

The rights of unaccompanied minors in the European Union: challenges and comparative perspectives

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Overview

The EU legal
framework

ECJ Jurisprudence

Reception and
integration in
Denmark



EUROSTAT 23.04.2021 (<https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20210423-1>)

10% of all asylum applicants are aged less than 18 in the EU in 2020

2020: 13 600

2019: 14 100

2015: 92 000

Majority (88%) were males.

67% aged 16 to 17 (9 100 persons)

22% aged 14 to 15 (3 000 persons)

11% aged less than 14 (1 500 persons)

2/3 of all asylum application from three countries:

Afghanistan: 5 500, or 41% of the EU total

Syria: 2 300 or 17% of the EU total

Pakistan: 1 100 or 8% of the EU total

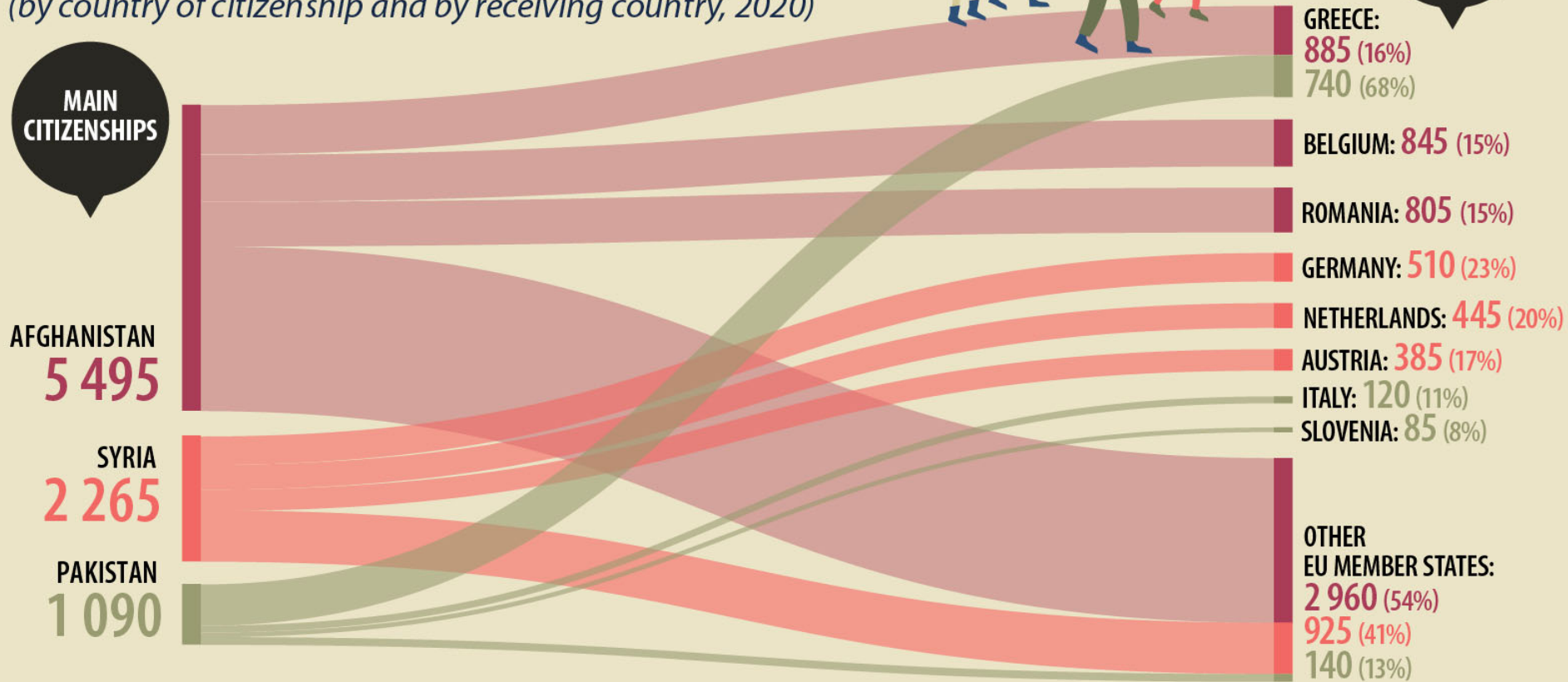
Asylum applicants considered unaccompanied minors in the EU

(by country of citizenship and by receiving country, 2020)



MAIN RECEIVING COUNTRIES

MAIN CITIZENSHIPS



Data are rounded to the nearest five. Parts may not add up to total due to rounding.

Collateral damages

According to data in 31 countries, between 2018 and 2020, more than 18,000 unaccompanied migrant children disappeared in Europe



Primary EU Law

Article 3(5) TEU

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.

Primary EU Law

Article 24 Charter of Fundamental Rights

1 Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2 In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3 Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

EU Legislation on Unaccompanied Minors

Asylum

Immigration

Trafficking



EU Action Plan on Unaccompanied Minors 2010-2014

Common EU wide plan on three strands

- Prevention
- Protection
- Durable solutions



EU Commission 2020 Action Plan

'Supporting the children and the vulnerable'

EU Child guarantee plan:

- Best interests of the child as primary consideration in all decisions concerning migrant children
- Respect of the children's right to be heard
- Exemption from borders procedure for unaccompanied children, unless there are security concerns
- Child-specific procedural guarantees and additional support
- Alternatives to detention, legal assistance, appointment of representatives
- Prompt and non-discriminatory access to education and integration services

Jurisprudence of the European Court of Justice

MA, BT, DA v. Secretary of State for the Home Department Case C-648/11, 06 June 2013

Case regarding the transfer of unaccompanied children in accordance to Dublin II

Article 6 Dublin, the Member State responsible for examining an application lodged by an unaccompanied minor is to be that where a member of his family is legally present, provided that this is in the best interest of the minor. If no family present, 'where the minor has lodged his or her application for asylum'.

