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BEST INTERESTS OF UNACCOMPANIED CHILDREN IN RETURN PROCEEDINGS

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ABSTRACT

Ever since the adoption of the UN Convention on the Rights of the Child in 1989, the best interests of the child principle has become main tool for the protection of children in all proceedings. The centrality of this principle has been particularly emphasised in asylum and migration proceedings, however, after the CJEU judgment in 2021 it remains more of a wishfull thinking than the actual practice.

In the meantime, parts of the 2018 Proposal for a recast of the Return Directive have been incorporated in other EU Acts (mainly Regulations, proposed by the Pact on Asylum and Migration). In the same vein, in March 2025 Proposal for the Directive has been replaced with the Proposal for a Return Regulation, establishing a Common European System for Returns.

Many novelties are introduced, not all of them are welcomed. The new transfer procedure, despite more or less explicit statement on the protection of human rights, threatens to reduce procedural as well as human rights compared to the Return Directive. Combined asylum and return procedure, as already confirmed by the CJEU case law, manifests serious deficiences. Even the European Parliament recognised the risks, like „the risk of refoulment which is not systematically assessed by the authorities on their own initiative when contemplating the issuing of a return decision", limitation of the rights of defence, broad detention grounds, etc. Also, the short deadline for the completion of the return border procedure is a risk in itself.

Thus, the aim of this article is to explore the content and scope of protection of the best interests of the child in the new return procedure, as well as to articulate arguments either in favour or against the new regime.

Keywords: *best interests of the child, human rights, Proposal for a recast of the Return Directive, Proposal for a Return Regulation, Return Directive, unaccompanied children*

1. INTRODUCTION

According to the available statistics, a significant number of children arrives every year in EU Member States. Many of them unaccompanied. In 2022, EU Member States received 881.200 first-time applications for international protection, of which 39.250 were made by unaccompanied minors, making a 45% increase

compared to those made in 2021.[1] Based on the available data, in 2023 there were 254.900 minors as first-time asylum applicants in the EU,[2] of which 42.940 were made by unaccompanied minors. The share of unaccompanied minors aged less than 18 was on average 16,1% over the period from 2013 to 2023, with a maximum value of 25,5% recorded during the migration crisis.[3] While the COVID-19 pandemic slowed it down to 7,3 %, already in 2022 the number raised up to 19,2%.[4] In terms of age, 7% of all applicants were aged 16-17 years old, 23% were aged 14-15 years old, and 7% were younger that 14 years old.[5] Although the acceptance rates in case of children are 1.4 times higher than for adults there are still many of them who are rejected and ordered to return to their country of origin.[6]

Some of these children are coming from economically underdeveloped countries, in search of better life,[7] while the rest are children who may have suffered a lot in their countries of origin, either because of the „child labour, early marriage, female genital mutilation, underage recruitment, trafficking for prostitution and sexual exploitation,"[8] etc. Their circumstances may vary significantly. They may have left the country of origin alone or they may be separated from their parents or guardians while traveling.[9] Their journey may be more or less traumatic. Therefore, it is very important to acknowledge their life circumstances and the need for their specific and appropriate protection.

The UN Convention on the Rights of the Child (hereinafter: CRC),[10] together with the General Comment No. 6[11] and the EU Charter of Fundamental Rights

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1 „Happines, Love and Understanding": The Protection of Unaccompanied Minors in the 27 EU Member States, 18 May 2023, p. 8. Available at: [https://euromedmonitor.org/en/article/5642/%E2%80%9CHappiness,-Love-and-Understanding%E2%80%9D:-The-Protection-of-Unaccompanied-Minors-in-the-27-EU-Member-States], Accessed 3 April 2025.

2 Children in migration – asylum applicants – statistics explained, April 2024. Available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Children_in_migration_-_asylum_applicants&oldid=636360], Accessed 3 April 2025.

3 *Ibid.*, Figure 10.

4 *Loc. cit.*

5 „Happines, Love and Understanding", *op. cit*., note 1.

6 Children in migration – asylum applicants – statistics explained (See: Figure 12.), *op. cit.,* note 2.

7 Gornik, B.; Sedmak, M.; Sauer, B., Introduction – *Unaccompanied minor migrants in Europe:: between compassion and repression*, in: Gornik, B.; Sedmak, M.; Sauer, B. (eds.), Unaccompanied Children in European Migration and Asylum Practices. In Whose Best Interests?, New York, 2017, p. 3.

8 „Happines, Love and Understanding", *op. cit.,* note 1.

9 Bhabha, J.: *Arendt's children: Do today's migrant children have right to have rights?*, Human Rights Quarterly, 2009, p. 413.

10 Available at: [https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child], Accessed 3 April 2025.

11 Committee on the Rights of the Child: General Comment No. 6 (2005): Treatment of Unaccompanied Children and Separated Children Outside their Country of Origin, CRC/GC/2005/6, 1 September 2005.

(hereinafter: EU Charter)[12] serves as a cornerstone for the protection of children's rights also in the Common European Asylum System (hereinafter: CEAS),[13] i.e. within the framework of Asylum and Migration Management Regulation,[14] Asylum Procedures Regulation,[15] Return Border Procedure Regulation,[16] Crisis and Force Majeure Regulation,[17] Eurodac Regulation,[18] Screening Regulation,[19] Qualification Regulation,[20] Reception Conditions Directive[21] and the Union Resettlement and Humanitarian Admission Framework.[22]

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12 Charter of Fundamental Rights of the European Union, OJ C 326, 26. 10. 2012. (art. 24(2) and (3)).

13 Smyth, C., *European Asylum Law and Rights of the Child*, New York, 2014, p. 34.

14 Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013, OJ; L, 2024/1351, 22 May 2024. (recs. 46-48 and 53, arts. 2(11), 23 and 25).

15 Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, OJ L, 2024/1348, 22. 5. 2024. (recs. 35 and 36, arts. 3(7) and 23).

16 Regulation (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 establishing a return border procedure, and amending Regulation (EU) 2021/1148, OJ L 2024/1349, 22 May 2024. (rec. 9).

17 Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147, OJ L, 2024/1359, 22 May 2024. (rec. 8).

18 Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of „Eurodac" for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac dana by member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council, OJ L; 2024/1358, 22 May 2024. (rec 47, art. 14).

19 Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, OJ L, 2024/1356, 22 May 2024. (recs. 25, 33, 38; arts. 2(11) and 13).

20 Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 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, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European parliament and of the Council „Qualification Regulation", OJ L, 2024/1347, 22 May 2024. (recs. 15 and 16, arts. 1 (11) and 33).

21 Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (recast), OJ L, 2024/1346, 22 May 2024. (recs. 35, 38-45, arts. 2(5), 13, 26 and 27).

22 Regulation (EU) 2024/1350 of the European Parliament and of the Council of 14 May 2024 establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147, OJ L; 2024/1350, 22 May 2024., note 46.

However, the aim of these documents is dealing with the irregular migration within the EU which is, first and foremost, aimed at adults. It is not so surprising since, historically, children were treated as a „property" of their parents.[23] They were considered objects of law and, consequently, depended on their parents or guardians to protect their interests. This reflected also in immigration law where they had no recognized rights on their own,[24] which particularly affected unaccompanied children who remained largely invisible. Only with the adoption of the CRC, and the change of paradigm in relation to children's status within the law, legislations began to develop material and procedural safeguards in relation to children.

The CRC contains four general principles which are (to a greater or lesser extent) explicitly incorporated in EU legislation in the field of asylum and migration: the principle of non-discrimination (art. 2); the principle of the best interests of the child (art. 3.); the right of the child to life, survival and development (art. 6) and the child's right to express his/her views freely (art. 12). However, even with the implementation of the CRC principles to unaccompanied children in migration cases, there are many challenges, especially in connection to the return proceedings.

