Oñati Socio-Legal Series (ISSN: 2079-5971)
Oñati International Institute for the Sociology of Law
Antigua Universidad s/n - Apdo. 28
20560 Oñati - Gipuzkoa (Spain)
opo@iisj.es / http://opo.iisj.net

From a sheltered to expulsion item. The transformation of unaccompanied minors' legal culture

OÑATI SOCIO-LEGAL SERIES VOLUME 12, ISSUE 6 (2022), 1358–1390: LEGAL CULTURE AND EMPIRICAL RESEARCH
DOI LINK: HTTPS://DOI.ORG/10.35295/OSLS.IISL/0000-0000-0000-1322
RECEIVED 2 NOVEMBER 2021, ACCEPTED 1 JULY 2022, FIRST-ONLINE PUBLISHED 4 OCTOBER 2022, VERSION OF RECORD PUBLISHED 1 DECEMBER 2022

DEBORAH DE FELICE*
GIUSEPPE GIURA*

Abstract

The paper analyses the topic of unaccompanied foreign minor migrants' (UFMs) access paths in Italy and France. The aim is to describe how Italy and France intercept the UFMs to European coasts, and how they are identified and guided to specific reception facilities by examining the data and available references. The focus is on the legal dimension of the "non-reception system". These are cases in which states have been convicted of violating children's rights. How the Western world has tried to institutionalise the concept of children's rights is closely related to the concept and operating modes of legal principles and "cultures". In a way, the study of legal culture represents a measure on of laws. In this paper, we highlight the usefulness of analysing the principle of the best interest of child (BIC), introduced in the ideal-typical configuration as a free formulation, which can only be understood based on the interpretation of Courts' decisions taken on behalf of UFMs.

Key words

Unaccompanied minors; migrants; legal culture; judicial decision

---

The authors jointly developed the overall layout of the article. Where necessary, Deborah De Felice edited §§ 1, 3, 4, 6, 6.1; Giuseppe Giura §§ 2, 5, 5.1, 7, 7.1, 7.2, 7.3, 8.

The work is part of research on the concept of vulnerability of minors. The research path was developed within the context of the project *G.R.I.D.A.V.I., Risk Management, Decision Uncertainties and Social Vulnerabilities*, funded by the University of Catania (Italy), Research Incentive Plan 2020/2022. The work constitutes one of the reflective levels of the research and, again, comprises work in progress on the level of organization and processing of collected data.

* University of Catania, Italy. Email address: defelice@unict.it
* IESE Business School, Barcelona, Spain. Email address: GGiura@iese.edu

Resumen

El artículo analiza el tema de las vías de acceso de los menores extranjeros no acompañados (MENA) en Italia y Francia. El objetivo es describir cómo Italia y Francia interceptan a los MENA hacia las costas europeas, y cómo son identificados y guiados hacia instalaciones de recepción específicas, examinando los datos y las referencias disponibles. La atención se centra en la dimensión jurídica del "sistema de no recepción". Se trata de casos en los que los Estados han sido condenados por violar los derechos de los niños. El modo en que el mundo occidental ha intentado institucionalizar el concepto de los derechos del niño está estrechamente relacionado con el concepto y los modos de funcionamiento de los principios y las "culturas" jurídicas. En cierto modo, el estudio de la cultura jurídica representa una medida de la evolución de las leyes. En este trabajo, destacamos la utilidad de analizar el principio del interés superior del niño, introducido en la configuración ideal-típica como una formulación libre, que sólo puede entenderse a partir de la interpretación de las decisiones de los tribunales tomadas en nombre de los MENA.

Palabras clave

Menores no acompañados; migrantes; cultura jurídica; decisión judicial

Table of contents

1. Introduction

The paper analyses the topic of UFMs' access paths in two European countries: Italy and France. UFMs are underage migrants not belonging to European countries who arrive on EU territory alone, without any adult legally responsible for them.[1]

The paper early defines legal culture as a key concept for interpreting the procedures for welcoming UFMs at the national level; then analyses the procedure adopted by the two countries. It is necessary to understand the dynamics by which the two states conform their national regulations to supranational ones, and how their reception systems react to increases in the flow of UFMs. The second step is identifying the main Courts that decide on the lawsuits lodged by UFMs when the protections and guarantees provided for by national and supranational laws are denied. As we will see, it is customary to consider the role played by the European Court of Human Rights (ECHR) within the international judicial system and, from a national point of view, the role assumed by the Administrative Courts of the two countries.

The choice to analyse the Judgements is based on the premise that, reading them with an approach that uses "narrative thinking", captures a sequence of actions that form a process. The process emerges from text capable of returning a large number of evidence at legal and factual levels (Latour 2007). Telling means, not only reproducing events in temporality, but also putting them together according to coherent relationships (before/after, motive/action, cause/effect) (Longo 2012, p. 19). Hence, it is a question of breaking down the informational value of a Judgement and not overlook any element which maybe be part of the process, and of separating the result from its immediate cause/condition. Decisions become events when they do not happen by chance or in isolation and, instead, result into a mutual relationship in a framework that establishes their effects. The event is subjected to its reading by a Court called to "decide" on what is "welcome" based on its pre-existing structure of meaning and its resonance with familiarity (legal culture).

This approach allows for the analysis to move between the structure of the topic in question and the functioning of the justice system (decisions). It is also a way to grasp the evolution of jurisprudential law when called upon to determine a case.

In 2019, about 17,700 applications for international protection were lodged by UFMs, representing 2% of the total 738,425 overall applications. While total applications increased in EU+ countries, the share of UFMs decreased compared to 2018 by 3%.

More than one-half of all applications were registered in just three EU+ countries, namely the UK (21% of the total), Greece (19%), and Germany (15%).

[1] UFMs "(…) means third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member States" (Council Directive 2001/55/EC, Chapter 1, Article 2, f). Art. 2, European Directive 55/2001; Art. 2, Italian Legislative Decree no. 142/2015, and Art. 2, Italian Law no. 47/2017. In France, there is neither a specific law for UFMs nor a legal definition. Their legal status includes measures to protect unaccompanied foreign minors as minors, and control measures deriving from immigration legislation.

The most dramatic development took place in Italy, where applications from unaccompanied minors dropped by 83%, from almost 3,900 in 2018 to less than 700 applications in 2019 (European Union Agency for Asylum 2020). Notwithstanding this decrease, for EU countries UFMs is still an unsolved question regarding interventions "for" and "on" minors always on the border between reception policies and policies to control migratory flows.

The focus of this paper is on the legal dimension of what we have defined as the "non-reception system", cases in which states have been convicted of violating children's rights. As we will see, the way the Western world has tried to institutionalise the concept of children's rights is closely related to the concept and operating modes of legal culture. The study of legal culture, in a way, represents the measure of transformation of laws. For the purposes of this paper, legal culture means a decision-making process with a structure defined by roles. Law is the result of this process. It is, therefore, useful to analyse the principle of the best interest of the child since it introduces itself in its ideal-typical configuration as a free formulation that can only be framed by the interpretation offered in the decisions taken by the Courts.

The protection profiles of UFMs are read as a result of the Orders issued by national and supranational jurisprudence. As a first level of findings, ECHR's effort to mend the decisions issued by French and Italian Courts about entry, stay, and expulsion of UFMs citizens will be highlighted.

Indeed, the ECHR acceptance of several requests brought into examination by applicants has highlighted which defendant nations have violated rights. The second level of findings focuses on the analysis of outcomes issued by the highest French and Italian Administrative Courts at the end of appeals filed by lawyers of UFMs against early Administrative Trial Courts Orders. The attempt aims at describing the capriciousness of the protection systems found by analysing minors' guardianships profiles of some outcomes issued at different levels of judgment (supranational and national). As we suggested in previous work (Pennisi and Giura 2009, De Felice 2014, Giura 2015), the language of the Judgements is: performative, because it creates the world it describes; classificatory, since it gives a different weight to instances that could be symmetrical, ascriptive, because modifies the identities of those who accept, or are obliged to submit to, the Judgment. Being aware of the deep methodological divisions that run through social sciences, we believe it is important to clarify our assertions (as Nelken, 2016 suggests).[2]

In our opinion, the different handling of these types of judgements, when French and Italian Courts deal with UFMs access proceedings, can be addressed by the concept of legal culture conceived as part of an approach to assess overall society, not just on specific subjects of study. That is, in line with Kurkchiyan's thought, the term legal culture offers the possibility to analyse how the law "works", and to show how it is connected to other social constructions such as, in this case, reception, social inclusion, and justice (Kurkchiyan 2012, p. 220, and following).

[2] Sociological-legal research has raised the question at a methodological level, and on the need to rethink how both social and institutional action referring to (legal) rules can be investigated (Banakar 2016).

In this paper, legal culture refers to the Judges' attitudes governing Courts' outcomes. Legal representations are deeply rooted on the social fabric context and are, therefore, both influenced by it and influencing it. The concept of legal culture is useful as it sheds light on the frameworks of meaning and action through which human beings experience law in various contexts, and the interconnections of these frameworks. The attitudes of interest here narrowly relate to how UFMs cases should be dealt with, and the accepted standards of behaviour within the deontic and normative approach.

2. The manifestation of juvenile legal culture regarding their best interest and children's rights

The best interest of child's construction immediately presents one of the challenges posed by late modernity in Western societies. This is true at least two levels: that of legal regulations of individual states and that of interventions imposed by the public sphere – as the guiding principle of the relationships between the public and private spheres (Saulle 2009). Although it is not up to the normative sources to define the concepts. Child's best interest construction manifestation is permeated with references to a plurality of national and international regulations that often prevent a common interpretation. Its construction, over time, has supplemented the process of recognition and expansion of individual rights. This has taken place through decisions on juvenile jurisprudence – both at the national and international level – aimed at protecting and affirming the rights of minors.

Nevertheless, abused in many contexts, the concept in question actually takes shape – and translates into actions – with the use that legal culture puts forth concerning its orientations (through the issuing of Sentences) in a framework of meaning in which the juridical formalisation of the minor's interest encounters all the difficulties of codifying both their life experiences and the very living conditions of the minors which may reflect childhood conditions of existence far from the idea that this concept recalls in Western countries (as in the case of UFMs).

The juvenile field is, in fact, permeated by purposeful legislation, typical of the welfare state, characterised by ambiguity and weakness; it is strictly conditioned by Charters of Rights, Agreements, Courts, and international and supranational bodies. For years the Judges of merit have used international Conventions on juvenile matters not only as instruments of interpretation, but in "applying them directly" (Tommaseo 1999, pp. 584–585). That's why decisions on the legal culture in the juvenile field are informative both on the level of the institutional response about what "is worth" as the interest of the minor in the shape of legal protection, interests, and rights, and at the social level concerning "if" and "how" the question facing the juvenile justice administration system is changing.

