

Master of Laws: Advanced Studies in International Children's Rights



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**Best Interests' Assessment In The Initial Reception Of
Children On The Move In Greece: Are Accompanied Children
Seen?**

Faculty of Law

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Advanced LL.M in International
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Declaration Statement



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“Mankind owes the Child the best it has to give.”
--- The Declaration of Geneva (1924)

Table of Contents

Acknowledgments	vi
Executive Summary	vii
Key words.....	viii
Overview of the main findings	ix
List of abbreviations and acronyms	xi
Chapter 1 Introduction.....	1
1.1. The situation of asylum-seeking children in Greece.....	2
1.2. Research Question.....	3
1.3. Research Scope	3
1.4. Methodology.....	4
Chapter 2 International and Regional Children’s Rights Legal Framework.....	5
2.1. Introduction	5
2.2. The United Nations Convention on the Rights of the Child	6
2.2.1. The right of the child to receive appropriate protection	6
2.2.2. The best interests of the child.....	8
2.2.3. The right to be heard	10
2.2.4. The right to non-discrimination	11
2.2.5. The right to life, survival and development	12
2.2.6. The right not to be deprived of their liberty.....	13
2.3. EU Legal Framework.....	13
2.3.1. Charter of Fundamental Rights of the European Union	14
2.3.2. The EU Reception Conditions Directive	15
2.4. Concluding Remarks.....	17
Chapter 3 Domestic Legislation and Implementation	19
3.1. Introduction	19
3.2. The situation of children on the move in Greece and the key developments.....	19
3.3. The Law No. 2101/1992 on children’s rights	21
3.4. The Law No. 4939/2022 on reception conditions of children	22
3.5. Practical implementation	26
3.6. Concluding Remarks.....	32
Chapter 4 Potential application of the Barnahus model as a child-rights solution in the initial reception of children on the move	34
4.1. Introduction	34

4.2. Child protection gaps and the significance of a child-rights solution	34
4.3. The Barnahus model as a child-rights solution.....	36
4.4. Barnahus model in the initial reception of children on the move in Greece.....	38
4.5. Concluding Remarks.....	42
Chapter 5 Conclusions and Recommendations.....	43
5.1. Conclusions	43
5.2. Recommendations	44
5.3. Key takeaway.....	46
Bibliography	47

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Executive Summary

Greece is an EU country that receives many unaccompanied and accompanied children who have crossed borders and seek international protection. In May 2024, the number of registered unaccompanied children who resided in Greece was 1935 and 53 for registered separated children. Nevertheless, there is no data about the number of accompanied children, provided by the Ministry of Migration and Asylum. It is estimated by NGO reports, that the total number of accompanied children residing in Greece counts for 80% of the total number of children on the move. Hence, the aim of this thesis is to examine their right to receive appropriate protection at their initial reception, irrespective of their application for international protection. For this, the assessment of their best interests plays an important role. It additionally seeks to suggest the application of the Barnahus model in the initial reception of children on the move in Greece, as a child-rights solution to the protection of children.

The research question that this thesis addresses is the following:

To what extent does Greece comply with the UNCRC, the EU Reception Conditions Directive and its domestic laws as far as the initial reception of children on the move is concerned and to what extent can the Barnahus model apply in that context and provide a child-rights solution?

To answer this research question, the thesis has been divided in five chapters.

The first chapter of the thesis aims to establish the context of the research and the situation in Greece, the central research question and the sub-questions that contribute to the former's analysis. It also intends to define the research scope and its limitations, and the methodology used for the conduction of the thesis analysis.

The second chapter delves into the international and European legal framework for the protection of asylum-seeking children on the move. It examines the right of children to receive appropriate protection under Article 22(1) UNCRC and the general principles in order to better interpret Article 22(1) UNCRC. This Chapter also sheds lights on the EU principles under the EU Charter and on the responsibilities of States under the Reception Conditions Directive to assess the child's needs and best interests.

The third chapter seeks to analyze the legal and practical compliance of Greece with the UNCRC and the EU Reception Conditions Directive. Hence, it examines the national children's rights law (Law No. 2101/1992) and the national law on reception conditions of third country nationals (Law No.4939/2022). This Chapter intends to illustrate existing protection gaps, namely, the lack of individual identification of accompanied children, the use of detention and the lack of comprehensive best interests' assessments.

The fourth chapter aims to discuss the need to have the asylum system and the child protection system work together in order to appropriately protect children. Hence, it explores the principles of the Barnahus Model and its potential application to the initial reception of children on the move.

The fifth chapter answers the research question and provides conclusions and recommendations based on the gaps that exist in the national child protection and asylum system, that were discussed throughout the examination of the aforementioned chapters. It then concludes with the key takeaway of the thesis.

Key words

Children on the move – best interests' assessment – appropriate protection – United Nations Convention on the Rights of the Child – Barnahus model.

Overview of the main findings

This thesis aims to contribute to the research on the right of asylum seeking children to receive appropriate protection that will enable them to enjoy their rights under the UNCRC. The thesis aims to examine this by an international and European approach.

Firstly, by analyzing the Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child and Article 3 (1) of the UNCRC, the thesis brings to the attention that the State is able to provide appropriate protection to children, only after having assessed their best interests and as soon as the child arrives in the host country. Timing matters and hence, the appropriate protection of the child must be provided to them immediately. Secondly, this thesis observes that there is better protection for unaccompanied children in international law than accompanied children. This is grounded on the fact that the UNCRC Committee has issued the General Comment No. 6 on the treatment of unaccompanied children, which analyzes the best interest assessment for unaccompanied children on the move and the factors that should be taken into account. Nevertheless, there is no equivalent international General Comment that focuses on the treatment of accompanied children.

Additionally, this research paper finds that the EU Reception Conditions Directive provides for the assessment of the best interests of the child but after the lodge of the international protection application. The Directive is limited in scope and does not provide for any exception for children. This delayed assessment risks the appropriate protection of children. After the examination of the domestic legal framework in line with the UNCRC and the EU Reception Conditions Directive, the thesis finds that the national law No. 4939/2022 on the reception of third country nationals, is not that limited in scope as the EU Reception Conditions Directive and it allows States, as an exception, to assess the best interests of the child, irrespective of their international protection application.

Nevertheless, the thesis finds that Greece does not comply in practice with the legal framework. It finds out that Greece does not individually identify accompanied children, and hence, it does not conduct any best interests' assessment for them in order to provide them appropriate protection. In contrast, the thesis finds that the deprivation of liberty is used as a last resort measure until the identification process is completed, if there is no less restrictive alternative measure to apply. This undermines the protection of children and discriminates them against their status as accompanied. For unaccompanied children, the thesis finds out that there has been some progress in the legal and policy development by the adoption of the National Emergency Response Mechanism for their protection. The latter is responsible for their emergent accommodation and the conduction of the best interests' assessment. Nevertheless, it is only operational on the mainland and not on the islands. Consequently, unaccompanied children who reside in the islands, do not have any assessment of their needs but instead, in the absence of emergent accommodation, they can be deprived of their liberty until the identification process is completed. This impedes the appropriate protection of unaccompanied children residing in the islands. Consequently, the thesis finds that Greece complies with the international and European legal framework legally but not in practice. The practical application undermines the protection of asylum-seeking children and poses a threat to their human dignity.

The thesis illustrates that a collaboration of the asylum system with the child protection system could provide a child-rights solution in the initial reception of children on the move. After the examination of the Barnahus model and its principles, it finds that this model could provide the basis for this. Nevertheless, it brings to the attention that the application of such model needs the willingness and

commitment of the Greek State to operate as well as the confrontation of the lack of coordination, the overlap of responsibilities, and the lack of prioritization in budgeting.

List of abbreviations and acronyms

Best Interests Assessment – BIA

ECtHR – European Court of Human Rights

EU – European Union

GC – General Comment

NERM – National Emergency Response Mechanism

RIC – Reception and Identification Center

The Charter – The Charter on Fundamental Rights of European Union

UNCRC – United Nations Convention on the Rights of the Child

UNHCR – United Nations High Commissioner for Refugees

Chapter 1 Introduction

Migration is a phenomenon that exists for thousands of years, and the Mediterranean Route is one of the most dangerous routes that people who hope to arrive to a European Union country (hereinafter: EU) cross.¹ People cross borders due to different reasons, including to escape war, persecution, violence.² Nevertheless, there is no safe journey for third country nationals to arrive to an EU country.³ Although they leave their countries to seek international protection and safety, the journey exposes them to many risks. There is a high possibility that these people face incidents of violence, exploitation and abuse.⁴ This also depends on risk factors, such as age, sex and religion.⁵ Children are amongst the most vulnerable people who need special protection.⁶ Hence, as the UN General Assembly underscores, the protection of the rights of migrant children shall be provided, irrespective of their migration status, in a way that ensures their best interests and enhances their health and psychosocial development.⁷ The initial reception of children on the move is a crucial stage at which their effective protection can be safeguarded by the host State.⁸ It is the time when the State shall identify the child in order to ensure the protection of their rights.⁹

According to data produced by the United Nations High Commissioner for Refugees (hereinafter: UNHCR), the number of children who were forced to leave their homes and to seek international protection surged to 43.3 globally by the end of 2022.¹⁰ That number counts for 40% of the total number of people who forcibly left their country of origin.¹¹ It is important to elucidate that a person who seeks international protection or otherwise asylum or refugee status, is a person that lives outside of their country of origin and is unable or unwilling to return because of a well-founded fear of persecution due to race, religion, nationality, membership of a particular social group or political opinion.¹² Consequently, there is a serious concern that pushes people to seek protection in another country's territory.

¹ IOM, Migration in West and North Africa and across the Mediterranean: Trends, risks, development and governance (2020) at 134.

² United Nations Human Rights Office of the High Commissioner, Chapter 26: Monitoring and Protecting Human Rights In The Context Of Migration (2022) at 5.

³ (https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/third-country-national_en), last visited (28-06-2024): Third country national is a person that is not a citizen of the EU within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union and does not enjoy the EU right to freedom of movement.

⁴ Supra 1 at 133.

⁵ Ibid at 134.

⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180 Article 21.

⁷ General Assembly, Resolution on the Rights of the Child, UN Doc. A/RES/69/157 (2015) at 8 para 25 and 26.

⁸ UNHCR, Technical Guidance: Child-Friendly Procedures (2021) at 29.

⁹ Ibid.

¹⁰ (<https://data.unicef.org/topic/child-migration-and-displacement/displacement/>), last visited (28-06-2024).

¹¹ (<https://www.unhcr.org/refugee-statistics/>), last visited (28-06-2024).

¹² Convention Relating to the Status of Refugees (1951), Article 1(2).

The EU host countries are responsible to provide protection to third country nationals, and especially to children who are deemed as a vulnerable group, once they arrive in their country.¹³ There are many international and European legal instruments that establish the legal framework for the protection of children. Nevertheless, there is a lack of practical implementation of such legal framework and thus, the protection of children is not always ensured and provided in accordance with their rights protected under the United Nations Convention on the Rights of the Child (hereinafter: UNCRC).

1.1. The situation of asylum-seeking children in Greece

Greece is one of the main Mediterranean countries that receive third-country nationals' children, who seek international protection and that 'acts as a crossing point' for those who want to continue their journey to the EU.¹⁴ Asylum-seeking people arrive especially on the islands (Kos, Lesbos, Chios, Samos, Leros) and on the mainland (Athens, Thessaloniki, Evros). Indicatively, Greece has received 9,342 people during the first three months of 2024, from whom 40% reside in the islands and 60% in the mainland.¹⁵ There is only national data about the number of children who are unaccompanied. Particularly, there are 1,935 registered unaccompanied children and 53 registered separated children arrived in Greece in May 2024.¹⁶ However, there is no specific data provided for children who are accompanied and thus, there is no precise knowledge about it.

After the European migration crisis in 2015 that Greece received hundreds of thousands of third country nationals, at a period when Greece was not prepared to host them and properly protect them, it attempted to create a legal framework to protect their rights and especially, children's rights.¹⁷ Specifically, Greece enacted the national law No. 4939/2022 that attempted to ensure the protection of children after the conduction of the best interests and needs assessment.¹⁸ Nevertheless, there is no effective legal framework without proper implementation. In the case of Greece, there is no effective implementation in practice that encompasses both the protection of unaccompanied and accompanied children. For unaccompanied children, Greece has made some steps towards protecting their rights, including adopting a National Strategy and a National Emergency Response Mechanism. However, there is no such progress for accompanied children and thus, there is still a lot to be achieved.

¹³ Supra 6.

¹⁴ EUAA, Asylum Report on the Situation of Asylum in the European Union (2022) at 86.

¹⁵ Hellenic Republic, Ministry of Migration & Asylum, Report A March 2024: Reception, Asylum & Integration Procedures (2024) at 1.

¹⁶ Hellenic Republic, Ministry of Migration & Asylum, Situation Update: Unaccompanied Minors (UAM) in Greece, 01 May 2024 at 1.

¹⁷ CEASEVAL, A. Dimitriadi and A.M. Sarantaki, The refugee 'crisis' in Greece: politicisation and polarisation amidst multiple crises (2018) at 3.

¹⁸ Greek Law No. 4939/2022 for the ratification of a Code of Legislation on the reception, international protection of third country citizens and stateless persons and temporary protection in the event of a mass influx of displaced foreigners (2022).

1.2. Research Question

This research paper aims to explore the protection of children on the move once they are initially received in Greece. For this, there will be primarily an analysis of the international, European and domestic legal framework, followed by an examination of its practical implementation. The additional aim of this paper is to identify child protection gaps during the latter examination and to recommend the potential application of the Barnahus model as a child-rights solution to the initial reception of children on the move.

Hence, the research question that this paper attempts to answer is the following:

To what extent does Greece comply with the UNCRC, the EU Reception Conditions Directive and its domestic laws as far as the initial reception of children on the move is concerned and to what extent can the Barnahus model apply in that context and provide a child-rights solution?

For the research question to be answered, the following four sub-questions also need to be examined:

- 1) What is the legal framework based on the UNCRC, the EU Charter on Fundamental Rights, and the EU Reception Conditions Directive for the protection of children on the move as far as their initial reception in EU countries is concerned?
- 2) Does Greece comply with the aforementioned legal framework both in law and in practice concerning the initial reception of children on the move?
- 3) What are the main child protection gaps in practice in Greece as far as the initial reception of children on the move is concerned?
- 4) To what extent can the Barnahus model provide a child-centred and child-friendly solution for the initial reception procedure of children on the move?

1.3. Research Scope

Children on the move are first and foremost children and their rights should be respected, protected and fulfilled by States. This thesis focuses on the right of children to receive appropriate protection from the host country (Article 22(1) UNCRC) and on their right to have their best interests assessed before any protection measure is taken.¹⁹ There is an additional analysis of their right to non-discrimination, their right to be heard, their right to life, survival and development and their right not to be deprived of their liberty in order better interpret Article 22(1) of the UNCRC.²⁰ These rights are examined from the international as well as from the EU and the domestic legal framework. Furthermore, this thesis places its emphasis on the initial reception of children on the move, and the importance of the assessment of their best interests and needs in order to receive the appropriate protection by the State. The initial reception of children includes the procedure of reception and

¹⁹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Article 22(1), Article 3(1).

²⁰ Ibid Article 2, 12, 6, 22(1) and 37 respectively.

identification, information, registration, medical examination, assessment of best interests and special needs, and referral to international protection application.

During the identification process, many States conduct age assessment in order to prove that the person is under 18 years old and thus, is entitled to child protection. Although age assessment is an important topic when discussing the protection of children and the best interests' assessment, this paper limits its scope to address only the latter. Nevertheless, there are guiding international documents that discuss the State's obligations on age assessments such as the Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child.²¹ Additionally, this paper does not address the application of international protection of children and as a result, there is no discussion of the Refugee Convention,²² the EU Procedures Directive on granting international protection²³ and the Dublin Regulation III on family reunification²⁴.

