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“Economic, social and cultural rights of
migrant children in the European Union”

INSTITUTE
OF LAW,
POLITICS AND
DEVELOPMENT



Scuola Superiore
Sant'Anna



Migration, Asylum and Rights of Minors

Reintroduction of Border Controls: impact
on **unaccompanied minors** in transit

The southern French-Italian border case

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Key definitions

UNACCOMPANIED MINOR (or unaccompanied migrant child): an individual under the age of eighteen years old who migrates across international borders and is separated from their parent or legal/customary guardian. The term might include unaccompanied asylum-seeking children.

ASYLUM SEEKER: a person who seeks protection from persecution or serious harm in a country other than their own and awaits a decision on the application for refugee status under relevant international and national instruments. *(Derived by the EMN — European Migration Network)*

REFUGEE: a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country. *(Art. 1, Geneva Convention 1951)*

GUARDIAN: an independent person who safeguards a child's best interests and general well-being. To this effect, the guardian complements the limited legal capacity of the child. The guardian acts as a statutory representative of the child in all proceedings in the same way that a parent represents his or her child. *(UNCRC General Comment N. 6)*

Key definitions

INTERNAL BORDER: Schengen Member States' common borders, including land borders, river and lake borders, sea borders and their airports, river ports, sea ports and lake ports. *(Derived by the EMN from Schengen Borders Code)*

EXTERNAL BORDER: the parts of a Schengen Member State's border, including land borders, river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, that are not common borders with another Schengen Member State. *(Derived by the EMN from Schengen Borders Code)*



Source: schengenvisa.info.com

Legal framework

- Geneva Refugee Convention (1951) and its Protocol (1967);
- Convention on the Rights of the Child (1989);

Article 3: *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the **best interests of the child** shall be a **primary consideration**."*

Article 27 (b): *"**No child** shall be **deprived** of his or her **liberty unlawfully** or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time"; (d) "Every child deprived of his or her liberty shall have the **right to prompt access to legal and other appropriate assistance**, as well as **the right to challenge the legality** of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."*

- Directive 2013/32/EU (2013);

Article 8 (1): *"Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, **Member States shall provide them with information** on the possibility to do so."*

- Schengen Borders Code (2006);
- Dublin III Regulation (2013).

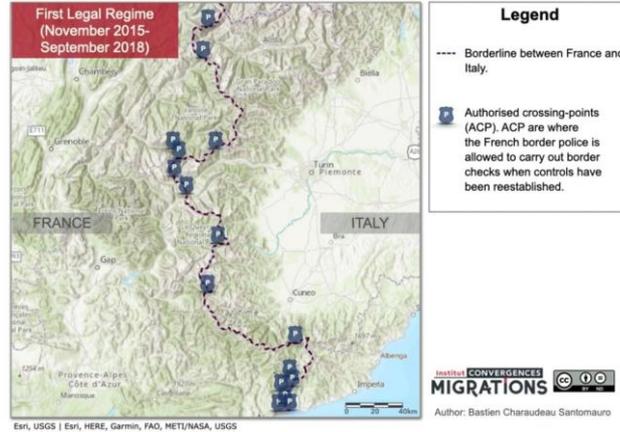
Context

Since 2015, France suspended the rule of free of movement in the Schengen area, reintroducing controls to its European borders (internal borders). This measure, that France firstly justified by the existence of a persistent terrorist threat and therefore supposed to be exceptional and temporary (1), keeps being implemented nowadays, constituting a new border regime.