The principle of best interest of the child is the foundation on which the child protection system has been built, and which defines the margins of the intervention of the judicial authorities of individual states and respective judicial systems; at the same time, is common ground for debate and conflict between states and their various judicial systems. The best interest of the child is "empty box" (Rodotà 1995, p. 40), it is, the result of how judicial decisions refer to it to motivate choices made. In the cases examined in this paper, there are decisions that must be read in relation, at the very least, to the

concepts of safety and the role responsibility that these decisions refer to. The aim is to penetrate the cultural boundary of the judicial affair, if detached from the contexts of reference, ends up being uncontainable, incontestable, and not even evaluable – relative to both implicit and stated objectives.

3. Legal culture highlighting unaccompanied foreign minors' rights

Minors' interest protection is part of a system of law that denotes its internal functioning, considers the pluralism of legal sources and, in turn, allows for the understanding of a social phenomenon through selections. Selections demonstrate the recurrence of the intent and purpose of legal decisions through the underlying elements of coherence and congruence. On another front, we are also witnessing the current loss of assumptions and weight of responsibility of political actions (Consoli 2015). Legal culture fits between these two aspects.

As known in socio-legal literature, there are a plethora of usages of the term "legal culture", preventing achieving theoretical precision in defining it (Friedman 1975, Nelken 1997, 2016, 2020, Cotterrell 2006, Teubner 2010, Pennisi 2018, Febbrajo 2019).[3] This brings to surface several issues concerning the law, culture, and the "law as culture" – albeit resulting in a lack of clear focus (Mezey 2003, Nelken 2020).

From a sociological perspective, this challenge is noticeably related to two theses by assuming that law and society move together – but can still adapt differently to an analytical approach (Banakar, 2009).[4] The two theses support the idea of law as a mirror, or as a spectrum, of social reality. In the first case, an external social influence is charted in the categories of law; in the second one, it is the law that gives the impulse to the definition of contingent rules, values, and the interests of society. It is not our intent to trigger a circular discussion on this point, we merely raise the level of awareness on the fact that it is a changing observation lens on a topic within the socio-legal framework.[5]

Starting on the second half of the 70s, and up to today, a central point scholars who have dealt with the concept of legal culture both as an object of analysis and as an explanatory tool, has been the dichotomy of internal and external legal culture which, Lawrence Friedman, considers legal norms (Friedman 1975/1978). However, this now common distinction between internal and external legal culture in Friedman's hypothesis is the mirror of a partially obsolete scenario in which law was represented as a set of technical rules assisted by the neutrality of interpretative operations (Raiteri 2018).

[3] External v internal legal culture; legal culture for recipients v legal culture for legal practitioners; legal culture v all that is not legal; legal culture as consciousness v legal culture as action; legal culture values and norms v legal culture feelings, attitudes, or generalised expectations; legal culture as an empirical research tool v legal culture theory, etc.

[4] "The sociology of law, Law and Society and sociological jurisprudence began somewhat differently, in different times and places and with different aims in mind. Yet, there is more which unites than separates them. As a result, many of the individual studies couched within these three orientations are hardly distinguishable from each other" (Banakar 2009, p. 68).

[5] "We are not interested in determining whether the law has lost its dominion over social life or whether it has ever possessed it; whether social life, in its development, has surpassed the law or, instead, has never corresponded to it. We are interested in emphasising that the scholar and the teacher of law do his task very badly if he only exposes what the law prescribes, and not what happens in reality" (Ehrlich 1913/1976, p. 591).

Many scholars have highlighted the limits of such clear-cut distinction, whose limits are enhanced by the growing awareness that law development also occurs while applying the rules in the decision-making procedure (Agodi *et al.* 2001, Nelken 2020, Tamanaha 2020).

As pointed out by Nelken, using the term as mentioned above means giving culture a double role: while already represented in the law, at the same time, it is an expression of something that the latter has yet to fully consider. Managing "law as culture", therefore, means, on the one hand, evaluating the latter (culture) as relevant for investigation – since it can offer coherence with the law, norms, and customs shared by groups and organisations; on the other hand, it means being aware of its pervasiveness, of its consistency fundamentals needed for understanding and interpreting what, in the juridical case, is identified as "relevant". Even more important, perhaps, are considerations relating to the use of the concept of legal culture to highlight the discrepancies between different legal systems and to clarify why individuals (and companies) tend to differ from each other in how they leverage the law. Nonetheless, the concept also finds a place in accounts of pluralistic interactions between different types of law, and in efforts to understand how international or hybrid Courts overcome conflicts between the heterogeneous cultures and knowledge base that Judges from various jurisdictions carry (Nelken 2016).[6]

The concept of legal culture is not defined irrespective of the actors, the criteria Courts adopt to decide, or the items of their attention (Febbrajo 2019, p. 29). Nor is the concept a perspective of analysis which can explain the patterns of social interaction. In accordance with the warning of Nelken and Cotterrell, notwithstanding their different perspectives (Nelken 1997, 2020, Nelken and Feest 2001, Cotterrell 2006), who point out the danger of theoretical incoherence in using the concept of legal culture simultaneously as an explanatory factor and as an outcome of social processes, here we reference a methodologically controlled use of the concept of legal culture (Pennisi 2018). In a nutshell, for the purposes of this paper, legal culture means a decision-making process with a structure defined by roles. Law is the result of this process. The ruling is the pre-condition, i.e., the structure that produces the law. Looking at law as culture means considering its objective character (law as a fact) as well as its subjective character (law as representation).

The dimension of change is the evolution of how law sociologists perceive the concept of legal culture and how it is intertwined with the dynamics of legal systems. With the consolidation of the "normative technique" transformation, the "legal rule" becomes a procedural statement which, on the one hand, expands the span attributed to the interpretation of the text and its actors and, on the other, the relevance of social facts (Raiteri 2018). Analysing this process is useful for the sociologist of law to understand the legal mechanisms' functioning. Hence, the concept of legal culture references the outcome of an analysis of a sequence of decision nodes. Methodologically, an observable path starts from the opportunity to reconstruct the passages, rather than by just

[6] This shows how far the legal culture concept is from what is defined as "legal consciousness". This notion is useful: "(…) to identify the manner particular individuals understand what the law is, experience it and respond to it" (Jaremba 2013, p. 194) because it looks exclusively at the decision, and not at the possible scope of where decisions are taken – the interaction framework where different legal orders interface.

deducing them. Through reading decisions on legal culture by decision-makers, and by reconstructing their paths, decisions can be understood. We use the word "culture" as an adjective to describe a cultural dimension of social organisation, and its domains and layers. The "cultural" aspect refers to the "cultural dimension" of the economic, religious, political, and legal aspects under consideration. Therefore, culture can refer to the knowledge, meanings and values inscribed into interrelated social phenomena at different social organisation layers (Von Benda-Beckmann and Von Benda-Beckmann 2010, p. 87, and following).

The concept of legal culture is useful to better understand some key aspects of UFMs' rights, from sheltering to expulsion, in the two mentioned European countries. It investigates the relationship between the cultural and regulatory aspects of decisions and the role dynamics in an organisational system purposed with recognizing the rights of UFMs. The jurisprudential cases support an understanding of their conditions and, based on more or less binding national, EU, international legislation, drive and inform on the distinction between what is law and tradition, values and expectations about UMFs protection according to the context of the law.

Focusing on a context, however, does not automatically result in evidence of a specific local legal culture, especially if a comparison is made between different legal cultures. If anything, context is but the reflection of certain recurrent cases that occur, due to geography, in a location that project the role of that specific legal culture – not occurring elsewhere. On the contrary, dealing with legal culture means referencing a dimension that is, currently, somewhat dampened, at least relating to the question of minors, by the effects of legal pluralism, regardless of extra-legal considerations. For example, in the European context the same cases can take on different meanings.[7] In fact, how compatible this aspect is with concerns about resources, identity, or security becomes an internal problem of the state. That's an issue that will remain unsolved if governments deny the validity of shared rules or agreements and if politicised aspects of a given reality are placed outside the conditions, formalities and justice system on which the normative expectations are based.

Indeed, some ECHR judgements have sanctioned Italy and France for cases in which they denied residence permits to UFMs, by considering them "adults", without carrying out the necessary checks, or by considering arrival companions as relatives not possessing visas and expelling them. We hypothesise that sole and independent interpretation based on the local legal culture aspect is no longer possible to defend the principles established at the supranational level. A global legal culture, in fact, is manifesting on legal institutions by the perceived emergence of a meta-legal order that crosses the boundaries of nation-states and which effects a still unclear influence on international Courts which defy states' power. This cross-cultural set of connections established legal orders which now support the controversial emergence of the potentially universal field of Human Rights (Febbrajo 2019, p. 41). "Legal pluralism is a property of social contexts and not of legal systems. It refers to the fact that within a

[7] An in-depth study on the role of legal culture in promoting the rule of law at the European level in European Commission 2019a. Also see European Commission 2019b.

social space there may be legal norms of different origins, some produced inside it and others by external social spheres" (Viola 2007, p. 108).[8]

We refer to "non-reception" as a key element of a renewed interest in economic and political borders.[9] Still, decisions can intervene as counter current manifestations of law (King 2004, p. 77). This applies not only to "rights" per se but also to how police officers can operate regarding minors with their tools, compliance principles and estimates of risk or damages related to behaviour. Here, jurisprudence can have a greater or lesser impact on society, becoming a manifestation of either change or legitimisation, getting closer to public opinion, conforming to an administrative organisation, shaping the approach taken by a government, or by transforming the meaning that "others" attribute on socially relevant terms (Trilling 2019).

The legal culture model is, essentially, an area of reflection on these still uncertain boundaries. It deals with a valid legal order's cultural extensibility to a dimension where population, territory, and sovereignty assume potentially transnational inflections. The (open) question is whether the contemporary description of the social and legal conditions is adequate for the wider, global horizon above that of the state (Febbrajo 2019, p. 38). This communicative perspective explains the increasing importance of the values as the most abstract normative level. This condition is especially noticeable in the field of juvenile justice, where the process of institutionalisation of the concept of children's rights has taken hold over the past twenty years in particular (Palmer 2010, p. 260).

4. Reaching *The Best Interest of the Child*

Children's rights have always been the projection of different cultural models – with resulting limits and peculiarities. That's an area of law in which the contribution of other disciplines and the cultural training of the interpreter are almost more decisive for the decision of concrete cases than his technical-legal knowledge.

The idea of children's rights as a fundamental and inclusive category is relatively recent, because of minority in the legal tradition have often represented alternative inquiries to the various social structures (Catanzariti 2012, p. 97). International conventions on juvenile matters are not only used as interpretative tools but are also directly applied by ordinary judges (Tommaseo 1999, p. 584).

[8] Insights strongly related to Viola's definition come from Griffiths (1986), Cotterrell (2020), and Tamanaha (2019).