1.4. Methodology

The research methodology used for this thesis is mainly legal desk-based. The research is based on the international and European legal standards and documents. As far as the international context is concerned, there is an analysis of the UNCRC, General Comments (hereinafter: GC) and UNCRC Committee's Concluding Observations. Concerning the European legal framework, the research is grounded on the EU Charter of Fundamental Rights, the EU Reception Conditions Directive, and ECtHR case law. Additionally, the thesis relies on the research of the domestic laws No. 2101/1992 and No. 4939/2022 in order to reflect on its compliance with the EU and international standards.²⁵ For the exploration of the practical implementation of the legal framework, this paper makes use of the UNCRC Committee's Concluding Observations, reports, articles and journals. Nevertheless, due to the fact that information about the practical implementation is limited in the academic literature, and often out of date in the reports, this research derives its up-to-date knowledge from the conduction of remote interviews of professionals working on the field. However, their names will only be disclosed, only at a request and after having acquired their consent.

²¹ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, UN Doc. CMW/C/GC/4-CRC/C/GC/23 at 2 paras 3-4 (2017).

²² Convention Relating to the Status of Refugees (1951).

²³ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180.

²⁴ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 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), OJ L 180.

²⁵ Greek Law No. 4939/2022 for the ratification of a Code of Legislation on the reception, international protection of third country citizens and stateless persons and temporary protection in the event of a mass influx of displaced foreigners, (2022).

Chapter 2 International and Regional Children's Rights Legal Framework

2.1. Introduction

As it has been stated in Chapter 1, 43.3 million children were forced to cross border globally and seek international protection by the end of 2022.²⁶ This situation triggers significant concerns for the protection of children on the move, taking into account their vulnerability and the risks they may encounter, which can put their rights in danger.²⁷ This Chapter aims to examine the international and European legal framework on the initial assessment of the best interests (hereinafter: BIA) of asylum seeking children at the time they arrive at an EU country. The reason behind the focus of the thesis is that States shall assess the best interests of the child on a case-by case basis in order to decide on the level and type of protection each child needs.

Although there are many important international and European legal documents that provide protection to children, this research paper will solely examine the UNHCR²⁸, the Charter on Fundamental Rights of the European Union (hereinafter: the Charter)²⁹ and the EU Reception Conditions Directive.³⁰ The reason is that these legal documents are more relevant to the procedure of the BIA of children on the move. At the same time, Greece has ratified the UNCRC under the Law 2101/1992³¹, it is a member of the EU since 1st January 1981³² and has implemented the EU Reception Conditions Directive under the Law 4939/2022³³. Thus, Greece has obligations derived by the UNCRC, the Charter and the EU Reception Conditions Directive, with which it shall comply.

Consequently, this Chapter will analyze the following sub-question: *What is the legal framework based on the UNCRC, the Charter and the EU Reception Conditions Directive for the protection of children on the move as far as their initial reception in EU countries is concerned?* For this, it is divided in three main parts: the UNCRC (Part 1), the Charter and the EU Reception Conditions Directive (Part 2) as well as the concluding remarks (Part 3). There are two main arguments throughout the analysis of the legal framework. Firstly, this paper aims to argue that there is different approach between the UNCRC and the EU Reception Conditions Directive as to the stage at which the BIA shall be conducted. Secondly, it tries to indicate that there is better protection in law for

²⁶ (<https://data.unicef.org/topic/child-migration-and-displacement/displacement/>), last visited (14-06-2024).

²⁷ Committee on the Rights of the Child, 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration, at 3 (2012).

²⁸ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

²⁹ Charter of Fundamental Rights of the European Union of the European Parliament, the Council and the Commission, 2012/C 326/02.

³⁰ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180.

³¹ Greek Law No. 2101/1992 for the ratification of the UN Convention on the Rights of the Child (1992).

³² (https://european-union.europa.eu/principles-countries-history/eu-countries/greece_en), last visited (14-06-2024).

³³ Greek Law No. 4939/2022 for the ratification of a Code of Legislation on the reception, international protection of third country citizens and stateless persons and temporary protection in the event of a mass influx of displaced foreigners (2022).

unaccompanied children rather than accompanied children under the international legal framework.

2.2. The United Nations Convention on the Rights of the Child

The UNCRC was adopted on the 20th of November, and it entered into force almost one year later, in 1990. This international treaty is the most widely ratified document and the first one that explicitly recognizes children as agents of their own rights.³⁴ This was a revolutionary change of the way children were perceived by adults.³⁵ Historically, children were seen as 'objects', as 'property' in their parents' hands and not as rights holders.³⁶ With the adoption of the UNCRC, children have explicit rights, which States must respect, protect, and fulfill. Additionally, this Convention applies to all human beings aged under eighteen years old, irrespective of their status.³⁷ Therefore, it also applies to children seeking asylum, meaning international protection.

2.2.1. The right of the child to receive appropriate protection

Article 22(1) of the UNCRC is dedicated to the right of children to receive appropriate protection and humanitarian assistance while seeking asylum. More precisely, it states that:

*'State Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties'.*³⁸

This Article imposes a legal obligation on States to take appropriate measures to provide such protection to children who seek international protection. During the drafting of the Convention, the Working Group had proposed the inclusion of the wording 'special protection' instead of 'appropriate protection'.³⁹ Nevertheless, the wording 'appropriate protection' was eventually included in Article 22(1) UNCRC. This occurred owing to the fact that children should be treated as children first and not as refugees or asylum seekers.⁴⁰ Given the interrelation of the UNCRC provisions, the wording 'appropriate protection' signifies that States shall take into account other UNCRC provisions in order

³⁴ J.E. Doek, *The Human Rights of Children: An Introduction*, in T. Liefwaard and U. Kilkelly (Eds.) *International Human Rights of Children* (2019) at 11,12.

³⁵ *Ibid* at 7.

³⁶ *Ibid*.

³⁷ *Supra* 28, Article 1 and 2.

³⁸ *Ibid*, Article 22(1).

³⁹ C. Whalen, Chapter 36 Article 22: The Right to Protection for Refugee and Asylum-Seeking Children, in Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero (Eds.) *Monitoring State Compliance with the UN Convention on the Rights of the Child* (2022) at 362-363.

⁴⁰ *Ibid* at 362.

to be able to provide appropriate protection to asylum-seeking children.⁴¹

States are able to provide appropriate protection to children seeking asylum only after having assessed their needs and as soon as they arrive at the host country. The Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child points out the timing when this protection must be provided.⁴² In its paragraph 13, it declares that the time a migrant child is detected by the States' authorities, the professionals must be informed and start assessing the child's individual needs for protection.⁴³ The timing is vital for the protection of the child. The reason is that children on the move are more at risk of being harassed, of experiencing any form of violence and of being exploited. If the assessment of the child's needs for protection is being conducted at an early stage, it is more likely that the child will not be re-victimized anew.⁴⁴ It is significant to note that Article 22(1) UNCRC does not distinguish between accompanied and unaccompanied children when affirming States' obligation to take measures to provide appropriate protection to children.⁴⁵

Non-refoulement

Furthermore, it is of utmost importance to concisely mention that providing appropriate protection means that the State first respects the principle of non-refoulement. This fundamental principle is core to the Geneva Convention, and it is addressed in its Preamble and in Article 33.⁴⁶ Specifically, States must not expel or return asylum seekers, in any manner, to a country that poses a threat to their life or freedom. This principle is also addressed in GC No. 6, where it is highlighted, that States must fully respect the principle of non-refoulement as derived by Article 33 of the Geneva Convention and thus, 'shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child'.⁴⁷ This safeguard is relevant to Article 22(1) of the UNCRC owing to the fact that States cannot proceed to appropriately protect children if they have not firstly respected the principle of non-refoulement.

⁴¹ General Comment No. 14 (2013) of the Committee on the Rights of the Child on the right of the child to have his or her best interests taken as a primary consideration (art.3, para. 1), UN Doc. CRC/C/GC/14, at 6 para 16 (2013).

⁴² Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, UN Doc. CMW/C/GC/4-CRC/C/GC/23 (2017).

⁴³ Ibid at 4 para 13.

⁴⁴ Ibid at 10 para 39.

⁴⁵ Supra 28, Article 22(1).

⁴⁶ Convention Relating to the Status of Refugees (1951), Preamble and Article 33.

⁴⁷ General Comment No. 6 (2005) of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin, UN Doc. CRC/GC/2005/6 at 10 para 27 (2005).

General principles

A further analysis of the general principles of the UNCRC is essential in order to better interpret Article 22(1) of the UNCRC.⁴⁸ The general principles are the right to non-discrimination (Article 2 of the UNCRC), the right of children to have their best interests taken as a primary consideration (Article 3(1) of the UNCRC), the right to life, survival and development (Article 6 of the UNCRC) and the right to have their opinion be heard and given due weight (Article 12 of the UNCRC). The general principles shall be deemed as an interpretive tool when implementing other rights and not as superior rights than others protected under the UNCRC.⁴⁹ Consequently, their analysis is significant in order to interpret the State's obligation to provide appropriate protection to children on the move.

Before proceeding to such analysis, it is important to state that the aforementioned provisions are identified by the UNCRC Committee as general principles.⁵⁰ However, Articles 37 and 22 of the UNCRC could also be considered as a general principle for children on the move.

2.2.2. The best interests of the child

The first general principle of the UNCRC that will be discussed is under Article 3(1). Specifically, Article 3(1) provides the child the right to have their best interests taken as a primary consideration in all actions that concern them.⁵¹ The best interest of the child is a threefold concept; it is a substantive right, a fundamental, interpretive legal principle, and a rule of procedure.⁵² For the purposes of the thesis, the best interests of the child will be analyzed as a substantive right and as a rule of procedure. Firstly, the best interests of the child is a substantive right given that children have the standalone right to have their best interests taken as a primary consideration in all actions that affect them.⁵³ This implies that this right can be directly invoked before a Court.⁵⁴ Secondly, it is a procedural right because States have the obligation to assess the best interests of the child when a decision or an action have an impact on them.⁵⁵ Complementary, States must safeguard procedural guarantees.⁵⁶ This means that States must justify their decision and show the criteria upon which they assessed the best interests of the child and took their decision.⁵⁷ This places an obligation on States to assess the best interests of the child on a case by cases basis, in any decision that concern them

⁴⁸ General Comment No. 5 (2003) of the Committee on the Rights of the Child on general measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), UN Doc. CRC/GC/2003/5, at 3-5 para 12 (2003).

⁴⁹ J.E. Doek, *The Human Rights of Children: An Introduction*, in T. Liefaard and U. Kilkelly (Eds.) *International Human Rights of Children* (2019) at 14.

⁵⁰ *Supra* 48.

⁵¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Article 3(1).

⁵² General Comment No. 14 (2013) of the Committee on the Rights of the Child on the right of the child to have his or her best interests taken as a primary consideration (art.3, para. 1), UN Doc. CRC/C/GC/14, at 4 para 6 (2013).

⁵³ *Ibid* at 4 para 6(a).

⁵⁴ *Ibid*.

⁵⁵ *Ibid* at 4 para 6(c).

⁵⁶ *Ibid*.

⁵⁷ *Ibid*.

and to adopt all necessary measures in order to fully implement this right.⁵⁸

Focusing on the BIA, it is fundamental to point out that all children, regardless of their status as asylum seeking children and whether they are accompanied or not, have the right to have their best interests assessed for their individual needs to be identified.⁵⁹ Specifically, during the initial assessment of the best interests of children the personal characteristics of the individual child, their situation and their needs shall be considered.⁶⁰ The Committee on the UNCRC proposes a non-exhaustive and non-hierarchical list of some elements that can be taken into consideration by States when assessing the child's best interests.⁶¹ Specifically, the views of the child is the first element to be taken into account. This element will be further elaborated below. Other elements are the child's identity, the preservation of the family unity and the care, protection and safety of the child, the health situation of the child and the situation of vulnerability in which the child finds themselves, for instance, in a situation of migration.⁶² The Committee declares that States must examine different kinds of vulnerabilities, especially for children on the move.⁶³ As the Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child recognizes, children in migration confront gender-specific risks and different vulnerabilities, which the States need to identify and specifically tackle.⁶⁴ As a result, the elements of the BIA may change depending on each case.⁶⁵ Owing to this, assessing the best interests of the child must be on a case-by-case basis⁶⁶ and as soon as the child arrives at the country.⁶⁷

The Committee on the UNCRC has dedicated GC No. 6 solely for the treatment of unaccompanied and separated children who reside outside their country of origin.⁶⁸ In particular, this GC underscores that States are able to take measures to protect unaccompanied and separated children only after having assessed their needs and their best interests individually as part of an initial assessment procedure. This assessment shall include the identification of a child as unaccompanied or separated the time the child arrives at a host country, their prompt registration and their assessment of the specific needs and vulnerabilities.⁶⁹ Nevertheless, even though this GC specifically speaks about the

⁵⁸ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Article 1; Supra 52 at 3 para 1, at 5 para 13 and at 9 para 32.

⁵⁹ J. Bhabha, M. Dottridge, *Child Rights in the Global Compacts: Recommendations for protecting, promoting and implementing the human rights of children on the move in the proposed Global Compacts*, at 10 (2017).

⁶⁰ Supra 52 at 9 para 32 and at 12 para 48.

⁶¹ Ibid at 12 para 50.

⁶² Ibid at 13-17 paras 52-78.

⁶³ Supra 52 at 16 para 76.

⁶⁴ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, UN Doc. CMW/C/GC/4-CRC/C/GC/23 at 10 para 41 (2017).

⁶⁵ Ibid at 80.

⁶⁶ UNHCR, *Technical Guidance: Child-Friendly Procedures* (2021) at 4.

⁶⁷ UNHCR, *Guidelines on Determining the Best Interests of the Child* (2008) at 22.

⁶⁸ General Comment No. 6 (2005) of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin, UN Doc. CRC/GC/2005/6 (2005).

⁶⁹ Ibid at 11-12 para 31.

treatment of children on the move and the assessment of their needs, it solely focuses on unaccompanied and separated children. There is the presumption that accompanied children are protected by their parents and thus, the focus is on unaccompanied children.⁷⁰ Although unaccompanied children do have specific needs because they do not have any parent or caregiver to protect them, accompanied children have also children's rights and this must not be forgotten. Children, whether accompanied by their parents or unaccompanied, are agents of their own rights and their best interest shall be individually assessed in order to be provided appropriate protection by the State.

Consequently, Article 3 (1) of the UNCRC is relevant to the interpretation of Article 22 (1) of the UNCRC because it provides the procedural ground for State's obligation to provide appropriate protection to children on the move. States must provide appropriate protection to all children and for this, they need to conduct an individual assessment of the best interests of each child in order to be able to comply with their obligation under Article 22(1) UNCRC.

2.2.3. The right to be heard

Article 12 (1) of the UNCRC stipulates that children have the right to have their views be heard and be given due weight in all matters that affect them, in accordance with their age and maturity. States have the obligation to assure the implementation of this right and especially, for asylum seeking children, whose participation is often overlooked. The right to be heard is closely related to the right to information which is protected under Article 17 UNCRC.⁷¹ For a child on the move to be fully able to participate and express their opinions, relevant information about their rights is necessary to be given in a child-friendly manner and in their own language.⁷² This is important because children on the move are mostly unaware of the procedures once they arrive in a host country and they do not speak the language. Hence, as the Joint GC No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child highlights, States must ensure that children are provided the right information, are assisted by an interpreter free of charge and are provided the ground to be heard.⁷³

Article 12 (1) has also a complementary nature with Article 3 (1) of the UNCRC since Article 3 (1) as a procedural right imposes the obligation on States to assess the best interests of children on the move in all actions that affect them and Article 12(1) of the UNCRC obliges States to hear the children's opinion and facilitate their participation when assessing their best interests.⁷⁴ As the GC No. 12 points out, there is no proper implementation of Article 3(1) of the UNCRC, if Article 12 of the UNCRC has not been respected.⁷⁵ Hence, Article 12 (1) UNCRC is a procedural guarantee for the conduction of

⁷⁰ C. Smyth, Migration, Refugees, and Children's Rights, in T. Liefaard and U. Kilkelly (Eds.), *International Human Rights of Children* at 428 (2018).

