

# Unaccompanied minor asylum seekers in the Dublin III Regulation

*If and how the Dublin III Regulation has  
strengthened the protection of unaccompanied  
minor asylum seekers*

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## **Abbreviations**

CRC - Convention on the Rights of the Child

EASO – European Asylum Support Office

ECHR – European Convention on Human Rights

ECJ – European Court of Justice

ECRE – European Council on Refugees and Exiles

ECtHR – European Court of Human Rights

EU – European Union

ICJ – International Court of Justice

MPI – Migration Policy Institute

NGO – non-governmental organization

UN – United Nations

UNHCR – United Nations High Commissioner for Refugees

## 1. Introduction

Unaccompanied minor asylum seekers comprise a particularly vulnerable group, as they arrive alone in a foreign country with the aim of seeking protection and refuge. This thesis will explore the human rights protection of unaccompanied minor asylum seekers arriving in Europe.

Save the Children states in a comment<sup>1</sup> that the European Union (EU) is experiencing an increase in the arrival of unaccompanied minors. Statistics presented in this comment shows that between 1<sup>st</sup> of January 2014 and January 2015 did 12 900 unaccompanied children, mostly from Eritrea, Syria and Egypt, arrive in Italy, one of the main gateways for third-country asylum seekers trying to reach EU territory.

This group, like all asylum seekers, faces a number of challenges when entering Europe. However, the task of navigating through the bureaucracy of asylum seekers' rights has proved to be an especially hard task for people underage and arriving without any family or relatives. The practice in EU Member States has shown that the protection framework in the EU securing the rights of this vulnerable group suffers from significant shortcomings,<sup>2</sup> and I will look into some of these in this thesis.

The Dublin III Regulation regulates the determination of the EU Member State responsible for examining an application for asylum.<sup>3</sup> It entered into force 1 January 2014, replacing the Dublin II Regulation.<sup>4</sup>

The Dublin III Regulation provides definitions of the group concerned in this thesis. In Dublin III art.2 (i) “minor” is defined as “a third-country national or a stateless person below the age of 18 years.” According to the following art.2 (j) “unaccompanied minor” means “a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States.”

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1 Save the Children, Addressing Protection Needs of Unaccompanied Children within the Context of the Dublin related Procedures, [http://resourcecentre.savethechildren.se/sites/default/files/documents/150127\\_sc\\_comments\\_amendments\\_dublin\\_regulation\\_jan\\_2015.pdf](http://resourcecentre.savethechildren.se/sites/default/files/documents/150127_sc_comments_amendments_dublin_regulation_jan_2015.pdf), 26 February 2015

2 European Council on Refugees and Exiles, The Dublin II Regulation: Lives on Hold – Full Comparative Report, <http://www.ecre.org/component/content/article/56-ecre-actions/317-dublin-ii-regulation-lives-on-hold.html>, 26 February 2015

3 EUR Lex, Regulation (EU) No 604/2013 of 26 June 2013, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>, 26 February 2015

4 EUR Lex, Council Regulation (EC) No 343/2003 of 18 February 2003, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003R0343&from=EN>, 26 February 2015

In other words, the requirements are firstly that the person is under 18 years of age and coming from outside the EU, secondly that a responsible adult does not accompany him or her. Furthermore, this thesis concerns asylum seekers, meaning those who have not yet acquired refugee status.

I will focus on the rights of unaccompanied minor asylum seekers in Dublin III, in comparison with Dublin II. The main research question is:

Has the Dublin III Regulation strengthened the protection of unaccompanied minor asylum seekers, and if so, how?

In this thesis I will argue that the Dublin III Regulation contains more specified rights of unaccompanied minor asylum seekers compared to Dublin II. An example is art.6 on guarantees for minors, which does not have an equivalent in Dublin II.

As a consequence of Dublin III's recent implementation, there exists limited guidance for the interpretation of its specific articles in case law and literature. Some processes are still pending, like the discussion of the amendments to Dublin III art. 8 (4), reviewed in section 8 of this thesis.

As previously stated, the asylum flow of this group is increasing in the EU, and it is not unlikely that more cases regarding them will appear in the years to come. This situation shows that an analysis of whether the changes in Dublin III have strengthened the protection of unaccompanied minor asylum seekers might prove interesting as well as important.

