

CHILDREN IN MIGRATION IN 2019

1.1.2019 → 31.12.2019

ANNUAL REVIEW

Contents

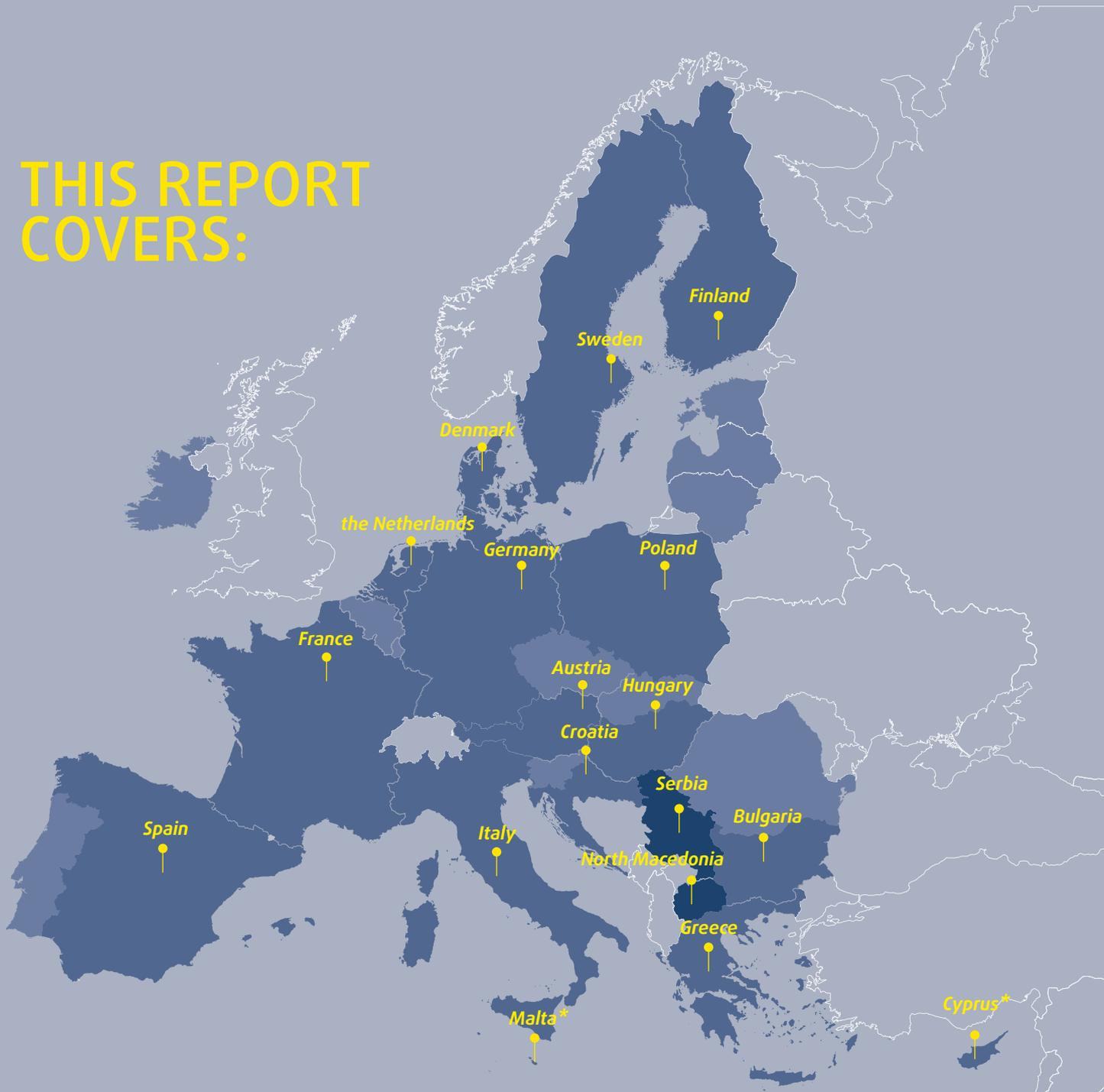
- 3 Introduction
- 6 Reaching and entering the EU
- 13 Arrival and stay in the EU
- 18 Detention and return



DISCLAIMER: This publication is based on quarterly reports that the European Union Agency for Fundamental Rights (FRA) commissioned under a contract with its research network, FRANET. Throughout 2019, FRANET provided FRA with descriptive up-to-date data on migration-related fundamental rights concerns on a quarterly basis. The data are based on interviews and desk research, and do not include analyses or conclusions.

EU Member States' legal and practical approaches and responses to migrants and refugees implicate several of their fundamental rights, as enshrined in the EU Charter of Fundamental Rights. The EU Agency for Fundamental Rights (FRA) has regularly collected data on these issues since September 2015.

THIS REPORT COVERS:



*covered since October 2019

Introduction

Children in migration are more vulnerable than adults, particularly when they are unaccompanied. Their vulnerability makes them more exposed to violence, exploitation and trafficking in human beings, as well as physical, psychological and sexual abuse.

The UN Convention on the Rights of the Child (CRC) obliges states to protect children from violence, exploitation and abuse. All EU Member States have ratified the convention, and the EU is guided by the principles and rights set out therein.¹ Nevertheless, many of the children coming to the EU to seek international protection, alone or with their families, are not sufficiently protected.

This report looks into challenges to the fundamental rights of children in migration throughout 2019. It pulls together the main issues identified in FRA's Quarterly Bulletins on migration in selected EU Member States. The report does not touch upon all areas relevant to migrant children's fundamental rights. For example, issues related to mental health and access to education were also of concern, but other recent FRA reports have extensively covered these.²

Note on sources

The evidence presented in this report is based on interviews with representatives of public institutions, non-governmental organisations, Ombudspersons and international organisations, as well as on desk research. In addition, where sources of information are available in the public domain, hyperlinks can be found in the footnotes throughout the text.

Fundamental rights of migrant children in 2019: key findings

In 2019, the main challenges concerning the fundamental rights of children in migration were:

1. Reaching and entering the EU

- Children risk death or injury when they try to enter the EU to seek international protection or a better life. The International Organization for Migration estimates that, in 2019, some 80 children died or went missing while crossing the sea to Europe. Moreover, since 2015, at least 34 children are known to have died while trying to cross land borders after their arrival in Europe.
- In 2019, over 780 children were stranded on board of rescue vessels – often for more than a week in bad weather and under poor health conditions. At least 28 rescue vessels were not allowed to dock immediately – more than double the number in 2018.
- Pushbacks, as well as the use of violence against migrants, including children, persisted or even increased during the past year. According to the international NGO 'Save the Children', at least 1,230 children were pushed back on the Western Balkan route.

2. Arrival and stay in the EU

- Reception capacity for all asylum applicants, particularly for unaccompanied children who have special protection needs, was insufficient in Cyprus, France, Greece, Italy, Malta and Spain.

¹ United Nations (UN), [Convention on the Rights of the Child \(CRC\)](#), 22 November 1989.

² FRA (2019), [Integration of young refugees in the EU: good practices and challenges](#), Publications Office of the EU.

EUROPE BY SEA AND LAND



- Hygiene and sanitation conditions for children were deplorable in the hotspots operated in Greece. Poor reception standards for children were also reported in Croatia, Cyprus, France, Hungary, Italy, Malta and Spain.
- Facilities are often not age appropriate. Migrant children were not effectively protected from sexual and labour exploitation.
- Children sometimes face long asylum procedures. This can either be due to lengthy age-assessment procedures or because it takes a long time to appoint the legal guardian who submits the application on behalf of the child. Despite significant progress in reforming national guardianship systems in recent years, in practice, gaps remained.