⁷¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Article 17; General Comment No. 12 (2009) of the Committee on the Rights of the Child on the right of the child to be heard, UN Doc. CRC/C/GC/12, at 15 para 68 (2009).

⁷² General Comment No. 12 (2009) of the Committee on the Rights of the Child on the right of the child to be heard, UN Doc. CRC/C/GC/12, at 24 para 124 (2009).

⁷³ *Supra* 64 at 5 para 17.

⁷⁴ General Comment No. 12 (2009) of the Committee on the Rights of the Child on the right of the child to be heard, UN Doc. CRC/C/GC/12, at 15 paras 70 and 74 (2009).

⁷⁵ *Ibid* at 15 para 74.

BIA.⁷⁶

This right is important for the realization of Article 22 (1) of the UNCRC. Specifically, if children are informed about their rights in a language that they understand by the presence of an interpreter, this results in their better participation and engagement throughout the assessment of their needs and their best interests and throughout the adoption of actions that affect them. In this way, children assist States to provide them appropriate protection and thus, they contribute to the realization of their own rights.

2.2.4. The right to non-discrimination

The right of children to non-discrimination is protected under Article 2(1) of the UNCRC. This Article requires States to respect and ensure the rights of children without discrimination based on their 'status'. Discrimination can be either direct or indirect.⁷⁷ For the purposes of the research essay, the direct discrimination against children because of their age and because of their status as accompanied asylum seeking children will be explored. Although Article 2(1) of the UNCRC does not explicitly provide any reference on discrimination on the ground of age and childhood, it could be said that it falls under the ground 'other status'.⁷⁸ The same can be argued for the discrimination on the ground of their status as accompanied asylum seeking children.

With regards to the first ground of discrimination, children are prone to face discrimination because of the fact that they are children and there is limited discussion about it worldwide.⁷⁹ This is vividly illustrated in situations where children are accompanied by their parents or their legal guardians. In fact, it is often overlooked that accompanied children on the move are also individual rights bearers. They are often treated as members of their family, and they do not receive any attention to their needs individually.⁸⁰ Another example that this discrimination is portrayed is during the asylum application. Specifically, there is a common practice in many European countries, that children who are accompanied by their families and seek international protection, are not interviewed separately, nor is any BIA and risk assessment conducted for them.⁸¹ This is highly problematic because even though children do have rights under the UNCRC, States may not fulfill them because of the fact that they are children. This directly impacts the rights of children under the UNCRC and their status as rights-holders.⁸²

As far as the second ground of discrimination is concerned, Besson mentions that 'children are not only directly discriminated because they are children but also because they are members of a specific

⁷⁶ Ibid at 18 para 89.

⁷⁷ S. Besson, The Principle of Non-Discrimination in the Convention on the Rights of the Child, in L. Lundy and H. Stafford (Eds.), *The International Journal of Children's Rights* at 440 (2005).

⁷⁸ W. Vandenhoe, G.E. Türkelli and S.Lembrechts, *Children's Rights: A Commentary on the Convention on the Rights of the Child and its Protocols* at 56 (2019).

⁷⁹ A.Daly, R.T. Stern, P. Leviner, *UN Convention on the Rights of the Child, Article 2 and Discrimination on the Basis of Childhood, the CRC Paradox?*, *Nordic Journal of International Law* 91 at 420 (2022).

⁸⁰ *Defence for Children International Greece, In the Shadows: Accompanied children on the move and their mothers in Greece, unrevealing their struggles* (2023) at 35.

⁸¹ EASO, *Practical Guide Series: Report on asylum procedures for children* (2019) at 27.

⁸² *Supra* 79 at 423.

group', in this case because of their status as 'accompanied children'.⁸³ Discrimination can occur between children and adults, between children and young adults and between children and children.⁸⁴ With regards to the latter category, Article 2(1) of the UNCRC explicitly states that children have equal enjoyment of all the rights under the UNCRC and that States have the negative obligation to refrain from discriminating against children in the fulfilment of their rights.⁸⁵ In fact, accompanied children are directly treated differently than unaccompanied children. They obtain less protection because of the belief that their parents are the ones that will protect them.⁸⁶ Nevertheless, it is the State's obligation to provide them appropriate protection when they seek international protection according to Article 22(1) UNCRC. As a result, States must conduct BIA in order to find the appropriate protection, to all children, irrespective of whether they are accompanied or unaccompanied. Therefore, part of the States obligations under Article 22(1) UNCRC should also be the protection of children against discrimination in the enjoyment of their children's rights.

2.2.5. The right to life, survival and development

Article 6(2) of the CRC requires States to ensure the survival and development of the child to the maximum possible. Focusing on the word 'development', GC No. 5 provides that it must be interpreted holistically, in its broadest sense, including the child's physical, mental, spiritual, moral, psychological, and social development.⁸⁷ In situations of migration, this is crucial to take into consideration. In fact, children on the move may be traumatized from the journey itself or from violent situations that they may have experienced, may live under precarious conditions, be stressed or/and suffer from constant fear.⁸⁸ This can have an adverse impact on their right to survival and development. Therefore, linking Article 6(2) UNCRC with Article 3(1) UNCRC, States are obliged to protect and to ensure the holistic development of the child when assessing their best interests.⁸⁹ The timing of the BIA is also crucial. It has to be as soon as possible from the time the child arrives at the host country because the passing of time can have adverse effect on the development of the child.⁹⁰ Article 6(2) is related to the interpretation of Article 22(1) because the protection that the State is obliged to provide to children shall take into consideration their holistic development in order to ensure that it is appropriate.

⁸³ Supra 77 at 443.

⁸⁴ Ibid at 445.

⁸⁵ Ibid at 445.

⁸⁶ C. Smyth, Migration, Refugees, and Children's Rights, in T. Liefaard and U. Kilkelly (Eds.), *International Human Rights of Children* at 428 (2018).

⁸⁷ General Comment No. 5 (2003) of the Committee on the Rights of the Child on general measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), UN Doc. CRC/GC/2003/5, at 3-5 para 12 (2003).

⁸⁸ UNHCR, *Refugee Children: Guidelines on Protection and Care* (1994) at 14.

⁸⁹ General Comment No. 14 (2013) of the Committee on the Rights of the Child on the right of the child to have his or her best interests taken as a primary consideration (art.3, para. 1), UN Doc. CRC/C/GC/14, at 3 para 4 (2013).

⁹⁰ M. Klaassen and P. Rodrigues, *The Best Interests of the Child in EU Family Reunification Law: A Plea for More Guidance on the Role of Article 24(2) Charter*, *European Journal of Migration and Law* 19 (2017) at 197.

2.2.6. The right not to be deprived of their liberty

Another right that is important to be addressed is the right of children not to be deprived of their liberty under Article 37 of the UNCRC. Children have the right not to be unlawfully and arbitrarily deprived of their liberty and if deprivation of liberty is used by the State, it must be employed only as a measure of last resort and for the shortest period of time.⁹¹ Nevertheless, Article 37 of the UNCRC does not prohibit detention per se but it solely puts restrictions on its use. This right is important to mention in this context of protection because detaining asylum-seeking children is still a common practice amongst States.⁹² Nevertheless, this undermines the appropriate protection that Article 22(1) of the UNCRC provides for. As the Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child points out, deprivation of liberty is not in line with the best interests of the child and States should cease to detain children in migration.⁹³ Additionally, the UNCRC Committee has expressed that detention should never be used for unaccompanied children especially, under the sole justification that they are unaccompanied and that in this way, the State attempts to protect them.⁹⁴ Instead, the deprivation of liberty of the child and their family, in case they are accompanied, should be prohibited by law and in practice.⁹⁵ Consequently, States should not use the deprivation of liberty of children on the move, not even as a measure of last resort, because it is never in their best interests and it undermines the appropriate protection that are obliged to provide them under Article 22(1) UNCRC.

2.3. EU Legal Framework

In the EU legal framework, there is not a legal document that solely addresses children's rights but instead, there are provisions contained in the EU Law. In this part of the Chapter, the BIA of the child who seeks international protection is discussed, based on the Charter of Fundamental Rights of the European Union and on the EU Reception Conditions Directive. The latter legal document aims to create common standards for the reception conditions of people in EU countries. However, due to the fact that it is a Directive, it is not directly applicable to EU Member States. EU Member States need to enact a national law in order to implement the Directive. This leaves a lot of space to EU Member States to comply with their EU obligations and there are often cases that EU Members States do not correctly transpose the Directives in the national law and this risks their implementation and the fulfilment of State's obligations.⁹⁶

⁹¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Article 37 (b).

⁹² European Parliament, Briefing: Detention of migrants – A measure of last resort (2023) at 4.

⁹³ Supra 64 at 2 para 5.

⁹⁴ Ibid at 3 para 10.

⁹⁵ Ibid at 4 para 12.

⁹⁶ European Parliament, Briefing: Challenges in the implementation of EU Law at national level (2018) at 2 and 3.

2.3.1. Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union codifies the fundamental rights, freedoms and principles that apply to EU Member States.⁹⁷ Article 24 of the Charter is explicitly dedicated to the rights of children and in particular, Article 24 (2) to the best interests of children. As it is stated in this Article, in all actions that concern children, whether taken in the public or private sphere, their best interests must be a primary consideration.⁹⁸ The Charter has used Article 3(1) of the UNCRC as the basis for drafting Article 24 (2) and this is the reason why it has used similar but more concise wording.⁹⁹ The Charter uses the wording 'must' instead of 'shall' be a primary consideration as in Article 3(1) UNCRC, potentially because it attempts to create a clear obligation on States.

Article 24(1) also includes the right of the child to express their views freely and their views to be taken into consideration for all matters that concern them, according to their age and maturity. The drafting of this right is based on Article 12 of the UNCRC. Nevertheless, Article 12 of the UNCRC specifically points out that the opinions of the child shall not only be taken into consideration but also be given due weight. The latter is a much stronger declaration for the enurement of this right. Additionally, Article 24 illustrates the tension that is inherent in the CRC between a child's welfare and a child's agency.¹⁰⁰ The best interest of the child shows the child's welfare approach that existed before the adoption of the UNCRC, and the child's views mirrors the child's agency.¹⁰¹

Thus, it could be said that Article 12 of the UNCRC, and hence, Article 24(1) of the Charter, moves away from the welfare approach and instead, they establish the legal status of children as rights-holders who have the right to speak about their opinions and needs and to participate in the assessment and determination of their best interests.¹⁰² It is also important to note that Article 24 (1) does not only speak about the right of children to express their views but also it sets out the right of children to receive protection and care for their well-being.¹⁰³ This is a State's obligation and thus, the State shall assess the best interests of the child and take into consideration the child's views in order to better comply with their obligation to provide protection to children.

Consequently, Article 24 of the Charter has integrated into EU law provisions of the UNCRC as it is shown in the Explanations Relating to the Charter. Although it does not include all the rights protected under the UNCRC, it has been argued by the Court of Justice of the European Union that, when interpreting Article 24(2) of the best interests, it is important to take into consideration of the UNCRC

⁹⁷ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180, Preamble.

⁹⁸ Charter of Fundamental Rights of the European Union of the European Parliament, the Council and the Commission, 2012/C 326/02, Article 24 (2).

⁹⁹ Explanations Relating to the Charter of Fundamental Rights, Official Journal of the European Union, 2007/C 303/02 (2007) at 2.

¹⁰⁰ T. Lock, Article 24 CFR, in M. Kellerbauer, M. Klamert, J. Tomkin (Eds.), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (2019), at 2.

¹⁰¹ *Ibid.*

¹⁰² General Comment No. 12 (2009) of the Committee on the Rights of the Child on the right of the child to be heard, UN Doc. CRC/C/GC/12, at 3 para 1 (2009); J.E. Doek, *The Human Rights of Children: An Introduction*, in T. Liefwaard and U. Kilkelly (Eds.) *International Human Rights of Children* (2019) at 16.

¹⁰³ *Supra* 98, Article 24 (1).

altogether.¹⁰⁴ Hence, it could be said that the best interest's principle acts as a gateway for other children's rights. Therefore, the entire UNCRC has effects in EU law through Article 24 of the Charter.

2.3.2. The EU Reception Conditions Directive

The EU Reception Conditions Directive lays down the minimum standards for the reception of people seeking international protection. This Directive applies at the time people arrive at a country to seek asylum.¹⁰⁵ Children, both accompanied and unaccompanied, are deemed as people with special reception needs and thus, Member States should have their special reception needs taken as a primary concern.¹⁰⁶ In order to effectively take their special needs into consideration, it is vital to individually assess them. In particular, Article 22 of the Directive states that the special needs assessment shall commence 'within a reasonable period of time after an application for international protection is made'.¹⁰⁷ As it has already been stated in this research paper, timing matters for the initial assessment of the best interests and needs of children.

Nevertheless, the Directive has a completely different scope about it than the UNCRC. This is because the moment that the scope of the Directive is triggered is after the lodge of the international protection application and there is no exception for children.¹⁰⁸ Nevertheless, the fact that the assessment of their needs is conducted after the international protection application, risks their protection altogether and is not in accordance with their best interests. Although the Directive affirms in recital 9, that Member States should fully comply with the principle of the best interests of the child, in accordance with the Charter and with the UNCRC, the scope of the Directive impedes that full compliance. It could ensure compliance with the UNCRC and the Charter, if there was an exception to the scope specifically for children, and thus, the assessment of their needs was conducted as soon as the child arrived in the host country, irrespective of their international protection status.

Focusing deeper on the best interests of the child, the Directive analyzes this right in Article 23(1). In particular, this Article mentions that 'the best interests of the child shall be a primary consideration for Member States when implementing provisions that involve minors'. The use of the word 'affect' instead of the word 'involve' would better comply with Article 3(1) of the UNCRC.¹⁰⁹ It would show that this provision is related to all provisions inside the Directive and not only to those that include children.¹¹⁰ This is vital to comprehend because children's rights are human rights and thus, all human rights are applicable to them and not only specific provisions in the law that are addressed to them. Nevertheless, as it has already been stated, in recital 9 in the Preamble, the Directive declares that Member States should comply with the principles of the best interests of the child, in accordance with the Charter and the UNCRC.¹¹¹ Thus, this could imply that the best interests of the child shall be

¹⁰⁴ Case C-490/20 V.M.A. v Stolichna obshtina, rayon 'Pancharevo', ECLI:EU:C:2021:1008, at 63.

¹⁰⁵ Supra 97, Article 3(1).

¹⁰⁶ Ibid, Preamble para 14, Article 1(k), Article 21.

¹⁰⁷ Ibid, Article 22 (1).

¹⁰⁸ Supra 97, Article 3(1).

¹⁰⁹ C.M. Smyth, *The common European asylum system and the rights of the child: an exploration of meaning and compliance*, Doctoral Thesis at University of Leiden (2013), at 50.

¹¹⁰ Ibid.

¹¹¹ Supra 97, Recital 9.

a primary consideration for Member States when implementing any provision in the Directive that affects children.

Additionally, Article 23(2) of the Directive provides the factors that should be taken into consideration when assessing the best interests of the child. Amongst the factors are the family reunification possibilities, the child's well-being and social development, the safety of the child, and the views of the child. The reference to the latter factor is crucial and it illustrates that it follows the same path of the UNCRC and the Charter. Specifically, both Article 12(1) UNCRC and Article 24(1) of the Charter assures that the child's opinion must be heard in order to be able to fully participate in the assessment of their rights and thus, in their protection. However, neither the Charter nor the Directive do emphasize that the views of the child must be given due weight. This is significant to point out because as GC No. 12 highlights, 'simply listening to the child is insufficient'.¹¹² The requirement to give due weight to children's opinion is a safeguard for their rights. This is because States may not rely on their age or maturity in order to avoid giving due weight to their opinions, but they will employ ways to make sure that their views are seriously taken into consideration.