After its implementation, both scholars and non-governmental organizations have discussed whether the new regulation has improved the rights of unaccompanied minors or not. I will present some of these views, in order to give a picture of the human rights protection of this group as it stands today in the EU.

This thesis is laid out as follows. Section 2 provides a theoretical overview of the sources of law used in this thesis. In section 3, I will briefly present the Dublin Framework in order to bring understanding of the system Dublin II and III is built on. The rights of unaccompanied minor asylum seekers in international law will be dealt with in section 4. This background information is essential with regard to the rights secured in the Dublin Regulations. Section 5 takes a look at the protection status according to Dublin II, whereas section 6 concerns the changes in general developed in Dublin III. Section 7 will focus on the Dublin III as it stands today, considering the rights of unaccompanied minor asylum seekers specifically. These three aforementioned sections are at the core of the research question. Section 8 looks into

two judgments with relevance to Dublin III. Finally, section 9 will sum up and offer some conclusions in order to answer the overall research question.

## **2. Methodology**

### **2.1 Sources of law**

This section will discuss the methodology and sources used in this thesis. I will make use of the traditional legal method, meaning a presentation of current law placed hierarchically. Establishing the sources of law is essential for understanding how the sources should be hierarchically placed and how they should be interpreted.

A source of law can be defined as “(...) the criteria under which a rule is accepted as valid in the given legal system at issue.”<sup>5</sup>

This thesis is written in the field of international law, as it deals with human rights protection. Art.38 (1) of the Statute of the International Court of Justice<sup>6</sup> (ICJ) is accepted as constituting a list of the sources of international law.<sup>7</sup> It mentions “international conventions”, “international custom”, “general principles of law recognized by civilized nations”, and “judicial decisions and the teachings of the most highly qualified publicists of the various nations.”

In this section, I will briefly present the different sources of international law used in this thesis.

### **2.2 Customary international law**

Customary international law is found at the core of all international law, as it is binding on all states and has comprised the most important source of law internationally for centuries. This law originally evolved from the practice of states, but was later codified in for instance multilateral treaties in order to clarify the law and to establish universally accepted norms.<sup>8</sup> These treaties fall in the category of treaty law, presented in 2.3.

The Introductory Note of the Office of the United Nations High Commissioner for Refugees

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5 Malanczuk, Peter: *Akehurst's Modern Introduction to International Law*, 7<sup>th</sup> edition, 1997, p.35

6 United Nations, Statute of the International Court of Justice,  
[http://legal.un.org/avl/pdf/ha/sicj/icj\\_statute\\_e.pdf](http://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf), 13 March 2015

7 Malanczuk p.36

8 Malanczuk p.35

(UNHCR) to the Convention and Protocol relating to the Status of Refugees notes that State parties to the said Convention and Protocol recognized that the core principle of non-refoulement is embedded in customary international law.<sup>9</sup> This is an example of a principle that has become a customary norm.

## 2.3 Treaty law

Treaty law is established as a source of international law in the ICJ Statute art. 38 (1) (a), as it mentions “international conventions.” According to Malanczuk the word «convention» means a treaty. He notes that other terms used as a synonym for treaties include charter, statute, declaration and regulations.<sup>10</sup>

Art. 31 (1) of the Vienna Convention on the Law of Treaties<sup>11</sup> states how treaties should be interpreted, namely in “(...) good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.”

An extensive part of human rights law consists of conventions. Conventions are binding for the states that have committed to them. Within the EU, the European Convention on Human Rights (ECHR)<sup>12</sup> is an example.

It can be questioned whether specific rules incorporated in a treaty can make up customary international law. As mentioned in 2.2, the principle of non-refoulement is an example of how a customary rule also may be embedded in a treaty, such as in the Convention and Protocol relating to the Status of Refugees. The principle of non-refoulement is explained in section 3.

There are a number of conventions covering children's rights specifically. I have chosen to focus on the Convention on the Rights of the Child (CRC) of the United Nations (UN)<sup>13</sup>, as it presents the fundamental principles of children's rights.

This thesis is built on the Dublin II and Dublin III Regulations, which are part of European treaty law and hence these regulations apply to all EU Member States. The regulations are supplied by directives, which I will comment on in 7.2.