3. Detention and return

- Since 2015, more migrant children have been detained, mainly to ensure their return. Detention conditions remained poor or even deteriorated in 2019.
- Croatia, Finland, the Netherlands and Sweden allow and carry out forced returns of unaccompanied children. However, most returns of unaccompanied children are voluntary.

In 2019, over 140,000 migrants were apprehended after crossing the EU's external land or sea borders in an unauthorised manner. Among them, about 33,000 claimed to be children, including over 5,000 who were unaccompanied.³ Compared to 2018, the number dropped from some 150,000 detected migrants, one in five of whom claimed to be under 18.⁴ Some countries, like **Greece**, received significantly more children than other countries, underscoring the urgent need for realistic burden sharing and solidarity among EU Member States.

Legal corner

The year 2019 marks the 30th anniversary of the UN Convention on the Rights of the Child (CRC). All EU Member States are bound by the convention, which sets out the civil, political, economic, social, health and cultural rights of children. The convention defines a child as any human being under the age of eighteen.

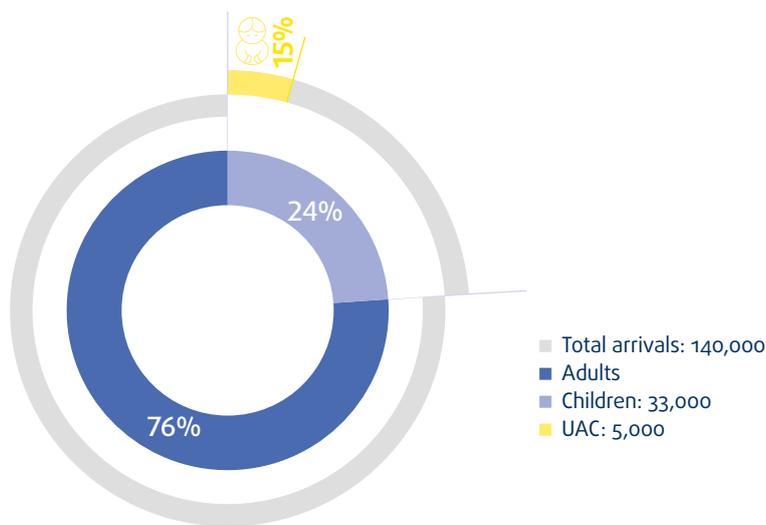
Article 3 of the Convention on the Rights of the Child – as well as Article 24 of the EU Charter of Fundamental Rights – require authorities to take due account of the best interests of the child, which must be a primary consideration in their actions.

The Committee on the Rights of the Child monitors the implementation of the CRC to ensure that every child has the right to be free from discrimination, violence and neglect; to be treated with dignity and respect; to be cared for, develop and be part of their communities; and to participate in decisions that concern them.

³ Information provided by Frontex to FRA in March 2020.

⁴ Frontex (2019), **Risk Analysis for 2019**, February 2019.

Figure 1: Arrivals in Europe by land and sea, total, children and unaccompanied children, EU-27 plus UK*



Note: The figure covers the United Kingdom because the country was still an EU Member State in 2019. UAC = unaccompanied children.

Source: Frontex, March 2020

This is the fourth year FRA is publishing an overview of the key fundamental rights challenges for migrants in the previous year.⁵ Many issues FRA flagged a year ago remain valid. Migrants' rights at borders are not always respected and incidents of violence and hate speech against migrants persist. Improvements were observed in several of the EU Member States where new arrivals continued to decline. Detected unauthorised arrivals at land and sea borders declined in all countries, except for Croatia, Cyprus, Greece, Hungary, Malta, and Romania, where more unauthorised border crossings were detected in 2019 than in 2018.⁶

FRA activity

Eye on migration: quarterly bulletins on migration

FRA has been collecting data on migration in selected EU Member States since September 2015.

As of 2020, the reports focus on 16 EU Member States and North Macedonia and Serbia. For the first time, coverage now includes Cyprus and Malta (replacing Finland).

The 'Quarterly Bulletin' reports provide overviews on key emerging and persisting fundamental rights concerns, the situation at the border, asylum procedures, reception, child protection, immigration detention, return, legal and policy responses, responses by civil society, local and political actors, as well as hate speech and violent crime.

All reports can be found on [FRA's website](#).

⁵ FRA (2019), *Beyond the peak: challenges remain, but migration numbers drop*, Publications Office of the EU.

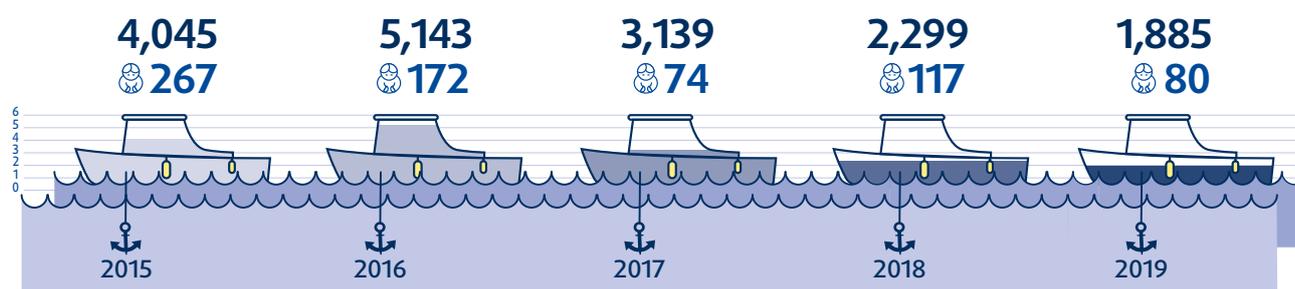
⁶ Information provided by Frontex to FRA in March 2020.

1. Reaching and entering the EU

Fatalities at sea and land borders

According to IOM, some 1,885 people are estimated to have died or gone missing in 2019 while crossing the sea to reach Europe. Of these, around 80 were children. Children face particular risks when they attempt to cross borders irregularly.⁷

Figure 2: Estimated deaths at sea 2015-2019: total number of persons/children



Source: International Organization for Migration, 2019

In Libya, the humanitarian situation continued to deteriorate last year. Around 3,300 migrants, including children, were arbitrarily detained in severely overcrowded centres, where they faced torture, ill-treatment, forced labour, rape and malnutrition.⁸ An airstrike on one of the centres near Tripoli killed more than 50 people, including six children, and left over 130 people injured. Many migrants, including children, were rescued at sea by the Libyan coastguards while fleeing to Europe, and brought back to Libya.⁹

IOM reported that, out of 9,225 people rescued or intercepted at sea and returned to Libya in 2019, 400 were children – 296 of them boys and 104 girls. In 2018, out of 15,428 people intercepted, 939 children were rescued and returned to Libya (696 boys and 243 girls).¹⁰

Legal corner

Providing assistance to people in distress at sea is a duty of all states and shipmasters under international law. Core provisions on search and rescue at sea are set out in the 1974 International Convention for the Safety of Life at Sea and the 1979 International Convention on Maritime Search and Rescue.

- 7 International Organization for Migration (IOM), **Missing migrants projects**. The dataset is regularly updated. Data extracted on 3 March 2020.
- 8 UNHCR (2019), **UNHCR, IOM condemn attack on Tajoura, call for an immediate investigation of those responsible**, Joint UNHCR/IOM Press Release, 3 July 2019.
- 9 UN News (2019), **Six children among 53 confirmed fatalities after Libya detention centre airstrikes: Security Council condemns attack**, 5 July 2019.
- 10 IOM, **Libya update 16-31 December 2019**. Data extracted 3 March 2020. For 2018: UNHCR, UNICEF and IOM, **Refugee and Migrant Children in Europe, Overview of Trends, January - December 2018**.

Legal corner

The UN Human Rights Committee published General Comment No. 36 on Article 6 of the ICCPR (right to life), which includes guidance on rescue at sea and the prohibition of *refoulement*.