Furthermore, as to the appropriate protection of asylum-seeking children, the EU Reception Conditions Directive does not specifically include a similar provision as Article 22(1) of the UNCRC. Nevertheless, the European Court of Human Rights (hereinafter: ECtHR) has referred in the case of *Tarakhel v Switzerland* that UNCRC has established that States shall take the appropriate measures to ensure that asylum-seeking children enjoy appropriate protection, irrespective of whether the child is accompanied or unaccompanied.¹¹³ It has also mentioned that the special protection of asylum-seeking children is specifically important, due to their special needs and their vulnerabilities.¹¹⁴ Hence, as the Court recognizes, the reception conditions must ensure that they are child appropriate and that they do not provoke additional stress and trauma to children but instead, aim to protect them.¹¹⁵ It is significant to note that the Court did not make any exception and made clear that this applies to accompanied children as well.¹¹⁶

Although the special protection that must be provided to asylum-seeking children is recognized by the ECtHR, the EU Reception Conditions Directive does include the provision of detention in Article 11. This Article states that children shall be detained only as a measure of last resort and only if there is no alternative less restrictive measure that can be applied. It also provides that the child's best interests shall be a primary consideration. Nevertheless, the deprivation of liberty is never in the best interests of the child.¹¹⁷ The ECtHR found in the case of *H.A. and other v Greece* that the protective custody is in breach of international and European standards and especially, against Article 3 of the UNCRC the best interests of the child. Moreover, it found that, in Greece, there was no assessment of the best interests before implementing the protective custody measure but that it was used as a

¹¹² General Comment No. 12 (2009) of the Committee on the Rights of the Child on the right of the child to be heard, UN Doc. CRC/C/GC/12 at 8 paras 28-29 (2009).

¹¹³ ECtHR, *Tarakhel v. Switzerland* (application no. 29217/12) 2014, para 99.

¹¹⁴ *Ibid*, para 119.

¹¹⁵ *Ibid*.

¹¹⁶ *Ibid*.

¹¹⁷ ECtHR, *H.A. and others v. Greece* (application no. 19951/16) 2019 at 46.

measure of the standard identification procedure.¹¹⁸ Hence, deprivation of liberty can never be a measure that ensures the right of children to appropriate protection.

It is vital to point out that the provision of providing appropriate protection is under the State's obligation. Hence, the State is responsible for initially receiving children on the move and for conducting best interests' assessment of the child. The role of the NGOs is supplementary to assist States to fulfil their obligations.

Consequently, although the Directive do provide the obligation to States to assess the best interests of the child and to take into consideration their views, its scope is limited. This is because it applies only after the application for international protection. Hence, there could be an exception to the scope of the Reception Conditions in order to better provide protection to children and to accordingly comply with the UNCRC, the Charter. Furthermore, the Directive does not prohibit the deprivation of liberty of children per se and thus, it leaves some space to States to employ it. Nevertheless, this undermines the protection of children and the effectiveness the Directive seeks to achieve.

2.4. Concluding Remarks

Children on the move, whether accompanied by their parents or unaccompanied, are in a vulnerable situation and in need of protection. As a result, there is a need for an immediate case-by-case best interests' assessment on the moment children arrive at a host country, and not at the moment of the international protection application. This Chapter has attempted to provide an overview of the children's right to protection under the UNCRC, the Charter and the EU Reception Conditions Directive.

Commencing from the international framework, Article 22 (1) of the UNCRC was the first one to be considered given that it is the only Article that specifically addresses the States' obligation to provide appropriate protection to children seeking international protection. States are able to provide appropriate protection to asylum seeking children only after having assessed their best interests and needs. As a result, Article 22(1) and Article 3(1) intend to mean that States have the legal obligation to have an immediate assessment of the best interests of the child, as soon as the child arrives at the host country. This implies that the child is never deprived of their liberty and is immediately heard in a child-friendly and child-appropriate way, after having been provided child-friendly information in a language that they understand. In this way, children are able to fully participate in the BIA procedure. The BIA and the right to be heard should be ensured for both unaccompanied and accompanied children and should not be denied to the latter. This ensures the child's right to development and to appropriate protection.

This Chapter also examines the European legal framework and especially Article 24(2) of the Charter and Articles 22 and 23 (1) of the Reception Conditions Directive which focuses on the assessment of the needs, the best interests of children and their right to have their opinions being heard. The Charter integrates UNCRC standards through Article 24, but the Reception Condition Directive is limited in scope. Additionally, the Reception Conditions Directive risks the protection of children altogether by not excluding per se the deprivation of liberty of children during their initial reception.

The conclusion that this Chapter reaches is three-fold; firstly, the international and European legal frameworks do provide for the rights of accompanied and unaccompanied asylum-seeking children

¹¹⁸ Humanium, *Protective Custody of Unaccompanied Child Migrants in Greece: A Long-Standing Practice is Coming to an End* (2021).

and do declare the States' obligations to protect them and to conduct BIA for such protection. Nevertheless, the Charter and the UNCRC provides better legal grounds for the protection of children seeking asylum. The UNCRC specifically mentions that their best interests' assessment shall be conducted at the time the child arrives at the receiving country and not after having lodged the application for international protection, whereas the EU Reception Conditions Directive is triggered only after the international protection application. Lastly, accompanied children enjoy less attention in international law than unaccompanied children, and this is in violation of the prohibition of discrimination under Article 2 UNCRC.

Chapter 3 Domestic Legislation and Implementation

3.1. Introduction

Children's rights are truly implemented in practice on the domestic level. This Chapter is dedicated to the analysis of the Greek legal framework and its application. Subsequently, this Chapter sheds light on the initial reception procedures, and especially on the BIA for the protection of children on the move in Greece. *The sub-question that it attempts to analyze is the following: Does Greece comply with the aforementioned legal framework both in law and in practice concerning the initial reception of children on the move?* It is divided in four sections. The first section analyzes the key developments of the domestic legal framework of Greece (Part 1). The second section is dedicated to the navigation of the national Law No. 2101/1992 on children's rights¹¹⁹ and the Law No. 4939/2022¹²⁰ that incorporated the European Directives, including the EU Reception Conditions Directive.¹²¹ At the same time, there is an examination of the compliance of the national legal framework with the UNCRC and the EU Reception Conditions Directive (Part 2). The third section explores the practical implementation of the legal framework (Part 3). This Chapter concludes with some key remarks (Part 4).

3.2. The situation of children on the move in Greece and the key developments

Greece is one of the EU countries that receives many asylum seekers each year. As it has been stated in Chapter 1, according to the Ministry of Migration and Asylum, there are 1,935 unaccompanied registered children and 53 separated children residing in Greece in May 2024 but there is no exact number of accompanied children provided by the Ministry.¹²² Reports from NGOs reveal that accompanied children count for 80% of children on the move currently residing in Greece.¹²³

Although Greece receives a significant amount of minor asylum seekers, there used to be no coordinated protection system that was activated once the child arrived in the country. There were mainly isolated efforts, primarily initiated from NGOs to provide protection to children on the move, and especially, to unaccompanied children.¹²⁴ Until 2020, the State had adopted the practice of 'protective custody', meaning the placing of unaccompanied children under detention, as a way to provide them protection from harm, without prior conducting any BIA.¹²⁵ The legal basis for this was

¹¹⁹ Greek Law No. 2101/1992 for the ratification of the UN Convention on the Rights of the Child (1992).

¹²⁰ Greek Law No. 4939/2022 for the ratification of a Code of Legislation on the reception, international protection of third country citizens and stateless persons and temporary protection in the event of a mass influx of displaced foreigners (2022).

¹²¹ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180.

¹²² Hellenic Republic, Ministry of Migration & Asylum, Situation Update: Unaccompanied Minors (UAM) in Greece, 01 May 2024 at 1.

¹²³ Defence for Children International Greece, In the Shadows: Accompanied children on the move and their mothers in Greece, unrevealing their struggles (2023) at 10.

¹²⁴ Defence for Children International Greece, Shadow Report for the 89th CRC Session of the Committee on the Rights of the Child (2021) at 5.

¹²⁵ Greek Presidential Decree 141/1991 (1991), Article 118.

found in the Presidential Decree 141/1991.¹²⁶ Additionally, there was no time limit for 'protective custody' under that Presidential Decree and thus, unaccompanied children could stay in these detention centres for months until an accommodation facility was available to host them.¹²⁷ This practice has been condemned many times by the ECtHR, as it is against European and international legal standards and especially, against the best interests of the child.¹²⁸ For accompanied children, this practice is not used for their protection but as part of the initial reception procedure. There will be further elaboration on this in section three of this Chapter.

From 2020, the State adopted a number of legal and policy measures with the aim to address protection for unaccompanied children. Particularly, it primarily established in the Ministry of Migration and Asylum, the Special Secretariat that is responsible for the protection of unaccompanied children (now called as 'General Secretariat for Vulnerable Persons and Institutional Protection'¹²⁹).¹³⁰ The latter adopted a number of measures for the protection of unaccompanied minors. Firstly, the Special Secretariat abolished the protective custody of unaccompanied children with the enactment of the Law 4760/2020.¹³¹ Nevertheless, there is no enacted provision in that law dedicated to accompanied children that are being detained with their families. This creates significant concerns for the protection of accompanied children, which will be discussed further in the Chapter. Furthermore, the Special Secretariat designed, for the first time in Greece, the National Strategy for the Protection of Unaccompanied Children, which prioritizes the development of a consolidated child protection system.¹³²

The National Strategy illustrates the progress in the national policy for the protection of unaccompanied children. This Strategy states that the child protection system must be developed and guided by the four general principles of the UNCRC and especially, by the best interests of the child.¹³³ The fact that general principles shall be an interpretive tool for the provision of appropriate protection to children was also discussed in Chapter 2. Additionally, the Strategy further makes clear that upon the arrival of an unaccompanied child in the country, a BIA must be carried out by trained professionals in order to identify the special needs of the child.¹³⁴ Moreover, this Strategy includes the

¹²⁶ This Presidential Decree 141/1991 is not related to the implementation of the EU Reception Conditions Directive. In the Greek legal system, there are different types of binding rules. The first type is the laws that are issued either by the Plenary of the Hellenic Parliament or by the competent permanent parliamentary committees according to Article 70 of the Constitution. The second type is the Presidential Decrees which are issued by the President of the Republic and are necessary for the execution of laws, according to Article 43(1) of the Constitution.

¹²⁷ UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of H.A. and Others v. Greece (Appl. No. 19951/16) before the European Court of Human Rights (2017) at 3.

¹²⁸ ECtHR, Rahimi v. Greece (application no. 8687/08) 2011; ECtHR, H.A. and others v. Greece (application no. 19951/16) 2019 at 46.

¹²⁹ (<https://migration.gov.gr/en/grammateies/geniki-grammateia-evaloton-politon-kai-thesmikis-prostasias/>), last visited (14-06-2024).

¹³⁰ Hellenic Republic, Ministry of Migration & Asylum - Special Secretariat for the Protection of Unaccompanied Minors, Annual Report 2022: Special Secretariat for the Protection of Unaccompanied Minors (2022) at 1.

¹³¹ Greek Law No. 4760/2020 for the provisions of the penal legislation (2020), Article 43.

¹³² Hellenic Republic, Ministry of Migration & Asylum, National Strategy for the Protection of Unaccompanied Children (2022) at 9.

¹³³ *Ibid* at 37.

¹³⁴ *Ibid* at 24,78.

establishment of a National Emergency Response Mechanism (hereinafter: NERM) for unaccompanied children. This Mechanism should also provide a helpline that aims to trace unaccompanied children and to provide them with immediate accommodation.¹³⁵ In 2021, the NERM was launched with the aid of the UNHCR and was institutionalized by the Law No. 4939/2022, which provides that NERM is under the responsibility of the Special Secretariat for the Protection of Unaccompanied Children.¹³⁶ Finally, the State adopted the aforementioned Law No. 4939/2022 for the protection of children on the move, both accompanied and unaccompanied. This law ratified the four EU Directives, including the Reception Conditions Directive. For the purposes of the essay, only the national law 4939/2022 will be discussed from the key developments, as it refers to both accompanied and unaccompanied children.

3.3. The Law No. 2101/1992 on children's rights

Before analyzing the national Law No. 4939/2022, it is important to shortly address the national Law No. 2101/1992 on children's rights.¹³⁷ In 1992, three years after the adoption of the UNCRC, Greece enacted the aforementioned law in order to ratify the UNCRC and incorporate all the rights protected under the UNCRC in the domestic law.¹³⁸ It is important to note that Article 28 (1) of the Greek Constitution declares that the time international conventions are ratified by statute and become operational, they shall be an integral part of the domestic law and shall prevail over any contrary provision of the law.¹³⁹ The wording of the provisions of the Law No. 2101/1992 is exactly the same as in the UNCRC. This means that Article 22 of the Law No. 2101/1992 provides that Greece must adopt the appropriate measures so that every child seeking international protection, whether this child is unaccompanied or accompanied by their parents or by a legal guardian, enjoys the appropriate protection that will allow them to enjoy all the rights recognized under the UNCRC.¹⁴⁰ Consequently, this Article does not make any distinction based on their status as accompanied or unaccompanied in order to provide them protection. Nevertheless, there is no further indication as to the way the State will provide this protection but the wording 'appropriate' portends that there must be an assessment of the child's needs before the State adopts any measure for the child's protection.

Greece has also enacted the general principles in the Law No. 2101/1992, namely the right to non-discrimination (Article 2)¹⁴¹, the right to have their best interest taken as a primary consideration (Article 3)¹⁴², the right to life, survival, and development (Article 6)¹⁴³, and the right to have their

¹³⁵ Ibid at 20.

¹³⁶ Greek Law No. 4939/2022 for the ratification of a Code of Legislation on the reception, international protection of third country citizens and stateless persons and temporary protection in the event of a mass influx of displaced foreigners (2022), Article 66 (33) (lg); Hellenic Republic, Ministry of Migration & Asylum - Special Secretariat for the Protection of Unaccompanied Minors, National Emergency Response Mechanism: A safety net for unaccompanied children identified in precarious living conditions (2022) at 10.

¹³⁷ Greek Law No. 2101/1992 for the ratification of the UN Convention on the Rights of the Child (1992).

¹³⁸ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Article 47.

¹³⁹ The Constitution of Greece (as revised by the parliamentary resolution of May 27th 2008), Article 28(1).

¹⁴⁰ Ibid, Article 22.

¹⁴¹ Ibid, Article 2.

¹⁴² Ibid, Article 3.

¹⁴³ Ibid, Article 6.

opinions being heard (Article 12)¹⁴⁴. This means that Greece is in compliance with the UNCRC. As a result, the State must respect the right of the child to non-discrimination and must not treat the child differently based on the child's status as being a child, or as being accompanied or unaccompanied. Additionally, the State must take the child's best interests as primary consideration in all actions that affect the child. That means that the State must assess the child's best interests, on a case-by-case basis, before taking any measure for the child's protection. At this stage of the assessment, the State must hear the opinion of the child and take it into consideration because any measure taken by the State, directly affects the child. This process is crucial for the substantive protection of the child and for assisting the child to develop holistically.

3.4. The Law No. 4939/2022 on reception conditions of children

The analysis of the Law No. 2101/1992 demonstrates that Greece recognizes the rights of the child and the State's responsibilities to ensure, protect and fulfill them. Nevertheless, it is also significant to examine the Law No. 4939/2022 in order to identify the specific rights of children on the move and the State's responsibilities to appropriately protect these children.¹⁴⁵ Amongst the EU Directives that this law implemented is the EU Reception Conditions Directive, which was analyzed in Chapter 2.