Primary legislation in the EU is found in the Treaties, whereas secondary legislation, which

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9 UNHCR, Convention and Protocol relating to the Status of Refugees, Introductory Note p.4, <http://www.unhcr.org/3b66c2aa10.html>, 4 March 2015

10 Malanczuk, p.36

11 United Nations Treaty Collection, Vienna Convention on the Law of Treaties, Vienna 23 May 1969, <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>, 13 March 2015

12 European Court of Human Rights, European Convention on Human Rights, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf), 1 March 2015

13 United Nations Human Rights, Convention on the Rights of the Child, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>, 4 March 2015



includes regulations, directives and decisions, is subject to the Treaties and takes its authority from them.<sup>14</sup>

Regulations that have general application in all Member States, such as the Dublin Regulations, are binding in their entirety and are directly applicable as to their purpose and their specific content. Directives, on the other hand, are binding as to the result to be achieved for each Member State, but leave a choice to the Member State as to the form and methods for implementation.<sup>15</sup> This means that the Member States are obliged to follow the articles set out in the Dublin Regulations, and they can be regarded as a primary source of law. The directives can prove important to the interpretation of the regulations, especially in cases where the regulations lack sufficient clarity. Hierarchically, however, they are placed under the regulations.

## 2.4 Case law

Case law is regarded as a source of international law, in accordance with the ICJ Statute art.38 (1) (d), as it mentions «judicial decisions».

Regarding case law, I will mainly focus on Case C-648/11 *MA and Others v. Secretary of State for the Home Department*<sup>16</sup> of 6 June 2013 by the European Court of Justice (ECJ). The outcome of this judgment led to a proposal from the European Commission for amendments to Dublin III art.8 (4) on minors.

The ECJ is one of the four bodies within the EU that can be identified as players in the legislative process. It has the primary function of ensuring that EU law is observed in the interpretation and application of primary and secondary law and in all related activities.<sup>17</sup>

This entails that the legislators should consider a ruling of the ECJ to be judicially binding, as the Commission dutifully has done with its proposal to amend Dublin III art.8 (4) in light of case law. This makes case law from the ECJ a significant source of law. The argumentation and outcome used in a case might prove helpful when the law is ambiguous, which was the situation with Dublin III prior to Case C-648/11.

In addition, I will take a look at case law from the European Court of Human Rights

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14 Doe, Susan/Furlong, John: Researching European Law – a Basic Introduction, *Legal Information Management*, 2006, p.136

15 Doe/Furlong p.137

16 InfoCuria – Case-law of the Court of Justice, Judgment of the Court (Fourth Chamber) 6 June 2013, <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30ddf2df136276b74d50bc7291237abf87e9.e34KaxiLc3qMb40Rch0SaxuPaNf0?text=&docid=138088&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=148541>, 1 March 2015

17 Doe/Furlong p.138

(ECtHR). Relevant to this thesis is the case of *Tarakhel v. Switzerland* of 4 November 2014<sup>18</sup>, which gives some guidance on the understanding of Dublin III.

With the entry into force of the Lisbon Treaty on 1 December 2009, the EU committed to accede to the ECHR. ECtHR delivers binding judgments on alleged violations of the Convention.<sup>19</sup> Thus, judgments from the ECtHR are binding for the EU, and similar to ECJ it delivers relevant case law.

The ECJ is the final authority on the interpretation of EU law, while ECtHR is the final authority on the interpretation of the ECHR. Individual claims must go through the ECJ before they can lodge an application to the ECtHR.<sup>20</sup> This shows that both courts present substantial sources of law. Despite that, they have a slightly different focus on the law source used, and are placed differently hierarchically.

## 2.5 Soft law

As well as conventions, there exist so-called soft law instruments like guidelines and general comments covering the rights of children, and the rights of unaccompanied minors in particular. I will look closer at some specific examples of soft law relevant to this thesis in section 4. The concept of soft law is explained in the following passage.