For a long time, the EU's return policy was framed by the so-called Return Directive,[25] minimum standards Directive whose aim is "to establish an effective removal and repatriation policy, based on common standards and common legal safeguards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity".[26] However, already in the midst of the refugee crisis in 2015, it was clear that the migratory pressure has increased, on the Member States and the EU as a whole, and that Member States encounter difficulties in the implementation of the Directive. In 2018 Commission went on with the Proposal for a recast Return Directive[27] which was later withdrawn, only to give a way to the proposed Return Regulation, establishing a Common European System for Returns (hereinafter: the Proposal for a Return Regulation).[28] Despite

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23 Dalrymple, J. K., *Seeking Asylum Alone: Using the Best Interests of the Child Principle to Protect Unaccompanied Minors*, Boston College Third World Law Journal, Vol. 26, No. 1, 2006, p. 142.

24 *Ibid.*, p. 137.

25 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 illegaly staying third-country nationals, OJ L 348, 24. 12. 2008.

26 C-146/14 PPU *Mahdi,* ECLI:EU:C:2014:1320 (para. 38); C-554/13 *Zh. and O.*, ECLI:EU:C:2015:377 (para. 47).

27 Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegaly staying third-country nationals (recast), COM (2018) 634 final, 12 September 2018.

28 Proposal for a Regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegaly in the Union, and repealing Direc-

explicit advocacy for the protection of human rights, both of these Proposals have met with numerous criticisms.

Thus, the aim of this article is to explore the content and scope of the protection of the best interests of unaccompanied minors within the Return Directive Framework and within the Proposal for a Return Regulation. Also, we will look into the current jurisprudence of the European Courts. Finally, in the conclusion, we will try to articulate arguments either in favour or against the new regime.

2. THE RETURN DIRECTIVE FRAMEWORK

Some decades ago, European rules referring (explicitly) to unaccompanied minors were rare.[29] Only the EU Council Resolution 97/C 221/03,[30] which was not even a binding instrument focused exclusively on the treatment of unaccompanied minors in cases of migratory flux. The aim of the Resolution was „to establish guidelines for the treatment for unaccompanied minors, with regard to matters such as the conditions for their reception, stay and return and, in the case of asylum seekers, the handling of applicable procedures".[31] Standards set out in a Resolution can be recognised in the subsequent EU legislation in asylum and migration cases.

Although according to the UN Committee on the Rights of the Child, there is a difference between an „unaccompanied children" - those „who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or by custom, is responsible for doing so"; and „separated children" - those „who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives",[32] in most of the documents they are covered by the same set of rules. The same is the case with the Return Directive.[33]

The main feature of the Return Directive is emphasis on voluntary return and the least coercive measures in cases of forced return. The transition from voluntary return to forced return is nuanced in a way that voluntary return within the 7 -30 days comes as a first option following the return decision (art. 7). If it doesn't work

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tive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council decision 2004/191/EC, COM (2025) 101 final, 11 March 2025.

29 Senovilla, D.; Lagrange, F., *The legal status of unaccompanied children within international, European and national frameworks, Protective standards v. restrictive implementation*, PUCAFREU Project, 2011, p. 21.

30 Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03), OJ C 221, 19. 7. 1997.

31 *Ibid.*, art. 1. para. 3.

32 General Comment No. 6 (2005), *op. cit.*, note 11 (paras. 7-8).

33 Directive 2008/115/EC, *op. cit.*, note 25.

out, than comes an entry ban (art. 11) and, „unless other sufficient but less coercive measures can be applied effectively in a specific case", detention (art. 15). It is up to Member States to decide to combine decisions ending legal stay (e.g. rejected asylum application or visa withdrawal) with return decisions (art. 6 para.6). The same is with the measures to prevent absconding, which may be imposed for the duration of the period for voluntary departure (art. 7 paras. 3 and 4). There are also some procedural safeguards regarding the form of the return decision and right to information (art. 11), available legal remedies (art. 13) and safeguards pending return (art. 14).

In relation to children, the recitals of the Directive make explicit reference to the ECHR, the Geneva Convention and the EU Charter. According to art. 5., „when implementing the Directive, Member States shall take due account of: (a) the best interests of the child; … and respect the principle of non-refoulment", e.g. „extend the period for voluntary departure by an appropriate period, taking into account the specific circumstances of the individual case, such as .. the existence of children attending school .." (art. 7 para. 2). „When considering a return or removal of unaccompanied minors, an independent authority must be involved in assesment of the best interests of the child. Also, before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State must be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return" (art. 10). With regard to detention, „the best interests of the child shall be a primary consideration in the context of the detention of minors pending removal" (art. 17 para. 5). Consequently, „unaccompanied minors … shall only be detained as a measure of last resort and for the shortest appropriate period of time" (art. 17 para. 2). Also, they shall be (as far as possible) provided with an accomodation in a child-friendly institutions - with the personnel and facilities which take into account the needs of persons of their age, which give them possibility to engage in leisure activities and education (paras. 3-4). Thus, the Directive allows for the pre-removal immigration detention of minors, but only as a measure of last resort and after consideration of all other alternatives.

There is no dispute that the text of the Return Directive leaves enough space for the protection of the best interests of unaccompanied minors. However, there are some *lacunas* which are particularly undesirable in case of unaccompanied minors, e.g. complete absence of the right to be heard, or the consequences of an infringement.[34] In *Mukarubega*[35] and *Boudjlida* case,[36] the CJEU stressed the importance

[34] Progin-Theuerkauf, S.: *The EU Return Directive – Retour à la „case départ"?*, sui-generis, 2019, p. 41.

[35] C-166/13 *Mukarubega*, ECLI:EU:C:2014:2336.

[36] C-249/13 *Boudjlida*, ECLI:EU:C:2014:2431.

of the right ot be heard at all stages of the return procedure, including the stage of voluntary departure, where the person should be able to express his or her point of view on detailed return arrangements, such as the period allowed for departure and whether the return is to be voluntary or coerced.

Also, the case law shows that majority of EU Member States make regular use of the pre-removal immigration detention of minors.[37] To this day, the harmful consequences of immigration detention of children are well documented.[38] It may lead to post-traumatic stres disorder (PTSD), depression and anxiety, behavioral difficulties and self-harm.[39] Numbers of studies accross continents show that children held in detention experience significantly more psycho-social and emotional difficulties than children living in a community, in particular younger ones.[40]

Despite its deficiences, „the Directive had positively influenced the situation regarding voluntary departure and effective forced return monitoring, and contributed to more convergence of detention practices, including the reduction of pre-removal detention periods and a wider implementation of alternatives to detention." Still, being a minimum harmonization Directive proved to be extremely challenging during the 2015 refugee crisis. Successfully stearing the unprecedented migration influx required coordinated action which the Return Directive, with its lenient implementation requirements, was not able to achieve. Number of weaknesses were identified: the different transposition in national legislation of EU Member States resulted in different sets of national rules and procedures (whith the consequence of „high risk of absconding"); inefficient national procedures in relation to subsequent asylum applications during return proceedings, (resulting in low rates of returns); long waiting between the completition of the asylum proceedings and the start of the return proceedings; the absence of interoperability and duplication of proceedings; non-cooperation of the applicants and the non-EU authorities, etc.[41]

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37 International Organization on Migration (IOM); UN Children's Fund (UNICEF), UN Refugee Agency (UNHCR): Safety and Dignity for refugee and migrant children: Recommendations for alternatives to detention and appropriate care arrangements in Europe, May 2022, p. 7.