[9] An example is the so-called Security Decree-bis: the d.l. 53/2019, which introduced the possibility that the Minister of the Interior adopts measures aimed at limiting or forbidding the entry, transit, or stopping of ships in the territory to combat irregular immigration. Despite the changes made to the Law of December 18, 2020, no. 173, which reduced the discretion to exercise this power, including the fact that the prohibition of entry into territorial waters can be imposed on NGO vessels only if they have not communicated their operations to the Italian authorities and those of the country of origin. The fines for infringing these rules cannot exceed €50,000, while administrative penalties have been eliminated, including ship's confiscation. For those who violate the entry ban, the provision of imprisonment of up to two years remains in force "if there are reasons of public order and security or violation of the rules on the smuggling of migrants by sea (…) an intervention of criminalisation (strictly speaking) of the conduct of non-compliance with discretionary acts issued by the government authority" (Mentasti 2021).

Setting aside the debate about the evolution of recognising type of children's rights, it is important to underline how much this arena of inquiry constitutes a form of anticipation of some processes of transformation of social phenomena in motion within a legal framework. We refer to the progressive shift "from rights to principles", found in the literature (Ronfani 1997, Resta 2006, Teubner 2010), which opens up thoughts on issues underlying the identity of the rule of law.

The shift abovementioned is evident in the case of T*he superior/preeminent/best interest of the Child*.[10] It embodies the guiding principle of every decision. That preeminent interest, indeed, as an informative criterion of judicial decisions, relating not only to the minors' personal and social life, ideally constitutes an ambiguous formula for success currently characterised by the growing and, and yet to be determined, possibility of applying it (Acierno 2019).

The Best Interest of the Child is, above all, a principle. In legal science, it refers to the debate on judicial discretion, and the fact that principles are interpreted to increase or decrease the distance between normative texts and jurisprudential decisions. Principles are indeterminate, take shape in the course of a concrete case and, therefore, only indirectly refer to the general and abstract rule that can establish their application, measure, and exceptions. The implementation of general principles (Hanson and Lundy 2017), particularly the BIC, is completely dependent on the socio-cultural context of reference and by the model shaping the interpreters' values. Therefore, there are clear risks of evaluative and arbitrary uses (Ronfani 1997, p. 268). Analyzing the use of the child's best interests serves to unravel the rhetoric of children's rights. The use of this principle cannot provide for all-inclusive, definitive or even simply pre-established solutions (De Felice 2007). In the tension between systems such as the system of receptions' policies and the system of migration control policies that characterise the figure of UFMs, there are no guarantees that a certain decision will be incorporated within it by one system in the sense of another. At the same time, there is no way to know in advance whether this decision will improve minors' condition. Neither in the legislative provisions nor the elaboration of doctrine or jurisprudence can be found definitions of interest to the minor which do not refer to concepts which are themselves generic and of a discretionary nature. That rhetorical/ discretionary condition is underpinned by the sample we analysed. Notwithstanding the number of judgements, within the texts we didn't find any clear definition or explanation of the best interest of the child

The elusive nature of this concept has led to a proliferation of works which, from different disciplinary perspectives, have questioned its use in the implementation of the Convention of which it constitutes the leitmotif. For this reason, the reflections proposed in this work are inserted in the wake of those studies that propose the need for comparison with other experiences and the jurisprudence of international courts (Bianca 2021). We are also referring to studies reflecting on advancements in empirical and conceptual research relating to theories of children's rights and mechanisms for incorporating the Convention into national law (Stalford and Lundy 2020).

[10] The three terms are used indistinctly for reasons both of space and object of this work. We are aware that literature, especially legal literature, has questioned the meaning and consequences that the use of one or the other term has produced in international conventions and its application.

5. Two (similar?) reception systems

As stated, this work aims to analyse, from a comparative perspective, the French and Italian judiciary rule reception systems of UFMs.

Starting from this notion, and grasping its most immediate meaning, it is clear that the domain of the protection that the children should benefit from in each state lies in three postulates: 1) protection of a "minor" means that the state must guarantee protection, assistance, right to study, and all of the rights that minors are accustomed to access regardless of nationality; 2) protection of the "unaccompanied", once they reach a foreign territory, often without even knowing the language, UFMs have the right to be placed with a guardian who can legally represents them; 3) protection of a "foreigner", because minors are also immigrants, thus subject to the same rules of "adult" migrants, albeit with the special considerations of the two previous postulates (Furia 2012).

Taking into consideration both the data and the legal differences between France and Italy, this comparison helps understanding how the two nations intercept the flow of UFMs to the European coasts and the ways in which they are identified and directed to specific reception facilities.

Over the last few years, the analysis of different practices related to UFMs' live have been growing, as evidenced by both the regulatory proliferation at European and national levels. At the same time the body of literature is currently analysing different practices related to the topic from several perspectives.

By comparing the two nations' models, it emerges that regulations are certainly influenced by the recommendations of the European Union and the various international Conventions (in particular the Universal Declaration of the Rights of the Child of 1989) – given the recurring references to the best interest of the child in the two regulatory systems and by how both do not respond in unison to the issues related to unaccompanied foreign minors.

Although not explicitly expressed, the principles representing the most important feature of the UFMs discipline are the non-refoulement, which refers to Art. 33 of the Geneva Convention of 1951, and the prohibition of expulsion and return to the border, which often addresses the outcomes issued by national and supranational Courts.[11] The international Conventions make it possible to define the minimum common conditions to be guaranteed to minors. A typical example is the EU Directives which, on the one hand, oblige states to achieve a particular result; on the other, however, do not bind them to methods for achieving it. This has resulted in substantial differences between the various state disciplines. Among the aspects that France and Italy share, the most important is the monitoring and census systems of UFMs: the Minor Information System (SIM), for Italy;[12] the mission for unaccompanied minors (MMNA) of the Protection

[11] The Geneva Convention refers to "Unaccompanied and Separated Children Migrants (UASC)", the meaning is the same.

[12] Ministry of Labour and Social Policies: "The d.p.c.m. 535/1999 (Articles 2, letters i and 5) and the Legislative Decree 142/2015 (Art.19, paragraph 5) assign to the Directorate General of Immigration and Integration Policies of the Ministry of Labour and Social Policies the tasks of monitoring and conducting a census of the presence of UFMs throughout the national territory. As part of these competencies, the General Management developed the Minor Information System (SIM). The SIM makes it possible to monitor the presence of unaccompanied minors and trace their movements throughout the country and to manage the

Judiciaire de la Jeunesse (DPJJ), for France.[13] Both reception systems provide for the mandatory recognition of certain rights, as well as for some practices to be implemented to protect UFMs, such as: a) the right to healthcare, an inviolable right recognised internationally by which the minor is enrolled in the Italian National Health Service (SSN) and, conversely, in France where the minor can benefit from Aide Médicale d'État (AME) and Protection Universelle Maladie (PUMA) (Durand 2017, pp. 24–25); b) the right to education and instruction. Both systems require compulsory schooling up to age 16, including the possibility of accessing training courses useful for UFMs' integration into the world of work, once they reach the age of adulthood; c) the practice of family surveys. Furthermore, both states guarantee, in compliance with the principle of the best interest of child, any family investigations in the national territory or the child's assisted voluntary repatriation, at the request of the minor.

The two models share other interesting features, which represent time-critical nodes: the verification of the minor's age, and the appointment of a legal representative (in Italy) and of an administrateur ad hoc (in France). The UFMs arriving in Italy – according to legislative Decree no. 220/2017, have the right to be supported by a legal representative appointed solely by the Minor's Court. The legal representative, in collaboration with other subjects working for, and within, the structure that welcomes UFMs, faces fundamental issues: the request to stay in the national territory or international protection of the minor; the enrolment in the National Health Service (SSN); verifying the minor's age; and to act on behalf of the minor before the Court, as necessary.

The same functions are carried out by the administrateur ad hoc in France, especially while s/he acts on behalf of the UFM requesting asylum. There is, however, a paramount difference: the administrateur ad hoc is appointed by the Prefect (local Governor) only after the minor has requested asylum. Hence, in France, the minor has to make important decisions without any legal support from an adult – in neglect of the compulsory advice of EU Directive no. 32/2013 requesting that states adopt, as soon as possible, any measure useful to ensure assistance and legal support to the minor (Burriez 2018). Paradoxically, the administrateur ad hoc appointment procedure may hinder the acceptance of the asylum request. As a matter of fact, there could be delays caused by the Prefect appointing the administrateur ad hoc or by the Deputy Prosecutor rejecting his/her consent to potential legal representation (*ibidem*).

5.1. The assessment UMFs' age

The other fundamental issue is the assessment of the minor's age procedure. In accordance with the President of Council of Minister Decree, no. 234/16, in Italy it is possible to clinically check, the minor's age only if there are valid doubts about her/his age. The procedure includes a psychological and medical report. A radiologic report of the wrist is foreseen, albeit there is clear proof of its margin of two years error, which

data relating to the personal data of the UFM, their status and their placement" (see http://www.lavoro.gov.it, last accessed 20 January 2021).

[13] Within the Sub-Directorate for Judicial Protection and Educational Missions (SDMPJE) and the Directorate for the Judicial Protection of Young Minors (DPJJ), the task for unaccompanied minors coordinates the national system of updating, admission, and the evaluation and guidance of unaccompanied minors (see http://www.justice.gouv.fr/, last accessed 20 January 2021).

has led to a wide range of complaints in Court due to the lack of warning of the possible error in the outcome (Asgi n.d.).

In France, checking the age is under the Statute no. R211-11, which requests the intervention of a multi-specialised team charged with carrying out a conversation with the minor, speaking in their language, to evaluate if their behaviour is compatible with a minor's behaviour (Éditions Législatives 2016).

In case of suspicion about the actual age of the minor, typically based on suspicious IDs, possibly counterfeited, or if the minor's aspect diverges from their declared age, the authorities have the power conduct an evaluation by adopting radiologic wrist investigation, in accordance with Statute no. 2016-297, covering childhood protection – even if this very form of checking is not conclusive for Judges (*ibid*.). There are several outcomes issued by Administrative Courts, either Italian or French, about this topic giving rise to one of the most important issues of the juridical debate on non-reception of minor's policy.

Significant changes occurred in France where a new database (Appui à l'évaluation de minorité) was created by Decree no. 2019-57 to provide support from central state authorities to the départements in carrying out age assessments (FR LEG 04). The system was rolled out in 68 out of 101 départements at the end of 2019. The Circular of November 20, 2019 includes provisions for age assessment of persons claiming to be UFMs and underlines that the evaluator should compare physical appearance, behaviour, the degree of independence and autonomy, and the ability to reason and understand questions to the stated age throughout the whole assessment process (FR LEG 03).

Civil society organisations, however, found that the measures were applied differently across the country's departments where, some departmental authorities, focused more on exercising powers over the applicants, rather than determining a child's protection needs (Delbos 2020).

