served as a weapon against social exclusion and helped promoting aspirations and inclinations. She recounted her personal experience with a UAM girl she was assigned, who she helped continuing her educational path, following her in her desires and supporting her in learning Italian, which contributed to build her future and opened new possibilities. However, access to education and targeted programmes addressed at UAMs are not properly designed and sometimes they are just limited to Italian language classes in the so called CPIA – i.e., Provincial Centres for Adult Education. Thus, education is still a disregarded issue for foreign minors coming to Italy, although the Law establishes their unconditional right to access ordinary schools irrespective of their nationality and status, putting them on the same level of Italian children. Equal access to education should however imply the need to create tailor-made paths for them, considering the language barriers they face and the differences in educational system among countries. However, these projects often do not take place and are very rare to be found. This is mainly due to the lack of proper funding allocated for this kind of projects, to be found in the very

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<sup>261</sup> Interview with Laura Pecchioli, *supra* note 169.

text of the Law concerning UAMs protection in Italy. Indeed, as previously explained, in its Article 21 the Law establishes the need to avoid further financial burden for public finance deriving from the implementation of the dispositions it contains.

Another good example of creation of opportunities and empowerment is represented by some best practices carried out in residential communities for minors accommodating UAMs. With this respect, it is interesting to investigate what is their role in UAMs' "negotiation" of the transition to adulthood.

Communities accredited to the Municipalities have indeed proved to be able to provide these young migrants with precious instruments and means that will accompany them in the acquisition of autonomy and, hopefully, for many years ahead. Illustrative of such best practices is the Community *Mulino di Suardi*, a farmhouse in the Province of Pavia in Northern Italy. Here, UAMs learn how to grow vegetables from seed to harvest, and process their products transforming them into ingredients for the meals served in the adjacent restaurant.<sup>262</sup>

In talking about these activities, the Director of the Community underlined the emphasis put on the message they want to communicate through the projects they realise, focusing on the simple meaning of planting something and taking care of it until it is ready to be harvested. Training courses focus on biological agriculture and the production cycle of vegetables and fruits, from seed to harvest, to be then transformed into typical products and used in the menu of the restaurant managed by the Community. This also intensified relationships with local restaurants and created a vibrant network involving local activities in the food sector. The opportunities offered by this Community, in fact, resulted in actual employment prospects for those UAMs accommodated there. Some of them were hired in local restaurants located nearby, whose owners came in contact with the Community as clients of the restaurant or just heard about these activities and became curious.<sup>263</sup>

In an acquisition of autonomy perspective – where, again, autonomy is understood as a set of abilities to lead a life being able to self-determine and realise a life project

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<sup>262</sup> Interview with the Director of the *Mulino di Suardi* Community in Pavia, *supra* note 233.

<sup>263</sup> *Ibid.*



– different factors play a key role. Creating opportunities and favour the development of hard and soft skills not only contributes to increase possibilities to access the labour market, but also to build key relational networks.

Further, these initiatives also served as a way to connect local communities with UAMs present on the territory and fight stigmatisation and prejudice. All these aspects together contribute to the creation of those means and tools needed for the acquisition of autonomy. To this aim, fighting prejudice and creating social cohesion is also crucial. The *Mulino di Suardi* Community, in particular, engaged in the creation of a bicycle repair point, also pursuing the ambition to connect with the inhabitants of the town where the community is located. The coordinator of the Community said, indeed, that the attitude among people living nearby was often hostile and the perception distorted by prejudice and preconception, which are especially common in small communities of people not used to have “external interferences”. The coordinator of the *Mulino Suardi* Community said many times how the bicycle repair initiative was a way to approach inhabitants and bring them closer to the community, to make them know what they were doing, which activities were offered and, most importantly, who were the young migrants accommodated there. He said he invited residents to come over to get their bikes repaired for free, as a way to attract them more easily. What happened was that people started to come and decided instead to pay for the work done. Although this might seem a simple happy-ending story – and pay for a service is certainly not something that should surprise one – this is just an example of how durable solutions are possible and life projects can be initialised through valuable experiences and the acquisition of means useful to become autonomous and be ready to cope with ordinary life issues.

These are successful examples of how a single community decided to address the issue of the acquisition of autonomy with its own approach. However, this is emblematic of a strong personal commitment and will showed by the coordinator of the Community and its staff. It probably won't come as a surprise to know that the coordinator of the Community has a migrant background and had in turn to face the difficulties of being a migrant and coping with the above-mentioned social exclusion dynamics. Hence, this is a twofold example of how a positive experience

generated another positive experience and how important is to enhance exchange of competencies and engage civil society as an active part of this process.