38 See: Zwi, K. *et al., The impact of detention on the social well-being of children seeking asylum: a comparison with community-based children*, European Child Adolescent Psychiatry, Vol. 27, No. 4, 2018, pp. 411-422.

39 Karatzas, A., *Bringing child immigration detention to an end: The case of EU return procedures,* European Policy Centre, 18 November 2022, p. 4.

40 Triggs, G., *The impact of detention on the health, wellbeing and development of children: findings from the second National Inquiry into Children in Immigration Detention (Chapter 20)*, in: Crock, M.; Bension, L.B. (eds.), Protection of Migrant Children. In Search of Best Practice, Edward Elgar Publishing Limited, UK, 2018, pp. 407-410.

41 Lutz, F., Prologue: *The Genesis of the EU's Return Policy*, in: Moraru, M.; Cornelisse, G.; de Bruycker (eds.), Law and Judicial Dialogue on the Return of Irregular Migrants from the European Union,

3. THE FAIL OF THE 2018 PROPOSAL AND THE PROPOSED REGULATION FRAMEWORK

3.1. The rise and fall of the 2018 Proposal for a recast Return Directive

Ever since the 2015 and the refugee crisis, irregular immigration has been at the core of the European immigration policy discussions. The current system was perceived as too complex and too fragmented to successfully deal with considerably changed EU migration policy. Also, a lack of cooperation of many returnees and also some States of origin was considered frustrating and in need of improvement. However, the Proposal for a recast Return Directive,[42] from 2018, was eventualy withdrawn. It was faced with heavy criticism which can be summarized in a conclusion that, with regard to international standards of protection, it has been moving backwards.

Compared to the existing Return Directive, the Proposal for a recast Return Directive introduced a number of measures showing that it departs from the proportionality principle and clearly favours a coercive approach. It introduced the new non-exahustive list of factors to help the States asses the risk of absconding.[43] On top of that, the Council was proposing to extend the number of criteria[44] which, together with the additional objective criteria envisaged in national legislation, would have made it easier for the Member States to use detention and entry bans, instead of voluntary return.

One of the criteria for establishing a risk of absconding was an obligation of the third-country nationals to cooperate in all stages of return proceedings.[45] The duty of cooperation was imposed rather unilateraly, laying mainly on the migrant. The authority had only the duty to inform the migrant of the consequences of a non-compliance, although it may be better placed to gain access to certain types of information/documents.[46]

Issuing a return decision immediately after the adoption of a decision ending a legal stay of third-country national, including a decision not-granting a refugee status or subsidiary protection status was obligatory (art. 8 para. 6).

Oxford: Hart, 2020, pp. 1-16.

42 The Proposal for a recast Return Directive, *op. cit.*, note 27.

43 *Ibid.,* art. 6 para. 1.

44 Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (recast) – Partial general approach, 2018/0329 (COD), 13. 6. 2019. Available at: [https://data.consilium.europa.eu/doc/document/ST-10144-2019-INIT/en/pdf]

45 The Proposal for a recast Return Directive, *op. cit.*, note 27, art. 7.

46 Majcher, I., *Legislating without evidence: The Recast of the EU Return Directive*, European Journal of Migration and Law, Vol. 23, 2021, p. 116.

With regard to voluntary return the minimum period for voluntary departure (7 days) was erased while the maximum was set at 30 days. In practice, leaving a very short period for voluntary return could easily turn into justification for detention. Also, the permission to refrain from granting a period for voluntary return was changed to obligation, in case of: risk of absconding, manifestly unfounded or fraudulent application and a risk to public policy, public security or national security;[47] thus, excluding the Member States discretion entirely if these circumstances were met.

Imposition of an entry ban was expanded, also to cases of „illegal stay detected in connection with border checks carried out at exit".[48]

With regard to legal remedies, the Proposal for a recast Return Directive limited the opportunity to appeal return decision outside the asylum proceedings to one; which had to be lodged within 5 days following the return decision.[49] Suspensive effect of an appeal was restricted, which is not in line with the CJEU jurisprudence.[50]

Detention was solidified, prohibiting a national maximum period of detention of less than 3 months, despite the lack of evidence that the shorter period of detention hinders removals.[51] On the other hand, the Proposal explicitly stated that the aim is to use detention more effectively to „support the enforcement of returns", which was understood that detention as a measure of last resort still remained as the preferred option.[52]

Finally, border procedure was proposed, introducing stricter rules than for the regular procedure (Chapter V).

In relation to children, recitals 43 and 45 of the Proposal, and other articles dealing with the unaccompanied children, remained the same as in the Return Directive. However, such a strong focus on increasing return rates and using detention as a supporting tool caused a fear that it may spill over the children as well,[53] which is particularly questionable in relation to unaccompanied minors. The Proposal retained the detention of minors, followed by an expansion of the grounds of detention which was certainly not the move in the right direction. Instead of

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47 The Proposal for a recast Return Directive, *op. cit*., note 27, art. 9 para. 4.

48 *Ibid.*, art. 13 para. 2.

49 *Ibid.*, art. 16 paras. 1 and 4.

50 Majcher, *op. cit*, note 46, p. 111.

51 Kilpatrick, J., *The revised returns Directive: a dangerous attempt to step up deportations by restricting rights*, September 2019, p. 3. Avalaible at: [https://www.statewatch.org/analyses/2019/eu-the-revised-returns-directive-a-dangerous-attempt-to-step-up-deportations-by-restricting-rights/#_ftn26], Accessed 3 April 2025.

52 Proposal for a recast Return Directive (note 27), p. 2. Karatzas, *op. cit.*, note 39, p. 4.

53 *Ibid.*, p. 7.

being accompanied with the alternatives to detention and additional safeguards with regard to children, the Proposal moved further away from the international standards and consensus developed on the issue.

Despite being eventualy withdrawn, the Proposal for a recast Return Directive set the trajectory for the future developments.

3.2. And through the back door…

In May 2024 the EU adopted an Asylum and Migration Pact with a view to strenghtening European response to irregular migration, i.e. better balancing responsibility for the EU's external borders control with the first-entry States, through the use of introduced „solidarity mechanism" and introduced pre-screening checks on the external EU borders. Some of the novelties impacting return were: mandatory inclusion of asylum rejection and the return decision in one act;[54] unified return border proccedings allowing for extended detention[55] and introduction of the new transfer procedure.[56]

This massive asylum and migration reform did not include a recast of the Return Directive.

However, after a years of disagreement about the Proposal for a recast Return Directive,[57] on March 11, 2025 European Commisson released the Proposal for a Return Regulation).[58] This Proposal consists of 9 chapters,[59] and it is considered „a key peace to complement the Pact on Migration and Asylum ... setting out a comprehensive approach on migration".[60]

At the legislative level, the Proposal aims „at increasing the efficiency of the return process"[61] through „establishment of common procedure for return, which simpli-

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54 Asylum Procedure Regulation, *op. cit.*, note 15.

55 Return Border Procedure Regulation, *op. cit.*, note 16.

56 Regulation (EU) 2024/1717 of the European Parliament and of the Council of 13 June 2024 amending Regulation (EU) 2016/339 on a Union Code on the rules governing the movement of persons across borders, OJ L , 2024/1717, 20 June 2024.

57 The Proposal for a recast Return Directive*, op. cit.*, note 27.

58 The Proposal for the Return Regulation*, op. cit.*, note 28.

59 I. General provisions; II. Return procedure; III. Obligations of third-country nationals; IV. Safeguards and remedies; V. Prevention and absconding and detention; VI. Readmission; VII. Sharing and transfer of personal data; VIII. Common system for returns; IX. Final provisions, including measures to be implemented in times of emergency.