Specifically, part 3 of this law is dedicated to the reception conditions of third country nationals and contains both general provisions (Articles 37-41) and specific provisions (Articles 61-64) for vulnerable people with special reception needs. According to Article 1(lg) of the law, vulnerable people are in particular children, whether accompanied by their parents or unaccompanied.¹⁴⁶ As a general rule, their special situation must be taken into account and must be determined after the conduction of an individualized assessment of their specific case.¹⁴⁷ Additionally, when assessing the child's special situation, it is crucial to take into account the child's best interest.¹⁴⁸ This will be further discussed when examining the special provisions of the law.

General provisions of the reception of children in Greece

The general provisions for the reception of children in Greece are depicted in the diagram below. This diagram demonstrates that the main general reception conditions apply to both accompanied and unaccompanied children. Nevertheless, there is a difference in treatment in law for unaccompanied and accompanied children in two situations.

Firstly, NERM is activated for unaccompanied children once they arrive in the country. It is important to note that NERM is only activated for unaccompanied children and not for accompanied, due to the scope of the mechanism. Once an unaccompanied child arrives in the country, the authorities are required to refer the child to the Special Secretariat for the Protection of Unaccompanied Minors in

¹⁴⁴ Ibid, Article 12.

¹⁴⁵ Greek Law No. 4939/2022 for the ratification of a Code of Legislation on the reception, international protection of third country citizens and stateless persons and temporary protection in the event of a mass influx of displaced foreigners (2022).

¹⁴⁶ Ibid, Article 1 (lg).

¹⁴⁷ Ibid, Article 19 (3).

¹⁴⁸ Ibid Article 19(4).

order to activate NERM.¹⁴⁹ NERM is responsible for placing the child in a special emergency accommodation in order to conclude the identification process.¹⁵⁰ During this time, the child is informed about their rights and obligations, the Public Prosecutor that is the temporary guardian of the child defines a guardian for that child and a comprehensive BIA is conducted.¹⁵¹ Based on that assessment, the child is transferred to the appropriate long-term accommodation and is provided psychosocial support throughout all the process.¹⁵²

The second difference in treatment is the detention of children. Specifically, one of the reasons NERM was launched was to provide an alternative, child protection solution to 'protective custody'.¹⁵³ Therefore, unaccompanied children should not be detained under protective custody. Nevertheless, Article 52 of the Law No. 4939/2022 allows for the detention of unaccompanied children, but only as a measure of last resort, if there is no alternative and less restrictive measure that can apply. It could be argued that NERM is the alternative measure since it provides emergency accommodation to unaccompanied children until the identification process is completed. Thus, there is a protective measure against detention. However, this does not happen with accompanied children. There is no law that has abolished the detention of accompanied children, nor an alternative measure to detention. Based on Article 52(3) of the Law No.4939/2022, families can be detained in a separate accommodation so as to ensure their protection to private and family life. Thus, accompanied children can still be detained with their families until the identification process has been accomplished.

¹⁴⁹ Hellenic Republic, Ministry of Migration & Asylum - Special Secretariat for the Protection of Unaccompanied Minors, National Emergency Response Mechanism: A safety net for unaccompanied children identified in precarious living conditions (2022) at 14.

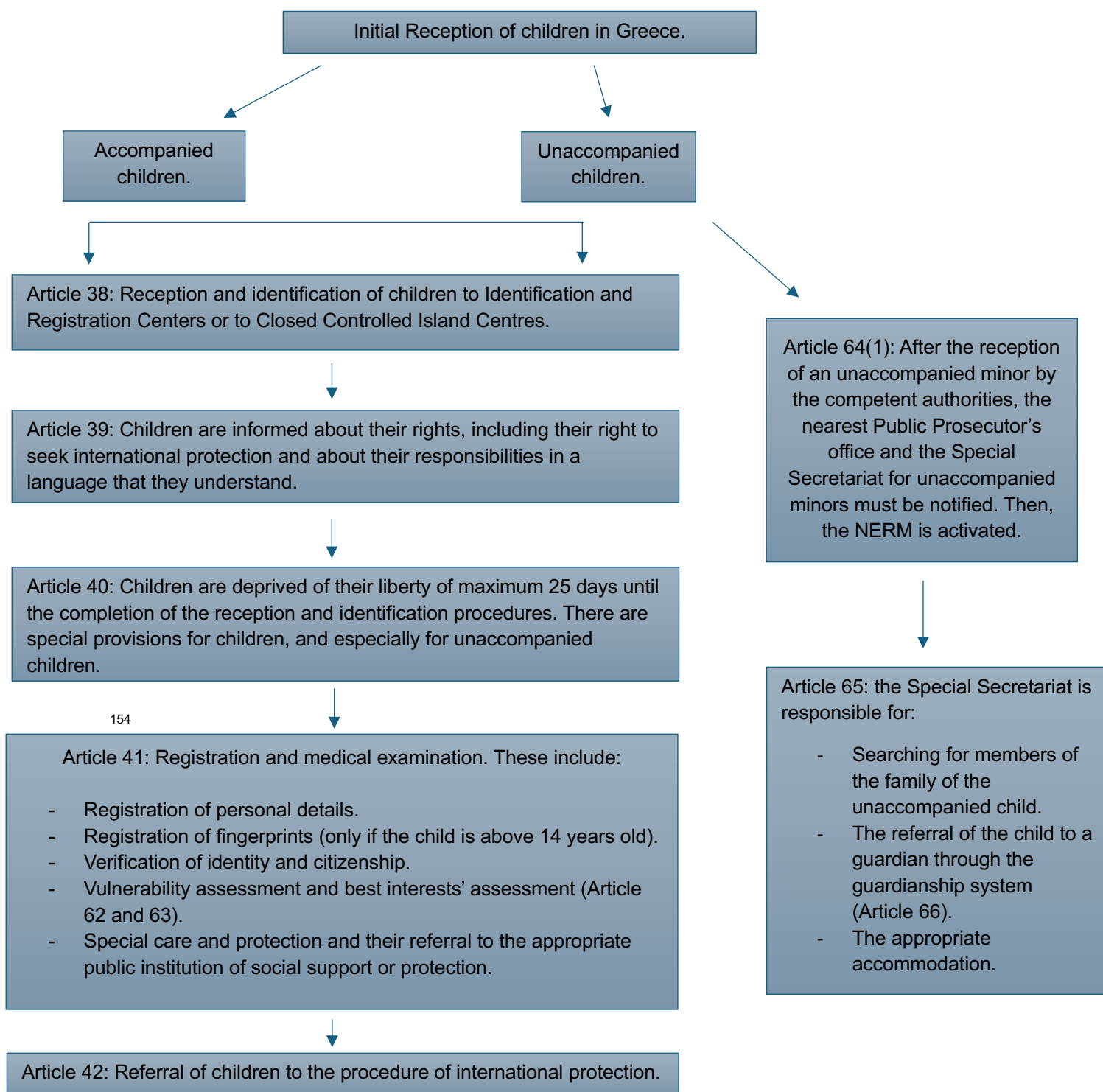
¹⁵⁰ Ibid at 10.

¹⁵¹ Greek Law No. 4960/2022 for the National Guardianship System (2022).

¹⁵² Supra 149 at 10.

¹⁵³ Ibid at 10.

Diagram 1
Initial Reception Procedure in Greece under the Law No. 4939/2022



¹⁵⁴ Supra 145 Article 52 specifies the special provisions for children in detention. Particularly, children are detained only as a last resort measure and always in consideration of their best interests. If there is an alternative measure available, it is preferred over detention. The aim is to refer children to appropriate accommodation centres. The detention of children until their referral to accommodation facilities must not exceed 25 days. For unaccompanied children, this detention measure must apply only under exceptional circumstances. For accompanied children that are detained with their families, there is a separate accommodation that is provided to them in order to stay together while in detention.

Special provisions of the reception of children in Greece

Children are deemed as a vulnerable group of people in law and thus, special provisions apply to their reception needs. In Article 62 of the Law No. 4939/2022, it is clear that these provisions apply to both accompanied and unaccompanied children, irrespective of the international protection procedure.¹⁵⁵ These special provisions place the focus mainly on the vulnerability assessment and on the best interests' assessment of children, both conducted during the stage of identification, registration and medical screening of children. For the purposes of this thesis, the focus will only be on the BIA.

Article 63 of the Law No. 4939/2022 elaborates on the important step of the assessment of the child's best interests. Particularly, this shall be the primary consideration of the authorities when they apply the Law.¹⁵⁶ The purpose of such assessment is to ensure that children have an adequate standard of living for their physical, mental, intellectual, moral and social development.¹⁵⁷ There are different factors that should be considered during the assessment. Amongst them are the possibilities of family reunification for unaccompanied children, the quality of life and the social development of the child and safety and security matters, especially if there is danger that the child is a victim of human trafficking.¹⁵⁸ During the assessment, the views of the child must be taken into consideration, according to their age and maturity.¹⁵⁹

After the assessment, if the child is victim of any form of abuse, neglect, exploitation, torture or cruel, inhuman or degrading treatment or armed conflict, the relevant authorities are responsible for referring the child to rehabilitation services and for providing them with appropriate psychological care and specialized treatment.¹⁶⁰ Thus, the conduction of the best interests of the child is of utmost importance because it determines the protection and rehabilitation of the child. Additionally, there are higher possibilities that the State provides appropriate protection to the child, if the assessment is conducted as soon as the child arrives in the country.¹⁶¹ Unfortunately, there are some protection gaps on this that will be further analyzed below.

The legal gaps of the Law No. 4939/2022

Although the Law No. 4939/2022 is a significant legal development which encompasses provisions directly targeting the protection of children, there are two main gaps. Firstly, the law does emphasize the principle of the best interests of the child and the importance of the assessment of the child's best interest. Nevertheless, as it is shown in the diagram, the BIA is conducted after the initial reception of children, at a stage during which the child can even be deprived of their liberty for up to 25 days if there is no alternative option.¹⁶² The fact that the child can be detained and that there is no

¹⁵⁵ Greek Law No. 4939/2022 for the ratification of a Code of Legislation on the reception, international protection of third country citizens and stateless persons and temporary protection in the event of a mass influx of displaced foreigners (2022), Article 62(3).

¹⁵⁶ Ibid, Article 19(4).

¹⁵⁷ Ibid, Article 63(1).

¹⁵⁸ Ibid Article 63(1).

¹⁵⁹ Ibid.

¹⁶⁰ Ibid Article 63(2).

¹⁶¹ UNHCR, Guidelines on Determining the Best Interests of the Child (2008) at 69.

¹⁶² Supra 155 Article 40.

assessment of their best interests taken beforehand is contradictory to the principle of the best interests of the child.

On the one hand, the State declares as a general rule the assessment of the best interests of the child and on the other hand, this is conducted, even after the deprivation of liberty. This is more concerning for accompanied children because for unaccompanied children, NERM is activated once authorities find the child. The second gap is that there is no specific guidance about the BIA in the law. There is no specific provision pointing out the professionals that should conduct the assessment nor the place nor the way they should execute it. Therefore, this may lead to an inefficient implementation of this principle.

Compliance with international and European standards

Focusing on international standards and particularly on the UNCRC, Greece has enacted, in Law No. 2101/1992, provisions that declare that the best interests of the child shall be a primary consideration in all actions that affect children. Furthermore, the legislation also makes clear that the BIA of the child shall be conducted at the identification and registration stage, meaning before the application for international protection in order to appropriately protect children.¹⁶³ Thus, it could be argued that this is in line with UNCRC and close to GC No. 13 that points out that the assessment of the best interests of the child shall be conducted once the child is detected by the authorities.¹⁶⁴

As far as the European standards are concerned, the Law No. 4939/2022 that implemented the EU Reception Conditions Directive, recognized that children both accompanied and unaccompanied are a vulnerable group of people with special reception needs. It also encompassed in the Law the assessment of child's best interests in order to effectively accommodate their special reception needs. Nevertheless, the EU Reception Conditions Directive is limited in scope because it starts to be applicable at the time an application for international protection is made. Nevertheless, although Greece implemented the EU Reception Conditions Directive under the Law No. 4939/2022, it does provide an exception in its scope and it makes clear that the special reception conditions for children apply after their identification and not after their application for international protection.¹⁶⁵ Hence, the national Law No. 4939/2022 adopts the UNCRC's approach to the timing of the assessment. This is a progress towards realizing that children shall first be seen as children and not as asylum seekers.

3.5. Practical implementation

The legal framework is crucial in order to assist States to meet their legal obligations. Nevertheless, the law cannot fulfill the rights of children without the State practically implementing it. Hence, in this section, there will be an analysis of the implementation of the Law No. 4939/2022 in practice. In this analysis, there will be a separate examination of the protection of unaccompanied children and of accompanied. The main gaps that will be discussed are the individual identification of children, their detention and the BIA.

¹⁶³ Greek Law No. 4939/2022 for the ratification of a Code of Legislation on the reception, international protection of third country citizens and stateless persons and temporary protection in the event of a mass influx of displaced foreigners (2022), Article 62(3).

¹⁶⁴ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, UN Doc. CMW/C/GC/4-CRC/C/GC/23 (2017), at 4 para 13.

¹⁶⁵ Supra 163, Article 62(3).

There are two main arguments. Firstly, accompanied children are seen part of their family and as a result, they are not individually identified.¹⁶⁶ This impedes their BIA and hence, their appropriate protection. The second argument is that the deprivation of liberty (or otherwise 'protective custody' in case of unaccompanied children) is still used in Greece, especially in relation to accompanied children. This indicates that the State does not take into consideration the best interests of the child, nor assess them when placing them in detention.

To begin with, in the official data report of 2023 provided by the Ministry of Migration and Asylum, it is shown that in the category of 'vulnerable people', only data for unaccompanied children was included and not for accompanied children.¹⁶⁷ However, this is contradictory with Article 1(Ig) of the Law No. 4939/2022 that consider as vulnerable people both accompanied and unaccompanied children. This gap on the data has also been identified by the UNCRC Committee in the Concluding observations towards Greece in 2022. Specifically, the Committee of the UNCRC has pointed out that there is no disaggregated data for children in vulnerability situations.¹⁶⁸ To display some of the data, in 2023, there were 2,241 unaccompanied children on the islands¹⁶⁹ and 123 on the mainland.¹⁷⁰ There is lack of knowledge about accompanied children and this already shows that accompanied children are not seen as individuals with their own agency but as part of their family.

Accompanied children

Accompanied children arrive in Greece with their families and it is common that they are seen as part of their family.¹⁷¹ The UNCRC Committee has indicated Greece that children should be identified separately from their families.¹⁷² Additionally, it has urged Greece to abolish the placement of children in detention and to accelerate timely identification procedures.¹⁷³ Thus, there are three main issues that will be addressed in relation to accompanied children. Firstly, there will be an examination of the individual identification of accompanied children; secondly, the deprivation of their liberty and thirdly the conduction of BIA.

Individual identification of accompanied children

Primarily, it is important to elucidate that there are three main routes that asylum-seeking children find themselves in Greece. The first route is to directly reach the islands of Greece. The second route is to

¹⁶⁶ UNHCR, Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees (2009) at 1.

¹⁶⁷ Hellenic Republic, Ministry of Migration & Asylum - General Secretariat for the Reception of Asylum Seekers Reception and Identification Service, Data report for registered Third-country nationals or stateless persons on the islands (2023) at 7; Hellenic Republic, Ministry of Migration & Asylum - General Secretariat for the Reception of Asylum Seekers Reception and Identification Service, Data report for registered Third-country nationals or stateless persons on the mainland (2023) at 7.

¹⁶⁸ Committee on the Rights of the Child, Concluding observations on the combined fourth to sixth periodic reports of Greece, CRC/C/GRC/CO/4-6 (2022) at 13 para 40(b).

¹⁶⁹ Supra 167 (islands) at 11.

¹⁷⁰ Supra 167 (mainland) at 12.

¹⁷¹ Supra 166.