Controls at the French-Italian Border: Legal Regimes



Controls at the French-Italian Border: Legal Regimes



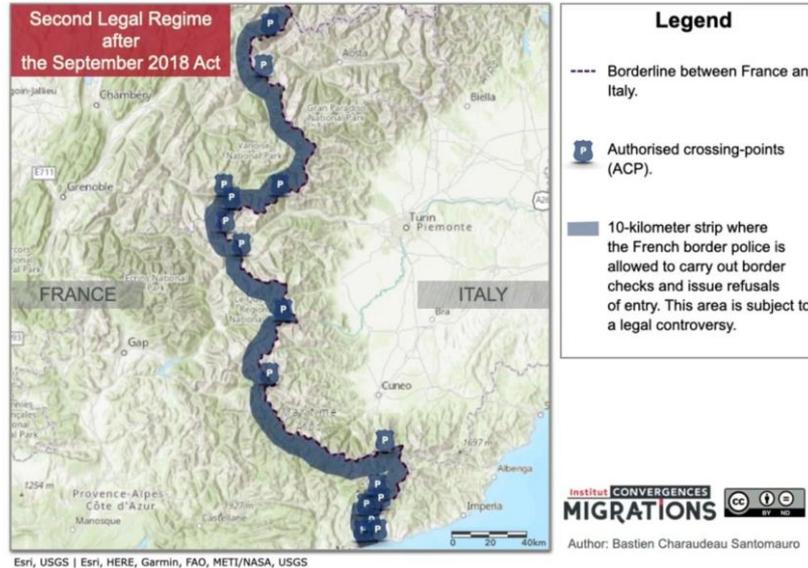
(1) According to Articles 25 to 30 of the «Schengen Borders Code», Member States may exceptionally reintroduce border checks in the case of a "serious threat to public policy or internal security" for a maximum period of two years.

Context

In 2018, the French government adopted the *Asylum and Immigration Law*, extending the admission regime (which used to only concern individuals crossing an external border of France) to its internal border, giving a legal framework to the removal procedures through the issuance of refusals of entry to foreigners entering French territory from Italy. The procedures can be applied to an area of ten kilometers strip along the border line (EU law authorizes border controls only to a series of crossing points).

The return procedures might include a period of detention in the premises of the border police which is not clearly regulated by the French law.

Controls at the French-Italian Border: Legal Regimes



Context

- Since 2015, the French government is constantly extending border controls every six months on the same basis of “persistent terrorist threat”.
- On the 26 of April 2022, the **Court of Justice of the European Union** (CJEU) had recalled that a Member State cannot reintroduce controls at its internal border for a period that exceeds six months, unless a new threat, different from the previous one, arises.
- On the 27 of July 2022, the **French Council of State** extended the reintroduction of border controls once again, against the decision of the CJEU, stating that an identical threat but renewed can be considered sufficient to prolong the border controls.



The **CJEU** is the EU's **highest court**. It interprets EU law to make sure it is **applied in the same way** in all EU countries.

Established in: 1799
Location: Paris



The **French Council of State** is France's **highest court**. It advises the French government on the preparation of bills, ordinances and certain decrees.

Established in: 1952
Location: Luxembourg

Concerns

Unaccompanied minors are often returned to Italy after trying to pass the French border between Ventimiglia and Menton. Police has been found to implement a series of illegal procedures:

- **RECORD OF A DIFFERENT AGE:** *Human Rights Watch* and other NGOs reported that, in order to return unaccompanied minors, French police frequently records on the refusal of entry document (*refus d'entrée*) a different age or birth date compared to the one that the children declared, making them appear as adults, even in cases where children provided documentary evidence of their age.

Moreover, after children are returned, the Italian border police often fails to identify them a second time, especially in the late evening time. This mandatory procedure would allow the immediate identification of the minor if he/she has already been registered at the first entry into the territory. Indeed, when this happens the Italian police itself entrust the minor to the French authorities, since they cannot accept unaccompanied minors. In some cases, minors were returned informally, that is, without any proof to grant their readmission in virtue of their minor age.

Concerns

- **FAILURE TO RESPECT OBLIGATIONS UNDER DUBLIN REGULATION:** asylum seekers may be returned to Italy as first country of entry under *Dublin III Regulation*. This should happen with a formal procedure where the Dublin Unit determines the responsible country for the analysis of the request. Unaccompanied children who have or want to apply for asylum in France should not be returned to Italy.

In addition, unaccompanied children with family members in other EU countries have the right for family reunification under the *Dublin III Regulation*, meaning that those children should have the right to apply for asylum in the State where their family member is legally present.