There is no clear and agreed definition of the phenomenon, as the term “soft law” is not regarded as very helpful from a legal perspective.<sup>21</sup> The term refers to any written international instrument, other than a treaty, containing principles, norms, standards, or other statements of expected behavior.<sup>22</sup>

According to Shelton, soft law may be categorized as primary and secondary. Primary soft law consists of those normative texts not adopted in treaty form that are addressed to the international community as a whole or to the entire membership of the adopting institution or organization. Secondary soft law includes the recommendations and general comments of international supervisory organs, the jurisprudence of courts and commissions, decisions of special rapporteurs and other ad hoc bodies, and the resolutions of political organs of international organizations applying primary norms. The existence and jurisdiction of these

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18 HUDOC European Court of Human Rights, Case of *Tarakhel v. Switzerland*, Strasbourg 4 November 2014, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-148070#{\"itemid\":\[\"001-148070\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-148070#{\), 1 March 2015

19 European Court of Human Rights, Accession by the European Union to the European Convention on Human Rights, p.1, [http://www.echr.coe.int/Documents/UE\\_FAQ\\_ENG.pdf](http://www.echr.coe.int/Documents/UE_FAQ_ENG.pdf), 1 March 2015

20 Accession by the European Union to the European Convention on Human Rights, p.7

21 Malanczuk p.54

22 Shelton, Dinah in *Routledge Handbook of International Law*, 2009, p.69

institutions are often derived from a treaty and they apply norms contained in the same treaty.<sup>23</sup>

Soft law, in the sense of guidelines of conduct, are “(...) neither strictly binding norms of law, nor completely irrelevant political maxims, and operate in a grey zone between law and politics (...)”, and they lack “legally binding quality.”<sup>24</sup> Judging from this description, soft law seems to be of limited value in a legal context.

On the other hand, Malanczuk points out that soft law creates several positive effects. Soft law enables states to adopt and test rules and principles before they become law. In addition, the guidelines may in actual practice acquire considerable strength in structuring international conduct, as well as be relevant from a sociological perspective of international law with regard to the process of the formation of customary law. He also covers the fact that certain principles and rules that are not yet legally binding may have limited “anticipatory” effect as supporting arguments in interpreting the law as it stands.<sup>25</sup>

Shelton points out that the increasing use of non-binding normative instruments in several fields of international law is evident<sup>26</sup>, which might suggest that despite its non-legal status, soft law still continues to play a not inconsiderable role in practice, and in some cases impacts the development of law.

These comments show that even though soft law is not legally binding, it offers relevant guidance when interpreting the law and in understanding how the law should be practiced.

## **2.6 Legal scholars**

The opinions of legal scholars are vital, especially within areas of law lacking in clarity, as they can instruct on how the law should be interpreted. The legal scholars are usually specialized in their field, have done research, and can present new ideas and guiding points in an area of law that can seem uncertain.

The opinions of legal scholars are no longer limited to books, but can also be readily found on the Internet. However, when publishing on the Internet, the opinion of the legal scholar has not been externally reviewed and edited, or been subject to criticism through peer review of other scholars.

Posting opinions in a blog post, like the one posted on the blog “EU Law Analysis” of

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23 Shelton p.70

24 Malanczuk p.54

25 Malanczuk p.54-55

26 Shelton p.75

professor Steve Peers at the University of Essex<sup>27</sup>, makes the law accessible to everyone. One might argue that the opinions on how the law should be interpreted should not be reserved solely for the legal community.

Other important contributors in this regard are non-governmental organizations (NGOs), even though they are not legal scholars. Reports by NGOs can give insights into the current situation of human rights in a specific area of law, as well as provide recommendations and guidance on how the law should be interpreted and practiced, in order to best fulfil its purpose.

Nevertheless, these reports do not constitute a legal source, and representatives of NGOs are not legal scholars. The reports are merely opinions based on the observations of NGOs. In spite of this, the NGOs are often regarded as experts within their field. For instance, NGOs are present when the Committee on the Rights of the Child have their sessions and they get the opportunity to present their assessment of the current situation with regards to the CRC.<sup>28</sup> When amending laws and creating new ones, the opinions of NGOs are often taken into account. The comments of NGOs might prove particularly relevant in the field of pending law, because they represent suggestions that might end up as binding law.

In relation to Dublin III, NGOs like Save the Children have commented on the proposed amendments to art.8 (4), which I will present in 8.2.1.

## **2.7 Summary**

The discussion of the sources of law used in this thesis shows that, depending on the area of law, different sources of law can prove relevant.

Their hierarchical status indicates how much value can be added to the given source and accordingly how it should be interpreted. While treaty law as the Dublin II and III Regulations are clear sources of law, soft law is limited to the understanding and practical use of the law. In between we find case law and the opinions of legal scholars, which can contribute to vital and valid arguments in the given area of law.