The French Constitutional Council examined and affirmed the constitutional conformity of the Civil Code provisions on age assessment through bone X-ray and highlighted that these tests can only be carried out if the applicant agrees, the judicial authority approves and the inherent margin of error of these tests is disclosed with the results.[14] Human Rights Watch noted issues in the Hautes-Alpes region, where flaws in the age assessment procedure led to the return of unaccompanied minors to Italy (Bochenek 2019).

The Constitutional Council in France reviewed the use of bone-related X-ray assessments to determine the age of applicants, asserting the constitutional character of such practice. It concluded that, according to current scientific knowledge, the results of this type of examination may include a significant margin of error; however, the legislator took into consideration the existence of this margin in the established guarantees (2018-768 QPC).

[14] A new guide on best practices for age assessment was published as a result of multi institutional partners' collaboration: Ministry of Justice, Ministry of Solidarity and Health, Ministry of Interior and Ministry of Territorial Cohesion and Relations with Local and Regional Authorities (2019), *Guide des bons pratiques en matière d'évaluation de la minorité et de l'isolement des personnes se déclarant comme mineur(e)s et privées temporairement ou définitivement de la protection de leur famille.*

The diagram 1 synthesises the main aspects of the two models.

DIAGRAM 1

FIELD	ITALY	FRANCE
Legal Framework	Legislative Decree no. 286/1998. Legislative Decree no. 142/2017. Legislative Decree no. 47/2017. Law Decree no. 118/2008.	CESEDAC. ASF. Statute no. 925/2015. Statute no. 297/2016.
System of Reception	Two different reception steps: 1. Initial reception centres. 2. Second level reception Centres (SPRAR/SIPROIMI).	Several reception steps: 1.Waiting area. 2.On parole and orientation national system for unaccompanied minors. *3. Pris en charge.* a) Administrative phase. b) Judicial phase.
Census System	General Directorate for Immigration and Integration Policies of the Ministry of Labour and Social Policies: Minor Information System (SIM).	Monitoring system by the Departmental Youth Directorate (DPL).
Procedure to Establish the Age of Migrants	Multidisciplinary procedure which, if necessary, involves the examination of the wrist's bone maturation.	Multidisciplinary procedure which, if necessary, involves the examination of the wrist's bone maturation.
Services Provided	1. Voluntary Guardian. 2. Cultural Mediator. 3. Juvenile Court. 4. Voluntary Associations.	1. *Administrateur ad hoc.* 2. Cultural Mediator. 3. Juvenile Judge. 4. OFPRA. 5. Voluntary Associations.

Diagram 1. Comparing Italian and French reception systems.

6. Assessed judicial outcomes

In 2019, the ECHR dealt with 2417 applications in Italy, of which 2402 were declared inadmissible or were struck down. It delivered 14 Judgments (concerning 15 applications), 13 of which found at least one violation of the European Convention on Human Rights.

In France, the ECHR dealt with 597 applications in 2019, of which 578 were declared inadmissible or were struck down. It delivered 19 Judgments (concerning 19 applications), 13 of which found at least one violation of the European Convention on Human Rights.

The comparison shows a higher number of cases lodged before the ECHR by Italy, but the average ECHR judgements for both countries refer just to the 1% of complaints. This depends on ECHR case admissibility: less than 10% of complaints arrive before the Courts. Furthermore, since 2004, ECHR adopted the "pilot judgement procedure" (PJP) – one decision covers all cases with the same violation of the Convention committed by a country, avoiding having to reconsider every lawsuit individually, and further reducing the number of cases.[15] "The main aim of this procedure is not only to remove the consequences of the unlawful national act for the applicant, but also to induce the respondent State to resolve a large number of individual cases arising from the same structural problem at the domestic level, and thus to offer guarantees of non-repetition." (Caligiuri and Napoletano 2010, p. 148). The cases analysed over the course of this research are of a significant amount. Often the same European Judge has delivered

[15] The PJP, after a long period, as Court's practice (from 2004 to 2010), has been inserted, in 2011 into the rules of the Court. Indeed, ECHR Art. 61 provides for: "1. The Court may initiate a pilot-judgment procedure and adopt a pilot judgment where the facts of an application reveal in the Contracting State concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications.
2. Before initiating a pilot-judgment procedure, the Court shall first seek the views of the parties on whether the application under examination results from the existence of such a problem or dysfunction in the Contracting State concerned and on the suitability of processing the application in accordance with that procedure.
A pilot-judgment procedure may be initiated by the Court of its own motion or at the request of one or both parties.
Any application selected for pilot-judgment treatment shall be processed as a matter of priority in accordance with Rule 41 of the Rules of Court.
3. The Court shall in its pilot judgment identify both the nature of the structural or systemic problem or other dysfunction as established as well as the type of remedial measures which the Contracting State concerned is required to take at the domestic level by virtue of the operative provisions of the judgment.
4. The Court may direct in the operative provisions of the pilot judgment that the remedial measures referred to in paragraph 3 above be adopted within a specified time, bearing in mind the nature of the measures required and the speed with which the problem which it has identified can be remedied at the domestic level.
5. When adopting a pilot judgment, the Court may reserve the question of just satisfaction either in whole or in part pending the adoption by the respondent State of the individual and general measures specified in the pilot judgment.
6. As appropriate, the Court may adjourn the examination of all similar applications pending the adoption of the remedial measures required by virtue of the operative provisions of the pilot judgment.
The applicants concerned shall be informed in a suitable manner of the decision to adjourn. They shall be notified as appropriate of all relevant developments affecting their cases."
The Court may at any time examine an adjourned application where the interests of the proper administration of justice so require.
7. Where the parties to the pilot case reach a friendly-settlement agreement, such agreement shall comprise a declaration by the respondent Government on the implementation of the general measures identified in the pilot judgment as well as the redress to be afforded to other actual or potential applicants.
8. Subject to any decision to the contrary, in the event of the failure of the Contracting State concerned to comply with the operative provisions of a pilot judgment, the Court shall resume its examination of the applications which have been adjourned in accordance with paragraph 6 above.
9. The Committee of Ministers, the Parliamentary Assembly of the Council of Europe, the Secretary General of the Council of Europe, and the Council of Europe's Human Rights Commissioner shall be informed of the adoption of a pilot judgment as well as of any other judgment in which the Court draws attention to the existence of a structural or systemic problem in a Contracting State.
10. Information about the initiation of pilot-judgment procedures, the adoption of pilot judgments and their execution as well as the closure of such procedures shall be published on the Court's website.

outcomes on key cases, making it possible to infer how the fundamental Convention's rights have been protected by the ECHR. Domestic cases are subject to two limits: temporal (the last five years of jurisprudence) and geographic, in France more so than in Italy.

DIAGRAM 2

ECHR Rulings	**ECHR Communications**	**France Administrative Courts Rulings**	**Constitutional Courts Rulings**	**State Councils Rulings**
	Bacary 36986/17	Appellate Administrative Court of Lyon no. 17LY02553, 17LY03644 2018	Constitutional Court order no. 326/2011	Sentence of Consiglio di Stato no. 6191 2017
CEDU 27765/09 *Jamaa v Italy* 2012	Bodiang 47523/17	Administrative Court of Nizza no. 1800195 2018		
CEDU 16643/09 *Sharif v Italy* 2014	Dansu 16030/17	Administrative Court of Rennes no. 0900239 2009		
CEDU 9347/14 *Moustahi v France* 2020	Diakite 44646/17			
	Jubail v France 72234/17			Juvenile Court of Bari, Italy
	M.A. v Italy 70583/17			
	Sadio v Italy 3571/17			
	Trawalli v Italy 47287/17			
Hirsi Jamaa v IT 27765/09	*Darboe and Camara v Italy* 5797/17			
	Fofana v Italy 3963/2017			
	Jhaid and others v Italy 3610/17			
	M.D. v France (Application no. 50376/13)			

Diagram 2. The judgments analysed.

As you can read in the annual factsheets of different countries, published every year by the ECHR, cases lodged to the Court by Italy and France share similar conditions (ECHR 2021).

6.1. ECHR's outcomes

6.1.1. Unlawful/Unfit Facilities for minors

The issue of dislocation is central to the detention of UFMs, as represented by the case of *Macalou Sadio v Italy* (Application no. 3571/17), in which the complaints of the four minors requesting international protection refer to the failure to transfer them to a suitable structure for minors. The request was made thanks to the intervention of some NGOs that reported the presence of minors in the Italian Cona Centre, reserved for adults, to the Guarantor for the Rights of the Child of the Veneto Region, which put pressure regarding children's rights. At the same time, the NGOs filed an appeal with the Juvenile Court of Venice and relative the competent social services, obtaining no response. Hence, they appealed to the ECHR to issue, (Art. 39 of the Convention) an order for the urgent transfer of minors to a suitable reception facility. The intervention of the Court drove the prompt intervention of the Italian government which declared that it had transferred the minors to appropriate reception centres. The issue of reception in centres not suitable to host minors is often the source of appeals by associations supporting minors, as evidenced by the communication of the ECHR Court relating to the case of *M.A. v Italy* (70583 of September 28, 2017).

M.A. had complained about reception's conditions in the Centre Osvaldo Cappelletti in Como, where she lived with approximately 180 people, and where the conditions were not suitable to her vulnerable situation as an unaccompanied minor and victim of sexual violence.

To be constrained to uncomfortable spaces meant being subjected to strong limitation of freedom such as suffering from the absence of education, as in the case of *Salimou Diakite v Italy* (no. 44646 of June 23, 2017), an Ivorian national migrant, allegedly 17, accommodated for about four months, at the Red Cross Reception Centre (Rome) and only then, at the reception Centre for Minors Villa Spada (Rome).

Also, even when the age of UFMs requesting protection is unquestionable, minors have undergone violations of their rights granted by the Convention, much akin to Ahamed Jubail's case (Application no. 72234/17 of October 6, 2017). Hosted in the Extraordinary Reception Centre for Adults San Nicola Pellegrino, in Trani, the UFM was granted by the Juvenile Court of Bari custody to the Social Service of Bari which appointed a guardian and ordered to take all necessary measures to ensure suitable accommodation for the applicant – considering his status as an unaccompanied minor. Notwithstanding the protection granted by the Court through the appointed Guardian, Jubail was still hosted, after one month from the declaration, in the Centre for adults San Nicola Pellegrino in Trani. Because of that violation, the Guardian reported the situation to Social Services and to the Juvenile Court of Bari asking for his transfer to a centre for unaccompanied minors. The ECHR ordered the urgent transfer of the applicant in a suitable structure for minors. The quest of the lawyers was to convict the Italian

Government for violating the Art. 3, 8 and 2 because the applicant had been denied the right to education, guaranteed by Art. 2 of Protocol no. 1.

