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The Protection of Unaccompanied Minors in Europe: Revising the Existing Asylum Policies of the European Union

Abstract: Children, who are outside their country of origin and separated from their parents or other relatives are referred to unaccompanied minors. Although the Common European Asylum System (CEAS) of the European Union (EU) has ascertained that member states should not send asylum seekers to another country where they would not be safe, the member states often take restrictive measures to repatriate vulnerable groups such as unaccompanied minors and prevent their entries. Therefore, the paper argues that the existing prevailing asylum policies of the EU have failed to address the protection needs of unaccompanied minors. This fragmented protection is comprised of lapses in the family reunification process, negligence of their take-charge requests, prolonged detention and expulsions. Along with that understanding, the author concludes that the time has come for a timely revision of the EU asylum mechanisms. Moreover, the paper employs qualitative methodology to substantiate both dependent and independent variables. The cross-border movements of unaccompanied minors are viewed as the independent variable, while the EU's stance on unaccompanied minors is reflected as the dependent variable.

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Zaščita mladoletnikov brez spremstva v Evropi: pregled obstoječih azilnih politik v Evropski uniji

Izvleček: Otroci, ki so zunaj svoje matične države in ločeni od staršev ali drugih sorodnikov, se imenujejo mladoletni migranti brez spremstva. Čeprav Skupni evropski azilni sistem (CEAS) v Evropski uniji (EU) prepoveduje državam članicam vračanje prosilcev za azil v države, kjer niso varni, le-te pogosto sprejemajo restriktivne ukrepe premeščanja ranljivih skupin, vključno z mladoletnimi migranti brez spremstva ter tako preprečujejo njihov vstop v EU. Članek na podlagi omenjenega argumentira, da prakse azilnih politik EU ne upoštevajo potreb mladoletnih migrantov po celoviti zaščiti. Ta fragmentarna zaščita je pogosto posledica napak v procesu združevanja družine, zanemarjanja njihovih zahtev za prevzem odgovornosti, dejstva dolgotrajnega pridržanja in vračanja v druge države. Ob tem avtorica v članku ugotavlja, da je čas za revizijo azilnih mehanizmov EU, pri čemer uporablja kvalitativno metodologijo za utemeljitev tako odvisnih kot neodvisnih spremenljivk; čezmejna gibanja mladoletnikov brez spremstva obravnava kot neodvisno spremenljivko, medtem ko se stališča EU do mladoletnikov brez spremstva v analizi obravnavajo kot odvisna spremenljivka.

Ključne besede: mladoletniki brez spremstva, prosilci za azil, CEAS, združitev družine, zahteve za prevzem odgovornosti, pridržanje, izgoni

Introduction

Generally, 'asylum' is interpreted as a privilege that is conferred by the state. The inherent right of individuals to seek asylum was given a mere metric unit to measure it. It signifies that states have discretionary powers to accept or refuse the requests made by asylum seekers. According to the United Nations High Commissioner for Refugees (UNHCR 2022), an asylum seeker is an individual who has left their country of origin with the aim of seeking international protection against persecutions and whose protection claims are in the pending stage. Article 14 of the 1948 Universal Declaration of Human Rights (Office of the United Nations High Commissioner for Human Rights 1948) has recognised the right of people to seek asylum as a universal right of every individual as follows:

> *Everyone has the right to seek and to enjoy in other countries asylum from persecution. The right may not be invoked in the case of persecution genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.*

Article 1 of Convention Relating to the Status of Refugees defines a refugee as a person who fears prosecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. This convention is an advancement of the 1933 Convention Relating to the International Status of Refugees that can be named as the first international agreement, which forbids the removal of a refugee to a territory where he or she holds the risk of being exposed to persecution. In accordance with that purview, unaccompanied minors may not be able to articulate the well-founded fear due to their incapability to understand prevailing situations in their home countries.

