

RECEPTION OF MIGRANT CHILDREN IN EUROPE

WITH A FOCUS ON ITALY

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INTRODUCTION

Main international convention and legal framework for the reception of migrant children:

There are common standards of reception conditions throughout the EU that choose the most adequate way to provide material reception conditions to ensure the protection of human dignity in accordance with the Charter of fundamental rights.

The migratory crisis has exposed the need to ensure greater consistency in reception conditions across the EU and the need to be better prepared to deal with large migration influxes. The Commission, therefore, presented in 2016 a proposal to revise the Reception Conditions Directive to further harmonise reception conditions throughout the EU and to reduce the incentives for secondary movements.

THE REVISED RECEPTION CONDITIONS DIRECTIVE PROPOSAL

In September 2016, the European Asylum Support Office (EASO) released the EASO guidance on reception conditions: operational standards and indicators. The guidance describes specific common standards which are applicable to national reception systems across all EU Member States and the indicators with which such standards should be measured against:

- The document has been designed to serve multiple purposes:
 - at policy level, it serves as a tool to support reform or development and serve as a framework for setting/further development of reception standards,
 - at operational level, it can be used by reception authorities/operators to support the planning/running of reception facilities or to support staff training.
- In addition, the guidance could serve as a basis for the development of monitoring frameworks to assess the quality of national reception systems.
- Finally, it should be noted that the European Commission's proposal for a recast of the Reception Conditions Directive of 13 July 2016 specifically refers to these operational standards and indicators.

EASO guidance on reception conditions for unaccompanied children: operational standards and indicators

- In March 2018, the European Asylum Support Office (EASO) issued the EASO guidance on reception conditions for unaccompanied children, which focuses on reception authorities and is written with reception staff in mind. It is based on the fact that unaccompanied children in migration require specific and appropriate protection, where listed guidances follow the principle of the best interest of the child.

EASO guidance on contingency planning in the context of reception

- In December 2018, the European Asylum Support Office (EASO) issued the EASO guidance on contingency planning in the context of reception with the goals to strengthen the reception authorities' preparedness and ability to cope with situations that create organisational strain.

EASO GUIDANCE ON RECEPTION CONDITIONS FOR UNACCOMPANIED CHILDREN

- The focus of this publication is to provide guidance on the consideration of the best interests of the child (BIC) when assessing the need for the age examination but also when devising and undertaking an age assessment using a holistic and multidisciplinary approach, with particular attention to the needs and circumstances of the person.
- This practical guide aims to provide national competent authorities with guidance and support in on the safeguards and guarantees required, to ensure that the best interests of the child are held in primary consideration when making decisions that affect the child in the course of asylum procedures.

HOLISTIC AND MULTIDISCIPLINARY APPROACH

This holistic approach is characterized by the aim of putting in place guarantees aimed at ensuring that the minor can participate in the asylum process, fully understand it and be informed both about the procedure itself and its consequences in a child-friendly, gender-sensitive manner and age-appropriate, as well as in language that the child can understand, so that he or she can express opinions, wishes and points of view, ask questions and make informed decisions about his or her participation in the proceedings.

To take the best interests of the child into primary consideration, it is necessary to apply holistic and child-centered procedures on an ongoing basis. The individual and specific circumstances and needs of the child must be taken into account in all acts and decisions affecting the child, be they short, medium or long term.

The best interests of the child is a primary consideration that may need to be balanced with the interests of other subjects, including the state.