Council decision (CFSP) 2019/1595 extends to 31 March 2020 the mandate of the European Union Naval Force Mediterranean Operation SOPHIA. Between its establishment in 2015 and July 2018, Operation SOPHIA's assets were involved in rescuing 45,000 people. However, ship patrols were ended in April 2019, with the focus shifting to the use of planes.

The stricter border controls introduced by many Member States also increased risks at land borders. As of September 2019, at least 34 children who had arrived in the EU since 2015 are known to have died when attempting to move onward to other EU Member States.¹¹ Some children have drowned attempting to cross rivers or died while trying to hide in trucks, cars or trains to cross borders undetected.¹²

Search-and-rescue operations

Tough search-and-rescue policies have continued to undermine civil society rescue efforts to save lives and bring to safety migrants in distress. The few remaining rescue boats deployed by civil society organisations faced serious difficulties when trying to dock, delaying the disembarkation of migrants and putting at risk their safety and physical integrity.

According to information available to FRA, in at least 28 cases in 2019, rescue vessels were not allowed to dock immediately – more than double the number of 2018 (Table 1). Consequently, over 780 children were stranded on board – often for more than a week in bad weather, under poor health conditions, and running out of drinking water and food before being allowed to disembark.

¹¹ UNHCR (2019), **Desperate Journeys - Refugee and Migrant Children arriving in Europe and how to Strengthen their Protection – January to September 2019**, October 2019.

¹² *Ibid.*

Table 1: Vessels that had to stay at sea for more than one day in 2019

Ship	Number of migrants		Days spent at sea***	Date and place of disembarkation	EU MS that pledged to relocate some passengers
	Total*	Children**			
'Sea Watch 3' (NGO vessel, Germany)	47	15	11	31 January Catania (Italy)	France, Portugal, Germany, Malta, Luxembourg, Romania, Lithuania, Bulgaria
'Mare Jonio' (NGO vessel, Italy)	49+1 evacuated	15	2	19 March Lampedusa (Italy)	No relocation requested
'Alan Kurdi' (NGO vessel, Germany)	64	12	10	13 April Malta	France, Portugal, Germany, Luxembourg
'Sea Watch 3' (NGO vessel, Germany)	47+20 evacuated	14	4	19 May Lampedusa (Italy)	No relocation requested
'Sea Watch 3' (NGO vessel, Germany)	53	4	16	29 June Lampedusa (Italy)	Finland, France, Portugal, Germany, Luxembourg
'Alex-Mediterranea' (NGO vessel, Italy)	41+13 evacuated	12	3	7 July Lampedusa (Italy)	No relocation requested
'Alan Kurdi' (NGO vessel, Germany)	65	36	2	7 July Malta	Finland, France, Germany, Portugal, Ireland, Luxembourg, Lithuania
'Gregoretti' (state vessel, Italy)	116 +19 evacuated	29	5	31 July Augusta (Italy)	France, Germany, Portugal, Luxembourg, Ireland
'Alan Kurdi' (NGO vessel, Germany)	40	13	4	4 August Malta	France, Portugal, Germany, Luxembourg, Ireland
'Open Arms' (NGO vessel, Spain)	163 (some of them evacuated)	23	21	21 August Lampedusa (Italy)	France, Portugal, Germany, Luxembourg, Spain
'Ocean Viking' (SOS Mediterranee and MSF)	356	103	14	23 August Malta	France, Portugal, Germany, Ireland Luxembourg, Romania
'Eleonore' (NGO Mission Lifeline, Germany)	104	30	8	2 September Pozzallo (Italy)	France, Portugal, Germany, Ireland, Luxembourg
'Mare Jonio' (Mediterranea Saving Humans, Italy)	35+63 evacuated	36	5	2 September Lampedusa (Italy)	No relocation requested
'Alan Kurdi' (NGO vessel, Germany)	5 + 8 evacuated	8	10	10 September Malta	France, Germany, Portugal
'Ocean Viking' (SOS Mediterranee and MSF)	85	20	6	14 September Lampedusa (Italy)	France, Portugal, Germany, Luxembourg
'Ocean Viking' (SOS Mediterranee and MSF)	182	45	8	24 September Messina (Italy)	France, Germany, Portugal, Ireland, Luxembourg
'Ocean Viking' (SOS Mediterranee and MSF)	176	39	4	16 October Taranto (Italy)	France, Germany, Portugal, Ireland, Luxembourg
'Asso 29/Diciotti' (commercial vessel and state vessel, Italy)	67	24	2	22 October Pozzallo (Italy)	No relocation requested

Ship	Number of migrants		Days spent at sea***	Date and place of disembarkation	EU MS that pledged to relocate some passengers
	Total*	Children**			
'Ocean Viking' (SOS Mediterranee and MSF)	104	38	12	30 October Pozzallo (Italy)	France, Germany, Portugal, Ireland
'Alan Kurdi' (NGO vessel, Germany)	89+3 evacuated	14	8	3 November Taranto (Italy)	France, Germany, Portugal, Ireland
'Asso Trenta' (state vessel, Italy)	151+4 evacuated	46	2	3 November Pozzallo (Italy)	No relocation requested
'Ocean Viking' (SOS Mediterranee and MSF)	213+2 evacuated	57	5	24 November Messina (Italy)	France, Germany, Malta, Ireland, Spain, Portugal
'Open Arms' (NGO vessel, Spain)	62+11 evacuated	29	5	26 November Taranto (Italy)	France, Germany, Malta, Ireland, Spain, Portugal
'Aita Mari' (NGO vessel, Spain)	79	21	5	26 November Pozzallo (Italy)	France, Germany, Malta, Ireland, Spain, Portugal
'Ocean Viking' (SOS Mediterranee and MSF)	60	24	6	4 December Pozzallo (Italy)	France, Germany, Portugal, Ireland
'Alan Kurdi' (NGO vessel, Germany)	61+23 evacuated	22	6	4 December Messina (Italy)	France, Germany
'Ocean Viking' (SOS Mediterranee and MSF)	159+3 evacuated	42	3	23 December Taranto (Italy)	France, Germany, Portugal, Ireland
'Alan Kurdi' (NGO vessel, Germany)	32	12	3	29 December Pozzallo (Italy)	France, Germany, Ireland

Notes:

* Medically evacuated persons listed separately; location of evacuation may differ from port of disembarkation.

** Includes unaccompanied children as well as children accompanied by their parents.

The numbers are based on declarations upon disembarkation and may later have been adjusted.

*** In case of multiple rescue operations, this corresponds to the number of days spent at sea by those who were at sea the longest.

Source: FRA, 2020 [based on various sources, including NGO and media reports and interviews]

FRA activity

In June 2019, FRA published an update on 'Fundamental rights considerations: NGO ships involved in search and rescue in the Mediterranean and criminal investigations'. The note draws attention to the criminalisation of search-and-rescue operations carried out by NGOs in the Mediterranean.

The note is available on [FRA's website](#).

.....

In May 2020, FRA will publish a study on different relocation schemes of unaccompanied children that have been put in place since 2015. The study explores challenges and good practices in ten EU Member States. It aims to help national authorities relocate unaccompanied children in a fundamental rights-compliant and feasible manner.

According to media reports, in September 2019, **Germany, France, Italy** and **Malta** reached a temporary agreement for the disembarkation and relocation of migrants who are rescued in the central Mediterranean.¹³ In this context, 22 unaccompanied children were relocated in 2019 from **Malta** to **Finland, Ireland, Germany** and **Slovenia**.¹⁴

Risk of *refoulement* and border violence

The number of children apprehended and returned back to a neighbouring country without granting those seeking international protection access to the territory and to fair and efficient asylum procedures (pushbacks),¹⁵ as well as the use of violence against children, continued or increased over the past year.¹⁶

Save the Children reported that, between January and September 2019, 1,230 children were pushed back on the Western Balkan route. Most children were pushed back at the **Croatian** border (321), followed by **North Macedonia** (212), **Bulgaria** (158) and **Hungary** (176). Pushbacks were also reported in **Serbia** (47 between January and July) and **Greece** (41 between January and July). Children are most likely to perceive pushbacks as violent – even if no actual physical violence has been used. Most incidents of violence during pushbacks were explicitly reported to Save the Children at Bulgarian borders, with 73 % of pushbacks being violent in the first half of 2019; followed by 51 % at Greek and Serbian borders; and 45 % in the case of North Macedonia.