In the opinion of the 'Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum', unaccompanied minors are persons who are under the age of eighteen and are separated from both parents (Office of the United Nations High Commissioner for Refugees Geneva 1997). As per the Article 1 of the Convention on the Rights of the Child (CRC) (United Nations 1989) they are not being cared for by an adult, law or custom. The New York Declaration for Refugees and Migrants (NYD) which was presented by the United Nations UN General Assembly in 2016 has also reiterated the importance of an organised asylum procedure and encloses a wide range of commitments to enrich the protection of unaccompanied minors (United Nations 2016). Unlike the 1951 convention (UNHCR 1951), the NYD indicates state responsibilities in protecting unaccompanied minors and provides specific support for them under international law:

> *We recognise and will address, in accordance with our obligations under international law, the special needs of all people in vulnerable situations who are travelling within large movements of refugees and migrants, including women at risk, children, especially those who are unaccompanied or separated from their families.* (United Nations 2016, Article 23)

European Union

When it comes to the context of Europe, it was highlighted in Article 80 of the Treaty on the Functioning of the EU (TFEU) that border, asylum, and immigration policies of the EU are governed by the principle of solidarity and fair sharing of responsibility. The solidarity delineates the capability of distributing asylum seekers among the member countries and their loyalty towards the institutional norms. For instance, Dublin Regulation has assured the responsibility of the member states to examine asylum

applications based on the first point of entry of asylum seekers and grant them a refugee status. But, as the solidarity of the EU has been securitized, it has not yet implemented an effective protection mechanism for vulnerable groups like unaccompanied minors. Feller (2001, 584) views that these problems are predominantly caused by the lack of a shared international sense when it comes to unaccompanied minors. It is mainly derived from the conflicting status on EU Directives that has emerged between the member states and the EU. In this setup, Dreyer-Plum (2017, 6-7) has argued that the European asylum system is a highly fragmented system, which undermines the credibility of the EU as a sponsor of human rights and good governance.

In the case of relevant theories, which can be used to analyse this situation, the theory known as 'Securitization' provides a definite layout to analyse the security stances of the states on the protection seekers. Buzan and Waever (1998, 15) posit that the securitization theory is radically constructivist, which views that an issue can be securitized when it gets constructed into a threat. Hereby migration is perceived as a serious challenge to the long-standing paradigms of state identity and the transnational nature of the EU.

The Unaccompanied Minors in Europe

In line with the 'Action Plan on Unaccompanied Minors' (2010-2014) formed by the EU Commission, the Council has set out a common approach for the protection of children based on the CRC (European Commission 2010). It deals with the fulfilment of the protection needs of any child irrespective of their immigration status or citizenship. CRC is the first international human rights treaty that brought a unique human rights approach for children. It was also ratified by all EU member states. Article 2 of the CRC places compulsions upon states to safeguard children against all

forms of discrimination or punishment. As these minors come from disrupted societies where poverty, violence, inequalities are deeply rooted, their right to enjoy international protection can be identified as one of the universal values. In this setup, the 'Executive Committee of the UNHCR' (UNHCR 2007) has categorized children as active subjects of rights as follows:

> *A rights-based approach, which recognises children as active subjects of rights, and according to which all interventions are consistent with State's obligations under relevant international law, including, as applicable, international refugee law, international human rights law and international humanitarian law, and acknowledgement that the CRC provides an important legal and normative framework for the protection of children.*

As mentioned by the committee, strengthening government liabilities in order to fulfil the children's right to protection ensures their fundamental right to live. The scope of the EU treaty provisions can be cited in the following manner.

> *In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.* (European Union 1957)

Moreover, the member states are bounded by well-established EU Directives, case laws of the the European Court of Human Rights (ECtHR), treaties of the Council of Europe and other region-

al agreements. As defined in Article 2(h) of the EU Council Directive 2003/9/EC (Council of the European Union 2003), unaccompanied minors are non-EU nationals or stateless persons below the age of 18 and unaccompanied by an adult responsible by law or custom. The term unaccompanied minor first emerged within the EU scope in 2000, in a study carried out by the European Parliament (EP) to examine how children's rights were being practised in multiple settings in Europe (Bernd 2017, 1). The 'Coordination and Cooperation in Integrated Child Protection System' was launched by the EU in 2015 to instigate a protective policy for unaccompanied minors (Coordination and Cooperation in Integrated Child Protection Systems 2015; European Commission Reflection Paper 2015). This aspect was anchored in the 'Common European Asylum System' (CEAS), which emerged in 1992 with the intent to reinforce the notion of intergovernmental cooperation on asylum policies. In other words, the commitment of EU member states to process asylum applications became prominent after signing the Maastricht Treaty in 1992. Article K of the treaty assimilated the concept of asylum into EU's third pillar known as Justice and Home Affairs, as a 'matter of common interest' (European Union 1992). Under this treaty, a new institutional approach was introduced to allow the EU Council to work closely with the EU Commission in implementing asylum initiatives. Then the communique of the Treaty of Amsterdam titled 'Towards an Area of Freedom, Security and Justice' (AFSJ) brought new priorities to the field of asylum seeking, including minimum standards for asylum procedures that are obliged by the EU council and Commission (European Union 1997). In conjunction, Article 73K (b) of the Amsterdam treaty determines that temporary protection is required to be granted to asylum seekers through a definite burden sharing mechanism. This approach was further reinforced by the concept of solidarity, which is an overrid-