- **FAILURE TO INFORM THE MIGRANT (CHILD) ON THEIR STATUS AND THEIR RIGHTS:** Police will normally return the person, including those who declare themselves minors, without providing them with information on their right to ask for asylum, therefore denying them this right. Even people who explicitly declare to seek asylum are immediately returned to Italy. In July 2020, the Council of State addressed French Government's legal obligations regarding asylum at the border, stating that authorities had manifestly violated the right to asylum by refusing entry to the country.

Concerns

- **FAILURE TO ANALYSE EACH CASE INDIVIDUALLY:** transfers of migrants, including children, is carried out without any examination of each individual situation. Migrants and asylum seekers have the right to see their cases considered singularly.

The pushbacks in this context often don't seem like the result of an individual analysis of the situation of the person, and identification operations are not to be considered enough to exclude the assumptions of a collective expulsion. (*Case of Khlaifia and others v. Italy, Application no. 16483/12, ECHR*)

- **FAILURE TO APPOINT A GUARDIAN:** unaccompanied minors who are refused to entry are not provided with a guardian, as well as legal assistance and an interpreter.

Concerns

- **DETENTION:** people apprehended in the evening, including unaccompanied minors, are often detained overnight at the Police Station in Menton before being pushed back to Italy. NGOs reports talk about prefabricated units, each about the size of a shipping container. People received no information regarding the duration of the stay, food and water were lacking, and no medical or legal assistance was provided. Unaccompanied asylum seekers children did not receive information about their rights as minors and were placed in the same room with adult men, thus violating their right to a safe place. The *Convention on the Rights of the Child* has clarified that children should never be detained for migration-related purposes and alternatives to detention need to be found for them and their families.
- **RACIAL PROFILING:** Border French Police and other police forces systematically carry out document checks on trains arriving from Italy based on the appearance of the person (ethnicity and religious symbols). Since December 2020, a new French-Italian police agreement resulted in the militarization of the train station in Ventimiglia. With the aim of preventing border crossings, Italian Police also increased the controls at the train station following the same racial profiling pattern.

Case scenario: Ventimiglia

Ventimiglia is a well-known transit point for migrants heading to Northern Europe's countries. After the reintroduction of internal border controls by France, the city became a bottleneck for people who are not succeeding to pass the border and one of the border points with the highest levels of violations of human rights within the European Union.



Case scenario: Ventimiglia

In 2016, the Prefecture of Imperia opened a reception camp (*Campo Roja*) for migrants in transit, in response to the humanitarian crisis in the town.

In 2020, the camp was closed, forcing people to seek shelter under the bridge or in other areas and leaving a further gap in an already critical area.



The Campo Roja was managed by the Italian Red Cross.



Migrants living under the bridge in squalid conditions, after the shutdown of Campo Roja.

Case scenario: Ventimiglia

This situation on the territory has led to several pitfalls.

- Basic assistance (food, shelter, sanitary facilities) is lacking and the only response is given by humanitarian associations and volunteer-driven initiatives.
- People, especially the most vulnerable ones like minors, are exposed to risks related to health, abuse, trafficking, exploitation and more.
- Associations have documented a rise of mental health vulnerabilities, specifically among vulnerable migrants such as minors, women travelling alone and women with children that were held together with single men, putting them at risk of gender-based violence and violating their right to a safe space.
- People pushed back from France have often no mean to get a bus ticket and are forced to reach the city by foot (10 km away from the border).
- Internal border controls encourages people, including unaccompanied minors, to reach France through dangerous ways, such as the so-called 'Pass of Death' on the mountains, walking through motorway tunnels, or hiding on the roof of trains facing the risk of being electrocuted by high voltage cables.