Legal corner

The principle of *non-refoulement* is the core element of refugee protection and is enshrined in international and EU law. Article 33 (1) of the 1951 Refugee Convention, the interpretation of Article 3 of the European Convention on Human Rights (ECHR) and Article 19 (2) of the EU Charter of Fundamental Rights prohibit returning an individual to a risk of persecution, torture, inhuman or other degrading treatment or punishment.

¹³ Joint declaration of intent on a controlled emergency procedure – voluntary commitments by member states for a predictable temporary solidarity mechanism ('**Malta Declaration**'), 23 September 2019.

¹⁴ Data provided by IOM Malta in February 2020.

¹⁵ As regards the obligations under Article 33 of the 1951 Convention Relating to the Status of Refugees, see UNHCR (2007), **Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol***, Geneva, 26 January 2007, para. 8.

¹⁶ Save the Children (2019), **Reports about Push Backs and Violence against Children on the Move at the Western Balkans Borders. January–June 2019**, 14 August 2019; Save the Children (2019), **Reports about Push Backs and Violence against Children on the Move at the Western Balkans Borders. July–September 2019**, 11 December 2019.

Legal corner

In D.D. v. Spain, the UN Committee on the Rights of the Child establishes that the return of an unaccompanied child from Spain to Morocco, without assessing the best interests of the child, violated Articles 3, 20 and 37 of the Convention on the Rights of the Child.

See UN Committee on the Rights of the Child (CRC), Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 4/2016, 15 May 2019.

According to the NGO 'Border Violence Monitoring Network', the use of gun violence – including firing warning shots and voicing threats while holding guns – was systemic and increased in the Western Balkan region. This was particularly the case in Croatia, including against children.¹⁷ In 2019, 63 cases involving gun violence were reported in different countries, among them 54 in Croatia. Almost 20 % of all recorded pushback cases from Croatia involved gun use, affecting 1,279 people.¹⁸

Some 770 people in transit were threatened with guns when they were pushed back in 2019, according to the Border Violence Monitoring Network. In several instances, the officers allegedly took or burnt the migrants' shoes, bags, phones and clothes.¹⁹ In at least one case, families – including their small children – had to take off their clothes and nappies in the forest at night.²⁰

NGOs reported that children were also pushed back in **France, Poland** and **Spain**.²¹

-
- ¹⁷ Border Violence Monitoring Network (2019), **Illegal Push-backs and Border Violence Reports – Balkan Region – November 2019**, November 2019. On pushbacks from Croatia, see also: Amnesty International (2019), **Pushed To The Edge: Violence And Abuse Against Refugees And Migrants Along Balkan Route**, March 2019; Amnesty International (2019), **Croatia: EU complicit in violence and abuse by police against refugees and migrants**, 13 March 2019; Meltingpot Europa (2019), **Stories of ordinary violence from the border between Bosnia and Croatia**, 19 February 2019; United Nations Children's Fund (UNICEF) (2019), **Refugee and Migrant Response in Europe Situation Report 32. April-June 2019**, June 2019; Centre for Peace Studies, **5th Report on Pushbacks and Violence from the Republic of Croatia: Illegal Practices and Systemic Human Rights Violations at EU Borders**, April 2019; Schweitzer Rundfunk, **Kroatische Polizei bei illegaler Abschiebung gefilmt**, May 2019.
- ¹⁸ Border Violence Monitoring Network (2019), Press release, **Croatian police shoot person in transit**, November 2019.
- ¹⁹ Border Violence Monitoring Network (2019), **Illegal Push-backs and Border Violence Reports – Balkan Region – November 2019**, November 2019.
- ²⁰ Border Violence Monitoring Network (2019), **The Babies' Diapers had to be taken off to Search the Babies. They were Naked in the Forest in the Middle of the Night**, 16 October 2019.
- ²¹ Médecins Sans Frontières (2019), **Unaccompanied minors: symbols of a policy of mistreatment**, 10 September 2019; Amnesty International (2019), **Der Schicksalszug in Richtung Polen**, 26 March 2019; European Council on Refugees and Exiles (ECRE) (2019), **Spain: Rights of Asylum Seekers Deteriorating at Border with Morocco**, 4 October 2019.

REPORTED INCIDENTS OF UNLAWFUL REFUSAL OF ENTRY OF CHILDREN AT BORDERS



Note: Unlawful refusals of entry at airports are not included.

Source: FRA, 2020

2. Arrival and stay in the EU

Reception

In 2019, due to the drop in arrivals, several EU Member States improved their reception capacity and living conditions in accommodation for migrants, including children. In a few Member States, however, the reception capacity and conditions severely worsened, particularly at the EU's external borders.

Insufficient reception capacity

Reception capacities were insufficient to cover all asylum applicants, including children, in **Cyprus, France, Greece, Italy, Malta** and **Spain**. Insufficient capacity led to challenges in all these countries. However, the camps on the Greek islands in the Eastern Aegean were unprecedentedly overcrowded and conditions incomparably poor. The combination of reception gaps on the ground, the inefficient use of EU funds,²² and the interpretation of the EU-Turkey statement, allowing only for readmission to Turkey of those staying on the islands, all undermined dignified reception standards in the Eastern Aegean islands.

In **Cyprus**, where some 13,200 people applied for asylum in 2019, the number of applicants has almost doubled every year for the past four years. Reception capacity also remained largely insufficient in **France**.²³ In **Greece**, at the end of 2019, the five hotspots hosted over 38,000 people, which is more than six times their capacity.²⁴ Over 5,300 unaccompanied children were estimated to be in the country at the end of the year, including 486 separated children.²⁵ In comparison, by the end of 2019, only some 7,000 unaccompanied children had arrived in six EU Member States combined (**Belgium, Germany, Italy, the Netherlands, Poland** and **Sweden**).²⁶ This discrepancy in numbers underscores the urgent need for realistic burden sharing and solidarity among EU Member States to overcome the fundamental rights challenges in Greece.

In November 2019, the Greek authorities announced a scheme ("No child alone") aiming to distribute unaccompanied children in various accommodation facilities on the mainland.²⁷ This, however, has not yet materialised.

In **Italy**, UNICEF reported that following the closure of reception centres, the number of unaccompanied children in informal settlements and squats increased in Rome and other urban areas.²⁸

22 FRA (2019), **Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy**, March 2019, p. 7.

23 France, Fédération des acteurs de la solidarité, **Manifeste national des associations et des collectifs citoyens** «En finir avec les situations inhumaines d'errance et de campements en France», 27 June 2019. For data about the number of accommodation places in France, see Office Français de l'Immigration et de l'Intégration, **Rapport d'activité 2018**, 10 July 2019, p. 15.

24 Greece, Ministry of Citizen Protection, National Coordination Center for Border Control, Immigration and Asylum, **National Situational Picture Regarding the Islands at Eastern Aegean Sea**, 31 December 2019.

25 Greece, National Center for Social Solidarity (EKKA) (2019), **Situation Update: Unaccompanied Children (UAC) in Greece**, 31 December 2019.

26 Eurostat, **webpage on asylum applicants considered to be unaccompanied minors**, extracted 17 March 2020.

27 Greece, Keep Talking Greece, **No Child alone: PM Mitsotakis to start new program for unaccompanied minors**, 24 November 2019.