"The applicants in these cases, with the exception of Mr. Sadio, who is of full age, are unaccompanied minors who have sought asylum. They were all accommodated in the Cona (Venice) reception centre for asylum-seekers, which is intended solely for adults. In the case of *Darboe and Camara v Italy*, the applicants complained that they were placed in this facility for adults although they had stated that they were minors. They alleged that the procedure for determining their age was conducted in breach of national and international law. The applicants alleged that the Cona reception centre, which has a capacity of approximately 500, was home to around 1,400 people at the relevant time. The dormitory measured 360 sq. m. and accommodated 250 people. Owing to the overcrowding, the communal areas were taken up with beds. The number of toilets was inadequate for the number of people and, among other things, the occupants had to form long queues outside, even in winter, in order to have a shower. There was no supervision of the distribution of food, which was frequently insufficient to meet the demand. In addition, the space set aside for eating meals was completely taken up by the serving staff. The applicants further claimed that law enforcement officials did not supervise the centre, and that knives and drugs were in circulation. They also alleged instances of prostitution. Relying on Art. 3 of the Convention (prohibition of inhuman or degrading treatment). Mr. Sadio complained of being exposed to inhuman and degrading treatment on account of the living conditions in the Cona reception centre. Under Art. 3 of the Convention, the applicants who were minors alleged that they were subjected to inhuman and degrading treatment on account of their placement in the Cona centre until January 15, 2016. Lastly, from the standpoint of Articles 3 and 8 of the Convention, the applicants complained that the competent authorities failed to take any protective measures in view of their status as unaccompanied minors. In the case of *Sadio v Italy* and two other applications, the applicants lodged a request to the Court, in January 2017, asking it to apply Rule 39 of the Rules of Court in order to indicate to the Italian government that the applicants should be transferred to a reception facility for unaccompanied minors. The Court decided to adjourn examination of the Rule 39 request pending the receipt of information from the Italian government. In February 2017 the Court found, with regard to the applicants who were minors, that the request for interim measures had become devoid of purpose as they had been transferred to centres for unaccompanied minors. In the case of Mr. Sadio, it decided not to apply the interim measure requested. In the case of *Darboe and Camara v Italy*, the applicants requested the Court to apply Rule 39 of the Rules of Court with a view to their transfer to a reception facility suitable for minors. The same month, the Court granted the applicants' request and indicated to the Government that the applicants should be transferred to appropriate facilities affording living conditions compatible with the standards of domestic and international law regarding the protection of unaccompanied minors. In both these cases the Court decided, under Rule 41 of the Rules of Court, to give the applications priority treatment. See also the case of *Dansu and Others v Italy* (no. 16030/17), which was communicated to the parties in March 2017 (ECHR 2021, pp. 18–19).

6.1.2. Illegal refoulement

The repatriation of UFMs is forbidden by EU and national legislation. Among the most important judicial outcomes about this topic there is the lawsuit *Hirsi Jamaa and Others v Italy* (Application no. 27765/09) decided by the Grand Chamber in March 2012.

The plaintiffs, 11 Somalis and 13 Eritreans, members of a wider group of 200 migrants, also unaccompanied minors, left Libya to land in Italian borders. When they were close to Lampedusa island, but still within the Maltese Search and Rescue Region of responsibility, their vessels were intercepted by the Italian Revenue Police, and transferred to three Italian military ships. All migrants were returned to Libya, skipping any compulsory procedure of identification, and keeping silent about their final destination, Tripoli.

The Grand Chamber convicted the Italian Government of violating Articles 13 and 3 of the European Convention of Human Rights and Art, 4 of the Annex Protocol. Thus, Italy didn't respect the non-refoulement obligation and its procedural consequences: "(…) the duty to advise an alien of his or her rights to obtain international protection and the duty to provide for an individual, fair and effective refugee-status determination and assessment procedure (…)". Furthermore, European Judges stated that, in accordance with the United Nations Committee on the Rights of the Child, in its General Comment no. 6 (2005) – treatment of unaccompanied and separated children outside their country of origin, U.N. Doc. CRC/GC/2005/6, September 1, 2005, Paragraph 27: "States 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, such as, but by no means limited to, those contemplated under Articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed."[16]

Additionally, as a result of *Sharifi and Others v Italy and Greece* (Application 16643/09), Italy and Greece were convicted of violating Articles 2 and 3 of the Convention.

In this case, the applicants were unaccompanied minors who illegally arrived in Italy from Greece and who were immediately sent back to Greek territory "under the fear of refoulement to their countries of origin, where they would be subjected to death, torture or other inhuman or degrading treatment" per Art. 19 of the Charter of Fundamental Rights of the European Union (Articles 2 and 3 of the ECHR). The unaccompanied minors declared that, before being expelled from Greece, and then from Italy, they were subjected to degrading treatment by Italian and Greek police (Art. 4, Annex Protocol). Furthermore, the Italian Government forbade them to exercise their own right to complain before a Court and be supported by an interpreter and a lawyer (Art. 34, ECHR).[17]

The ECHR, having referred to the various international agreements, in particular the Procedures Directive and the Reception Directive, to remind the state of the obligations imposed to protect UFMs, and the Special Rapporteur of the United Nations Human Rights Council underlined how "Another serious concern is that, as part of these rejections, some unaccompanied minors have been sent back to Greece. The refoulement

[16] Footnote 9 of the Verdict.

[17] Point 3 of Procedure.

of unaccompanied minors constitutes a direct violation of international and Italian law" condemning Italy for favouring their potential repatriation to Afghanistan, a well-known risk zone, and for not having carried out adequate checks on the possible presence of unaccompanied minors, rather opting for block expulsions.

6.1.3. Age assessment

As aforementioned, establishing if an applicant is a minor is a critical step in the identification and vulnerability assessment process, with important consequences, for example, for the conduct of the Asylum Procedure and Reception Rights. It is a complex process because of the wide range of circumstances in which age may be disputed. This can be a consequence of the different individuals

and organisations with whom an asylum seeking child may come into contact, all of which may dispute the child's stated age (Crawley 2007, p. 14).

Improving processes for age assessment has been steadily on the policy agenda over the past years, while civil society and international organisations continue to observe gaps and deficiencies in the process (EUAA 2020 section 6.3). Requests made to the ECHR relates to the assessment of the age of UFMs are recurring them. The *Ibrahima Bodiang v Italy* complaint, lodged before the ECHR in July 2017 (Application no. 47523/17), aimed at convicting the Italian state for the violations of Articles 3, 8, and 13 of Convention. The alleged Senegalese minor who underwent the medical examination had been declared of age and, after that, transferred to the adult hospitality centre of Caritas in Rome, in violation of the applicant's rights to protection afforded to UFMs and, therefore, placed in a situation of vulnerability.

Along the same lines is the application of *Sabaly Bacary v Italy* (no. 36986/17 of May 24, 2017) claiming that there had been a violation of Articles 3 and 8 of the Convention. In this case Bacary was submitted to an X-ray wrist exam following the Greulich-Pyle method, and the medical committee stated that the applicant was about 19 years old (Greulich and Pyle 1959). Because of his allegedly false declaration about his age, Bacary was placed under investigation by police lawyers.

Often, ECHR requests to issue an outcome regarding several people, as in the case of Ebrahima Dansu and three other people. From what we can tell from Proceeding no. 16030/17 lodged with the Court on February 28, 2017, the four UFMs left their country (Gambia) in 2016 and, after a long journey of hope, they landed in the Italian island of Lampedusa, where they were subjected to just one medical check, and declared adults. After Administrative Procedures, they were moved to the Cona Centre where they spent a long period of time and, while there, had an X-ray wrist exam but were not assessed by an Interdisciplinary Commission for evaluation.

X-ray wrist examination is still a questionable detection method. In the case of *Darboe and Camara v Italy* (Application no. 5797/17), the X-ray wrist exam was performed, following the Greulich-Pyle method instead of the newer, and more reliable, TW3 method. The prior method, developed for US citizens born in Europe – between the first and second World War – and based on Caucasians (Govender and Goodier 2018, p. 1), was clearly not scientifically designed to take into consideration the "racial" differences

of people of African origin, such as the applicants.[18] Furthermore, the shortcomings of the method had also been underscored by the Consiglio Superiore della Sanità (Italian Higher Health Council).

Cases like *M.D. v France* (Application no. 50376/13), an unaccompanied minor migrant who complained of being left in a precarious environment by the French authorities for at least 14 months after the Court of Appeal had found him to be an adult, have been difficult because in this case, it had not amounted in the Court's view to treatment contrary to Art. 3 of the Convention. M.D. was ultimately placed in the care of the Council for the department until he reached the age of adulthood on October 15, 2014. Since May 14, 2018, he has been working in a company with a permanent contract. Actually, M.D., after an order issued by the Guardianship Judge, denied him staying as unaccompanied minor because, on June 4, 2013, the Rennes Court of Appeal set aside the previous order. It held that, in the absence of a reliable document enabling the assessment of applicant's age, there was no evidence preventing it from accepting the results of the bone tests.[19] The Court, therefore, concluded that M.D. was an adult and the protection and assistance measures were lifted. Nonetheless, in November of the same year, Guinean authorities issued M.D. a passport indicating his date of birth as October 15, 1996. On July 31, 2014, on the basis of this passport, the Children's Judge ruled that M.D. was a minor and gave him rights to education assistance measure until he reached the age of adulthood. M.D. was issued an initial residence permit in November 2014 and then a multi-year residence permit authorising him to work. Since May 14, 2018, a company in Nantes employs him with a permanent contract.

7. Applications of Administrative Italian and French Courts

The main method recognised in Italy for UFMs to assert their rights is resorting to the Regional Administrative Courts (TAR),[20] which is the main tool for resolving disputes between citizens and public administration (Enciclopedia on line n.d.).

The same role is fulfilled in France by the Tribunal Administratif Départementales, where 42 Courts judging conflicts in the first instance are scattered throughout French departments.[21]

---

[18] We are completely conscious that "human races" are social constructs but, whatever it means for them, medical scientists still use this word writing about this topic (e.g. Tsehay *et al.* 2017, p. 631, 637; Pan *et al.* 2020).

[19] For an interesting perspective on how the criminalisation of undocumented immigration and the increasing privatisation of immigration controls and services can conflict with the duty of nation states to protect migrants' human rights, see Menjívar and Perreira 2019.

[20] In essence, Administrative Justice in Italy is carried out on two levels of judgment: the first is represented by the Regional Administrative Courts (TAR: Tribunale Amministrativo Regionale), established by Law 1034/1971, and composed of a President and a number of no less than five Regional Administrative Magistrates; the second is represented by the Council of State, which holds both advisory and judicial powers and which, in the jurisdictional seat, is composed of four sections (third, fourth, fifth, sixth), each of which is comprises of a President and four Directors who can confirm or overturn the sentences issued by the TAR (available at: https://www.giustizia-amministrativa.it/web/guest/funzioni-della-giustizia-amministrativa, accessed 21 July 2022).