Case scenario: Ventimiglia

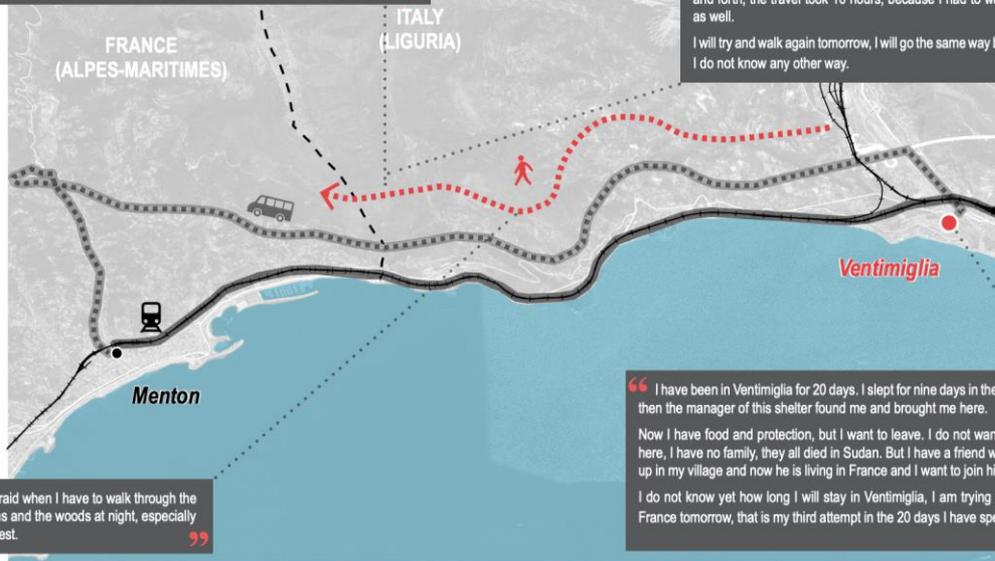
This situation on the territory has led to several pitfalls.

THE EXPERIENCE OF AN UNACCOMPANIED 17 YEAR OLD BOY FROM DARFUR, SUDAN

“ I have already tried to cross the border to go to France twice, the first time on Wednesday and the second on Friday. The first time I went alone, I left during the night not to be seen and I started walking in the woods over the mountains. Then, I reached the road at the border with France in Menton. There, the French police caught me and handed me over to the Italian police who sent me back to Ventimiglia. ”

“ The second time I left with a friend, we again walked on the mountains in the forest and arrived in France in the morning. To know which way to go I followed the cars, and went in the same direction, but in the woods and not on the road. But the French police found us and sent us back to Ventimiglia by foot. Back and forth, the travel took 10 hours, because I had to walk back as well. ”

I will try and walk again tomorrow, I will go the same way because I do not know any other way. ”



“ I am afraid when I have to walk through the mountains and the woods at night, especially in the forest. ”

“ I have been in Ventimiglia for 20 days. I slept for nine days in the streets, then the manager of this shelter found me and brought me here. Now I have food and protection, but I want to leave. I do not want to stay here, I have no family, they all died in Sudan. But I have a friend who grew up in my village and now he is living in France and I want to join him there. ”

I do not know yet how long I will stay in Ventimiglia, I am trying to reach France tomorrow, that is my third attempt in the 20 days I have spent here. ”

Conclusions

- In 2017 the *UN Committees on the Rights of the Child and on Migrant Workers* reiterated that States "*shall not reject a child at a border*".
- It is fundamental that unaccompanied minors who present themselves at the border are referred to the child protection services in France to receive adequate protection and care. (*Human Rights Watch*)
- Returning or deporting children without due process, without giving them an opportunity to apply for asylum or without an assessment of each child's best interests carried out by child protection authorities is always a child rights violation. (*UNICEF*)
- French border police should guarantee and inform anyone, including unaccompanied children, of the option to apply for asylum in France if they want. People who intend to apply for asylum should not be denied entry until their asylum request has been considered.
- *Présomption de minorité*: a young person presenting himself or herself as a minor must be considered as such until a different court decision. French Border Police has no legal authority to decide who and who is not underage and is obliged to accept a person's declared age if there is a reasonable possibility that the person is a child.

Conclusions

- Italian authorities should verify that what is stated on the entry refusal document is correct according to what is declared by the person. They should then ensure that the unaccompanied minors are handed to the appropriate care of child protection authorities either in Italy or France. *(Human Rights Watch)*
- Since the age of the children is not always correctly registered during their first entry in Europe, age verification through the Italian database cannot be sufficient. Indeed, in some cases, children do not provide their true age or can be misunderstood if the authorities interview them without competent interpreters. *(Human Rights Watch)*
- Italy should ensure that children and adults expelled from France have access to the basic material needs including adequate shelter, food and medical care.

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