28 UNICEF (2019), **Refugee and Migrant Response in Europe Humanitarian Situation Report # 32**, April-June 2019.

Legal corner

Article 1 of the EU Charter of Fundamental Rights provides: "Human dignity is inviolable. It must be respected and protected." Housing serves to uphold the right to human dignity guaranteed in Article 1. It is a key dimension of integration and a precondition for the enjoyment of other rights.

Under Article 34 of the Charter, the Union recognises and respects the right to social and housing assistance, in accordance with national laws. The Reception Conditions Directive obliges Member States to ensure adequate living conditions for vulnerable persons, such as children.

In numbers

At the end of 2019, there were 5,301 unaccompanied children in Greece. Of these, only 1,286 were in appropriate and long-term accommodation (shelters and semi-independent living apartments); 748 were in temporary accommodation ('safe zones' and emergency hotels); 1,809 stayed in Reception and Identification Centres; 195 in 'protective custody', mainly at police stations; 77 at emergency accommodation facilities; and 141 in open temporary accommodation facilities. 1,045 have been reported as living in informal or insecure housing conditions, including being homeless.

See National Center for Social Solidarity (EKKA) (2019), **Situation Update: Unaccompanied Children (UAC) in Greece**, 31 December 2019.

Legal corner

In *European Committee on Social Rights, International Commission of Jurists and European Council for Refugees and Exiles v. Greece*, No. 173/2018 (23 May 2019), the European Committee on Social Rights ordered immediate measures to protect migrant children's rights in Greece.

Sh.D. and others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia, No. 14165/16 (13 June 2019), concerned living conditions of five unaccompanied migrant children in Greece. The European Court of Human Rights found that conditions in the Idomeni camp were not suitable for children, and that the protective custody of three applicants in police stations amounted to a deprivation of liberty in facilities not designed for unaccompanied children.

During times of increased arrivals, the hotspot in Lampedusa was overcrowded.²⁹ In **Malta**, where no new reception facilities have opened in the past years, increased arrivals led to overcrowding, riots and arbitrary detention.³⁰ This constitutes a serious risk to the life, health and psychological wellbeing of children.³¹

In **Spain**, every month some 10,000 people applied for asylum in 2019.³² Official data on reception capacity are not available, but the Chair of Refugees and Forced Migrants estimates that the 9,100 places in first reception, where applicants stay for up to six months, were largely insufficient.³³ Due to the increasing number of arrivals in the Canary Islands, according to media reports, the reception system on the islands was overwhelmed and pregnant women and children stayed in hotel rooms.³⁴

Poor reception conditions

Hygiene and sanitation conditions remain unacceptable in the hotspots situated in **Greece**, where many families and children stay for prolonged periods of time, with few support measures available for vulnerable people, in particular unaccompanied children.³⁵ A baby died from dehydration in Moria, illustrating the seriousness of the situation.³⁶

Children also faced difficulties as a result of reception conditions in **Cyprus, Croatia, France, Hungary, Italy, Malta, and Spain**. Age appropriate facilities are rare.

In **Cyprus**, poor reception conditions made it impossible to ensure a dignified standard of living, exposing children to particular hardships.³⁷ **Croatia** continued to place unaccompanied children in centres for children with behavioural problems. These are not well equipped and lack resources (experience, interpreters) to provide appropriate support and services to unaccompanied children during the asylum procedure.³⁸

29 UNHCR (2019), **UNHCR Italy Factsheet, October 2019**, 31 October 2019; **UNHCR Italy Factsheet, November 2019**, 30 November 2019; Italy, Melting Pot Europa, **Esigiamo una degna accoglienza per chi sopravvive ai frequenti naufragi!**, 2 December 2019.

30 Times of Malta, **Police raid open centre, arrest ringleaders, after Hal Far riot**, 21 October 2019; Times of Malta, **No food for three days for Hal Far migrants**, 24 October 2019. Times of Malta, **Rats and cramped conditions: life inside the Hal Far open centre**, 28 October 2019.

31 Malta Today, **University academics call for appropriate conditions for child asylum seekers**, October 2019.

32 Eurostat, **migr_asyappctzm**, data extracted on 22 January 2020.

33 Spain, information provided by Chair of Refugees and Forced Migrants, December 2019.

34 El País, **La llegada de migrantes colapsa los centros canarios de acogida**, 6 December 2019.

35 European Committee on Social Rights, International Commission of Jurists and European Council for Refugees and Exiles v. Greece, **No. 173/2018**, 21 December 2018; Greek Council for Refugees (2019), **Limits of Indignation: the EU-Turkey Statement and its implementation in the Samos 'hotspot'**, 9 May 2019; Council of Europe, Parliamentary Assembly (PACE) (2019), **Resolution 2280 (2019) on the situation of migrants and refugees on the Greek islands: more needs to be done**, 11 April 2019.

36 Greece, euronews, **Baby dies in Moria migrant camp, MSF reveals**, 17 November 2019.

37 Cyprus, **Asylum Service**, asylum applications 2015–2018. The statistics for 2019 have not yet been published, but the Asylum Service reported to FRA that it received 13,200 asylum applications, the highest number ever recorded; Commissioner for Children's Rights, Report from the Commissioner on material conditions granted to asylum seekers not hosted in the reception centres and the treatment of vulnerable persons, **Έκθεση Επιτρόπου, αναφορικά με τις υλικές συνθήκες υποδοχής που παραχωρούνται στους Αιτήτες Ασύλου που δεν υπάρχει δυνατότητα φιλοξενίας σε κέντρα υποδοχής και της μεταχείρισης ευάλωτων προσώπων**.

38 Croatia, interview with Rehabilitation Centre for Stress and Trauma, March 2019.

The European Court of Human Rights found that **France** violated Article 3 of the European Convention on Human Rights (prohibiting torture, and inhuman or degrading treatment or punishment) by not offering alternative accommodation to a 15-year-old unaccompanied child from Afghanistan evicted near Calais.³⁹

In **Italy**, UNICEF reported that most children are still hosted in first-level reception centres or in centres managed directly by municipalities, with inadequate standards.⁴⁰

In **Malta**, authorities placed many new arrivals, including unaccompanied children, in the Safi barracks, the country's main immigration detention facility. The facility was soon overcrowded and facing serious hygienic issues.⁴¹ In October, there was a riot in the largest open reception centre in Hal Far, hosting 1,200 people. It led to the temporary suspension of food distribution and the arrest of 107 people, including unaccompanied children.⁴² In **Hungary**, almost half of those kept in the transit zones along the Hungarian-Serbian border were children.⁴³ In the transit zones, armed security guards escort asylum applicants, including children, at all times; freedom of movement is severely restricted; and adequate medical care, in particular for women and children, is not available.⁴⁴ In Melilla, **Spain**, unaccompanied children at the centre "La Purísima" reported a lack of beds, food scarcity, cold-water showers and physical mistreatment by at least one centre employee.⁴⁵

Children often lacked child appropriate facilities and adequate facilities for play and leisure in some reception facilities in **Germany**,⁴⁶ **Hungary**,⁴⁷ **Malta**,⁴⁸ **the Netherlands**,⁴⁹ **North Macedonia**,⁵⁰ **Spain**⁵¹ and **Sweden**.⁵²

In **Cyprus** and **Greece**, newly arrived asylum applicants have to stay for weeks and months (or even years in the case of Greece) in camps originally intended only for short-term stays. On the Greek islands, FRA staff observed children sleeping in tents, halls or taking turns sleeping and in some cases staying together with adults not related to them. In Cyprus, adults share common areas with children unrelated to them.⁵³

39 ECtHR, *Kahn v. France*, No. 12267/16, 28 February 2019. See also UN Special Rapporteur on the right to adequate housing, **End of Mission Statement**, April 2019, presenting her preliminary findings after her visit to the Republic of France, conducted on 2–11 April 2019

40 UNICEF (2019), *Refugee and Migrant Response in Europe Humanitarian Situation Report # 32*, April-June 2019.

41 Malta, interview with Office of the Commissioner for Child, December 2019.

42 Times of Malta, **Police raid open centre, arrest ringleaders, after Hal Far riot**, 21 October 2019; Times of Malta, **No food for three days for Hal Far migrants**, 24 October 2019; Times of Malta, **Rats and cramped conditions: life inside the Hal Far open centre**, 28 October 2019.