[21] In France there are 42 Departmental Administrative Courts (*Tribunal Administratif Départementales*), each of which consists of a various number of Chambers, Sections and Judges (on average 2–3). Established in 1953 with Décret 53-934, the DAC judges in the first instance applications by subjects who feel harmed by

Both in Italy and in France, Administrative Justice has been asked several times to judge the appeals presented by unaccompanied foreign minors. In some cases, as we shall see, these judgments have driven an institutional clash between France and Italy.

7.1. Administrative proceedings in Italy

Among the sentences issued by the Italian Administrative Justice system, it is interesting to mention the case of some Bengali minors. These UFMs, at first, were hosted in Rome on the basis of an initial examination which had established they were minors – decreeing their inclusion in suitable accommodation facilities. Following the radiological tests of the wrist, later arranged, the first judgment had been revised and revoked.

The consequence was their expulsion from the reception centres dedicated to minors. The NGOs Asgi and YoMigro reported the incident and started legal actions to protect the Bengali children, thus resorting to the Lazio TAR.

The Lazio Regional Administrative Court, in February 2014, confirmed that "the investigations regarding the effective age (...) cannot give absolute certainty regarding the disputed data" and that, moreover, pursuant to the New York Convention, in the event of doubt about the age of those who are subjected to these tests the principle of favouring minors applies" (Bellumore 2014).

As soon as the second age test was declared unlawful, the two NGOs – Asgi and YoMigro – immediately asked that the minors be reintegrated in the reception centres (Cavaliere 2014).

An interesting decision is that of the Regional Administrative Court of Liguria, Section II (with Sentence no. 933 of 2016). Its outcome denied a residence permit for minors to Anowar Ullah.

When he arrived in Italy, in 2015, he declared his name was Anwar Hamdi and that he was born in Bangladesh on January 1, 1997, and was, therefore, not a minor.

However, before the Administrative Court he declared that his real name was Anowar Ullah and that he was born in Goshbag on July 1, 1997, producing documentation to prove it; therefore, at the time of entry into Italy he was an unaccompanied minor.

On this basis, on November 30, 2001, the Territorial Commission granted him a residence permit for humanitarian reasons.

Notwithstanding the Court's decision, "the Police headquarters considered that the new personal details and the new date of birth provided constituted a clumsy attempt to circumvent the rules on immigration aimed at facilitating obtaining a residence permit in Italy" and denied his application for a residence permit for minors.

---

the decisions taken by the P.A. and, if the sentence handed down at first instance does not uphold the requests presented, the appellant can appeal to the *Cour Administratif d'Appel*, which is, in turn, made up of a various number of Judges and is present in eight different French Departments. On the other hand, the *Conseil d'État* is at the supreme French Administrative Justice which, however, does not represent a third degree of judgement after the appeal as it is an institution with consultative and jurisdictional powers that can only verify the presence of procedural defects committed in the course of previous judgments – thus performing the same functions that are performed in Italy by the Court of Cassation with regard to appeals against the acts of the P.A. See Vie Publique n.d. and Conseil d'État 2020.

The TAR of Liguria, with the aforementioned Sentence, endorsed this approach since "the personal details spontaneously declined upon entering Italy would have engaged the foreigner and would have assumed relevance, on the basis of the principle of self-responsibility".

Also in this case, the outcome issued by the first degree Administrative Court was declared nil and void by the Council of State, Section Three. The Council of State stated that evidences of other cases of erroneous compilations form in the same Italian centre, the absence of any technical and cultural support (e.g. at least a cultural mediator), and the recognition of the applicant's minor age corroborated by the Juvenile Court and by the Territorial Commission for International Protection which, recognised him humanitarian protection, didn't allow "(…) to share the statements of the first Judge who excluded, without carrying out further investigations, the possibility that the applicant was a minor at the time of entry into Italy." In the same outcome the judges stated that "The concept of self-responsibility, consequent to what was declared in the form drawn up upon arrival in Italy coming from Libya, (…) may apply in the case of an adult, but certainly not when it is a subject that has been deemed by the Juvenile Court to be a minor who is, therefore, devoid of the capacity to act and, as such, has been subjected for protection" (Council of State. Appeal no. 2536/2017, point 9.2.).

7.2. Administrative proceedings in France

On the same issue, a similar decision can be found in France where, in 2009, an unaccompanied minor of Afghan origin, without documents, was subjected by the Prefect of the Department of La Vienne to exams for the assessment of age, which denied his condition as a minor and made it legitimate to return him to the border (Arrêté du 20 Janvier 2009).

The Tribunal Administratif de Rennes, with Judgment no. 0900239, wholly overturned the decision of the (General Governor) Préfet de La Vienne, stating that "l'inadaptation des techniques médicale utilisées actuellement aux fins de fixation d'un âge chronologique. Il ne récuse pas à priori son emploi, mais suggère que celui-ci soit relativisé de façon telle que le statut de mineur ne puisse en dépendre exclusivement", and that, in fact, such examinations alone are not able to demonstrate age and, for this reason, the expulsion decree had to be annulled and a provisional residence permit had to be issued to the applicant.

There were also unfavourable rulings in the face of similar requests by UFMs, which were then overturned at the next level of judgment.

For example, with Sentence no. 1704289, the Administratif Court of Lyon, confirmed the legitimacy of the Expulsion Decree – Obligation de Quitter le Territoire Français (OQTH), issued by the Préfet du Rhône, where the applicant had been declared of age following the age assessment test (Figureau 2018). However, the second degree of judgment, the Appellate Court of Lyon, overturned the sentence issued in the first instance, hence recognising the minor age of the appellant and declaring null and void the provision with which the Prefect decreed the applicant "(…) to leave French territory in application of Article 1 L., 511-4 of the Code of Entry and Stay of Foreigners and of the Right to Asylum (CESEDA)"(Cour Administrative d'Appel de Lyon nos. 7LY02553, 17LY0364).

Specifically, the Court, thus accepting Appeals no. 17LY02553 and no. 17LY03644, stated that the documents presented by the minor were to be considered valid for the purposes of age recognition, and ordered his placement at a *social aide à l'enfance.*

7.3. Rejections at the Ventimiglia border

One of the cases that have resulted in a lot of discussion in recent years, and which has caused significant friction between French and Italian authorities, is that of the unlawful pushbacks of unaccompanied minors at the Ventimiglia border.

As highlighted by Asgi, in a letter sent in April 2018 to the European Commission and to the Italian authorities, the conditions of the reception centres in Ventimiglia did not meet the minimum standards prescribed for reception facilities. So much so that many minors, not only didn't attend school but some complained about "[...] the failure to satisfy basic needs, such as the availability of adequate food, clothing and space, and inadequate protection from violence and abuse". In such conditions, it is difficult for minors to apply for asylum and the chances of them moving away from the centres that host them decrease and become essentially unattainable (Asgi and INTERSOS 2018).

In some cases, minors decided to illegally cross the border to re-join their relatives residing in France, given that the procedure, pursuant to Art. 8 of the Dublin III Regulation, presents considerable delays and clashes with the restrictive guidelines in France (*ibid*.).

Additionally, French authorities repeatedly violated the rules that provide for the prohibition of refoulement in "first entry" countries of unaccompanied minors applying for asylum in France, as well as the guarantee of the appointment of an ad hoc administrator and a jour franc, thus violating the rules of the 2013 Reception Directive (*ibid*., pp. 3–4).

In June 2018, a report by Oxfam, Diaconia Valdese, and Asgi further highlighted the violations committed at the border. The report spelled out that the practice adopted by the French police at the border included the arrest of minors, their registration as adults, and the falsification of declarations on their willingness to go back (Oxfam *et al.* 2018), resulting in "(...) systematic rejections of unaccompanied minors and continuous episodes of arbitrary detention, both of minors and adults" (Oxfam *et al.* 2018, p. 17).

In this context of continuous violations, various Italian and French associations mobilised to support the appeals of minors before the French justice system.

The first success achieved by unaccompanied foreign minors, was accomplished with Ordinance no. 1800195 issued by the Administrative Court of Nice on January 22, 2018. The Ordinance denounced the violations committed by French authorities with respect to the failure to appoint the ad hoc administrator, the failure to guarantee the jour franc, and the failure to comply with international Conventions. Furthermore, the Court obliged maritime forces to get in touch, within 3 days, with Italian authorities in order to obtain a pass for the minor object of the ruling so that they could cross the Menton-Garavan border. Also interesting is Order no. 1800701, issued by the same Court on February 23, 2018, with which the Court accepted a petitioner's request to access the provisional services of the Aide juridictionnelle, as required by French law.

This was followed by over 20 appeals by as many children illegally rejected at the Ventimiglia border. The Court of Nice confirmed its case law, but this minimally changed the behaviour of the border police, who continued to reject them, after having classified them as adults, thus effectively changing the age declared by minors to be able to "legally" reject them (Oxfam *et al*. 2018, p. 19).

Three years after the closure of the borders by France, there has been a tightening of relations between France and Italy, silenced by the tragedy of the COVID-19 pandemic but still present, with the reception of migrants who want to cross the border, where in the first four months of 2018, 25% of them were UFMs aged 15 to 17) (*ibid*., p. 10).

8. Concluding remarks

The social phenomenon considered in this paper is the question of unaccompanied foreign minors in transit. Law cases support an understanding of this topic, decided on the basis of legislation (national, community, international – loosely binding), and inform about what is law and also about tradition, values and the protection expectations of the specific legal context.

Furthermore, the migration field is one of most critical area of EU policy and emphasises: how the frontline bureaucrat implementers operate according to diverse structural discretion levels of interpretation and application of intertwined national and European migration rules (Dörrenbächer 2018, pp. 459–460); how civil society movements can play an important political role in advocating for human rights, including the rights of migrant children (Barbulescu and Grugel 2016).

The analysis of the Sentences highlights, on the one hand, the use of legally derived concepts – such as the primary interest of the minor or, alternatively, their maximum vulnerability – characterised by semantic ambiguity which allows the ECHR and national Judges to refer indifferently to one or another definition in passing judgement on the violation of treaties and/or the national rules closely connected to them.