60 See: [https://ec.europa.eu/commission/presscorner/detail/en/ip_25_724], Accessed 3 April 2025.

61 The Proposal for the Return Regulation, *op. cit.*, note 28, p. 3.

fies, facilitates and speeds up return procedures".[62] It picks up where the Proposal for the recast Return Directive has left. Novelties introduced by the Proposal for the Return Regulation are: common/unified procedural rules for the issuance of return-related decisions, ensuring the same treatment of third-country nationals throughout the EU; stronger accent on voluntary returns (through the reinforced right to information and return counceling and reintegration); strenghtened procedural safeguards throughout the entire return proceedings, in particular with respect to vulnerable persons; introduction of explicit obligation of the returnees to cooperate with national authorities (and the list of possible consequences); stricter rules for managing and preventing absconding and unauthorized movements between Member States (exhaustive list to assess the risk of absconding and an exhaustive list of detention grounds); strict rules for people posing security risks; introduction of European Return Order; direct enforceability of decisions issued by another Member State (now only a possibility, with the aim to become mandatory); return hubs (based on agreements or arrangements with third countries where international human rights standards and principles, including the principe of non-refoulment are respected) and readmission as an integral part of a return process. All steps under the return procedure must be carried out under the framework of the EU Charter of Fundamental Rights.

At operational level, the Proposal for the Return Regulation envisages a number of support systems, including counselling and (potentially) reintegration support. In line with the CRC and the EU Charter, the principle of the best interests of the child is of primary consideration when returning minors. Member States need to pay particular attention to unaccompanied minors. The Proposal for the Return Regulation aligns with key novelties of the Pact rules. Thus, the age assessments of minors follows the same rules as in the area of asylum and, in doubt, a representative must be appointed to see to the interests of the minor (art. 19). Standard is even higher in case of return of unaccompanied minors. Unaccompanied minors shall automatically be provided with free legal assistance and representation (art. 25 para. 2). A representative must be appointed to represent, assist and act on behalf of an unaccompanied minor from the beginning till the end of the return process, and appropriately trained in child-friendly and age-appropriate communication and speak a language that the minor understands (art. 20 para. 2). The unaccompanied minor shall be heard, either directly or through the representative or trained person .. including in the context of the determination of the best interests of the child, and the authorities of a Member State must be satisfied that the minor will be returned to a member of his or her family, a nominate guardian or adequate reception facilities in the country of return (art. 20. para. 3).

[62] *Ibid.* note 8.

Unfortunatelly, the Proposal did not give up on detention for unaccompanied children (and families with minors). It says that the unaccompanied minors shall only be detained as a measure of last resort and for the shortest appropriate period of time and taking into account the best interests of the child (art. 35 para. 1). However, despite providing for strong safeguards on detention conditions in case minors are detained, which in any case remains a measure of last resort, the provision of art. 35 of the Proposal compared with the provision of art. 17 of the Return Directive seems to be lowering the level of protection of unaccompanied children with regard to detention, since it moved from „the best interests of the child shall be a primary consideration" to „taking into account the best interests of the child". Although it may seem just a subtle departure, moving from the „primary consideration" to the „taking into account" significantly lowers the standard of the protection of the child. The wording of the provision certainly raises some quiestions regarding the operationalization of the principle within the Proposal, especially compared to art. 18 (Section 5, Return of minors) which explicitly states that „the best interests of the child shall be a primary consideration when applying the provisions in accordance with the Regulation". Thus, either the wording of the art. 35 para. 1 is unfortunate, or the legislator envisages different scrutiny of the principle within the Proposal, depending on the subject matter/ stage of proceedings.

Anyhow, based on the children's response to detention, particularly prolongued detention,[63] combined with the restrictions of movement,[64] it can be said that the detention is never in the best interests of the child and that it should be prohibited, even as a measure of last resort.[65] The continued use of child detention in the European region is at odds with the commitments made internationally and regionally.[66] Instead, less restrictive measures should be used, which may restrict

[63] WHO, Regional Office for Europe: Addressing the health challenges in immigration detention, and alternatives to detention: a country implementation guide, 2022. Triggs, *op. cit.*, note 40, pp. 407-410. Dudely, M.; Steel, Z.; Mares, S.; Newman, L.: *Children and young people in immigration detention*, Current Opinion in Psychiatry, Vol. 25, No. 4, p. 228.

[64] According to the ECtHR jurisprudence, prolongued detention combined with the restriction of movement may be a violation of art. 3 of the ECHR (Application No 11593/12 *AB and Others v. France*, 12. 7. 2016.; Application No 68264/14 *RK and Others v. France*, 17. 10. 2014.). Smyth, C.: *Towards a Complete Prohibition on the Immigration Detention of Children,* Human Rights Law Review, 2019, Vol 19, No 1, p. 29.

[65] Parliamentary Assembly of the Council of Europe: Missing refugee and migrant children in Europe, Strasburg, Resolution 2324 (2020).

[66] WHO: Immigration detention is harmful to health – alternatives to detention should be used, May 2022; UNICEF: Alternatives to Immigration Detention of Children, February 2019; UNHCR's position regarding the detention of refugee and migrant children in the migration context, January 2017, etc.

the person's freedom of movement without deprivation of liberty.[67] Therefore, any of the „alternatives to detention" listed in art. 31 of the Proposal for Regulation should be mandatory,[68] especially in case of unaccompanied children. Preference should be given to those alternative measures which are community-based and include independent living, foster and family based care and supervision and case management.[69]

4. THE CJEU AND THE BEST INTERESTS OF THE CHILD IN THE RETURN PROCEEDINGS

The principle of the best interests of the child is no longer new. It was introduced into the legal system in 1989, by the CRC,[70] whose article 3 introduces the concept that the child, in accordance with his or her evolving capacities, age and maturity, has the right to express his or her own views. In other words, the child becomes an active participant in his or her own life.[71]

However, consideration of the interests of the child in asylum and migration cases did not appear in the Court of Justice of the EU (further on: CJEU) jurisprudence

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67 ECtHR, Application no 8687/08 *Rahimi v. Greece*, 5. 4. 2011. - in cases concerning children, „searching for alternatives to detention is obligatory in order to eradicate arbitrariness of the detention on children". A landmark judgment concerning the detention of an unaccompanied migrant child in a closed centre for adults with poor hygiene and infrastructure conditions, in which the ECtHR found out that the national authorities, when ordering the detention of the child, did not at any stage gave consideration to the best interests of the child. The Court reiterated its earlier findings in Neulinger and Shuruk that in all decisions concerning children their best interests must be paramount. ECtHR, Application no 13178/03 *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 12. 10. 2006., regarding a detention of a five-years old unaccompanied migrant child at the Brussels Airport because she did not have the necessary documents to enter the State's teritorry, the ECtHR took an explicit stand that the authorities should have considered alternatives to detention, which would have aligned more with the best interests of the child. The Court acknowledged the State's sovereign right to control the entry and stay within its territory but it emphasised the fact that they are still bound by the obligations under international law (i.e. ECHR and CRC). Also, the fact that the Belgium authorities returning the unaccompanied child to the Democratic Republic of Congo, her state of nationality, where there was no reception arrangements in place to ensure her safe arrival and care; was considered a violation of article 3 ECHR. ECtHR, Application no 14165/16 *Sh. D. and Others v. Greece, Austria, Croatia, Hungary, Northern Macedonia, Serbia and Slovenia*, 13. 6. 2019.; Application no 19951/16 *H.A. and Others v. Greece*, 28 February 2019.