The assessment of the best interests of the child must consist of a multidisciplinary exercise (47) with the participation of interested parties, conducted by authorized specialists and experts and in possession of the necessary training to work with minors

The views of the child should be heard and considered according to their age and maturity

LINES OF INTERVENTION:

- The minor must be assisted and adequately informed when deciding to apply for international protection.
- The minor must be exempted from border procedures. It is considered appropriate to grant a period of rest and recovery if the needs of the child so require
- In cases where it is necessary to appoint a guardian / representative for the minor, the application for international protection should not be filed before the appointment of the guardian / representative, who has, among other things, the task of assisting the minor in submitting such an application. In the context of the safeguards for unaccompanied and separated minors, an independent and qualified guardian / representative should be appointed as soon as possible. The guardian should possess a range of qualities, including adequate capacity and skills in dealing with young people and the specific protection needs of minors
- The DPA (recast) requires Member States to appoint a representative as soon as possible (62). This directive also provides for legal and procedural information to be provided free of charge upon request at first instance
- During the asylum procedures, respect for the concept of family unity must be guaranteed, unless any fears for the well-being or safety of the child suggest the opposite
- It is necessary to ensure that international protection systems communicate and link with national child protection systems / referral mechanisms

THE INNOVATIVE ELEMENT OF THE GUIDE

The child has the right to express their views and opinions personally or through a guardian / representative. Must be interviewed / heard in the context of assessing the best interests of the child where this is feasible and recommendable, taking into account their individual circumstances (for example, children with disabilities or unable to communicate)

The child should feel comfortable during the interview.

Where possible, the minor should be asked if he has preferences regarding the gender of the official and the interpreter. Depending on the specific situation, it may be that the child chooses a person of the opposite sex

The views and wishes of the child should be taken into account according to his age and maturity.

THE CHALLENGES THAT LIE

Some issues affecting unaccompanied foreign minors are:

- In the phase of the first reception, the relatives are reluctant to take care of the minor, on the contrary they delegate every decision to the communities and institutions. In many cases, the attitude changes with the boy obtaining a residence permit, because it represents a guarantee of legal stability.
- Problems in ascertaining the age, some young people sometimes claim to be under the age of being able to enjoy the residence permit for minors for a period of time
- Another fact about which, in recent months, there are doubts is schooling: prolonged observation has made it possible to identify several illiterates
- The majority came to Italy at the behest of their parents; some said they left to join friends. The hope is to find a job thanks to the family and compatriots network of the city, with the aim of sending money home and repaying the debt incurred for the trip. The anxiety linked to the mandate is a heavy burden and in some cases there are added fears related to the serious repercussions that their families could suffer in the event of failure to pay their debt. Mostly they seem disoriented and psychologically unprepared for the path they have taken, even for their young age. The disinformation prior to the trip leads to a great distrust of the operators, who find themselves having to contrast an image of Italy and Europe, described as full of opportunities.
- The paths of insertion into the working world are sometimes too long for the young boys who arrive. Very often the courses that are implemented provide for the learning of the Italian language and the achievement of basic qualifications. For these paths sometimes the time is long and this discourages young immigrant children whose aim is to find a job in the shortest possible time, even ending up in exploitation or illegal work. In addition, to work you need a residence permit and the bureaucratic process often resolved too long.

RECEPTION OF MIGRANTS IN ITALY

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ART. 10.3 OF ITALIAN CONSTITUTION

- A foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law.

LEGAL FRAMEWORK

- Legislative **Decree no. 286/1998** “Consolidated Act on provisions concerning the Immigration regulations and foreign national conditions norms” (TUI)
 - *Amended by:* Decree Law no. 13/2017, converted into **Law no. 46/2017**
 - *Amended by:* Decree Law no. 113/2018, converted into **Law no. 132/2018**
- Legislative **Decree no. 142/2015** “Implementation of Directive 2013/33/EU on standards for the reception of asylum applicants and the Directive 2013/32/EU on common procedures for the recognition and revocation of the status of international protection.”
 - *Amended by:* Decree Law no. 113/2018, converted into **Law no. 132/2018**
 - *Amended by:* Decree Law no. 130/2020, converted into **Law no. 173/2020**

RECEPTION STEPS ACCORDING TO THE L.D. n. 142/2015

- a first aid and identification phase
 - implemented in the crisis points present at the main disembarkations places (Hotspots)
- a first “assistance” phase aimed at first assisting the applicant in starting the asylum procedure, vulnerabilities and health check procedure.
 - implemented in first governmental centres (CAD)
- a second reception phase was implemented into the so called Asylum seekers and refugees protection system (SPRAR) based on local projects of integrated reception realized by local authorities.