43 Hungary, 444.hu (2019), *A tranzitónában őrzött menedékkérők nagyobbik része gyerek*, 11 April 2019.

44 United Nations High Commissioner for Human Rights (OHCHR) (2019), **End of visit statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales**, 17 July 2019.

45 Spain, Harraga Association (2019), *La Purísima: la pesadilla de ser menor y extranjero en Melilla*, 6 May 2019.

46 Germany, interview with Caritas Association, September 2019.

47 OHCHR (2019), **End of visit statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales**, 17 July 2019.

48 Malta, interview with Office of the Commissioner for Child, December 2019.

49 The Netherlands, **Study on the living conditions of children in reception centres and 'family locations'**, May 2018.

50 North Macedonia, interview with Ombudsperson, September 2019.

51 Spain, Harraga Association (2019), *La Purísima: la pesadilla de ser menor y extranjero en Melilla*, 6 May 2019.

52 Sweden, Interview with Save the Children, June 2019.

53 Cyprus, interview with Refugee Council and Commissioner for Children's Rights, December 2019; Report from the Commissioner on material conditions granted to asylum seekers not hosted in the reception centres and the treatment of vulnerable persons, **'Εκθεση Επιτρόπου, αναφορικά με τις υλικές συνθήκες υποδοχής που παραχωρούνται στους Αιτήτες Ασύλου που δεν υπάρχει δυνατότητα φιλοξενίας σε κέντρα υποδοχής και της μεταχείρισης ευάλωτων προσώπων**.

FRA activity

Integrating young people

FRA published a report on the challenges of young people aged between 16 and 24 who fled armed conflict or persecution and arrived in the EU in 2015 and 2016. The report identifies two critical moments that require more attention: the transition from asylum applicant to a person granted international protection, and the transition from childhood to adulthood upon turning 18. During such transitions, people experience gaps in rights and services, which risk undermining their pathway to social inclusion.

See FRA (2019), *Integration of young refugees in the EU: good practices and challenges*.

Bright spots

In **Sweden**, municipalities receive financial support for accommodating unaccompanied asylum-seeking children who turn 18 during their asylum procedure to allow them to remain in the same accommodation until their asylum procedure is finalised.

In Spain, the Office of Asylum and Refuge stopped appointments to register applications for over a month. In Madrid, this led to people sleeping on the streets, including pregnant women and children, as they cannot access the reception system before their asylum claims are registered.⁵⁴

Challenges when turning 18

Upon turning 18, unaccompanied asylum-seeking children face particular challenges, as they often have to leave their child-specific accommodation and experience a significant reduction in social support.⁵⁵ Guardianship ceases and young people may have to share rooms with other adults of different ages. Housing experts in **Greece, Italy** and **Sweden** noted that some young asylum applicants refuse to move to adult reception facilities, worried that they will not offer sufficient protection and assistance. Turning 18 can thus even result in homelessness.⁵⁶

Sexual and labour exploitation

In 2019, the NGO Rosa Luxemburg Stiftung issued a report on **Greece, Italy** and **Spain** showing that shortcomings in their national child-protection systems led to the social exclusion, as well as to sexual and labour exploitation, of children.⁵⁷ ECPAT, a worldwide network of organisations working to end the sexual exploitation of children, reported that unaccompanied children in Greece, especially boys, offer sex services to obtain food, shelter or money to continue their journey.⁵⁸ According to the Committee to the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Committee), in **Hungary**, due to the exclusion of children between 14-18 years of age from the child protection system, migrant children, in particular girls, are not adequately protected from sexual harassment and exploitation.⁵⁹

Age assessment

Age assessments not only prolong the procedure in some cases, but the manner in which they are conducted continued to raise fundamental rights concerns in several countries, including **France, Germany, Malta** and **Spain**.⁶⁰

In **France**, age-assessment methods predominantly rely on bone testing and physical examination.⁶¹ In **Germany**, untrained police officers increasingly performed age assessments.⁶²

54 Spain, Interview with the Reception Solidarity Network, Parish Church of San Carlos Borromeo and Coordinadora de Barrios, June 2019.

55 FRA (2019), *Integration of young refugees in the EU: good practices and challenges*.

56 *Ibid*, p. 59.

57 Rosa Luxemburg Stiftung (2019), *Children Cast Adrift – The exclusion and exploitation of unaccompanied minors (UAMs) in Greece, Spain and Italy – Comparative report*, November 2019.

58 Greece, ECPAT, Country Overview Greece, *A report on the scale, scope and context of the sexual exploitation of children*, p. 2, December 2019.

59 Committee to the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Committee), *Assessment by the Lanzarote Committee of the follow-up given by the Hungarian authorities to the recommendations addressed to them further to a visit undertaken by a delegation of the Lanzarote Committee to transit zones at the Serbian/Hungarian border (5-7 July 2017)*, 6 June 2019.

60 FRA (2019), *Integration of young refugees in the EU: good practices and challenges*, p. 32.

61 France, *National Consultative Commission on Human Rights and Public Defender of Rights*.

62 Germany, interview with Federal Association for Unaccompanied Minors, June 2019.

Legal corner

In *A.L. v. Spain* (No. 16/2017) and *J.A.B. v. Spain* (No. 22/2017), the UN Committee on the Rights of the Child found that Spain's age-assessment procedure for unaccompanied children violates the UN Convention on the Rights of the Child.

In **Malta**, age assessment is not multidisciplinary; is conducted on every child (as opposed to when a child's age is in doubt); and there is currently a large backlog.⁶³

In **Spain**, age assessment procedures were automatically applied to every child, even when a child had documentation. Some of the medical age-assessment procedures are invasive, not carried out by a medical expert, and applied without the child's consent.⁶⁴

Guardianship systems for unaccompanied children

An effective guardianship system for unaccompanied children is a necessary precondition to ensure the child's best interests, as required by the UN Convention on the Rights of the Child and by Article 24 of the EU Charter for Fundamental Rights. Further details are elaborated in the Council of Europe's Guidelines on Guardianship.⁶⁵ Despite significant progress in recent years in reforming national guardianship systems,⁶⁶ gaps remained in practice.

In **Croatia**, local social-welfare centres or people who arrived with a child exercise the role of guardians, without being systematically trained.⁶⁷ **Greece** adopted a new guardianship law, but to date, implementation has not started.⁶⁸ A civil society guardianship project created to fill the gap offered some 43 guardians by the end of 2019, while there were 5,300 unaccompanied children in the country.⁶⁹ Under **Hungarian** law, only children under 14 receive a fully-fledged child guardian (*gyermekvédelmi gyám*). Children aged between 14 and 18 are considered to have full legal capacity and are assigned only temporary "ad hoc guardians" (*eseti gyám*) to represent them in the asylum procedures.⁷⁰ In **Malta**, where reform of the guardianship system is pending,⁷¹ the relocation of unaccompanied children was on hold until the Minister for Family and Children's Rights produced interim care orders for them. These assigned temporary guardianship to the Director of the Agency for the Welfare of Asylum Seekers (AWAS) for 21 days.

63 Committee on the Rights of the Child, **Concluding observations on the combined third to sixth periodic reports of Malta**, June 2019; Asylum Information Database, **Country Report Malta**, January 2019; interviews with IOM and the Office of the Commissioner for Children, December 2019.