68 See: Karatzas, *op. cit.*, note 39, p. 8.

69 PICUM: Implementing Case Management Based Alternatives to Detention in Europe, March 2020, p. 2.

70 Available at: [https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child], Accessed 3 April 2025, *Op. cit*, note 10.

71 See: Medić, I., *Najbolji interes djeteta u europskim prekograničnim predmetima*, in: Župan, M. (ed.), Prekogranično kretanje djece u Europskoj uniji, Osijek, 2019, p. 11.

until 2006,[72] when European Parliament[73] challenged some provisions of the Directive 2003/86[74] (further on: Family Reunification Directive) as incompatible with fundamental rights, i.e. the 1950 European Convention for the protection of Human Rights and Fundamental Freedoms (further on: ECHR)[75] and other various instruments of public international law dealing with children's rights.[76] In its judgment, the CJEU found that the dedication for the respect of fundamental rights (child's rights included) is clearly stated already in recitals, since recital 2 of the Directive explicitly refers to the EU Charter of Fundamental Rights[77] which, at a time, was not yet a legally binding instrument.[78] Further on, the Family Reunification Directive also refers to "the best interests of minor children" (art. 5 para. 5) and therefore, requires the Member States to "examine the application in the interests of the child and with a view to promoting family life".[79]

Since then, the importance of the EU Charter evolved,[80] and the CJEU keeps referring to the Charter, in particular it's article 24, as well as to the CRC and the General Comment No 14 of the CRC.[81] In the last few years the CJEU has given over 20 preliminary rulings in asylum and migration cases, most of them containing explicit reference to article 24 para. 2 of the EU Charter.[82] On top of that the

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72 For the other reasons and some other cases connected to migration but not to return, see: *Gromek-Broc, K.: Vicissitudes of Unaccompanied Minors in the EU. In the best interests of a child: one step forward two steps back*, Ordines, Vol. 1, 2018. Available at: [http://www.ordines.it/wp-content/uploads/2018/08/KATARZYNA.pdf], Accessed 3 April 2025.

73 See: C-540/03 *Parliament v. Council*, ECLI:EU:C:2006:429.

74 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3. 101. 2003.

75 Available at: [https://www.echr.coe.int/documents/d/echr/convention_ENG], Accessed 3 April 2025.

76 The International Covenant on Civil and Political Rights (1966), The Convention on the Rights of the Child (1989), The International Convention on the protection of the Rights of all Migrant Workers and Members of their Families (1990), The Declaration on the Rights of the Child (1959), etc. (para. 33 of the Judgment).

77 *Op. cit.*, note 12.

78 C-540/03 *Parliament v. Council*, ECLI:EU:C:2006:429, para. 38.

79 *Ibid.*, para. 88.

80 Frasca, E; Carlier, J.-Y., *The best interests of the child in ECJ asylum and migration case law: Towards a safeguard principle for the genuine enjoyment of the substance of children's rights?*, Common Market Law, Review, Vol. 60, no. 2, 2023, p. 351.

81 Committee on the Rights of the Child: General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, 29 May 2013.

82 Frasca, E.; Carlier, J.-Y., *op. cit,* note 80, p. 345. Takács, N., *The treefold concept of the best interests of the child in immigration case law of the ECtHR*, Hungarian Journal of Legal studies, Vol. 62, No. 1., 2021, pp. 96-114.

CJEU continues to base its judgments on relevant recitals,[83] like the recital 22 of the Return Directive.[84] Compared to its early jurisprudence in asylum and migration cases in which the accent was on "balancing all the interests in play, taking particular account of the interests of the children concerned"[85], recent case law requires "general and in-depth assessment of the situation" in order to determine the best interests of the child.[86] Change of paradigm is additionally strengthened with the duty to take the best interests of a child as a "primary consideration" in all asylum and migration cases, in particular with respect to unaccompanied children since they are considered "extremely vulnerable" persons.[87]

So far, the CJEU has been asked to interpret the best interests of the child in the context of the Return Directive on three ocasions.[88] Two of these cases concerned the return of family members of a child who is an EU citizen.[89] The last one is the first case ever in which the CJEU ruled on return decision against third country national unaccompanied minor.[90] The case concerns an unaccompanied minor whose claim for international protection has been rejected.

In June 2017, an unaccompanied minor (TQ) aged 15 years and 4 months, applied in the Netherlands for a fixed-term residence permit on grounds of asylum. He stated to be born in Guinea but living with his late aunt in Siera Leone, after whose death he came to Europe/Amsterdam. There he claimed to have been the victim of human trafficking and sexual exploitation. In March 2018, the State Secretary *ex officio* rejected his application due to ineligibility to fixed-term residence permit. Also, in accordance with national law that decision constituted a return decision. In April 2018, TQ brought an appeal against that decision claiming *inter alia* that he doesn't know where his parents live or whether he has any other family members.

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83 See: C-233/18 *Haqbin*, ECLI:EU:C:2019:256 (para. 54); Joined cases C-273/20 and 355/20 *Bundesrepublik Deutschland*, ECLI:EU:C:2022:617 (para. 39); C-19/21 *Staatssecretaris van Justitie en Veiligheid*, ECLI:EU:C:2022:605 (para, 34).

84 C-441/19 *Staatssecretaris van Justitie en Veiligheid*, ECLI:EU:C:2021:9 (para. 6); C-112/20 *M.A. v. État Belge*, ECLI:EU:C:2021:197 (para. 4).

85 Joined cases C-356/11 and 357/11 *O. and S.*, ECLI:EU:C:2012:776 (para. 81).

86 C-441/19 *Staatssecretaris van Justitie en Veiligheid*, ECLI:EU:C:2021:9 (para. 46).

87 Frasca; Carlier, *op. cit.*, note 80, p. 367.

88 C-82/16 *K.A. and Others*, ECLI:EU:C:2018:308; C-441/19 *Staatssecretaris van Justitie en Veiligheid*, ECLI:EU:C:2021:9; C-112/20 *M.A. v. État Belge*, ECLI:EU:C:2021:197.

89 C-82/16 *K.A. and Others*, ECLI:EU:C:2018:308 and C-112/20 *M.A. v. État Belge*, ECLI:EU:C:2021:197.

90 C-441/19 *Staatssecretaris van Justitie en Veiligheid*, ECLI:EU:C:2021:9.

The referring court explained that the Netherlands legislation, with respect to unaccompanied minors, envisages dual approach. If the child is under 15 years old on the date of the application an investigation will be carried out and if the adequate facilities are not available in the State of return the child will be granted a residence permit. On the contrary, in relation to unaccompanied children over 15 years of age, the Netherlands legislation allows for automatic imposition of return in case of rejection of asylum application, without examination of the availability of adequate reception conditions in the country of return. The referring court also explained that, in such cases, the authorities responsible for the return periodically check whether the child and his guardian prepared for his return but they do not execute the return until the child in question reaches 18. In the meantime the child's status in Netherlands is irregular but tolerated.

Thus, the referring court wanted to know: 1) whether, under the EU law, in the case of unaccompanied minor the imposition of the obligation to return depends on an investigation whether an adequate reception facilities exist and are available in the country of origin; 2) is it permitted, under the EU law, to make distinctions on the basis of age when granting lawful residence on a teritorry if it is established that an unaccompanied minor does not qualify for refugee status or subsidiary protection; 3) is it permitted under the EU law to impose an obligation to return but not to undertake any concrete actions to proceed with removal until the unaccompanied child reaches 18 or it implies suspension of obligation to return and granting a lawful residence.