ing principle used in sharing the burden of asylum seekers among the EU member states. It is mainly aligned with the willingness of member states to share asylum seekers within the union (Council of the European Union 1995). From that perspective, Article 67 of the TFEU has introduced a common policy on asylum, immigration and external borders. This intertwines with the Preamble to the EU Charter of Fundamental Rights (CFR), which demonstrates universal values of human dignity, freedom, equality and solidarity (European Commission 2022a; European Parliament, Council of Europe and European Commission 2012). These collective identities have given the union the competence to act in the field of asylum, immigration and external border controls by performing their shared obligations. Wendt's (1995, 77-78) findings specify that the collective identity consists of interdependence, common perceptions and homogenization of polices. In this milieu, it is very clear that all EU member states are responsible for protecting the human rights of asylum seekers. But the rules and regulations that have been set out within the scope of CEAS meant to ensure the international protection of asylum seekers have now become more complex due to its legal provisions and the disinclination of member states to accommodate unaccompanied minors in their countries.

It has been reported that an estimated 9,300 unaccompanied minors had entered Europe between January and August 2021 (UNICEF 2022b). The lifting of COVID-19 regulations and Turkey's decision in 2020 to open its borders with Greece and Bulgaria led to an influx of unaccompanied minors from Northern, Sub-Saharan Africa and Syria to the countries like Greece, Montenegro, Bulgaria and Serbia. It showed a 95% increase compared to the same period in 2020 (European Parliamentary Research Service 2022). Furthermore, unaccompanied minors who had sought protection in the EU in 2021 later increased to 72%, which was mainly

followed by the resurgence of the Taliban in Afghanistan (Reuters 2022). In this regard, Eurostat confirms that unaccompanied minors, who applied for asylum in 2020, rose to 23,255 (Reuters 2022). On the other hand, the ongoing war between Russia and Ukraine has intensified the moves of the unaccompanied minors to EU states such as Slovakia, and Romania. The European Commission (2022b) has found out that 500 unaccompanied minors have arrived in Romania and to the Polish-Ukrainian border by May 2022.

Most likely, the prevalent burden of unaccompanied minors imposed on EU states is caused by the inefficiency of the CEAS in managing the inflows of asylum seekers. Dublin regulation (DR) was introduced in 1990 for the first time to lodge asylum claims effectively within the member states (Smythies and Ramazzotti 2013). The regulation was signed as a co-response to the implementation of the Schengen Agreement. Through further developments, DR II was announced in 2003 to make sure that the applicants are offered substantive examinations. Moving forward from both DR I and II, DR III was formed in 2013 with the goal of diminishing deficiencies faced by the member states. In Feller's (2001, 593) words, problems faced by refugees and asylum seekers are predominantly followed by the absence of a shared international sense of responsibilities. In relation to this, DR generally establishes the member state's responsibility to examine asylum applications based on the first point of entry. As per the Asylum Procedures Directive (The Council of the European Union 2005):

> *A country can be considered to be a first country of asylum for a particular applicant for asylum if: (a) s/he has been recognised in that country as a refugee and s/he can still avail him/herself of that protection; or (b) s/he otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement.*

This arrangement has led to a rise in the share of these first countries. Again, the DR was contradicted with the ruling made by the Court of Justice of the European Union (CJEU) in the case of the MA and Others v. Secretary of State (Court of Justice of the European Union 2013). The court concluded that for unaccompanied minors who have lodged more than one claim for international protection in two member states, the responsible member state is the country in which the minor is accommodated after having lodged an asylum application there.