¹⁷² Supra 168 at 13 para 40 (a).

¹⁷³ Ibid at 13 para 40 (b).

enter the country from the northern borders of Evros and the third route is to travel unnoticed to the mainland, namely to Athens, the capital of Greece or to the second biggest city, Thessaloniki. Once the child is identified by the authorities, the initial reception procedure commences, irrespective of their application for asylum.¹⁷⁴ The first crucial step, also shown in the diagram above, is the identification of the accompanied child. The individual identification of the child is fundamental in order to appropriately protect the child. In this way, the child is seen as subject of their rights, as an individual with specific needs.

Unfortunately, although accompanied children may witness exploitation, violence and experience trauma throughout their journey and in Greece, this is not identified by authorities because they are not individually identified, and this has adverse effects on their protection.¹⁷⁵ There is no child protection mechanism that is activated once the accompanied child arrives with their parents in order to assess the child's best interests and to provide them appropriate protection. Their well-being depends on the treatment of their parents. This is a vicious cycle provided that their parents also may experience trauma, violence, trafficking, exploitation and children witness such circumstances. Their well-being depends on their parents' welfare which is also at risk when they encounter such incidents.¹⁷⁶ This leaves children with trauma and feeling hopeless within their families, instead of having voice and receiving appropriate protection.¹⁷⁷ The State has the obligation to identify the child, to assess their needs and to provide them protection under Article 63 of the Law No. 4939/2022. The fact that the State does not identify accompanied children individually risks the protection and fulfillment of their rights, including their right to protection.

Deprivation of liberty of accompanied children

One of the remaining issues in Greece is the protective custody of children, even though the ECtHR has condemned it several times.¹⁷⁸ Greece has abolished protective custody for unaccompanied children with the enactment of 4760/2020 but not for accompanied children.¹⁷⁹ Furthermore, even though the law has abolished that practice, the Law No. 4939/2022 does include the deprivation of liberty of children in the identification and reception procedure.¹⁸⁰ It does not prohibit it per se, but it provides certain guarantees.¹⁸¹ Particularly, children are deprived of their liberty only as a last resort solution, always with their best interests taken into account, and solely if there is no alternative measure.¹⁸² The deprivation of liberty of children must not last for more than 25 days. For families

¹⁷⁴ Greek Law No. 4939/2022 for the ratification of a Code of Legislation on the reception, international protection of third country citizens and stateless persons and temporary protection in the event of a mass influx of displaced foreigners (2022), Article 62(3).

¹⁷⁵ Defence for Children International Greece, *In the Shadows: Accompanied children on the move and their mothers in Greece, unrevealing their struggles* (2023) at 36.

¹⁷⁶ *Ibid* at 36, 37.

¹⁷⁷ J. Kanics, *Challenges and Progress in Ensuring the Right to Be Heard and the Best Interests of Children Seeking International Protection* 32 *Refuge* 3 (2016) at 2.

¹⁷⁸ ECtHR, *Rahimi v. Greece* (application no. 8687/08) 2011; ECtHR, *H.A. and others v. Greece* (application no. 19951/16) 2019.

¹⁷⁹ Greek Law No. 4760/2020 for the provisions of the penal legislation (2020), Article 43.

¹⁸⁰ *Supra* 174, Article 40.

¹⁸¹ European Council on Refugees and Exiles, *Country Report: Detention of vulnerable applicants, Greece* (2023) at 1.

¹⁸² *Supra* 174, Article 52(2).

that are deprived of liberty, there is a separate accommodation that is provided to them with the aim to protect their privacy and their family life.¹⁸³ There is no specific time limit stated in the law for families that are deprived of liberty.¹⁸⁴

In Greece, the detention of children is inside the initial reception procedure as per Article 40 of the Law No. 4939/2022. Thus, it is not used as a measure of last resort for children but as a 'de facto' practice.¹⁸⁵ There is no BIA that is being conducted before depriving children their liberty. Even if there was an assessment, the deprivation of liberty is never in the best interests of children. At the same time, according to Article 52 (2) of the Law No. 4939/2022, the deprivation of liberty can be used as a measure of last resort. Nevertheless, neither on the islands nor on the mainland, there is a mechanism that provide an alternative measure to the deprivation of liberty for accompanied children. Therefore, the deprivation of liberty is always the applicable measure, since the State has not provided for an alternative. Moreover, accompanied children always follow their parents and thus, families with children are still being detained in practice.¹⁸⁶ Families can remain in detention for more than one month if they are victims of shipwreck until there is an available accommodation facility provided to them and until the identification procedure is completed.¹⁸⁷

On the islands, the Reception and Identification Centres (hereinafter: RIC) have changed to 'Controlled Access Centres of Islands', where children with their families stay until the identification and registration procedure is completed.¹⁸⁸ These centres have been characterized by people living there and by civil society organizations as a form of deprivation of liberty, even if they are not an official detention centre.¹⁸⁹ The Greek Council for Refugees reveals that the conditions are 'prison-like' and surely, not appropriate for child's protection.¹⁹⁰ Additionally, given that the placement of families and children in these centres are part of the reception procedure and are not regarded as a deprivation of liberty by the State, there is no assessment of the best interests of the accompanied child that is being conducted before their placement there. In the border of Evros, once the families and their children are detected by the competent authorities, they are transferred to a police station where they stay for a couple of days or even weeks until they go to the RIC Fylakio.¹⁹¹ This deprivation of liberty is not justified in law because it does not occur for the completion of the reception and identification procedures but occurs before the identification and registration process even begins.¹⁹²

¹⁸³ Ibid, Article 52(3).

¹⁸⁴ Greek Law No. 4760/2020 for the provisions of the penal legislation (2020).

¹⁸⁵ Fenix, Unlawful detention and worsening conditions: Over 4,000 asylum seekers unlawfully detained on Samos and Lesbos (2023) at 2.

¹⁸⁶ Greek Council For Refugees, AIDA - Country Report: Detention of vulnerable applicants in Greece (2023) at 3.

¹⁸⁷ Ibid.

¹⁸⁸ European Council on Refugees and Exiles, Country Report: Reception and Identification Procedure, Greece (2023) at 1.

¹⁸⁹ Ibid at 3.

¹⁹⁰ Ibid.

¹⁹¹ Greek Council For Refugees, AIDA - Country Report: Greece (2022) at 50.

¹⁹² Ibid at 13.

Assessment of the child's best interests

It is evident that when the child is not identified separately from their families, the child is not seen as an agent of their rights and thus, there is no assessment that is being conducted separately for the child's needs. At the same time, the detention of children with their families is never in the best interests of the child and is not conducted after any assessment of the child's best interests. The non-identification of the child and their deprivation of liberty creates a situation where the assessment of the child's best interests does not occur.¹⁹³ As a result, accompanied children are not visible to the State and hence, they are not provided any appropriate protection by Greece. Unfortunately, there is the 'informal' presumption that the parents of the child are responsible for protecting the child. Nevertheless, in this way, Greece 'avoids' its legal obligations, under the Law No. 4939/2022, to provide appropriate protection to accompanied children and instead, informally 'delegates' these responsibilities to parents. Therefore, even though Greece does have the obligation under the Law No. 4939/2022, to assess the child's best interests in order to provide them appropriate protection, it does not comply with it in practice.¹⁹⁴

Unaccompanied children

As indicated in Part 1 of this Chapter, there are many key developments that have occurred since 2022 that specifically target the protection of unaccompanied children. In this section, the issues of identification, protective custody and best interests' assessment of unaccompanied children will be explored. The aim is to obtain a holistic idea for the initial reception of unaccompanied children in practice and hence, the provision of appropriate protection provided to unaccompanied children.

Individual identification

Unaccompanied children, like accompanied, arrive either on the islands, on the border of Evros or on the mainland as accompanied children do. Taking into consideration that unaccompanied children are traveling alone, their identification is necessary. Once the child is detected by the authorities, they are transferred to a RIC if the child is on the mainland or in Evros and to Closed Controlled Island Centres if the child is identified on an island. The State then determines whether the child is unaccompanied in order to activate NERM and refer the child to the Special Secretariat for the Protection of Unaccompanied Children. Consequently, Greece does individually identify unaccompanied children in order to provide them protection by activating NERM. There are some concerns though, that sometimes children are not properly identified. This is because children are assumed to be adults by authorities or by children themselves and the authorities proceed to an age assessment in order to prove that the child is above 18 years old and hence, is not eligible to receive child protection.¹⁹⁵ This improper identification has serious implications for the protection of the child, as they will be treated as adults and they will be denied the protection provided to children and the fulfillment of their rights.¹⁹⁶ Nevertheless, this is not in the scope of this analysis and thus, it will not be explored.

¹⁹³ Border Violence Monitoring Network, Rule of Law Report Greece (2024), at 2.

¹⁹⁴ Greek Law No. 4939/2022 for the ratification of a Code of Legislation on the reception, international protection of third country citizens and stateless persons and temporary protection in the event of a mass influx of displaced foreigners (2022), Article 63.

¹⁹⁵ Supra 191 at 113.

¹⁹⁶ UNHCR, Technical Guidance: Child-Friendly Procedures (2021) at 18.

Protective custody

As it has already been stated, the UNCRC Committee has urged Greece in the concluding observations to ban the placing of children on the move in detention centres.¹⁹⁷ Nevertheless, it is a practice that is still used. According to Article 52 (2) of the Law No. 4939/2022, the deprivation of liberty of unaccompanied children shall be used only as a measure of last resort, and only in accordance with the best interests of the child. Considering that the law still does not ban it per se, Greece continues using protective custody for unaccompanied children, especially for children residing in the islands and in Evros.¹⁹⁸ Nevertheless, this triggers concerns. Specifically, the deprivation of liberty of unaccompanied children is used as part of the identification procedure for the protection of children until this procedure is completed, if there is not any alternative measure available. As it has already been pointed out, NERM was created to replace the protective custody and thus, it is regarded as the alternative measure. However, NERM only functions in Athens and in Thessaloniki. Therefore, unaccompanied children are still being placed in protective custody or in Closed Controlled Access Centres of Islands if they reside in the islands or in Evros and this is part of the 'de facto' procedure since there is no alternative measure.¹⁹⁹

Assessment of the child's best interests

According to the Law No. 4939/2022, the assessment of the child's best interests is conducted after the completion of the identification process. There are two types of assessments that are being conducted for unaccompanied children in practice. The rapid BIA and the comprehensive.²⁰⁰ In fact, once the authorities identify an unaccompanied child, they refer the child to the Special Secretariat for the protection of unaccompanied children and the NERM is activated.²⁰¹ This means that the NERM notifies the Mobile Units that are run by the NGO called Network for Children's Rights in Athens and the NGO Arsis in Thessaloniki in order to transfer the child firstly to the specific Police Department, if the child is not identified, or to the emergency accommodation facility, if the child has already been identified.²⁰² During this procedure, trained professionals by these two NGOs conduct a rapid BIA.²⁰³ The time the child is at the emergency accommodation facility, trained professionals conduct a comprehensive BIA in order to provide appropriate protection to the child in that facility and after, in the long-term accommodation facility.²⁰⁴ Consequently, the best interests of the child are assessed

¹⁹⁷ Committee on the Rights of the Child, Concluding observations on the combined fourth to sixth periodic reports of Greece, CRC/C/GRC/CO/4-6 (2022) at 13 para 40 (b).

¹⁹⁸ Greek Council For Refugees, AIDA - Country Report: Greece (2022) at 50.

¹⁹⁹ Greek Council For Refugees, AIDA - Country Report: Greece (2022) at 196.

²⁰⁰ UNHCR, Form – BIA – Short BIA (2019) & UNHCR, Form – BIA – Comprehensive BIA (2020) (<https://www.unhcr.org/what-we-do/reports-and-publications/handbooks-and-toolkits/bip-toolbox/forms>), last visited (14-06-2024): The rapid BIA is a concise assessment that focuses primarily on accommodation care arrangements and on the safety of the child. The comprehensive BIA is an extensive assessment that analyzes the history of family separation and tracing needs, care arrangements and living conditions, health and safety, daily life and education, and concludes with an action plan.

²⁰¹ Hellenic Republic, Ministry of Migration & Asylum - Special Secretariat for the Protection of Unaccompanied Minors, National Emergency Response Mechanism: A safety net for unaccompanied children identified in precarious living conditions (2022) at 14.

²⁰² Ibid at 18-20.

²⁰³ Ibid at 24-26.

²⁰⁴ Ibid at 28.

twice during their initial reception.

Nevertheless, NERM only functions on the mainland, in Athens and in Thessaloniki and in practice, it is run by the two aforementioned NGOs and not by State actors. This creates two significant issues. Firstly, the fact that NERM is not functioning on the islands, is highly problematic because the majority of unaccompanied children are found on the islands.²⁰⁵ If there is no alternative accommodation measure for the completion of the identification procedure, the measure of detention is the one that may then apply, and this undermines the effectiveness of the NERM. As of May 2024, there were 114 unaccompanied children residing in RICs and Closed Controlled Access Centres of Islands.²⁰⁶ This means that the assessment of the best interests of the child is not conducted as part of the initial reception procedure, if unaccompanied children reside in the islands and hence, the mechanism that was created for the protection of unaccompanied children, does not reach the intended target group on the islands. Secondly, the fact that NERM is substantially run by NGOs is concerning because it means that it is dependent on funding from EEA grants.²⁰⁷ This mechanism is crucial for the protection of unaccompanied children, and it should be primarily under State's responsibility and the role of NGOs should be complementary. It is difficult to achieve consistent protection of children, if there is no specific budget allocation provided by the State for that mechanism to function.

3.6. Concluding Remarks

In this section, there was a navigation of the national legal framework and its implementation in practice. On the one hand, the national legal framework has implemented the UNCRC under the national Law No. 2101/1992 and the EU Reception Conditions Directive under the Law No. 4939/2022. It does include in both laws, the right of the child to have their best interests taken as a primary consideration. On the other hand, the Law No. 4939/2022, does not exclude the detention of children per se but instead, it does allow it as a procedural measure until the identification is completed. The fact that the law states that it shall be used after the assessment of the best interests of the child and as a measure of last resort if there is no other available measure, does not guarantee that it is not used. Hence, the legal framework does not guarantee effective protection for children.

As far as the practical application of the national legislation is concerned, Greece has made some efforts to protect unaccompanied children, as shown in the key developments in section 1. One of them was the creation of the NERM. However, the NERM does not reach all unaccompanied children but only those who reside in the mainland. This results in the ineffectiveness of the NERM in practice. At the same time, the NERM is not funded by the State and not run by it, but instead, it is dependent on EEA funding and on NGOs work. Hence, the protection of unaccompanied children cannot be stable and consistent in this way.

Regarding the protection of accompanied children, the State has not made any progress neither on the law nor in practice. In general, there is more attention to the protection of unaccompanied children

²⁰⁵ Hellenic Republic, Ministry of Migration & Asylum - General Secretariat for the Reception of Asylum Seekers Reception and Identification Service, Data report for registered Third-country nationals or stateless persons on the islands (2023).

²⁰⁶ Hellenic Republic, Ministry of Migration & Asylum, Situation Update: Unaccompanied Minors (UAM) in Greece, 01 May 2024 at 1.

²⁰⁷ Hellenic Republic, Ministry of Migration & Asylum - Special Secretariat for the Protection of Unaccompanied Minors, National Emergency Response Mechanism: A safety net for unaccompanied children identified in precarious living conditions (2022) at 33.

than to accompanied children with their families.²⁰⁸ Accompanied children are seen as part of their family and not as separate individuals with rights, who also need protection.²⁰⁹ This implies the invisibility of accompanied children, their unmet right to be individually identified and hence, the lack of their protection. Furthermore, the State has not abolished the detention of children in law nor in practice. In particular, accompanied children are seen as dependent on their parents and thus, they follow the de facto deprivation of liberty until the completion of the identification procedure. This is conducted without assessing the best interests of the child. Consequently, there is still a lot to improve for the initial reception of children, and particularly, to establish a child protection system for both accompanied and unaccompanied children. In the following Chapter, the Barnahus model will be explored as a child-rights solution to improve compliance with children's rights in initial reception of children on the move in Greece.