With regard to the first question, the Duch authorities were of the opinion that art. 10 para. 2 of the Return Directive may be interpreted in a way that the authorities may adopt a return decision even without examination in to „whether the unaccompanied minor will be returned to a family member, a nominated guardian or adequate reception facilities". The CJEU rejected such interpretation and took a clear stand that the best interests principle must be applied at all stages of the procedure and to all children regardless of their age (paras. 43 and 45). It means that the State before deciding to issue a return decision in respect of an the unaccompanied minor must carry out an investigation in order to verify specifically that adequate reception facilities are available for the unaccompanied minor in the State of return (paras. 49, 55, 58-60). Failing to do so places the minor in an intolerable situation, since „he would be a subject of return decision but could not be removed in the absence of adequate reception facilities"(para. 52), „he would be placed in a situation of great uncertainty as to his legal status" (para. 53) and „it is contrary to the requirement to protect the best interests of the child at all stages of the procedure" (para. 54).

With regard to the second question, the CJEU answered that „the criterion of age cannot be the only factor to be taken into account in order to ascertain whether there are adquate reception facilities in the State of return". Instead of automatic decision making the State should carry out an assessment on a case-by-case basis (para. 66).

Finally, in relation to the third question, the CJEU basically reiterated the answer to the first question, i.e. a return decision should only be adopted if there is a real possibility of implementing the decision in a way that fulfils the best interests of the child (para. 81).

The interpretations in this judgment must be considered not only in relation to the Return Directive but also in relation to the current and the future architecture of the European migration legislation. The CJEU emphasised couple of points. First, individual assessment is at the core of the unaccompanied child best interest determination. Any decision taken with respect to the child should lead to the regularization of the child's status, either in the State providing adequate reception facilities or in the Member States of refuge. Second, there are number of factors which must be taken into into account before deciding whether to adopt a return decision or not.[91] Only by carrying out a general and in-depth assessment of the situation of the unaccompanied minor in question, it is possible to determine the „best interests of the child" and to issue a decision which comlies with the requirements under Return Directive.[92] Since, under the new CEAS „construction", there is a „streamlined" approach to asylum and return and dual approach to return (border return proceedings and return proceedings), Member State authorities must carefully balance between fundamental rights and obligations arising from cross-referencing. Third, in any proceedings, an unaccompanied minor is entitled to the right to be heard, to the independent guardian and legal assistance.

The judgments of the CJEU, with an *erga omnes* binding force, should have a substantial impact on the interpretation of EU legislation and, implicitly, national legislation transposing EU legislation. Based on the facts of this case, it is safe to say that the Dutch legislator failed to implement the CJEU judgment, as well as the CRC and the ECHR, in more than one way. Unaccompanied children are by definition „vulnerable persons"[93] and the standards of protection applied to their

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91 *Inter alia*, the age, seks, particular vulnerability, state of physical and mental health, the placing in a foster family, the level of school education and the social environment of that minor (para. 47 of the *TQ* Judgment).

92 Para. 46 of the *TQ* Judgment.

93 Art. 3. para. 9. of the Return Directive, *op. cit.*, note 25.

situation should be highest. According to the General Comment No. 14,[94] the best interests of the child is a treefold concept: a substantive right; a fundamental, interpretative legal principle and a rule of procedure.[95] As such, it is self-executing, provides a framework for interpretation, and requires to be applied in all actions concerning children (either individually or as a specific group). „The best interests of the child shall be primary consideration in the adoption of all measures of implementation".[96] As a primary consideration, the decision-maker must not „treat any other consideration as inherently more significant than the best interests of the child".[97] The best interests of the child also require „appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the Convention".[98]

What is worrying in relation to this case is that even after the CJEU's judgment, and its clear guidance (in line with the CRC, EU Charter and the ECHR), the Dutch legislation remained (practicaly) the same. Justifying direct discrimination with respect to unaccompanied minors with policy considerations (which the reference to the lenght of the procedure implicitly is, since it only serves to advance the return rates) is far from the rule of law. More so, according to the Resolution of the Committee of Ministers adopted in May 2004,[99] this could qualify as a systemic deficiency,[100] which requires serious improvement of the current system.

5. CONCLUSION

As already explained, the reform of the CEAS did not go straightforward, mainly due to a lack of consensus among the Member States on the implementation of the principle of solidarity. When it finally happened it did not encompas the Return Directive, since there was no consensus with regard to the Proposal for a recast Return Directive. Placing the returns at the center of European migration policy, enlarging the scope of application of return border procedure and increasing the

94 *Op. cit*, note 81.

95 *Ibid.*, para. 6, p. 4.

96 *Ibid.*, para. 36, p. 10.

97 Collinson, J., *Making the best interests of the child a substantive human right at the centre of national level expulsion decisions,* Netherlands Quarterly of Human Rights, Vol. 38, No. 3, 2020, p. 187.

98 General Comment No. 14, *op. cit.*, note 81, para. 1, p. 11.

99 Resolution (Res(2004)3) on judgments revealing and underlying systemic problem, 12 May 2004.

100 *Ibid.* In this Resolution, the Committee of Ministers, having emphasised the need to help the states concerned to identify underlying problems, and to implement necessary measures, invited the ECtHR „to identify in its judgments finding a violation of the Convention what it considers to be an underlying systemis problem and the source of that problem, in particular when it is likely to give rise to numerous applications, so as to assist States in finding the appropriate solution and the Committee of Ministers in supervising the executioon of judgments". – para. I of the Resoultion.

link between return policies and asylum was not acceptable to many civil societies. Many interests groups have voiced their concerns, stating that the proposed Regulation: „turns forced returns into the default option for people in irregular situations", „massively expands the use and duration of immigration detention", „lays grounds for States to send people to countries to which they have no connection", etc.[101] However, new European migration policies have found their way through the backdoor, i.e. Pact on Asylum and Migration (May 2024) and the Proposal for a Return Regulation (March 2025). According to the Commission's press relase, main incentive for the proposed changes was the reasoning that the EU must „give protection to those in need" whilst removing „those who have no right to stay".[102] In order to achive that aim, double objective has been followed - effective returns and compliance with fundamental rights. However, looking into the new regime brings some concerns in relation to human rights, particularly of the most vulnerable migrants.

When it comes to return politics, the adoption of the Pact for Asylum and Migration already changed the „playing field" significantly. One of the biggest novelties introduced by the Pact is the creation of a „seamlesss link" between asylum and return policies.[103] To that end, there are numerous new provisions, scattered accross different legislative acts and cooperation agreements with third countries, which must be applied together with the existing global, regional and national legislation.[104] Thus, looking only into the Proposal for Return Regulation is far from enough to draw a final conclusions with regard to the respect for the best interests of the unaccomanied children within new return proceedings.

Namely, the Pact influences return in three different ways: the return decision must be a part of the asylum rejection decision; appeal procedure for asylum and return decisions within the border procedure are merged into one single procedure; the detention of asylum seekers is linked to the pre-removal detention during border procedures;[105] thus it should be evaluated as a whole.

In many aspects the Pact is more respectful of human rights that the Proposal for a recast Return Directive. Some standard safeguarding provisions are included with

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101 Available at: [https://emnbelgium.be/news/new-proposal-regulation-establishing-common-return-system-has-been-released], Accessed 3 April 2025.

102 European Commission press release: European Agenda on Migration: Commission presents new measures for an efficient and credible EU return policy, 2. 3. 2017. Available at: [https://europe.eu/rapid/press-release_IP-17-350_en.htm], Accessed 3 April 2025.