Family Reunification and Take-Charge Requests

Family reunification of unaccompanied minors indicates bringing together a child and his or her previous care providers for the purpose of re-establishing long-term care. The right of individuals to enjoy family life without any disturbance has been documented as one of the basic human rights in both the International Covenant on Civil and Political Rights (ICCPR) and CRC. In line with the CRC, a child shall not be separated from his or her parents against their will. At this point, DR III has demonstrated that the unaccompanied minors are only permitted to unify with family members who are legally settled within the member states but not with family members who seek asylum in other countries. This provision has restricted the possibility of unaccompanied minors settling with their family members.

Moreover, Article 2 (d) of the DR III defines that the father, mother or other adults are permissible to protect unaccompanied minors, but not their siblings. This confines the opportunities of unaccompanied minors to settle with their younger siblings who might be living in different EU member states. Therefore, it is very clear that the best interests of unaccompanied minors have been neglected by the EU asylum mechanisms in reunifying them with their families.

All state obligations regarding children, enshrined in the modern international refugee regime are primarily interlinked with their best interests. Generally, the best interest of children describes the well-being of children and is applied consistently with international legal norms. The assessment of the best interest of unaccompanied minors is a unique activity that is required to be undertaken in each asylum case in accordance with the procedural safeguards. In the words of the Committee on the Rights of the Children's (2013):

> *... assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it biased on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.*

In line with it, the NYD (United Nations 2016) for Refugees and Migrants assures to:

> *... protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and giving primary consideration at all times to the best interests of the child. This will apply particularly to unaccompanied children and those separated from their families; we will refer their care to the relevant national child protection authorities and other relevant authorities. We will comply with our obligations under the Convention on the Rights of the Child.*

In other words, in the case of making any decision regarding unaccompanied minors by public or private social welfare institutions, courts of law, administrative authorities or legislative

bodies, the prime consideration needs to be given to the best interest of the child (United Nations 1989). Unlike Principle 2 of the 1959 Declaration on the Rights of the Child, the CRC fails to interpret the best interest of the child in a broader view. Nevertheless, both the declaration and convention have not exactly elaborated the term of 'best interest'. At this point, capacities in assessing the best interest of children differ from one country to another. The question then arises on how to define the best interest of children and what criterion needs to be considered in ascertaining said best interest. Despite CRC permitting the detaining of children only as a measure of last resort and for the shortest period, the detention of unaccompanied minors takes place in an atmosphere of enforcing decisions to repatriate them to their countries of origin. Hence, many of these detained minors run away due to their fear of being sent back to war zones where they came from. Conversely, the European Convention on Human Rights (ECHR) in the case of Rahimi v. Greece (Smyth 2013, 21) has endorsed that the best interests of children must be assessed before transferring them to another location. Most importantly, this case is the first time a court examined an unaccompanied minor who was released from a detention centre without assessing his best interest. The striking factor is that the capabilities and understandings of legal representatives who are appointed on behalf unaccompanied minors to exemplify their best interests may vary from one person to another. Legal representatives are legal advisors or professionals who deliver legal assistance to unaccompanied minors. For instance, a specific asylum act law functioned in Portugal to assure the competencies of legal representatives are in conformity with the measures adopted by the 'Portuguese Refugee Council' (CPR) (Delbos et al. 2012, 52). But the process is not being implemented effectively because

of the absence of competent staff (ibid). Reasoning from this fact, unaccompanied minors are not in a position to lodge their asylum applications on time as they cannot apply for asylum without a legal representative.

Furthermore, the legal representatives who are appointed to assess the best interest of unaccompanied minors must exercise their responsibilities until a relevant guardian is appointed for them. As stated in Article 2 (K) of the DR III (European Database of Asylum Law 2013), representatives are persons or organizations assigned by the shelter states to assist the minors. Particularly, volunteers, lawyers and even mayors in the member states act as the representatives of unaccompanied minors (European Commission 2015). In relation to that, Article 8 of the DR IV suggest appointing guardians for unaccompanied minors no later than twenty-four hours after making the application. These shorter deadlines would disrupt the efficacy of the procedure as well as the best interest of children (European Council on Refugees and Exiles 2016). A guardian is a person or organization appointed for an unaccompanied minor to ensure the overall security of the child, by projecting their best interests and exercising legal representations and procedures on behalf of the child (European Union Agency for Fundamental Rights 2022). In line with the EU proceedings n. 2014/2171, guardians are often appointed several months after the minor's arrival. A relative, a person close to the child's family or different suitable persons are often named as guardians. They are informed of every action taken in relation to unaccompanied minors and permitted to be present during all planning and decision-making processes, including appeal hearings and all care arrangements (UNHCR 2017).