²⁰⁸ J. Kanics, Challenges and Progress in Ensuring the Right to Be Heard and the Best Interests of Children Seeking International Protection 32 *Refugee* 3 (2016).

²⁰⁹ UNHCR, Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees (2009) at 1.

Chapter 4 Potential application of the Barnahus model as a child-rights solution in the initial reception of children on the move

4.1. Introduction

The initial reception of children on the move is a crucial stage, during which the right of children to appropriate protection can be ensured. As illustrated in Chapters 2 and 3, Greece has legal obligations under the UNCRC, the EU Reception Conditions Directive and the national Laws No. 4939/2022 and No. 2101/1992 to provide appropriate protection to these children, irrespective of whether they are unaccompanied or accompanied by their families. Nevertheless, the practical implementation of these obligations has proved to be inefficient.

There is a need to provide a holistic child-rights solution to the initial reception of children on the move. Article 4 of the UNCRC establishes that States should take all appropriate measures, legal or not, in order to implement the rights recognized in the Convention.²¹⁰ Hence, this Chapter aims to explore the potential application of the Barnahus model as a child-rights measure at the initial reception of children on the move in Greece. The sub-questions that attempt to answer are the following: 1) *What are the main child protection gaps in practice in Greece as far as the initial reception of children on the move is concerned?* and 2) *To what extent can the Barnahus model provide a child-centred and child-friendly solution for the initial reception procedure of children on the move?* It is divided in three parts. In the first part, there is a concise exploration of the broad child protection gaps in Greece and the importance of a child-rights solution (Part 1). The second part delves into the Barnahus model itself (Part 2). The third part sheds light on the way it can apply to the initial reception of children on the move and the difficulties that may occur during its implementation (Part 3). Finally, the fourth part concludes with some final remarks (Part 4).

4.2. Child protection gaps and the significance of a child-rights solution

Throughout the analysis of the domestic legal framework and its practical implementation in Chapter 3, there were three main issues that were highlighted, namely the individual identification of children, the deprivation of liberty and the assessment of the child's best interests as part of the initial reception procedure. Having reflected on these protection issues, it is equally important to delve into the broader challenges of the practical compliance of Greece with its obligations in order to better comprehend the aforementioned matters and to attempt to find a solution. The central child protection gaps are two-fold. Firstly, there is a lack of a comprehensive and coordinated child protection system in Greece, that could cooperate with the asylum system.²¹¹ The second challenge is that the child protection system is confused with the asylum system.

To begin with the first issue, the Committee on the UNCRC has expressed its concerns regarding the child protection system in Greece and has urged the State to create a holistic legal framework in order to adopt a comprehensive child protection system.²¹² In Greece, the child protection system is governed by the State, but it lacks coordination since there are many overlapping responsibilities

²¹⁰ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Article 4.

²¹¹ UNICEF, *A Situation Analysis of Children and Youth, Greece* (2020) at 13, 56 and 85.

²¹² Committee on the Rights of the Child, *Concluding observations on the combined fourth to sixth periodic reports of Greece, CRC/C/GRC/CO/4-6* (2022) at 1 para 7.

between Ministries and Municipalities.²¹³ At the same time, Greece has adopted national laws for the protection of children but there is no proper implementation.²¹⁴ As an illustrative example, Greece has adopted the Law No. 4478/2017 which establishes the rights of victims of criminal offences, with an emphasis on the protection of child victims and witnesses. In particular, Article 74 of this law establishes the Children's House as a measure to protect child victims and witnesses, with the focus being on the individual assessment of each child.²¹⁵ The latter shall be conducted by a child psychologist and shall be assessed by a multidisciplinary team.²¹⁶ It should be pointed out that the Children's House is based on the Barnahus model that will be explored below. Although Greece has provided the legal framework, the Children's House is not completely operational, it lacks coordination and professionals are not adequately specialized and trained.²¹⁷ Consequently, the national law lacks proper implementation and hence, the child protection system is still fragmented. Nevertheless, the example of the Children's House shows that there can be cooperation between the child protection system with another system, in this case the justice system. This is crucial to note for the later examination of the Barnahus model as a child-rights approach in the migration context.

Regarding the second challenge, the child protection system is confused with the asylum system. This means that these two systems do not work in parallel for the protection of children but the asylum system 'replaces' the child protection system. Children are first seen as asylum-seekers and then as children. This is particularly relevant for accompanied children. Specifically, accompanied children by their families are placed under the asylum system in practice. They follow the asylum procedures and there is no BIA that is undertaken in order to individually assess their needs and to provide them appropriate child protection. This is not always the case for unaccompanied children. Due to the fact that unaccompanied children are more vulnerable than accompanied because they do not have the protection of their parents, Greece places its emphasis on their protection.²¹⁸ Hence, in the case of unaccompanied children, Greece does activate a child protection mechanism, namely NERM, that has been further elaborated in Chapter 3. However, this is not a child protection system but a mechanism that applies only to the needs of unaccompanied children who reside in the mainland due to its operational limitation. Therefore, there shall be a comprehensive child protection system that puts the rights of all children at the centre and that is able to collaborate with the asylum system for the protection of both accompanied and unaccompanied children.

It is important to note anew that children are rights-holders and when they need protection, this shall be provided by the State in a child-rights manner. This means that the State must respect the rights of children and must take into consideration the child's views for every decision the State needs to take.²¹⁹ Furthermore, the protection shall be provided after the assessment of their specific needs and best interests.²²⁰ The principle of the best interests is not a philosophical conception but a substantive right of children. Greece shall adopt such measures that take the best interests of the child as a

²¹³ Supra 211 at 56.

²¹⁴ Ibid.

²¹⁵ Greek Law No. 4478/2017 for the incorporation of the EU Directive 2012/29/EU establishing the minimum standards on the rights, support and protection of victims of crime (2017), Article 74 (1) and (2).

²¹⁶ Ibid, Article 75(2).

²¹⁷ Supra 212 at 5 para 26.

²¹⁸ UNHCR, *Refugee Children: Guidelines on Protection and Care* (1994) at 70.

²¹⁹ Supra 210, Article 12.

²²⁰ Ibid, Article 3.

primary consideration in all actions and situations that affect them. Therefore, it is essential to address the protection of children on the move, both accompanied and unaccompanied, by adopting a child-rights approach. For this, there must be a cooperation between the child protection system and the asylum system in the initial reception of children on the move.²²¹ This shall be comprehensive and thus, shall apply to both the mainland and the islands and to both accompanied and unaccompanied children. Also, it shall be coordinated and funded by the State in order to ensure its proper monitoring and evaluation and its stability. This child-rights solution could be the application of the Barnahus model, which will be examined below.

4.3. The Barnahus model as a child-rights solution

The Barnahus model emerges in 1998 in Iceland, where it was founded by Bragi Guðbrandsson, Member of the UNCRC Committee.²²² Barnahus signifies 'children's house' in the Icelandic language. The Barnahus model is a child-friendly and multidisciplinary house for child victims and witnesses, where children are interviewed solely by one single professional, they undergo a medical examination to ensure their wellbeing and as part of the forensic procedure, and their needs are assessed in order to be provided the appropriate protection from specialized professionals.²²³ The idea is that professionals working in the justice system and in the child protection system work together in order to holistically address the specific needs of the child victims and witnesses. The aim is multi-fold. Firstly, this model attempts to avoid the re-traumatization of the child, that can occur when the child is interviewed many times by different professionals. It has been proved that when professionals work in isolation and the child is interviewed multiple times by different professionals without proper specialization and in different locations, the child can be (re) traumatized.²²⁴ Therefore, according to the Barnahus model, the child is only interviewed once by one single professional, and the other relevant professionals observe the interview on screen in another room and keep the information that is needed for the completion of their role.²²⁵

At the same time, there is an assessment of the child's needs in this Children's House, that is being examined by a multidisciplinary team. In this way, the best interests of the child are better ensured because there is a holistic view of the child's needs. Additionally, this model aims to have the child protection services accessible to all children in this way. Another key aim is to build a relationship of trust with the child in order to assist the child reveal their trauma and thus, to early identify it, investigate it and respond to it effectively.²²⁶ It also attempts to establish that children are first and foremost children and not victims or witnesses. Hence, the child protection system and the justice system work together to achieve this. Consequently, this model provides an excellent 'one-roof- child-

²²¹ EASO, Practical Guide on the best interests of the child in the asylum procedures (2019) at 8, 26.

²²² International Juvenile Justice Observatory, IJJO Interviews, Bragi Guðbrandsson – Founder of the Barnahus Model, Member of the United Nations Committee on the Rights of the Child (2023).

²²³ O.L. Haldorsson, Child Circle, Barnahus Quality Standards: Guidance for Multidisciplinary and Interagency Response to Child Victims and Witnesses of Violence (2017) at 13.

²²⁴ Ibid at 8.

²²⁵ Ibid at 65.

²²⁶ S.Greijer and D. Wenke, Barnahus: a European journey – Mapping study on multidisciplinary and interagency child-friendly justice models responding to violence against children in Council of Europe member states (2023) at 61.

friendly service that puts the rights of children and their protection first.²²⁷

Key principles

Best Interests of the child

It is important to note that the Barnahus model is based on some key principles in order to prevent re-traumatization. These are the best interests of the child, the right of children to be heard and to receive appropriate information and to prevent undue delay.²²⁸ Commencing from the former, the best interests of the child shall be assessed in every action that affects the child by a qualified multidisciplinary team, if possible.²²⁹ Additionally, the assessment of the best interests of the child is not a 'one size fits all' process²³⁰ but an individualized process that shall consider the specific circumstances of each child, including the personal profile of the child as well as social and cultural aspects, such as age, sex, experience, having a disability, the existence of parents, the quality of their relationship, any trauma inflicted on the child.²³¹ Although the process is unique for each child, it is crucial to create a standard tool with specific elements in order to have a comprehensive assessment of the child's best interests.

Child participation

Another vital element and safeguard to the BIA, is child participation. The child has the right to have their views being heard and given due weight in all matters that affect them.²³² The child shall not be deprived of this right because of their age or maturity. As GC No.12 declares, there is no age limit for a child to express their views and that States are under the obligation to ensure the fulfillment of such right. Additionally, there are other methods that can be used for younger children such as play and drawing in order to make them feel more comfortable and as a result, to better express themselves.²³³ Furthermore, the child should be provided child-friendly information by specialized professionals at a child-friendly place and in a language they understand in order to be able to understand the situation and express their opinion.²³⁴ It is important to build a relationship of trust with the child in order to enhance the child's engagement in a way that the decisions made throughout the procedure firmly meet the child's needs and best interests.²³⁵ Moreover, the child should not be interviewed more times than it is necessary, especially if the child is traumatized from harmful incidents that has experienced. This is because the process of hearing the child is challenging for the child themselves

²²⁷ Ibid at 131.

²²⁸ Supra 223 at 20.

²²⁹ General Comment No. 14 (2013) of the Committee on the Rights of the Child on the right of the child to have his or her best interests taken as a primary consideration (art.3, para. 1), UN Doc. CRC/C/GC/14, at 12 para 47 (2013).

²³⁰ UNHCR, Technical Guidance: Child-Friendly Procedures (2021) at 4.

²³¹ Supra 229 at 9 para 32.

²³² Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Article 12.

²³³ General Comment No. 12 (2009) of the Committee on the Rights of the Child on the right of the child to be heard, UN Doc. CRC/C/GC/12 at 6-7 para 21 (2009).

²³⁴ Ibid at 9 para 34 and 8 para 25.

²³⁵ Supra 226 at 131.

and it can provoke trauma, re-victimization and re-traumatization to the child.²³⁶

Prevention of Undue Delay

As it has already been stated in this research paper, the assessment of the child's needs is important to be conducted as early as possible in order to ensure the effective protection of the child. Hence, the prevention of undue delay in the processes is crucial in order to avoid further traumatization of the child, to identify promptly their needs and to provide them suitable protection. A factor that can contribute to the avoidance of undue delay is the proper collaboration and coordination of the different agencies and professionals within the Barnahus model.²³⁷ In this way, professionals assess the case of the child as soon as possible and provide them with a protection plan. Amongst the vital responding measures to child's needs is the provision of therapeutic measures in order to enhance child's recovery.²³⁸ As a result, the child's right to be protected is holistically ensured.

4.4. Barnahus model in the initial reception of children on the move in Greece

In Greece, this model also exists in the national law as part of the child justice system, as mentioned above. Nevertheless, this model could also apply to the migration context. In particular, as it has already been stated, there shall be a collaboration between the child protection services and procedures and the refugee procedures in practice and not only in law. As shown in the diagram below, the refugee procedures include the identification and reception, the registration and the provision of information whereas the child protection procedures mainly encompass the medical examination, the BIA and the provision of therapeutic and recovery services. The importance is to create a child-friendly system for children who arrive in Greece and not 'obliging' children to adapt to the system.

Commencing from the first contact of children with the authorities, the identification and reception are two crucial procedures that can define the access to child protection.²³⁹ Specifically, it is the time when children shall be individually identified, even if they are accompanied, in order to recognize them as rights-holders and ensure the fulfilment of their rights. By applying the Barnahus model in the migration context, it is more likely that the State will identify children individually, separately from their parents in case of accompanied children, given that they need to proceed to the Children's House for the next procedures, necessary for both the child protection and the international protection. Additionally, the reception of children in a child-friendly and child-appropriate accommodation is significant in order to feel safe. If the child does not feel safe in the accommodation, then it is less likely to trust the procedures and to build a relationship of trust with a professional. This would at the end affect the protection of the child overall. In Greece, the Closed Controlled Island Centres, for instance, are not an enabling environment for children to feel safe. Nevertheless, the accommodations provided through NERM on the mainland are a type of accommodation that could be deemed as child-appropriate. Thus, the proper accommodation is crucial for the rest of procedures and thus, Greece shall create such facilities, appropriate and accessible to all children and to both the mainland and the islands.

²³⁶ Supra 233 at 7 para 24.

²³⁷ O.L. Haldorsson, Child Circle, Barnahus Quality Standards: Guidance for Multidisciplinary and Interagency Response to Child Victims and Witnesses of Violence (2017) at 36.

²³⁸ Supra 232, Article 39.

²³⁹ UNHCR, Technical Guidance: Child-Friendly Procedures (2021) at 29.

Continuing with the procedures, after the reception of children on the move, NERM is activated for unaccompanied children in Greece. This mechanism is appropriate for the protection of unaccompanied children and thus, there is no need to be changed but it should be operational to both the mainland and the islands. The Children's House can be placed inside the reception accommodations. In this way, this house is accessible and available to all children and thus, all children have access to the remaining procedures. Particularly, the child is informed by a specialized professional about their rights on both their child protection and the international protection. They are then registered, and this is vital in order to then access protection. The registration procedure includes their personal details, their family details and their family links and their fingerprints, if they are above 14 years old.²⁴⁰ Moreover, they undergo a medical examination which could be mainly considered as part of the child protection procedure that ensures their well-being or identifies any abuse or violence they have suffered.

The next procedure is the interview of the child by one single professional and it is of utmost importance for two reasons. Firstly, it is the time that BIA is conducted in order to determine the child's needs and best interests and create a protection plan.²⁴¹ The child may run hidden risks for instance, being a victim of trafficking, or facing abuse either by their family or by other actors.²⁴² Hence, the conduction of BIA is essential and should be used as the standard tool for the child protection and for the case management.²⁴³ Also, the conduction of BIA should be assessed by a multidisciplinary team in order to better decide on the protection plan of the child. During the interview, the child should be provided with child-friendly information about their rights and the procedures in a language that they understand, and their views should be heard and be given due weight.²⁴⁴ It is upon the child to decide whether they want to be heard with the presence of a parent or a guardian.²⁴⁵ After BIA, a formal best interests' determination may be needed for decisions that have greater impact on the child, such as the reunification of the unaccompanied child with their family.²⁴⁶ Secondly, the information that will be revealed by the child in this interview will be used on the international protection application. Consequently, it is vital that the professional creates a relationship of trust with the child and helps the child express their views and speaks about everything that have occurred throughout their journey to Greece and until the time of the interview. This information is crucial in order to be able to provide them appropriate protection and to acquire international protection.