103 Moraru, M.: *The new design of the EU's return system under the Pact on Asylum and Migration*, p. 3. Available at: [https://eumigrationlawblog.eu/the-new-design-of-the-eus-return-system-under-the-pact-on-asylum-and-migration/], Accessed 3 April 2025.

104 *Loc. cit.*

105 *Loc. cit.*

regard to children and in particular unaccompanied minors (Respect for the CRC, Geneva Convention and EU Charter). They are not so „invisible" any more. There are also procedural guarantees, absent from the Return Directive, eg. right of the minor to be heard, child-friendly assistance, child-friendly interviews, etc.

However, compared to the Return Directive there are some points of concern, like the limitation of the right to defence, broad detention grounds, rather short deadline to complete the return border procedure, etc. Also, the detention remains one of the biggest issues. According to the Global detention project, at least 20 out of 27 EU Member States have held children in immigration detention during the last 5 years. Detention has been used a s „structural method at EU borders" and the last resort principle has rarely been observed.[106] Thus, it can also bi viewed as „expanding and extending the detention of people subject to return decisions based on vague and punitive grounds, new sanctions for failing to „cooperate" sufficiently with return proceedings, an increased use of entry bans, limited options for voluntary departure, and expansive derogations for people deemed a security risk".

On the other hand, the current return system, determined by the Return Directive (coloquially called the „Directive of shame"),[107] is from the very beginning labeled as unsatisfactory, exactly because of „inexcusably low" standards of protection of the fundamental rights.[108] Not even the two succesive Commission's „Return Handbooks"[109] helped to improve the quality of implementation.

According to statistics, children under 18 make up almost half of the world's refugee population. Also, according to the official reports, between 2014 and 2018, one registered migrant child was reported dead or missing every day worldwide.[110] Thus, the consideration that is given to the CRC, EU Charter and the ECHR is particularly relevant for unaccompanied minors. International human rights standards included in the Pact and the Proposal for a Return Regulation, if applied properly (assesing the best interests of the unaccompanied minor as the primary consideration in return proceedings), have the potential to change this saddening statistics.

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106 Karatzas, *op. cit.*, note 39, p. 7.

107 Lutz, F.: *The Negotiations on the Return Directive: comments and materials*, Wolf Legal Publishers, 2010. Baldaccini, A.: *The EU Directive on Return: Principles and Protest*, Refugee Survey Quarterly, Vol. 28, No. 4, 2009, pp. 114-138.

108 Progin-Theuerkauf, S.: *The EU Return Directive – Retour à la „case départ"?*, sui-generis, 2019, p. 35.

109 Commission Recommendation C(2015) 6250 of 1 October 2015 establishing a common „Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks, Commission Recommendation (EU) 2017/2338 of 16 November 2017 establishing a common „Return Handbok" to be used by Member States' competent authorities when carrying out return related tasks, OJ L 339, 19 December 2017.

110 Parliamentary Assembly of the Council of Europe: Missing refugee and migrant children in Europe, Strasburg, Resolution 2324 (2020).

REFERENCES

BOOKS AND ARTICLES

1. Baldaccini, A., *The EU Directive on Return: Principles and Protest*, Refugee Survey Quarterly, Vol. 28, No. 4, 2009, pp. 114-138
2. Bhabha, J., *Arendt's children: Do today's migrant children have right to have rights?*, Human Rights Quarterly, 2009, pp. 410-451
3. Collinson, J., *Making the best interests of the child a substantive human right at the centre of national level expulsion decisions,* Netherlands Quarterly of Human Rights, Vol. 38, No. 3, 2020, pp. 169-190
4. Dalrymple, J. K., *Seeking Asylum Alone: Using the Best Interests of the Child pricnciple to Protect Unaccompanied Minors,* Boston College Third World Law Journal, Vol. 26, No. 1, 2006, pp. 131-168
5. Dudely, M.; Steel, Z.; Mares, S.; Newman, L., *Children and young people in immigration detention*, Current Opinion in Psychiatry, Vol. 25, No. 4, pp. 285-292
6. Frasca, E.; Carlier, J.-Y., *The best interests of the child in ECJ asylum and migration case law: Towards a safeguard principle for the genuine enjoyment of the substance of children's rights?,* Common Market Law, Review, Vol. 60, no. 2, 2023, pp. 345-390
7. Gornik, B.; Sedmak, M.; Sauer, B., *Introduction – Unaccompanied minor migrants in Europe: between compassion and repression*, in: Gornik, B.; Sedmak, M.; Sauer, B. (eds.), Unaccompanied Children in European Migration and Asylum Practices. In Whose Best Interests?, New York, 2017, pp. 1-16
8. Gromek-Broc, K., *Vicissitudes of Unaccompanied Minors in the EU. In the best interests of a child: one step forward two steps back,* Ordines, Vol. 1, 2018. Available at: [http://www.ordines.it/wp-content/uploads/2018/08/KATARZYNA.pdf], Accessed 3 April 2025
9. Karatzas, A., *Bringing child immigration detention to an end: The case of EU return procedures*, European Policy Centre, 18 November 2022
10. Kilpatrick, J.: *The revised returns Directive: a dangerous attempt to step up deportations by restricting rights*, September 2019. Avalaible at: [https://www.statewatch.org/analyses/2019/eu-the-revised-returns-directive-a-dangerous-attempt-to-step-up-deportations-by-restricting-rights/#_ftn26], Accessed 3 April 2025
11. Lutz, F., *The Negotiations on the Return Directive: comments and materials*, Wolf Legal Publishers, 2010
12. Lutz, F., *Prologue: The Genesis of the EU's Return Policy*, in: Moraru, M.; Cornelisse, G.; de Bruycker (eds.), Law and Judicial Dialogue on the Return of Irregular Migrants from the European Union, Oxford: Hart, 2020, pp. 1-16
13. Majcher, I., *Legislating without evidence: The Recast of the EU Return Directive*, European Journal of Migration and Law, Vol. 23, 2021, pp. 103-126
14. Medić, I., *Najbolji interes djeteta u europskim prekograničnim predmetima*, in: Župan, M. (ed.), Prekogranično kretanje djece u Europskoj uniji, Osijek, 2019, pp. 9-59
15. Moraru, M., *The new design of the EU's return system under the Pact on Asylum and Migration*, p. 3. Available at: https://eumigrationlawblog.eu/the-new-design-of-the-eus-return-system-under-the-pact-on-asylum-and-migration/], Accessed 3 April 2025

16. Progin-Theuerkauf, S., *The EU Return Directive – Retour à la „case départ"?,* sui-generis, 2019, pp. 32.48.
17. Senovilla, D.; Lagrange, F., *The legal status of unaccompanied children within international, European and national frameworks, Protective standards v. restrictive implementation*, PUCAFREU Project, 2011
18. Smyth, C., *European Asylum Law and Rights of the Child*, New York, 2014
19. Smyth, C., *Towards a Complete Prohibition on the Immigration Detention of Children*, Human Rights Law Review, 2019, Vol 19, No. 1, pp. 1-36
20. Takács, N., *The treefold concept of the best interests of the child in immigration case law of the ECtHR*, Hungarian Journal of Legal studies, Vol. 62, No. 1., 2021, pp. 96-114
21. Triggs, G., *The impact of detention on the health, wellbeing and development of children: findings from the second National Inquiry into Children in Immigration Detention (Chapter 20)*, in: Crock, M.; Bension, L.B. (eds.), *Protection of Migrant Children. In Search of Best Practice*, Edward Elgar Publishing Limited, UK, 2018, pp. 407-410
22. Zwi, K., *et al., The impact of detention on the social well-being of children seeking asylum: a comparison with community-based children*, European Child Adolescent Psychiatry, Vol. 27, No. 4, 2018, pp. 411-422