Para 55: "Since unaccompanied minors form a category of particularly vulnerable persons, it is important not to prolong more than is strictly necessary the procedure for determining the Member State responsible, which means that, as a rule, unaccompanied minors should not be transferred to another Member State."

Para 57: "in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests are to be a primary consideration."

Jurisprudence of the European Court of Justice

Family reunification directive: European Parliament vs. Council, Case C-540/03, 27 June 2006

Article 4

1. The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members:

- (a) the sponsor's spouse;
- (...)

The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.

Jurisprudence of the European Court of Justice

A and S v Staatssecretaris van Veiligheid en Justitie Case C-550/16, 12 April 2018

What date is decisive in order to be considered as an unaccompanied minor within the meaning of the EU Directive on the right to family reunification: the date of the application for family reunification or the date of the asylum application?

The moment of submission of the asylum application is decisive as it 'enables identical treatment and foreseeability to be guaranteed for all applicants who are in the same situation'.

Minors who reach the age of 18 during the asylum procedure retain the right of family reunification.

The application for family reunification must be made within a reasonable time, in principle within three months of the date on which the minor concerned was recognised as a refugee.

Jurisprudence of the European Court of Justice

TQ v Staatssecretaris van Justitie en Veiligheid

C-441/19, 14 January 2021 – preliminary ruling

Decisions re. the return of unaccompanied minors to home country

Investigation re. the presence of family, guardian, or reception facilities in the State of return carried out for children aged more than 15 years old

Para 43: 'An unaccompanied minor cannot systematically be treated as an adult.'

Para 44: 'where a Member State intends to issue a return decision against an unaccompanied minor under Directive 2008/115, it must, at all stages of the procedure, necessarily take into account the best interests of the child.'

Para 55: 'before issuing a return decision, the Member State concerned must carry out an investigation in order to verify specifically that adequate reception facilities are available for the unaccompanied minor in question in the State of return.'

Para 81: 'Member State may not issue a return decision against an unaccompanied minor without subsequently removing that minor until he or she reaches the age of 18 years'

Unaccompanied Minors in Denmark



Statistics on arrivals of unaccompanied minors

Nationalitet	2015	2016	2017	2018	2019
Afghanistan	844	527	55	22	28
Algeriet	33	51	33	28	18
Eritrea	168	121	17	19	5
Indien	1	0	0	0	3
Irak	75	21	10	7	10
Iran	103	10	3	5	7
Marokko	74	126	197	73	84
Somalia	50	107	21	12	12
Statsløse	130	20	11	5	5
Syrien	584	72	40	17	28
Øvrige	82	129	75	55	17
I alt	2.144	1.184	462	243	217
	<i>10%</i>	<i>19%</i>	<i>13%</i>	<i>7%</i>	<i>8%</i>

Source: Tal og fakta på udlændingeområdet 2019, https://nyidanmark.dk/da/numbers/tal_fakta

Statistics

Age	2018	Most represented nationalities in 2019			2019
	I alt	Afghanistan	Marokko	Syrien	I alt
0-11	12	2	4	4	14
- Boys	8	2	4	2	11
- Girls	4	0	0	2	3
12-14	39	11	22	1	38
- Boys	36	10	22	1	37
- Girls	3	1	0	0	1
Over 15	192	15	58	23	165
- Boys	171	14	57	15	151
- Girls	21	1	1	8	14
I alt	243	28	84	28	217

Source: Tal og fakta på udlændingeområdet 2019, https://nyidanmark.dk/da/numbers/tal_fakta (author's translation)

Legal basis

Aliens Act

European Convention on Human Rights

Convention on the Rights of the Child

Opt-out: Trafficking directive, return directive



Unaccompanied Minors in Denmark

Distinction between minors

- under 12 years of age
- between 12-15
- over 15 years

Accommodation in dedicated, children-friendly asylum centres

Rights of unaccompanied minors

- Appointment of a personal representative
- Appointment of a lawyer
- Help in locating the family of origin
- 2010 legal amendment: not possible anymore to be granted a temporary residence permit and be placed in foster care
- Adoption

Asylum procedure

- Police interview and registration at the asylum centre 'Sandholm'
- Pairing with a personal representative
- Interview with the Immigration Service



Ascertaining minor age

- Decision by the Immigration Service in case of doubt re. the alleged minor age
- Obligation to participate in a medical examination
- Medical Examiner's Council
- Representative present for the procedure
- Possibility to appeal the decision on change of age to the Refugee Appeals Board

Permission to stay

Temporary permission to stay

- 1) before the minor's 15th birthday: until they reach 15 years of age;
- 2) after the minor's 15th birthday: for a maximum of 1 year, though not for a longer period than the date when the minor reaches 18 years of age.

Possibility to renew until 18 years of age

Travel document/ laissez-passer

Rejection of asylum application:

- possibility to be returned to their home country if the minors have a family network or if there is a possibility to stay at a reception care centre
- if not possible to return, permission to stay until major age

The personal representative

To support and guide during the asylum process

Minimum 25 years of age, clean criminal record, independent of immigration authorities

Can act as a legal guardian

Child friendly asylum centres

- Responsible authority: Immigration Service
- Centres operated by the Danish Red Cross, municipalities,
- Access to education
- Access to health services
- Cash benefits
- Zero tolerance for criminality
- Transfer at age 17
- Moves outside the centre
- Special residential institutions for minors with problematic behaviours





The way ahead ?

Differentiation of protection based on age

The double-edged sword of family reunification rights

Temporality and return

The invisibility of the right to protection as children