This takes place in a framework of meaning characterised by an undeclared cultural ethnocentrism.[22] The condition of all underage subjects arriving on the coasts of Europe

[22] The phrase "cultural ethnocentrism", actually, synthesises Luhmann's approach to human and fundamental rights. According to Luhmann, fundamental rights, in particular, are a mechanism to hold separate policy and law systems (Philippopoulos-Mihalopulos 2010). Fundamental freedoms and human rights protect and stabilise the functionally differentiated society as their institutionalization protect and avert tendencies towards regression or de-differentiation of modern society (Verschraegen 2002). According to Luhmann human rights have to been seen as a social institution with a specific function. To regulate social interaction in modern society, from a sociological standpoint, individual need to be considered possessors of rights. The introduction of subjective rights prompts the differentiated social system (modern society), to adopt the sociological principle of inclusion, the mechanism by which social system consider human beings as persons. Basically, subjective rights have to be considered a compensation for the loss of total inclusion and a specific social position (Verschraegen 2002, p. 267) typical of undifferentiated pre-modern society. Values and fundamental rights are available without any justification as they draw special status (Luhmann 1968/2002, p. 43). Nowadays, in Luhmann's perspective, fundamental rights, paradoxically, are continuously advocated and, at same time, is still difficult to guarantee their general adherence by the diverse political and legal systems. This is due to the fact that the establishment of the concept of fundamental rights (their roots and their justification) is grounded on a paradox that must be managed: the distinction between individual and law, on the one hand, and a consensus surrounding the validity of fundamental rights and key values, on the other – which do not afford "real" justification of such universal

is evaluated according to an ideological scheme (a certain conception of childhood) which, in many cases, puts strain on deeply different cultural traditions. The use of the concept of vulnerability and the attention to "vulnerable people" are often an instrumental way in the documents and institutional speeches underlying the processes of closing borders. Often, we deal with the paradox of policies that identify irregular immigration as a sort of endemic phenomenon, rather than as the result of specific political choices. Actually, the closure of borders produces the positions of vulnerability of people in migration, leaving them the only alternative to accept border abuses (Sciurba 2020, p. 79). Additionally, the practices of law enforcement agencies aim at a restrictive/reductive interpretation and application of the provisions of the law on migrants in general and, even more so, on unaccompanied minor migrants, through their partial assessment of their status based on the use of techniques that are not without flaws (the measurement of the wrist, for example, with inadequate or dated techniques), through incomplete assessments (radiography and no interviews or multi-specialist evaluations), through the establishment of formally flawless but essentially unusable mechanisms of appeal against possible expulsion from the national territory (within 24 hours; absence of an interpreter; failure to recognise family ties etc.).

The dynamics just mentioned often obtain the approval of the Judges of merit of the first degree of judgement or of some administrative authorities. Still, they clash with the increasingly persuasive, articulate, and motivated action of the Judge with national legitimacy and the ECHR. Through a mechanism of osmosis, they exchange a legal culture that is increasingly imposing itself on the European context, until it becomes homogeneous: the so-called external legal culture represented by civil society. In fact, most minors who lodge an appeal with the national Courts or the ECHR are legally assisted by NGOs that sponsor most of the appeals. This fact implies there is an external impact, not only on the work of the controlling agencies, but also on the decisions of national Courts.

References

Acierno, M., 2019. Il mantra del preminente interesse del minore. *Questione giustizia* [online], 2, 993–100. Available from: https://www.questionegiustizia.it/rivista/articolo/il-mantra-del-preminente-interesse-del-minore_654.php [Accessed 13 July 2022].

Agodi, M.C., *et al*., 2001. Il Diritto Delle Burocrazie. Milan: Giuffrè.

Asgi, no date. *L'accertamento dell'età dei minori privi di documenti* [online]. Available from: https://www.asgi.it/minori-stranieri-accertamento-eta/ [Accessed 20 January 2021].

Asgi and INTERSOS, 2018. *Minori stranieri rinviati in Italia come maggiorenni : lettera di denuncia alla Commissione europea e alle autorità italiane* [online]. Press release, 10 April. Available from: https://www.asgi.it/famiglia-minori/francia-ventimiglia-

validity. Luhmann has shown that the concept of human rights is completely contingent, and that they are functional for the inclusion of persons into differentiated social systems. Human rights can be declared unlimited since they are actually not meant as a formulation of a state of affairs, but as a work in progress (

minori-stranieri-non-accompagnati-lettera-commissione-europea/ [Accessed 13 July 2022].

Banakar, R., 2009. Law Through Sociology's Looking Glass: Conflict and Competition in Sociological Studies of Law. *In:* A. Denis and D. Kalekin-Fishman, eds., *The ISA handbook in contemporary sociology: conflict, competition, cooperation.* London: Sage, pp. 58–73.

Banakar, R., 2016. *Driving culture in Iran: Law and Society on the Roads of the Islamic Republic.* London/New York: I.B. Tauris.

Barbulescu, R., and Grugel, J., 2016. Unaccompanied Minors, Migration Control and Human Rights at the EU's Southern Border: The Role of Limits and civil Society Activism. *Migration Studies* [online], 4(2), 253–272. Available from: https://doi.org/10.1093/migration/mnw001 [Accessed 13 July 2022].

Bellumore, F., 2014. Certificati medici a confronto: il secondo accertamento dell'età dei ragazzi del Bangladesh. *PiuCulture* [online], 16 January. Available from: https://www.piuculture.it/2014/04/certificati-medici-secondo-accertamento-eta/ [Accessed 13 July 2022].

Bianca, M., ed., 2021. *The best interest of the child* [online]. Rome: Sapienza Università. Available from: https://www.editricesapienza.it/sites/default/files/5950_Bianca_Vol_Child_completo.pdf [Accessed 13 July 2022].

Bochenek, M.G., 2019. *Subject to Whim: The treatment of unaccompanied migrant children in the French Hautes-Alps* [online]. Report. Paris: Human Rights Watch. Available from: https://resourcecentre.savethechildren.net/document/subject-whim-treatment-unaccompanied-migrant-children-french-hautes-alps/ [Accessed 13 July 2022].

Burriez, D., 2018. Mineurs isolés situés sur le territoire: une atteinte au droit de solliciter l'asile en France. *InfoMIE* [online], 16 October. Available from: http://www.infoMIE.net/spip.php?Article4342&lang=fr, [Accessed 25 December 2018].

Caligiuri, A., and Napoletano, N., 2010. The application of the ECHR in the domestic systems. *The Italian Yearbook of International Law Online* [online], 20(1), 125–159. Available from: https://doi.org/10.1163/22116133-90000173 [Accessed 16 February 2022].

Catanzariti, M.V., 2012. I diritti su misura: La Corte Europea di Strasburgo e i minori. *Sociologia del Diritto* [online], 1, 97–121. Available from: https://doi.org/10.3280/SD2012-001005 [Accessed 13 July 2022].

Cavaliere, L., 2014. Roma e i minori stranieri non accompagnati. Blog post. *Minoristranierinonaccompagnati* [online]. April. Available from: https://minoristranierinonaccompagnati.blogspot.com/2014/04/roma-e-i-minori-stranieri-non.html [Accessed 13 July 2022].

Conseil d'État, 2020. *Découvrir la justice administrative* [online]. Available from: https://www.conseil-etat.fr/content/download/147395/document/Decouvrir-la-justice-administrative.pdf [Accessed 17 February 2021].

Consoli, T., 2015. Southern Europe, migration flows and the "separated children". Norms, policies and local issues. *In:* M.T. Consoli, ed., *Migration towards Southern Europe: The case of Sicily and the separated children*. Milan: FrancoAngeli, pp. 13-27.

Cotterrell, R., 2006. *Law, Culture and Society.* Aldershot: Ashgate.

Cotterrell, R., 2020. Still Afraid of Legal Pluralism? Encountering Santi Romano. *Law & Social Inquiry*, 45(2), 539–558.

Crawley, H., 2007. *When is a Child not a Child? Asylum, Age Disputes and the Process of Age Assessment* [online]. Research report. May. London: Immigration Law Practitioners' Association (ILPA). Available from: https://ilpa.org.uk/wp-content/uploads/resources/13267/Executive-Summary-Age-Dispute.pdf [Accessed 13 July 2022].

De Felice, D., 2007. *La costruzione istituzionale dell'interesse del minore: Processo penale, politiche e procedimenti.* Milan: Giuffrè.

De Felice, D., 2014. *Il sapere specialistico nel giudizio penale: Profili d'analisi di sociologia del diritto.* Milan: Mimesis.

Delbos, L., 2020. *Country Report: France—2019 Update* [online]. Edited by ECRE. Written by Forum réfugiés. Nice: AIDA France. Available from: https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2019update.pdf [Accessed 13 July 2022].

Dörrenbächer, N., 2018. Frontline uses of European Union (EU) law: a parallel legal order? How structural discretion conditions uses of EU law in Dutch and German migration offices. *Journal of Public Policy*, 38(4), 455–479.

Durand, S., ed., 2017. *L'accueil et la prise en charge des mineurs isolés étrangers en France* [online]. L'essentiel, no. 1. October. Paris: France terre d'asile. Available from: https://www.france-terre-asile.org/images/stories/publications/pdf/La_prise_en_charge_et_l_accueil_des_MIE_pages.pdf [Accessed 4 February 2021].

Éditions Législatives, 2016. *Mineurs isolés étrangers: De la vérification documentaire au test osseux* [online]. Montrouge: Éditions Législatives. Available from: http://www.infomie.net/IMG/pdf/livre_blanc_mineurs_isoles_etrangers_de_la_verification_documentaire_au_test_osseux_1_.pdf [Accessed 20 January 2021].

Ehrlich, E. (with A. Febbrajo, ed.), 1976. *I fondamenti della sociologia del diritto*. Milan: Giuffrè. (Originally published in 1913).

Enciclopedia on line, no date. *Tribunale amministrativo regionale* [online]. Rome: Istituto della Enciclopedia Italiana (Treccani). Available from: https://www.treccani.it/enciclopedia/tribunale-amministrativo-regionale/ [Accessed 20 January 2021].

European Commission, 2019a. *Communication from the Commission to the European Parliament, the European Council and the Council: Further strengthening the Rule of Law within the Union* (COM (2019) 163 final) [online]. Brussels, 4 April. Available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019DC0163 [Accessed 13 July 2022].

European Commission, 2019b. *Strengthening the rule of law through increased awareness, an annual monitoring cycle and more effective enforcement* [online]. Brussels, July 17, 2019, European Commission – Press release. Available from: https://ec.europa.eu/commission/presscorner/detail/en/ip_19_4169 [Accessed 13 July 2022].

European Court of Human Rights (ECHR), 2021. *Press country profile: Italy* [online]. Available from: https://www.echr.coe.int/documents/cp_italy_eng.pdf [Accessed 4 February 2022].

European Union Agency for Asylum (EUAA), 2020. *Asylum Report 2020: Data on applications for international protection* [online]. Valletta: EUAA. Available from: https://euaa.europa.eu/asylum-report-2020/41-data-applications-international-protection [Accessed 23 April 2021].

Febbrajo, A., 2019. A typology of legal cultures. *In:* A. Febbrajo, ed., *Law, Legal Culture and Society: Mirrored Identities of the Legal Order.* London/New York: Routledge, 28-43.