COURT OF JUSTICE OF THE EUROPEAN UNION

1. C-540/03 *Parliament v. Council*, ECLI:EU:C:2006:429
2. Joined cases C-356/11 and 357/11 *O. and S.*, ECLI:EU:C:2012:776
3. C-166/13 *Mukarubega*, ECLI:EU:C:2014:2336
4. C-249/13 *Boudjlida*, ECLI:EU:C:2014:2431, 11. 12. 2014
5. C- 554/13 *Zh. and O.*, ECLI:EU:C:2015:377
6. C-146/14 PPU *Mahdi,* ECLI:EU:C:2014:1320
7. C-82/16 *K.A. and Others*, ECLI:EU:C:2018:308
8. C-233/18 *Haqbin*, ECLI:EU:C:2019:256
9. C-441/19 *Staatssecretaris van Justitie en Veiligheid*, ECLI:EU:C:2021:9.
10. C-112/20 *M.A. v. État Belge*, ECLI:EU:C:2021:197
11. Joined cases C-273/20 & 355/20 *Bundesrepublik Deutschland*, ECLI:EU:C:2022:617
12. C-19/21 *Staatssecretaris van Justitie en Veiligheid*, ECLI:EU:C:2022:605

EUROPEAN COURT OF HUMAN RIGHTS

1. *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Application no 13178/03, 12. 10. 2006
2. *Rahimi v. Greece*, Application no 8687/08, 5. 4. 2001
3. *AB and Others v. France*, Application no 11593/12, 12. 7. 2016
4. *RK and Others v. France*, Application no 68264/14, 17. 10. 2014
5. *Sh. D. and Others v. Greece, Austria, Croatia, Hungary, Northern Macedonia, Serbia and Slovenia,* Application no 14165/16, 13. 6. 201
6. *H.A. and Others v. Greece,* Application no 19951/16, 28. 2. 2019

EU LAW

1. Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03), OJ C 221, 19 July 1997
2. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3. 101. 2003
3. Resolution (Res(2004)3) on judgments revealing and underlying systemic problem, 12 May 2004
4. 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 illegaly staying thrid-country nationals, OJ L 348, 24 December 2008
5. Commission Recommendation C(2015) 6250 of 1 October 2015 establishing a common „Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks
6. Commission Recommendation (EU) 2017/2338 of 16 November 2017 establishing a common „Return Handbok" to be used by Member States' competent authorities when carrying out return related tasks, OJ L 339, 19 December 2017
7. Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegaly staying third-country nationals (recast), COM (2018) 634 final, 12 September 2018
8. Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (recast) – Partial general approach, 2018/0329 (COD), 13 June 2019
9. Parliamentary Assembly of the Council of Europe: Missing refugee and migrant children in Europe, Strasburg, Resolution 2324 (2020)
10. Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (recast), OJ L, 2024/1346, 22 May 2024
11. Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 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, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European parliament and of the Council „Qualification Regulation", OJ L, 2024/1347, 22 May 2024
12. Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, OJ L, 2024/1348, 22 May 2024
13. Regulation (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 establishing a return border procedure, and amending Regulation (EU) 2021/1148, OJ L 2024/1349, 22 May 2024
14. Regulation (EU) 2024/1350 of the European parliament and of the Council of 14 May 2024 establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147, OJ L; 2024/1350, 22 May 2024

15. Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013, OJ; L, 2024/1351, 22 May 2024
16. Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, OJ L, 2024/1356, 22 May 2024
17. Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of „Eurodac" for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac dana by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council, OJ L; 2024/1358, 22 May 2024
18. Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147, OJ L, 2024/1359, 22 May 2024
19. Regulation (EU) 2024/1717 of the European Parliament and of the Council of 13 June 2024 amending Regulation (EU) 2016/339 on a Union Code on the rules governing the movement of persons across borders, OJ L , 2024/1717, 20 June 2024
20. Proposal for a Regulation of the European Parliament and of the Council establishing a common system for the return of Third-country nationals staying illegaly in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council decision 2004/191/EC, COM (2025) 101 final, 11 March 2025

INTERNATIONAL LAW

1. The Declaration on the Rights of the Child (1959). Available at: [https://digitallibrary.un.org/record/195831?v=pdf/], Accessed 3 April 2025
2. The International Covenant on Civil and Political Rights (1966), Available at: [https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf/], Accessed 3 April 2025
3. The International Convention on the protection of the Rights of all Migrant Workers and Members of their Families (1990). Available at: [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-13&chapter=4&clang=_en/], Accessed 3 April 2025
4. UN Convention on the Rights of the Child (1989). Available at: [https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child/], Accessed 3 April 2025
5. General Comment No. 6 (2005): Treatment of Unaccompanied children and Separated Children Outside their Country of Origin, CRC/GC/2005/6 1 September 2005
6. Charter of Fundamental Rights of the European Union, OJ C 326, 26. 10. 2012

7. General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, 29 May 2013

WEBSITE REFERENCES

1. UNHCR's position regarding the detention of refugee and migrant children in the migration context, January 2017. Available at: [https://www.refworld.org/policy/legalguidance/unhcr/2017/en/115250/], Accessed 3 April 2025
2. European Commission press release: European Agenda on Migration: Commission presents new measures for an efficient and credible EU return policy, 2. 3. 2017. Available at: [https://europe.eu/rapid/press-release_IP-17-350_en.htm], Accessed 3 April 2025
3. UNICEF: Alternatives to Immigration Detention of Children, February 2019. Available at: [https://www.unicef.org/media/58351/file/Alternatives%20to%20Immigration%20Detention%20of%20Children%20(ENG).pdf], Accessed 3 April 2025
4. PICUM: Implementing Case Management Based Alternatives to Detention in Europe, March 2020. Available at: [https://picum.org/wp-content/uploads/2020/04/Concept-Paper-on-Case-Management_EN.pdf], Accessed 3 April 2025
5. International Organization on Migration (IOM); UN Children's Fund (UNICEF), UN Refugee Agency (UNHCR): Safety and Dignity for refugee and migrant children: Recommendations for alternatives to detention and appropriate care arrangements in Europe, May 2022. Available at: [https://www.unicef.org/eca/sites/unicef.org.eca/files/2022-07/Advocacy%20Brief%20Alternatives%20to%20detention%20appropriate%20care%20arrangements%20fo%20refugee%20and%20migrant%20children%20Europe.pdf], Accessed 3 April 2025
6. WHO: Immigration detention is harmful to health – alternatives to detention should be used, May 2022. Available at: [https://www.who.int/europe/news/item/04-05-2022-immigration-detention-is-harmful-to-health---alternatives-to-detention-should-be-used], Accessed 3 April 2025
7. WHO, Regional Office for Europe: Addressing the health challenges in immigration detention, and alternatives to detention: a country implementation guide, 2022. Available at: [https://iris.who.int/bitstream/handle/10665/353569/9789289057929-eng.pdf?sequence=2&isAllowed=y], Accessed 3 April 2025
8. „Happines, Love and Understanding": The Protection of Unaccompanied Minors in the 27 EU Member States, 18 May 2023, p. 11. Available at: [https://euromedmonitor.org/en/article/5642/%E2%80%9CHappiness,-Love-and-Understanding%E2%80%9D:-The-Protection-of-Unaccompanied-Minors-in-the-27-EU-Member-States], Accessed 3 April 2025
9. Children in migration – asylum applicants – statistics explained, April 2024. Available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Children_in_migration_-_asylum_applicants&oldid=636360], Accessed 3 April 2025