64 UNICEF (2019), *Niños y niñas migrantes no acompañados*, February 2019.

65 Council of Europe (2019), **Guidelines on Guardianship**, December 2019.

66 See, for example, Italy, Law No. 47, 7 April 2017 (*legge Zampa*).

67 Croatia, Ombudsperson for Children, Ombudsperson's work report for 2018 [*Izvjješće o radu pravobraniteljice za djecu za 2018. Godinu*], p. 132.

68 Greece, **Law No. 4554 of 18 July 2018**, published in Government Gazette No. 130/A/18-7-2018 on the regulatory framework for the guardianship of unaccompanied minors ("*Επιτροπεία ασυνόδευτων ανηλίκων και άλλες διατάξεις*"); Ministerial Decision **No. Δ11/οικ.26945/1074** published in Government Gazette 399/B/19-06-2019 on the registry of accommodation facilities for unaccompanied children; Joint Ministerial Decision No. Δ11/οικ.28304/1153/21.6.2019 published in the Government Gazette 2725/B/2-7-2019 on the registry of professional guardians; Joint Ministerial Decision **No. Δ11/οικ.26943/1073** published in the Government Gazette 2474/B/24-06-2019 on the registry of unaccompanied children; Joint Ministerial Decision No. Δ11/οικ.28303/1153 published in the Government Gazette 2558/B/ 27-06-2019 on the determination of the formal and substantive qualifications for the selection of a professional guardian, obstacles, number of unaccompanied minors per guardian, details on their training, continuing education as well as regular evaluation, content, type and conditions of their contract, their remuneration and any necessary detail; Ministerial Decision No. Δ11/28925/1169 published in the Government Gazette 2890/B/5-7-2019 on adoption of the rules of procedure of the Supervisory Board for Guardianship of Unaccompanied Minors as per Article 19 of L.4554/2018 (130/Τ.Α).

69 See Metadrasis, **Guardianship Network for unaccompanied minors** and National Centre for Social Solidarity, **Situation update on Unaccompanied Children in Greece**, 31 December 2019.

70 Hungary, Act No. 31 of 1997 on Child Protection and Guardianship Administration (*1997. évi XXXI. törvény a gyermekek védelméről és a gyámügyi igazgatásról*).

71 Malta, **Child Protection (Alternative Care) Act**, published for public consultation on 14 June 2018.

Legal corner

Detention is the most severe limitation on the right to liberty set out in Article 6 of the Charter and Article 5 of the European Convention on Human Rights (ECHR). Any deprivation of liberty must respect the strict safeguards established to prevent unlawful and arbitrary detention.

The Reception Conditions Directive (2013/33/EU) and the Return Directive (2008/115/EC) both emphasise that children are to be detained only as a last resort and only if less coercive measures cannot be applied effectively. Such detention must be for the shortest period of time possible and, in the asylum context, all efforts must be made to release those detained and to place them in suitable accommodation. The best interests of the child must be the primary consideration, in accordance with the Convention on the Rights of the Child.

3. Detention and return

Detention of children

Under EU asylum law, migrants can be detained for immigration-related reasons, either as asylum applicants,⁷² to ensure transfer under the Dublin Regulation procedure⁷³ or to facilitate their return.⁷⁴ A child can be deprived of liberty only in exceptional cases, as the detention of children – even if only for a short time – negatively affects their physical and psychological well-being.⁷⁵ Nevertheless, a UN Global Study on Children Deprived of Liberty found that immigration detention of children in Europe is extensively used, although no reliable statistics exist.⁷⁶

Detention of children on the rise

Since 2015, the detention of children in migration, in particular to facilitate their return, has been on the rise. According to available data, in 2015-2016, detention of unaccompanied children pending return was allowed in 19 EU Member States.⁷⁷ In 2019, in some EU Member States, including **France**, **Greece** and **Malta**, the use and length of child detention was increasing.

In **France**, some 1,430 children were detained in 2018, usually for between 1–13 days before their return or transfer.⁷⁸ The French overseas territory of Mayotte in the Indian Ocean, to which the EU Return Directive applies, detained the most children in the EU: 2,000 children.⁷⁹ In **Greece**, since August 2019, on average around 200 children have been held in ‘protective custody’, often in police cells, as a protective measure pending their transfer to a specialised accommodation facility. The number almost doubled compared to the same period in 2018, when fewer than 100 children were being held per month.⁸⁰ Immigration detention is on the rise in **Malta** since the country effectively returned to systematically detaining all who arrive by sea, including children.⁸¹ In 2019, this concerned some 885, mostly unaccompanied, children. Around 80 of them were girls.⁸²

72 Directive 2013/33/EU laying down standards for the reception of applicants for international protection, Art. 8.

73 Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), No 604/2013. Art. 28(2) provides that ‘When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively. Member States shall not hold a person in detention for the sole reason that he or she is subject to the Dublin procedure, and Member States shall ensure that the detention is as short as possible.’

74 Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, Art. 15.

75 Red Cross, EU Office, **Reducing the use of immigration detention in the EU**, 2020.

76 See in this regard also Manfred Nowak, **United Nations Global Study on Children Deprived of Liberty**, November 2019, p. 460.

77 This list only includes the 16 EU Member States covered by FRA’s Quarterly Bulletins on migration and only those for which data were available. For a complete list of all EU Member States, see FRA (2017), **European legal and policy framework on the immigration detention of children**, p. 74.

78 France, various authors, **Rapport 2018 sur les centres et locaux de rétention administrative**, June 2019.

79 Manfred Nowak, **United Nations Global Study on Children Deprived of Liberty**, November 2019, p. 460.

80 Greece, National Center for Social Solidarity, **Situation Update on Unaccompanied Children in Greece, 31.12.2018** and **Situation Update on Unaccompanied Children in Greece, 31.12.2019**.

81 Times Malta, **1,400 migrants detained ‘illegally’ at Marsa and Safi – UNHCR**, 4 January 2020.

82 Data provided by UNHCR. The number of children refer to the declared age.

Most of them were detained for at least one week, but some for months, often together with unrelated adults.⁸³

Even in **Italy**, where the law does not allow the detention of children, media and NGOs continued to report about cases of unaccompanied children in detention in Trapani.⁸⁴ In **the Netherlands**, unaccompanied children are detained for an average of 21 days, exceeding the maximum allowed period by seven days.

⁸⁵ The District Court of The Hague found that the relevant national legislation violates the rights of the child, as it does not contain sufficient guarantees regarding the detention of unaccompanied children under immigration law.⁸⁶

In **North Macedonia**, detention of unaccompanied children is on the rise.⁸⁷ Children were held for 1-2 days in detention to ensure their presence as witnesses in criminal procedures against smugglers.⁸⁸ In **Poland**, in 2019, some 156 children were detained (132 accompanied and 24 unaccompanied). This is one third fewer than in 2018, when 229 children were deprived of their liberty (210 accompanied and 19 unaccompanied).⁸⁹ In most cases, the district courts in Poland did not examine the best interests of the child when deciding on the detention of children.⁹⁰ At the same time, the number of alternatives to detention applied to children increased from 605 in 2018 to 830 in 2019.⁹¹

Detention conditions

While numbers of children in detention and the length of their detention were on the rise in 2019, reports about deplorable detention conditions continued to emerge, particularly in **Greece, France** and **North Macedonia**, as the following examples illustrate.

The ECtHR found that detention conditions for unaccompanied children under “protective custody” in police stations in **Greece** represented degrading treatment in violation of Article 3 of the ECHR.⁹² In December 2019, three unaccompanied children attempted suicide in protest against their long detention under ‘protective custody’ in Greece.⁹³ In **France**, conditions at Mesnil-Amelot, the largest pre-removal detention centre in the country were reported as poor.⁹⁴

83 Malta, Interview with Office of the Commissioner for Children, IOM Malta and several NGOs in December 2019; Times Malta, **1,400 migrants detained ‘illegally’ at Marsa and Safi – UNHCR**, 4 January 2020.