Figureau, M., 2018. Lyon: le combat de Djellil, mineur isolé, reconnu par la cour administrative d'appel. *France Info* [online], 3 May. Available from: https://france3-regions.francetvinfo.fr/auvergne-rhone-alpes/rhone/lyon/lyon-combat-djellil-mineur-isole-reconnu-cour-administrative-appel-1469545.html [Accessed 13 July 2022].

Friedman, L.M., 1978. *Il Sistema giuridico nella prospettiva delle scienze sociali, introduzione e traduzione a cura di G. Tarello.* Bologna: Il Mulino. (Originally published in 1975: The Legal System. A Social Science Perspective. New York: Russell Sage).

Furia, A., 2012. *Victims or Criminals? The Vulnerability of Separated Children in the Context of Migration in the United Kingdom and Italy.* Brighton: Sussex Centre for Migration Research, Working Papers/Sussex Centre for Migration Research.

Giura, G., 2015. *I delitti di criminalità organizzata in Sicilia: Un'analisi socio-giuridica della giurisprudenza.* Milan: Mimesis.

Govender, D., and Goodier, M., 2018. Bone of contention: The applicability of the Greulich-Pyle method for skeletal age assessment in South Africa. *South Africa Journal of Radiology* [online], 22(1), a1348. Available from: https://doi.org/10.4102/sajr.v22i1.1348 [Accessed 13 July 2022].

Greulich, W.W., and Pyle, S.I., 1959. *Radiographic atlas of skeletal development of the hand and wrist*. Stanford University Press.

Griffiths. J., 1986. What is legal pluralism? *Journal of Legal Pluralism*, 18(24), 1–55.

Hanson, K., and Lundy, L., 2017. Does Exactly What it Says on the Tin? A Critical Analysis and Alternative Conceptualisation of the So-called "General Principles" of the Convention on the Rights of the Child. *International Journal of Children's Rights*, 25(2), 285–306.

Jaremba, U., 2013. At the Crossroads of National and European Union Law: Experiences of National Judges in a Multi-level Legal Order. *Erasmus Law Review*

[online], 3/4, 191–203. Available from: https://doi.org/10.5553/ELR.000008 [Accessed 13 July 2022].

King, M., 2004. *I diritti dei bambini in un mondo incerto.* Rome: Donzelli.

Kurkchiyan, M., 2012. What to expect from institutional transplants? An experience of setting up media self-regulation in Russia and Bosnia. *International Journal of Law in Context* [online], 8(1), 115–131. Available from: https://doi.org/10.1017/S1744552311000401 [Accessed 13 July 2022].

Latour, B. (with P. Landri, ed., and D. Lipari, trans. and ed.), 2007. L*a fabbrica del diritto: Etnografia del Consiglio di Stato.* Troina: Città Aperta.

Longo, M., 2012. *Il sociologo e i racconti.* Rome: Carocci.

Luhmann, N., 2002. *La fiducia.* Bologna: Il Mulino. (Originally published in 1968).

Menjívar C., and Perreira, K.M., 2019. Undocumented and unaccompanied: Children of migration in the European Union and the United States. *Journal of Ethnic and Migration Studies* [online], 45(2), 197–217. Available from: https://doi.org/10.1080/1369183X.2017.1404255 [Accessed 13 July 2022].

Mentasti, G., 2021. Il "decreto sicurezza" (D.l. no. 130), diventa legge (l. 18 December 2020, no. 173): le novità introdotte in sede di conversione. *Sistema penale* [online], 15 January. Available from: https://www.sistemapenale.it/it/scheda/novita-conversione-decreto-immigrazione-sicurezza [Accessed 13 July 2022].

Mezey, N., 2003. Law as Culture. *In:* A. Sarat and J. Simon, eds., *Cultural Analysis, Cultural Studies and the Law: Moving beyond Legal Realism.* Durham: Duke University Press, 37–72.

Moeller, H.G., 2008. Human Rights Fundamentalism: The Late Luhmann on Human Rights. *Soziale Systeme,* 14(1), 126–141.

Nelken, D., 1997. *Comparing legal culture.* Aldershot: Ashgate.

Nelken, D., 2016. Comparative Legal Research and Legal Culture: Facts, Approaches and Values. *Annual Review of Law and Social Science*, vol. 12, 45–62.

Nelken, D., 2020. Sociology of law and Legal Culture. *In:* J. Přibáň, ed., *Research Handbook on the Sociology of Law.* Cheltenham: Edward Elgar, 136–150.

Nelken, D., and Feest, J., eds., 2001. *Adapting Legal Cultures.* Oxford: Hart.

Oxfam, Diaconia Valdese and Asgi, 2018. *Se questa è Europa – Minori stranieri respinti dalla Francia all'Italia* [online]. 17 June. Available from: https://www.asgi.it/famiglia-minori/se-questa-e-europa-minori-stranieri-respinti-dalla-francia-allitalia/ [Accessed 13 July 2022].

Palmer, M., 2010. Rethinking children's rights and interests: Economic reform, social protection and legal culture in post-Mao China. *Journal of Comparative Law,* 5(2), 260–280.

Pan, I., *et al*., 2020. Rethinking Greulich and Pyle: A deep learning approach to pediatric bone age assessment using pediatric trauma hand radiographs.

Radiology: Artificial intelligence [online], 2(4), e190198, 1–6. Available from: https://doi.org/10.1148/ryai.2020190198 [Accessed 13 July 2022].

Pennisi, C., 2018. L'istituzionalizzazione dell'amministrare: il ruolo della cultura giuridica nell'analisi sociologica delle decisioni pubbliche. *In:* C. Pennisi *et al*., eds., *Amministrazione, cultura giuridica e ricerca empirica*. Santarcangelo di Romagna: Maggioli, 3–17.

Pennisi, C., and Giura, G., 2009. Un'analisi empirica della giurisprudenza sulla criminalità organizzata e di tipo mafioso. *Antigone*, 4(2–3), 125–162.

Philippopoulos-Mihalopoulos, A., 2010. *Niklas Luhmann: Law, Justice, Society.* London: Routledge.

Raiteri, M., 2018. La discrezionalità trasversale dell'azione amministrativa nelle pratiche e nelle politiche. *In:* C. Pennisi *et al*., eds., *Amministrazione, cultura giuridica e ricerca empirica*. Santarcangelo di Romagna: Maggioli, 19– 31.

Resta, E., 2006. *Il diritto fraterno.* Rome/Bari: Laterza.

Rodotà, S., 1995. *Tecnologie e diritti.* Bologna: Il Mulino.

Ronfani, P., 1997. L'interesse del minore nella cultura giuridica e nella pratica. *In:* G. Maggioni and C. Baraldi, eds., *Cittadinanza dei bambini e costruzione sociale dell'infanzia.* Urbino: Quattroventi, 253–276.

Saulle, M.R., 2009. L'opinione dissenziente. Speech at the Seminar of Italian Constitutional Court. Rome, 22 June. Available from: https://www.cortecostituzionale.it/documenti/convegni_seminari/22_6_09_Saulle.pdf [Accessed 30 May 2022]

Sciurba, A., 2020. Vulnerabilità posizionale e intersezionale. I minori migranti soli come caso paradigmatico. *In:* I. Fanlo Cortés and D. Ferrari, eds., *I soggetti vulnerabili nei processi migratori: La protezione internazionale tra teoria e prassi.* Turin: Giappichelli, 71–95.

Stalford, H., and Lundy, L., 2020. Editorial. *International Journal of Children's Rights* [online], 28(1), 1–13. Available from: https://doi.org/10.1163/15718182-02801010 [Accessed 13 July 2022].

Tamanaha, B.Z., 2019. The Promise and Conundrums of Pluralist Jurisprudence. *Modern Law Review*, 82(1), 159–179.

Tamanaha, B.Z., 2020. Sociological Jurisprudence Past and Present. *Law & Social Inquiry*, 45(2), 493–520.

Teubner, G., 2010. Constitutionalising Polycontexturality. *Social and Legal Studies*, 19, 327–341.

Tommaseo, F., 1999. Processo civile e tutela globale del minore. *Famiglia e diritto*, 6, 583–589.

Trilling, D., 2019. How the media contributed to the migrant crisis. *The Guardian* [online], 1 August. Available from: https://www.theguardian.com/news/2019/aug/01/media-framed-migrant-crisis-disaster-reporting [Accessed 13 July 2022].

Tsehay, B., Afework, M., and Mesfin, M.V., 2017. Assessment of reliability of Greulich and Pyle (GP) Method for Determination of age of children at Debre Markos Referral Hospital, East Gojjam Zone. *Ethiopian journal of Health Science* [online], 27(6), 631–640. Available from: https://doi.org/10.4314/ejhs.v27i6.8 [Accessed 13 July 2022].

Verschraegen, G., 2002. Human rights and Modern Society: A Sociological Analysis from the Perspective of System Theory. *Journal of Law and Society*, 29(2), 258–281.

Vie publique, no date. *Fonctionnement de la justice administrative* [online]. Available from: https://www.vie-publique.fr/fiches/fonctionnement-de-la-justice-administrative [Accessed 17 February 2021].

Viola, F., 2007. Law and legal culture in the 21st Century. *In:* T. Gizbert Studnicki and J. Stelmach, eds., *Diversity and Unity*. 23rd Internationale Vereinigung für Rechts (IVR) World Congress (August 1–6, Warsaw). Warsaw: Oficyna, 105–131.

Von Benda-Beckmann, F., and Von Benda-Beckmann, K., 2010. Why not legal culture? *Journal of Comparative Law*, 5(2), 104–117.

Case law

Constitutional Council Decision no. 2018-768 QPC of 21 March 2019 (ECLI:FR:CC:2019: 2018.768.QPC) [online]. Available from: https://www.conseil-constitutionnel.fr/decision/2019/2018768QPC.htm [Accessed 13 July 2022].

Council of State. Appeal no. 2536/2017, point 9.2.

Cour Administrative d'Appel de Lyon nos. 17LY02553 and 17LY03644 [online]. Available from: http://lyon.cour-administrative-appel.fr/content/download/134047/1358900/version/1/file/17LY02553-17LY03644.pdf [Accessed 13 July 2022].

Hirsi Jamaa and Others v Italy. Application no. 27765/09, Council of Europe: European Court of Human Rights, 23 February 2012 [online]. Available from: https://www.refworld.org/cases,ECHR,4f4507942.html [Accessed 13 July 2022].

Tribunal Administratif de Nice, ordonnance n. 1800195 du 22 janvier 2018 [online]. Available from: http://www.anafe.org/IMG/pdf/jrta_nice_22_janvier_2018_m_h_anafe_no1800195-2.pdf [Accessed 13 July 2022].

Tribunal Administratif de Nice, ordonnance n. 1800701 du 23 février 2018 [online]. Available from: https://www.infomie.net/IMG/pdf/ta_nice_23022018.pdf [Accessed 13 July 2022].