What is still needed, is a coherent approach at the national and international level to address the problem of UAMs life projects' realisation, identifying durable solutions and consider the key role of cooperation within the very same society.

## Conclusions

This work aimed at giving a clearer image on the socio-legal condition of UAMs as young individuals who are migrating alone in a phase of transition from adolescence to adulthood. The idea was to consider a mostly disregarded phenomenon, namely the realisation of UAMs life projects in their transition to adulthood. This phase was dealt with in a legal perspective and deemed it as a key step in their path towards the acquisition of autonomy. In so doing, crucial was to give attention to the deficiencies of the legal system, at the international and national level, and its effects in this process of transition. What emerged was also a disharmonious framework, often conflicting in the emphasis put on their condition: if at the UN level most of the attention is put on their vulnerability as *children*, having as main reference the UNCRC, at the EU level most of the efforts concentrate on migration control issues, such as those concerning the first tracing phase.

As Italy was chosen as a case study, I tried to highlight the challenges faced by UAMs in this country in their path towards autonomy, mainly linked to the relevant legal system, and the requirements they have to meet once they turn eighteen to obtain a regular residence permit. I focused on what I identified as the main root causes of these challenges: notably, (a) the gaps of the protection system, with particular reference to the shortcomings in providing essential means through effective socio-employment projects, targeted programmes, vocational trainings and, more generally (b) the failure to consider UAMs' capacity as social actors an urgent issue to be tackled; (c) the efforts made to look at them more as children rather than migrants, which eventually translate into a gap between the emphasis put on vulnerability as long as UAMs are considered children to become a form of "seduction and abandonment". Indeed, once they become adult, they are asked to meet conditions to which they are unprepared. In this respect, I also stressed the implications of the time limit faced by UAMs before turning eighteen, due to their age upon arrival – which in the majority of cases ranges from 16 to 17 years old. In this regard, a crucial role is played by the difficulties of the system of rules concerning residence permits: this is tainted by many obstacles, ranging from tricky

rules to long administrative procedures to discrimination and exploitation. All these aspects seem to be exacerbated by both the short amount of time they have to acquire means and build relational networks essential to meet legal requirements, and by the lack of tailored measures aimed at addressing the delicate transition from *minor* migrant to only *migrant*.

In this analysis, however, I did not forget the *prosieguo amministrativo* and its role in mitigating the effects of the transition towards adulthood. On the contrary, I examined the importance of this measure as an attempt to address this issue more effectively and considered it as an important step towards a greater consideration of the issue of the transition to adulthood. However, problems in its full implementation as well as in its very functioning have emerged, sometimes threatening its potential positive outcomes.

In this thesis, each chapter sought to answer a different question, starting from which is the international framework relevant to UAMs and on which it focuses in the twofold status characterising this group, and on which phase between first reception and transition to adulthood. The analysis then moved to the Italian framework, considering it relevant for its Law 47/2017, the only Law dedicated to UAMs at the European level. This served as a basis to focus on the problems in the implementation and the further negative effects of both the Security Decrees and the Covid-19 pandemic on the delicate passage from adolescence to adulthood, considered mainly in socio-legal terms. In the last part of this thesis, I argued that the above-mentioned difficulties in the effective implementation of the Law, especially with regards to the functioning of the reception system, together with the lack of attention on the transition to adulthood and related targeted programmes are somehow responsible for the struggle of UAMs in becoming autonomous. Further, I argued how the emphasis put on the condition of vulnerability is in direct opposition with the approach adopted once they are no longer children in legal terms. In so doing, I also concentrated on the importance to avoid approaches that would lead to victimisation and stigmatisation, which are, as a matter of fact, the very enemy of self-realisation. This sudden change of status has proved to negatively affect the path of UAMs in trying to be actively included in the society

and the strict requirements they have to meet in a very short amount of time is a symptom of the discriminative nature of the legal system dedicated to migrants. This argument leads right to the concept of citizenship as a scarce resource, as a privilege allocated to specific categories of people on the basis of discriminatory criteria, deliberately established by States. Within this discourse, the analysis concerning the debate on citizenship and the need to revisit its construction in a more universalistic perspective becomes relevant.

Such premises stressed the urgency to tailor legislations to the needs of a specific group, without forgetting the differences present within the very same group. In other words, the arguments were framed on two different levels: firstly, how the characterisation of UAMs as vulnerable reduces their possibilities to become autonomous, especially if put in relation with the legal regime they have to deal with once they are no longer minors; and, with regards to this last aspect, an assessment of the discriminative nature of the legal regime to which they become subject as migrants, which is representative of the exclusive criteria States put in place to determine who is entitled or not entitled to rights. Taking into account the criteria according to which rights are ascribed as well as how they are withdrawn, an easy example can be made comparing their situation to that of Italian adolescents approaching adulthood. Indeed, requirements to these young adults differ from those asked to young Italians, although they both find themselves in the same crucial phase.