84 Italy, Melting Pot (2019), **Un minore trattenuto al CPR di Trapani. La denuncia della campagna LasciaCEntrare**, 11 February 2019; TrapaniSi (2019), **Giunti al porto di Trapani 14 migranti tunisini, ci sono anche minorenni**, 5 January 2020.

85 The Netherlands, **Letter from the State Secretary for Justice and Security (Kinderen ivreemdelingendetentie/ alternatieve toezichtmaatregelen)**, 22 February 2019.

86 The Netherlands, Court of The Hague (Rechtbank Den Haag), **NL19.18769 and NL19.18836**, 23 August 2019.

87 North Macedonia, Macedonian Young Lawyers Association (2019), US AID, **Gender Aspects of Migration**, 2020.

88 U.S. Department of State (2019), **2018 Country Reports on Human Rights Practices: North Macedonia**, 13 March 2019.

89 Poland, Border Guard Headquarters, Foreigners Department, data provided to FRA in January 2020.

90 Poland, Secretariat of the Committee of Ministers of the Council of Europe (2019), Communication from a NGO (Helsinki Foundation for Human Rights) (21/08/2019) in the case of *Bistieva and Others v. Poland* (Application No. 75157/14) and reply from the authorities (06/09/2019), 10 September 2019; Interview with the NGO Helsinki Foundation for Human Rights, December 2019. In July 2018, the ECtHR in *Bistieva and Others v. Poland* already stressed that Polish authorities failed to properly assess children’s best interests before deciding on placing them in immigration detention.

91 Poland, Border Guard Headquarters, Foreigners Department, data provided to FRA in January 2020.

92 ECtHR, **H.A. and Others v. Greece**, No. 19951/16, 29 February 2019.

93 Greece, NGO ARSIS (2019), **SOS for 61 unaccompanied minors in “protective” custody**, 11 December 2019.

94 France, *La Cimade* (2019), **Face à une situation intenable au CRA du Mesnil-Amelot, la Cimade se retire pour trois jours**, 11 July 2019.

Legal corner

Individuals without permission to stay in an EU Member State can be returned to their home country following the procedures laid down in the Return Directive (Directive 2008/115/EC).*

The directive also applies to children, including those who are unaccompanied. Article 3 of the Convention on the Rights of the Child, Article 24 of the EU Charter of Fundamental Rights and the Return Directive require Member States' authorities to take due account of the best interests of the child, which must be a primary consideration in their actions.

See *Return Directive, Art. 5 (a) and Art. 10 (1), read together with recital (22)*. The CJEU has also cited these provisions: see CJEU, C-249/13, *Khaled Boudjlida v. Préfet des Pyrénées-Atlantiques*, 11 December 2014, para. 48.

* The Return Directive was proposed to be recast in September 2018. For a fundamental rights-centered analysis of the recast proposal, see FRA (2019), **The recast Return Directive and its fundamental rights implications**, 10 January 2019.

At the border to **Italy** between Menton and Briançon, vulnerable people, including unaccompanied children, were detained under inadequate conditions before being sent back to Italy.⁹⁵ In **North Macedonia**, the Reception Centre for Foreigners Gazi Baba did not meet international standards and did not have appropriate conditions for accommodating children. Children did not have access to fresh air and were not given the opportunity to make phone calls. The police did not inform them of the reasons for their detention.⁹⁶

Greece, Malta⁹⁷ and **North Macedonia**⁹⁸ detained unaccompanied children together with unrelated adults. Concerning Greece, the ECtHR, applying Rule 39 of the Rules of the Court, indicated interim measures in the case of two unaccompanied girls seeking international protection, and ordered the Greek authorities to transfer them immediately from the pre-removal detention centre for adults to an accommodation facility dedicated to unaccompanied children.⁹⁹ The Greek authorities complied with the interim measure. In **France**, a 10-year-old Cuban girl was held with her parents and 65 other people in the waiting area of Roissy Charles de Gaulle Airport for 16 days. As a result, she reportedly stopped talking and suffered from insomnia.¹⁰⁰

Return of unaccompanied children

Returns of unaccompanied children are largely voluntary, as most Member States do not (by law or in practice) return unaccompanied children forcibly, including, for example, **Austria, Belgium, Cyprus, Greece, Hungary, Italy** and **Malta**.¹⁰¹

At least **Croatia, Finland, the Netherlands** and **Sweden** allowed and carried out forced returns of unaccompanied children.¹⁰² **Germany** also started returning unaccompanied children to their parents or youth welfare facilities in the Balkan region.¹⁰³ **France** introduced a new law making it possible to return unaccompanied children without waiting for a court decision placing them under care.¹⁰⁴

FRA activity

Returning unaccompanied children: fundamental rights considerations

In September 2019, FRA published guidance on how to ensure fundamental rights compliance when returning unaccompanied children. The focus paper aims to help national authorities involved in return-related tasks to ensure full rights compliance.

The guidance is available on **FRA's website**.

95 France, Interview with the Public Defender of Rights, April 2019.

96 North Macedonia, Ombudsman, Annual Report 2018–Republic of North Macedonia 2018 (ГОДИШЕН ИЗВЕШТАЈ ЗА СТЕПЕНОТ НА ОБЕЗБЕДУВАЊЕТО ПОЧИТУВАЊЕ, УНАПРЕДУВАЊЕ И ЗАШТИТА НА ЧОВЕКОВИТЕ СЛОБОДИ И ПРАВА 2018), March 2019; Macedonian Young Lawyers Association (MYLA), "Immigration detention in North Macedonia through numbers, January - September 2019", *Имиграциски притвор во Северна Македонија низ бројки. јануари-септември 2019 година*, December 2019.

97 Malta, interview with the Office of the Commissioner for Children and IOM Malta, December 2019.

98 North Macedonia, Macedonian Young Lawyers Association (2019), **US AID, Gender Aspects of Migration**, 2020.

99 Greece, Greek Council of Refugees (2019), **The European Court of Human Rights grants interim measures in favour of two detained unaccompanied girls**, 28 March 2019.

100 France, NGO 'ANAFÉ' on Twitter, January 2019.

101 See for data in 2016, FRA (2019), **Returning unaccompanied children: fundamental rights considerations**, p.5, 2019. This information was confirmed to FRA in various interviews for 2019.

102 *Ibid.*

103 Germany, interview with Federal Association for Unaccompanied Minors, December 2018.

104 France, **Loi n° 2018-778 du 10 septembre 2018 pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie**, Art. 18.



PROMOTING AND PROTECTING YOUR FUNDAMENTAL RIGHTS ACROSS THE EU —

Looking ahead

After four years of regular migration updates, FRA will continue to issue 'Quarterly Bulletins' on key migration-related fundamental rights concerns in 2020. These bulletins cover the following countries: Austria, Belgium, Cyprus, Bulgaria, Croatia, Denmark, France, North Macedonia, Germany, Greece, Hungary, Italy, Malta, the Netherlands, Poland, Serbia, Spain and Sweden.

For the February 2020 Quarterly Bulletin, see: <https://fra.europa.eu/en/publication/2020/migration-key-fundamental-rights-concerns-quarterly-bulletin-1-2020>

All previous monthly and weekly reports also remain available on **FRA's website**.

FRA – EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS
fra.europa.eu

 facebook.com/fundamentalrights

 twitter.com/EURightsAgency

 linkedin.com/company/eu-fundamental-rights-agency

© FRA, 2020

© Luxembourg: Publications Office
of the European Union, 2020

ISBN 978-92-9474-840-9

DOI:10.2811/71324

TK-01-20-047-EN-N



Publications Office
of the European Union