In addition, take-charge requests made by the EU states in support of unaccompanied minors are constantly expired due to the failures in the process of determining their best interests. Take-

charge requests refer to first application, which is being processed in a State where the Dublin III Regulation applies (International Protection Office 2022). A take-charge request is emanated when the applicant has not previously applied for asylum, but another member state is considered to be responsible based on a pre-determined criterion. In conformity with these applications, take-charge requests of unaccompanied minors, which are submitted to another country on the grounds that their legal residence and place of entry need to be justified through the applicant's close and fair links to that country.

Article 21 of the DR III asks member states to proceed by taking charge of requests within 3 months from the date of application. The receiving countries then need to give a decision for take-charge requests within two months from the date of request. Conversely, the reluctance and inabilities of the sheltering states to initiate these mechanisms have resulted in extended delays of transfer decisions. At the same time, unaccompanied minors who have received the acceptance for their take-charge requests are required to wait for extended periods of time until the arrangements are made by the receiving countries.

The refusal to take-charge requests is also driven by the inability of unaccompanied minors to produce sufficient proof on their countries of origin. The majority of these unaccompanied minors remain undetected within their host countries as they arrived from societies where their dates of birth are often not even recorded (Silverman 2016, 32). It was reported that one in four children under the age of 5 worldwide has never been officially registered (UNICEF 2019). As an example, in the countries like Afghanistan, it is difficult to obtain documentations on the biological age of minors because of the lack of bureaucratic and institutional resources. Validating the willingness of both children and their parents to

reunite is another challenge of this family reunification process. This concern was brought once by the case of Tuquabo-Tekle & Others v. the Netherland (ECtHR 2006b), which examined the inability of the government of the Netherlands to identify an unaccompanied minor's interest to rejoin her mother who has chosen to leave her behind in the country of origin and married a refugee living in the Netherlands. The ECtHR stated that it is questionable to what extent the interest of the mother can be assessed once she left her child following the death of her husband. The difficulty of meeting the deadlines of take-charge requests was also questioned in the case of VG Wiesbaden AZ. 4 L 478/19.WI. A (Administrative Court Wiesbaden 2019), which addressed the matter of a single mother from Afghanistan who moved to Germany with one child while leaving her second child in Greece. Though Greece made a take-charge request by considering the child's best interest, both take-charge requests and re-examination requests were rejected on account of the expiration of the deadlines. Hence, it is apparent that there is an imprecision in the EU asylum system regarding the protection of unaccompanied minors who were initially accompanied by an adult and then abandoned during the journey.

The absence of member states' concerns about effective family reunification of unaccompanied minors has also resulted in trafficking. Trafficking has been known as a serious violation of fundamental rights that involves practices such as abuses and deceptions of vulnerable persons. With this understanding, 'Claude Moraes' who was the former chair of the European Parliament (EP)'s Justice and Home Affairs Committee, once pointed out the need of having an organised care for unaccompanied minors once they arrived in Europe (Neslen 2017). The Anti-trafficking Directive (2011/36/EU) has highlighted the necessity of giving distinct attention to unaccompanied minors who are the victims of traf-

ficking. Article 13 (2) of the Anti-Trafficking Directive has advised EU member states to arrange initial support and protection for children who are vulnerable to trafficking (European Parliament and Council of the European Union 2011). Even so, the EU Agency for Law Enforcement Cooperation (EUROPOL) has observed that at least 10,000 refugee children have disappeared after arriving in Europe (As cited in Townsend 2016). Within this landscape, it has found out that at least 18,000 unaccompanied minors have disappeared after entering countries like Germany, Greece, and Italy (Einashe and Homolova 2021). Besides, the Inter -Agency Coordination Group against Trafficking (ICAT), (as cited in UNICEF 2022a) has confirmed that 28 % of victims of the global trafficking represent children. As mentioned by Einashe and Homolova, trafficked unaccompanied minors often become the targets of the sexual exploitation, forced begging and labour. For instance, it was revealed in 2019 that 60 Vietnamese children had disappeared from shelters in the Netherlands. The Dutch authorities assumed that they had been trafficked into Britain to work on cannabis farms and in nail salons (Einashe and Terlingen 2019). In 2020, the Austrian government also acknowledged the fact that approximately 4500 unaccompanied minors, who had applied for asylum in Austria last year, had disappeared and were transferred into the hands of traffickers (MacGregor 2022).