In carrying out the research and writing the present work, the important differences deriving from gender characteristics and the role gender should play in shaping policies and adopting measures has not been forgotten. However, as this work represents a starting point for further research, some topics were not treated comprehensively as this would require dedicating an entire work for each issue.

This work seeks to be a starting point to revisit and rethink protection systems in a more consistent and effective fashion, being able to consider different aspects and concurrent issues in defining UAMs' life paths. Such an approach would also require taking into account cultural characteristics and differences that can play an important role in how UAMs cope with their transition to adulthood and how they conceive their self-realisation. UAMs should be part of the process and be actively

included in the decision-making affecting them. Accordingly, I am well aware of the lack of direct involvement of UAMs for the realisation of this present work, which I personally regret. However, due to the Covid-19 pandemic, in person-interview where not possible and reaching out to the Communities and UAMs via phone turned out to be very difficult.

To conclude, the overall objective was to shed light on the need to consider UAMs as adolescents and act accordingly when designing protection systems, programmes and projects aimed at their socio-employment inclusion in the host society. Education still remains a huge challenge, indeed, what often happens is that either they are not able to continue their educational path in the host community, or their completed education is not fully recognised by their host countries. Employment becomes an obstacle to social inclusion, rather than being one of the means to attain it. Awareness should be raised towards these urgent issues, and action should be taken to provide UAMs with the means for the realisation of their life projects.

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## Interviews

Interview with the Head of Unit of Migrant Children Protection at Save the Children Italy, October 2020.

Interview with the coordinator of a Save the Children *Civico Zero* Centre in Catania, Sicily, November 2020.

Interview with the Coordinator of the UAMs Office of the Juvenile Court in Florence, Tuscany, December 2020.

Interview with the coordinator of the *Mulino di Suardi* Community accredited to the Municipality of Pavia, in Suardi, in the Province of Pavia, Lombardy, December 2020.

Interview with the Vice President of the Association of the Voluntary Guardians of the Tuscany Region, December 2020.

Interview with the Coordinator of the SIPROIMI Centre *Il Ponte* in Genoa, Liguria, December 2020.

Interview with the Coordinator of the SIPROIMI Centre *I Girasoli* in Scordia, Province of Catania, Sicily, January 2021.

Interview with a legal caseworker of *AccoglieRete Onlus* in Siracusa, Sicily, January 2021.

## Appendix: Semi structured Questionnaire

1. Quali direbbe essere le principali problematiche nell'applicazione della Legge Zampa? Quali gli effetti della mancanza dei decreti attuativi?
2. Ci sono differenze di prassi a livello territoriale? Quali?
3. Quali sono stati i principali effetti Decreti Sicurezza sul sistema di accoglienza?
4. Quanto percepisce che la condizione di vulnerabilità viene accentuata rispetto alla necessità di acquisire gli strumenti per l'autonomia?
5. Quali sono le principali disfunzioni del sistema di accoglienza, con riferimento a progetti di integrazione socio-lavorativa e problemi nella permanenza (dopo prosieguo amministrativo e per il rinnovo dei permessi)?
6. Quanto sono utili i progetti del SIPROIMI per l'inserimento socio-lavorativo? Quanto diffusi e funzionanti? Che tipo di progetti? Rispettano le loro inclinazioni e le competenze preesistenti?
7. Come si concretizza il passaggio alla maggiore età dal punto di vista legale, pratico ed emotivo? Quali le difficoltà incontrate e quali gli escamotages per cercare di superarne gli ostacoli?
8. Ci sono forme alternative per negoziare questo passaggio o si ricorre alle richieste d'asilo anche laddove si sa già che non sussistono i criteri per ottenerlo?
9. Quanto è efficace l'istituto del prosieguo amministrativo? Quali i problemi una volta scaduto? Quale il percorso pensato durante lo svolgimento? Quali le regole da seguire perché non venga revocato?
10. Quanto direbbe concreto il rischio di sfruttamento lavorativo nel passaggio alla maggiore età? Quanto la condizione di incertezza sul futuro influisce nella "decisione" di accettare un lavoro in cui si è sfruttati?
11. Quanto è grande lo sbalzo da *minore* a *migrante* in termini legali ed emotivi?
12. Quanti di loro spariscono per sfuggire alla condizione post-maggiore età?
13. L'eliminazione del silenzio-assenso ha pesato?
14. I ragazzi sono informati delle possibilità a livello legale e delle condizioni da rispettare per poter continuare a risiedere regolarmente?
15. Quali sono le principali incertezze dopo il prosieguo amministrativo?