It is important to note that the international protection could be dealt with outside the Barnahus model. Nevertheless, the child will be interviewed anew from an asylum officer. As a consequence, the child may suffer from stress and trauma from the additional interview, if they need to speak again about a

²⁴⁰ EASO, Practical Guide on the best interests of the child in the asylum procedures (2019) at 20; Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' (recast), OJ L 180, para 17.

²⁴¹ UNHCR, Field Handbook for the Implementation of UNHCR BID Guidelines (2021) at 1.

²⁴² EASO, Practical Guide on the best interests of the child in the asylum procedures (2019) at 29.

²⁴³ Supra 241 at 7.

²⁴⁴ General Comment No. 12 (2009) of the Committee on the Rights of the Child on the right of the child to be heard, UN Doc. CRC/C/GC/12 at 24 para 124 (2009).

²⁴⁵ Ibid at 9-10 paras 35-37.

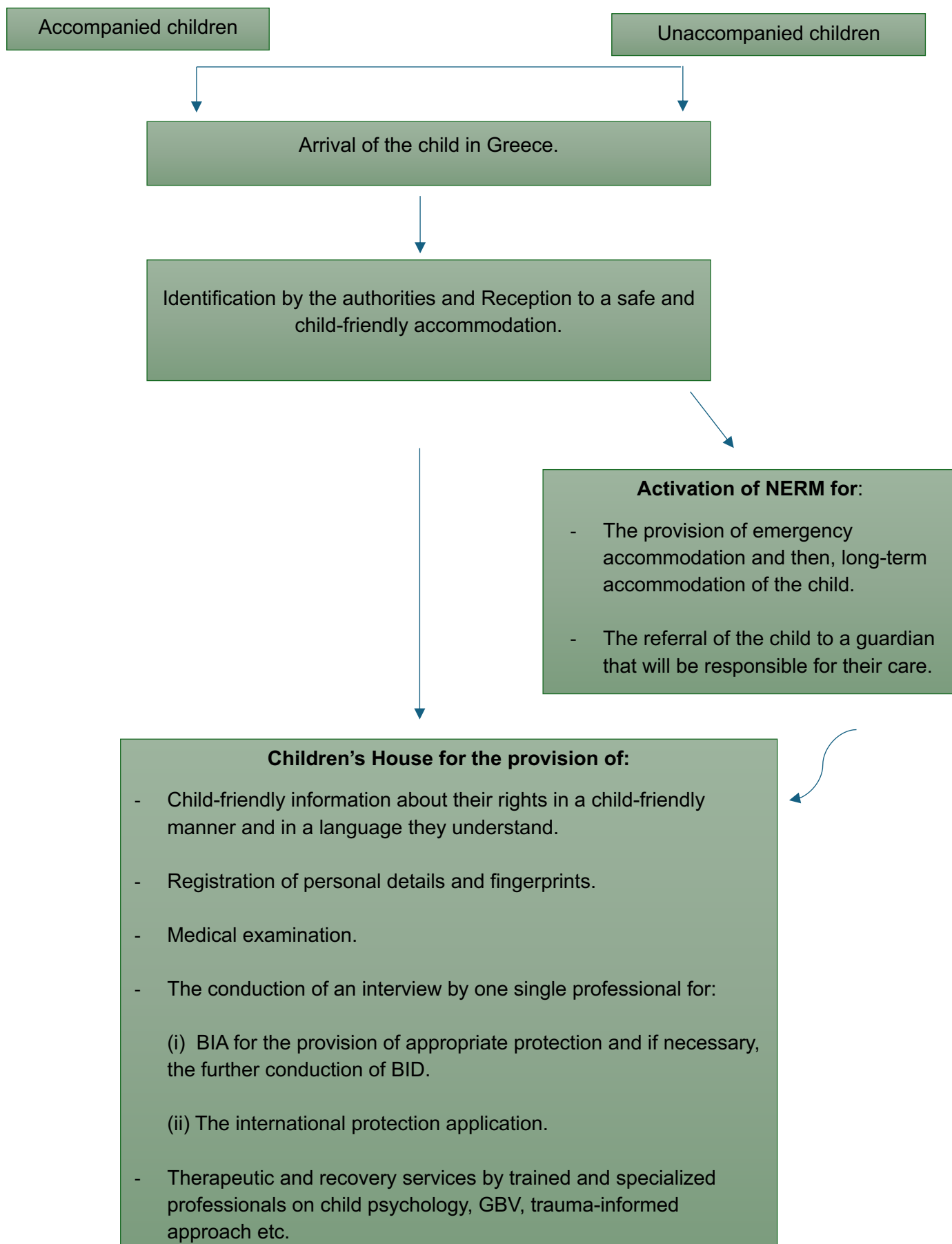
²⁴⁶ Supra 241 at 59.

harmful experience.²⁴⁷ In parallel, it is doubtful that the officer has the time to create a relationship of trust with the child and that the child feels comfortable sharing their story and this can have adverse effects on their application for international protection.²⁴⁸ Consequently, the asylum officer could be amongst the professionals that can view the interview on the screen in another room. Lastly, after the conduction of BIA and the creation of the protection plan, the child may need therapeutic and recovery services. This needs to be provided inside the Children's House for two reasons. Primarily, the Children's House is inside the reception accommodation and thus, it is easily accessible to all children. Secondly, the child has already built a relationship of trust with professionals inside the Children's House and thus, it is a place that the child already feels safe.

²⁴⁷ Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), Preamble at 8.

²⁴⁸ S.Greijer and D. Wenke, Barnahus: a European journey – Mapping study on multidisciplinary and interagency child-friendly justice models responding to violence against children in Council of Europe member states (2023) at 131.

Diagram 2: The potential application of the Barnahus model in the initial reception of children on the move in Greece



Challenges in the implementation

There are three key challenges in implementing Barnahus model. Primarily, there may be a lack of consistency in Greece. This means that if Children's Houses are firmly enacted in the national law and are established in practice, there is the possibility that they will operate only on the mainland, as it happens with the majority of services, and not on the islands. The same issue occurs with the NERM for the protection of unaccompanied children, as demonstrated in Chapter 3. Thus, this creates unequal access to the procedure for children residing in the mainland and those received in the islands. Secondly, there is lack of a comprehensive and coordinated child protection system²⁴⁹ that can work with the asylum system and as a result, there is a limited number of trained and specialized professionals that can work in a Children's House. This has also been proved in Children's Houses that were installed in Greece as part of the justice system. Lastly, there needs to be a prioritization in the budgeting by the State and if it does not occur, it can result in the ultimate hinderance of the proper implementation of such model.

4.5. Concluding Remarks

There are two main child protection gaps in Greece that hinder the effective protection of children on the move during their initial reception by Greek authorities. Firstly, the child protection system in Greece lacks coordination, effective implementation in practice and personnel that is specialized and trained. Additionally, the child protection system in Greece is confused with the asylum system and this, impedes their protection. Consequently, this Chapter attempted to illustrate the Barnahus model as a potential child-rights solution for the protection of children. Barnahus model is admiring for two main reasons. Firstly, it can combine two systems, in this case the child protection system with the asylum system. This shows that the model is holistic and it recognizes that children should first be seen as children who are rights-holders and then, as asylum seekers. Secondly, it provides a child-rights solution by putting at its centre the best interests of the child. It achieves that with the assessment of BIA by a multidisciplinary team in order to better ensure the holistic protection and development of the child and to respect the child's dignity.²⁵⁰

²⁴⁹ Committee on the Rights of the Child, Concluding observations on the combined fourth to sixth periodic reports of Greece, CRC/C/GRC/CO/4-6 (2022) at 2 para 9.

²⁵⁰ General Comment No. 14 (2013) of the Committee on the Rights of the Child on the right of the child to have his or her best interests taken as a primary consideration (art.3, para. 1), UN Doc. CRC/C/GC/14 at 4 para 5 (2013).

Chapter 5 Conclusions and Recommendations

Throughout this research paper, the focus is on the initial reception and specifically on the protection of all children on the move that arrive in Greece, and this can be achieved through the individual assessment of their best interests as early as possible. As it has been stated in GC No.14, the full application of the child's best interests principle needs the development of a rights-based approach, through the involvement of all actors in order to ensure the holistic engagement and development of the child with the ultimate aim to respect their human dignity.²⁵¹ As a result, in Chapter 4, the application of the Barnahus model was recommended as a child-rights approach in the migration context and particularly, for the initial reception of children on the move in Greece.

It is significant to note anew that the protection of children is under the State's obligation according to international, European and domestic legal standards, as explained in Chapter 2 and 3. As a result, after the conclusions, this Chapter aims to provide suggestions to the Greek State that could use to improve its compliance with the legal framework. The recommendations are based on the gaps that were identified throughout this thesis and namely, the lack of coordination and the overlapping of professionals' responsibilities, the lack of specialized professionals working with and for children, the lack of specific budget allocation and disaggregated data, and the lack of evaluation. They are also based on the potential application of the Barnahus model that was examined in Chapter 4.

5.1. Conclusions

Discrimination based on the child's status as accompanied, non-individual identification throughout the reception procedures, the lack of best interests' assessments on the moment the child arrives in the country and detention undermine the appropriate protection of children on the move. At the same time, the lack of a comprehensive and coordinated child protection system that could cooperate with the asylum system contributes to the ineffective protection of children. Hence, the question that this thesis attempted to answer is the following:

To what extent does Greece comply with the UNCRC, the EU Reception Conditions Directive and its domestic laws as far as the initial reception of children on the move is concerned and to what extent can the Barnahus model apply in that context and provide a child-rights solution?

The thesis argues that the appropriate protection of the child can be ensured, only if an assessment of their best interests is made on the moment the child is initially received by Greece. Throughout the examination of the UNCRC, the EU Reception Conditions Directive and the national Law No. 4939/2022, it has been illustrated that the UNCRC does offer the legal basis for it, but the EU Reception Conditions Directive is limited in scope. It applies only after the application for international protection is made and there is no exception for children. Additionally, Article 11 of that Directive provides space to States to deprive children their liberty during their reception, because it does not prohibit it per se. This undermines the protection of children. Although the national law No. 4939/2022 implemented the EU Reception Conditions Directive, it is not that limited in scope. It does provide an

²⁵¹ General Comment No. 14 (2013) of the Committee on the Rights of the Child on the right of the child to have his or her best interests taken as a primary consideration (art.3, para. 1), UN Doc. CRC/C/GC/14 at 4 para 5 (2013).

exception for children, and it declares that the assessment of the child's best interests should be conducted during their reception, irrespective of their international protection application.

Nevertheless, the practical application of the legal framework illustrates significant deficiencies. Firstly, the assessment of the child's best interests is not conducted on the moment the child arrives in Greece but after the conclusion of the identification of the child, at a stage during which the child can even be deprived of their liberty, according to Article 52 of the Law No. 4939/2022. Specifically, it has been demonstrated that detention is still used in the identification procedure without the conduction of any BIA, and this undermines the protection of children and violates Article 3 and 37 of the UNCRC as well as Article 11 (2) of the EU Reception Conditions Directive. Furthermore, accompanied children receive less protection due to the fact they are seen as part of their families and not as individual rights bearers. Specifically, they are not individually identified, and this risks their protection and the fulfillment of their rights overall. This violates their rights and especially, their right to non-discrimination under Article 2 and their right to be heard under 12 of the UNCRC. Lastly, the BIA is conducted on the mainland for unaccompanied children through the NERM but not on the islands because the NERM is not operational there. For accompanied children, BIA is not conducted at all. This violates their right to receive appropriate protection under Article 22(1) UNCRC and their right to have their best interests taken as a primary consideration under Article 3(1) UNCRC. This shows that in practice, Greece does not comply with its legal obligations and also, that it treats specifically accompanied children in a discriminatory manner.

As the Geneva Declaration recognizes 'mankind owes the child the best it has to give'. This should apply to all children in practice. As a result, the thesis recommends the application of the Barnahus model as a child-rights solution to the initial reception of children on the move. This model ensures the collaboration between the child protection and the asylum system and ensures that children are protected. Nevertheless, Greek child protection system lacks coordination and allocation of clear responsibilities to professionals, prioritization in the budgeting and in general practical implementation. Thus, the Greek State needs to address its child protection gaps in order to be able to apply the Barnahus model in the initial reception of children on the move.

Consequently, to answer the research question, Greek law does comply legally with the UNCRC and the EU Reception Conditions Directive but not in practice. Additionally, although the Barnahus model could provide a child-rights solution to the initial reception of children on the move in Greece, this depends on the willingness of the State to solve its child protection gaps and work on this model.

5.2. Recommendations

Recommendation 1: Coordination and allocation of responsibilities to each professional

- i. The government needs to establish a specific department of the Government to be responsible for the coordination of the child protection and asylum system, meaning the Barnahus model. This department should also allocate precise responsibilities to each professional in order to avoid overlap.
- ii. The government should ensure that there are child protection professionals and refugee professionals in the Barnahus model. Some examples are social workers, psychologists, lawyers, medical personnel, asylum officers, translators, child protection officers.

- iii. The government should also establish a governmental mechanism that maps all the services operating in the Barnahus model and that is responsible to coordinate them. In parallel, it is important to ensure coordination between all actors, governmental and non-governmental.

Recommendation 2: Capacity Building

- i. The government should establish a team in the governmental department that is responsible for training and capacity building of professionals. It is important that this is provided to all people working with and for children.
- ii. The government should also ensure that these trainings are obligatory and that provide education on the UNCRC, trauma-informed approach, GBV, child-friendly interview techniques, child psychology.
- iii. It is also necessary to ensure that the trainings are on-going and systematic for all the professionals working for and with children.
- iv. The government could cooperate with the civil society in designing the trainings and the capacity building sessions because given that they work on the field, they have extensive experience working with and for children.

Recommendation 3: Allocation of Budget

- i. The government needs to establish a sufficient and clear budget plan for each recommendations the government plans to implement and in specific timelines. This budget shall be part of the public expenditure and not funds from the EU. This is crucial in order to ensure consistency.
- ii. The government should establish a governmental mechanism that is responsible for monitoring and evaluating the budget plan.

Recommendation 4: Data Collection

- i. The government should ensure that the data collection is disaggregated and that encompass data for all the services in the Children's House, for all children and for all locations.
- ii. It is also important that the government establishes a data mechanism that collects the opinion of children on the move who have been in the Children's House. This could be in the form of interviewing children about their experience in the Children's House or through a questionnaire.
- iii. The government should ensure that there is an analysis of the data in order to identify the progress of the recommendations.

Recommendation 5: Monitoring and Evaluation

- i. The government should establish a monitoring and evaluation mechanism that tracks the progress of the recommendations.
- ii. It is also important that the government establishes an independent monitoring mechanism that could be run by the civil society that also evaluates the progress of the recommendations. In this way, there will be an objective analysis of their implementation.
- iii. The government should ensure the publication of the evaluation reports.

5.3. Key takeaway

Children shall first and foremost be seen as children, and not as asylum seekers. Greece does not have a comprehensive and coordinated child protection system that could cooperate with the asylum system in order to appropriately protect children. There needs to be a change in practice and not only in policies and in laws. Greece should ensure the appropriate protection of asylum seeking children in practice once they initially arrive in the country. For this, the application of the Barnahus model could provide the child-rights solution for the appropriate protection of children on the moment they are initially received by Greek authorities.

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