Detention

In the case of processing the asylum mechanisms of unaccompanied minors, detention can be reflected as the one of the common measures that is undertaken by the states. Article 19 of the CRC mentions that a detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort. In other words, it justifies the detention of children

in compliance with the law. Generally, unaccompanied minors frequently undergo detention once they are captured. These detention centres do not offer a specially designed or child friendly environment that could be beneficial to their growth and education. Pertaining to this concern, the ECtHR held in the cases of Rahimi v. Greece (European Database of Asylum Law 2011) and Abdullahi Elmi and Aweys Abudakar v. Malta (ECtHR 2016) that the inadequate hygiene and infrastructure facilities of detention centres undermine the human dignity of unaccompanied minors. However, states like Costa Rica (Global Detention Project 2015) and Ireland (Delbos et al. 2012, 30-31) have forbidden the detention of children for immigration purposes. As rendered in the case of Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (ECtHR 2006a), known as Tabitha's case, the detention of unaccompanied minors in incongruous environments and repatriating them to their countries of origin violates the minor's right to a family life. In line with this, the court affirmed that exceptional care for unaccompanied minors in detention is highly required to assure their safety. Besides, unaccompanied minors are reluctant to share information on their parents or caregivers, especially when they are in the custody of government authorities. Furthermore, prolonged detentions have made a negative impact on the aged-out young minors. Particularly adolescent unaccompanied minors, who passed the age of 18, are regularly subjected to lengthy detentions or repatriations. Also, unaccompanied minors held in detention are often at a risk of post-traumatic stress disorder that negatively impacts their health and development. These unaccompanied minors stay for extended periods in camps, without being exposing to the cultural and social patterns of their host countries. They undergo serious physiological stages due to the loss of their identity and protection. Although paragraph 33 of the NYD asks to adopt alternatives to detention of

children, the international community has not yet proposed a progressive alternative for detention. Again, the court held in the cases of Rahimi v. Greece (ECtHR 2011b) and Abdullahi Elmi and Aweys Abudakar v. Malta (ECtHR 2016) that the hygiene and infrastructure facilities are a basic right of unaccompanied minors.

Expulsions and Returns

Article 19 of the CFR states that Non-refoulement prohibits sending asylum seekers to a country in which they would face serious risks caused by torture or inhuman degradation (As cited in the European Commission 2022). It is an exceptional limitation to exercise sovereign rights of states to repatriate aliens to their countries of origin. In this regard, as per the UN Convention Against Torture, expelling unaccompanied minors to their countries of origin where they are likely to be tortured can be named as a violation of human rights. (UNHCR 1984). Since the principle of Non-refoulement is not being upheld on the high seas or in international waters, there are issues related to the enactment of this principle. Nevertheless, the irrelevance of the provision to safeguard unaccompanied minors was questioned in the case of ECtHR-M.S.S. v. Belgium and Greece (ECtHR 2011a). The case dealt with the removal of unaccompanied minors with Afghan citizenship from Greece and Belgium and then to the child's home country by exposing them to perilous environments. With this background, the expulsion of unaccompanied minors is a practice of states that compel children to leave a country, even without any reasonable examination of their protection claims. The court rule given by the ECtHRn the case of Hirsi Jamaa and Others v. Italy case (ECtHR 2012), elaborated further that the maritime interceptions of unaccompanied minors on the high seas infringe the IV additional protocol pertaining to the prohibition of collec-

tive expulsions. These expulsions of asylum seekers are frequently prompted by maritime interceptions of states, which are aimed at preventing their arrival. This reality was also acknowledged by Violeta Moreno-Lax's (2008, 333), which stated that the expulsion too includes the rejections unaccompanied minors at the borders. Regarding the return of unaccompanied minors, the EU Returns Directive (European Parliament 2020, Article 10(2)) indicates that before making a return decision for an unaccompanied minor, the receiving country needs to confirm that the child would be returned to a family member, a nominated guardian or would undertake adequate reception facilities. Despite these commonly accepted rules, member states have launched different mechanisms, which question the collective stance of the EU.