SPRAR BETWEEN GOOD PRACTICES AND CHALLENGES


- The system was recognized at European level as a inspiring example of holistic approach: supporting the asylum seekers from a material point of view, not forgetting integration on the territory, language learning and psycho-physical support.

BUT

- Since the access to these projects was limited on the number of places and available resources
- Considering that the decree foresaw that “In case of unavailability of places due to a large influx of arrivals, first and second reception may be implemented in “temporary” structures” (*strutture temporanee CAS*)
- Practically the extraordinary centres, CAS, represented – and represents – over the 70% of the facilities where asylum seekers were and are accommodated, while only a small number of asylum seekers were able to access the second reception system.

THE DECREE LAW N. 130/2020 STEPPING BY THE DECREE LAW N. 113/2018

The Decree Law n. 113 of 2018 provided:

- **The abrogation of ‘humanitarian protection’** and the creation of a ‘special protection’ residence permits.
 -  Strong impact on unaccompanied migrant children: the majority of UMC had access to the humanitarian protection. Now need to choice between asking for international protection or apply for the residence permit for minors
- The Decree Law n. 113 excluded by the second reception phase (ex SPRAR), renamed SIMPRIOMI, the asylum seekers. The access was limited to international protection holders, UMC, and some categories of residence permits as indicated by the law.
- This willingness was to differentiate the integration practices and the resources addressed to international protections holders and seekers.

The Decree Law n. 130/2020 has changed at least in theories to important aspects:

- Access to the (second) phase of reception system;
- The type and level of services provided in first and second accommodation facilities

THE SECOND RECEPTION SYSTEM

- The reception and integration system (SAI) implemented by the Decree Law 130/2020 has again conceived the reception system as a single system for asylum seekers and beneficiaries of international and special protection, as previously provided for by Legislative Decree no. 142/2015

BUT

- The system remains based on limit of the voluntary adhesion of the municipalities to the second reception system
- The actual passage from first reception centers to S.A.I. centers remains undefined.

FOCUS ON UNACCOMPANIED MIGRANT CHILDREN

- Provides a “priority” access to the second reception facilities for vulnerable people, including unaccompanied migrant children, BUT the law is not clear how the system works in practice.
- Specific centers are destined to receive UCM, both in the first and second reception.

TYPE OF SERVICES PROVIDED

Within the SAI the services are divided in two categories:

- First level services, including healthcare assistance, psycho-physical support, intercultural and linguistic mediation..
 - These services are provided for asylum seekers.
- Second level services involve, as well as the first category of services, also those finalized to the integration on local territory: job placement, vocational training.
 - These services are **not** provided for asylum seekers
- !!! A form of “ differentiated reception” based on the legal status is still present




A focus on unaccompanied migrant children

The Zampa law (Law no. 47/2017)

New aspects

- Unaccompanied and separated foreign children will not be subjected to “refoulement”.
- Promote guardianship and families host for children by using trained volunteers, trying to create a list of volunteer guardians
- Harmonizes and improves procedures for age assessment in a child-sensitive manner



Any age assessment methodology based exclusively on medical age assessment procedure can be insufficient and not exhaustive, many children are therefore wrongly identified as adults and have no access to the rights unaccompanied minors are entitled to. This law provides a social and medical assessment.

The procedure may be ordered by the judicial authority when there are well found doubt about the age of the children and it's impossible to establish it by evidence.

The age assessment procedure has to be carried out by a multidisciplinary approach, involving expertise, cultural mediators, granted the child his/her rights

A missed opportunity?

- The Zampa law also established a structured and streamlined national reception system, with minimum standards in all reception facilities

But

- In practice the new law has introduced an extremely limited changes on this matter, not addressing the important issue on how to really avoid that many UMC are placed in inadequate reception centers, with no completely access to their rights.

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