The Way Forward

In 2016, the EU Commission proposed to revise the existing Dublin procedures to address deficiencies that exist in the Dublin applications (European Commission 2020). From that point of view, DR IV was drafted to introduce a well-organized reception procedure. The proposal intends to 'create a fairer, more efficient, and suitable mechanism in processing asylum applications among the member states (European Commission 2016). The judgement made by The Supreme Court (2015) in the case of TN, MA (Afghanistan) (Appellants) v. Secretary of State for the Home Department (Respondent) assured the importance of assessing the best interest of unaccompanied minors before tracing their family links. Tracing is a process of searching for the child's primary or usual caregivers and other family members in accordance with the best interest of the child. This also refers to the search for missing children, whose parents are looking for them. After these tracing activities, states need to decide whether unaccompanied minors

need to return to their countries of origin or to another third country. However, this provision might be incompatible with Article 3(3) of the DR IV that permits states to review the admissibility of the applicants to grant protection prior to the assessment of their family links (European Council on Refugees and Exiles 2016).

Conclusion

In conclusion, the protection of unaccompanied minors should be positioned in the EU asylum system as these are under-aged individuals who leave their home countries in search of safety and shelter. Since these minors come from disrupted societies where poverty, violence, inequalities are deeply rooted, their right to enjoy international protection needs to be identified by sovereign states as a key universal norm. Since a separate legal mechanism or declaration on the asylum claims of unaccompanied minors has not yet been formulated by the EU, their freedom to seek asylum has been jeopardised across Europe. For that, states must adopt relevant legal provisions in respect of their rights and claims. Although universal discourses on the protection of unaccompanied minors are merely predicated as special recognition, an unresolved question remains on the commitment of EU member states to facilitate effective sharing of unaccompanied minors among the member states.

The limited power that derives from EU international mechanisms and procedures does not overcome the above-discussed challenges faced by unaccompanied minors. It is also evident that a conflicting status has emerged between the member state's asylum policies and the EU asylum law, which is mainly followed by interpretive inconsistencies. Therefore, it is unclear whether member states are truly bound by the shared EU norms and values. With this in mind, the protection of unaccompanied minors is required to be the first and foremost concern of member states

since the international human rights law upholds the protection of children as an inalienable human right.

The reluctance of member states to agree upon a common strategy to process take-charge requests and assess the best interest of unaccompanied minors has often resulted in the separation of them from their families. Therefore, comprehensive actions are required in order to share unaccompanied minors among the member states effectively and exercise their jurisdiction in complying with the international law. In conjunction, an authoritative body that monitors or reports the issues of unaccompanied minors needs to function within the existing EU asylum system.

In dealing with the family reunification of unaccompanied minors, it is essential to first broaden the scope of family members by allowing unaccompanied minors to unify even with their siblings in an extended manner. Along with existing regulations, take-charge requests of unaccompanied minors, which are submitted to another country on the grounds of their legal residence and place of their entry, should be justified through the applicant's connection to that country.

The lack of safety for unaccompanied minors at the borders where they are denied entry is mainly caused by the absence of a child-centred strategy. Subsequently, protection gaps in the treatment of unaccompanied minors need to be addressed by the relevant state and legislative authorities by developing the clauses related to child protection. States should give the utmost attention to widening child-specific forms and manifestations in determining their status. Creating an independent body to formulate a common criterion to measure the best interests of children and provide legal assistance on national asylum policies would be more beneficial to address the protection needs of unaccompanied minors. Its focus must be laid on an effective and sustainable child protection system that includes a better reception system, emergency response

mechanisms, secured accommodation systems, inter-state collaborations, proper coordination between governments and law enforcement agencies, and an efficient information sharing arrangement regarding unaccompanied minors across the territories. All those procedures must also stem from understanding the inability to make a definite benchmark on the eligible age for unaccompanied minors that is highly dependent on social, political and psychological factors. Finally, this paper concludes that the EU should review its asylum policies concerning unaccompanied minors in order to establish efficient and effective protection for them.

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