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27 EU Law Analysis, “Unaccompanied minor asylum-seekers: a step in the right direction?”, published 27 June 2014 by Steve Peers, <http://eulawanalysis.blogspot.no/2014/06/unaccompanied-minor-asylum-seekers-step.html>, 5 March 2015

28 United Nations Human Rights, Committee on the Rights of the Child, <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>, 5 March 2015

### **3. Dublin Framework**

#### **3.1 The foundation**

This thesis has its main focus on the Dublin Regulations, which are part of the Dublin Framework. This section will give a brief overview of its content, in order to better understand the purpose of the Dublin Regulations.

The Dublin Framework came into existence through the Dublin Convention<sup>29</sup>, which set the criteria relating to a country responsible for processing an asylum application.<sup>30</sup> It was applicable to all the Member States of the European Community, today known as the European Union (EU). The framework is today known as the Dublin System or the Dublin Regulation, as the convention later was replaced by regulations.

The Dublin II Regulation, implemented in 2003, had the objective “(...) to identify as quickly as possible the Member State responsible for examining an asylum application, and to prevent abuse of asylum procedures.”<sup>31</sup>

As stated in section 1, Dublin III replaced the Dublin II Regulation in 2014. Dublin III is “(...) aimed at increasing the system's efficiency and ensuring higher standards of protection for asylum seekers falling under the Dublin procedure. It contains improved procedural safeguards such as the right to information, personal interview, and access to remedies as well as a mechanism for early warning, preparedness and crisis management.”<sup>32</sup>

In other words, Dublin III makes up the current legal framework of the Dublin System, and is supposed to offer better protection and efficiency than before.

#### **3.2 Fundamental principles**

The Dublin Framework is based on some fundamental principles, which I will explain briefly in the following passage.

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29 EUR-Lex, Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41997A0819\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41997A0819(01)&from=EN), 5 March 2015

30 EUROPA, Summaries of EU Legislation, Dublin II Regulation: Context, [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/l33153\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33153_en.htm), 5 March 2015

31 EUROPA, Summaries of EU Legislation, Dublin II Regulation: under headline, [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/l33153\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33153_en.htm), 5 March 2015

32 European Council on Refugees and Exiles, Dublin Regulation: What is the Dublin System? , <http://www.ecre.org/topics/areas-of-work/protection-in-europe/10-dublin-regulation.html>, 5 March 2015

The principle of non-refoulement creates the basis for the rights of asylum seekers. It is stated in art.33 on prohibition of expulsion or return (“refoulement”) in the Convention and Protocol relating to the Status of Refugees, as well as implied in the Dublin Regulations.

It is true that an asylum seeker is not yet a refugee. However, it is often the case that the situation of the asylum seeker makes him or her eligible for refugee status as well.

By way of explanation, non-refoulement means that the asylum seeker cannot be sent back to his or her country of origin if there is a potential threat to the life and freedom of the asylum seeker. It is therefore the obligation of the asylum seeker's country of arrival to make sure that the asylum seeker is not prone to such a risk if sent back.

As stated in 3.1, the purpose of the Dublin Framework is to identify the Member State responsible for the asylum application. There are exceptions though: “If no Member State can be designated on the basis of the criteria listed, the first Member State with which the asylum application was lodged will be responsible for examining it.”<sup>33</sup>

In practice it is often the case that the asylum seeker has lodged an application in several Member States. In this event, only the application made in the first country of entry applies. This «first country»-principle, stemming from the regulation, often creates problems for those wanting to seek asylum in another Member State than the one they first entered, but so far this rule remains steadfast for all adult asylum seekers.

The term “asylum shopping”<sup>34</sup> has come into existence through the use of the Dublin Framework, though it is not expressly stated. The Dublin system aims to avoid this situation: “The objective is to avoid asylum seekers from being sent from one country to another, and also to prevent abuse of the system by the submission of several applications for asylum by one person.”<sup>35</sup> Asylum shopping is a not desired scenario according to the aim of the Dublin system, as this puts a stress on both the asylum seekers and the Member States.

Closely linked to “asylum shopping” is the term “refugee in orbit”<sup>36</sup>, meaning that the asylum seeker lives in a constant limbo, not knowing in which country he or she will end up. As noted under asylum shopping, it is not a wish according to the Dublin system that an asylum seeker applies for asylum in several Member States. This does not only put the asylum

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33 EUROPA, Summaries of EU Legislation, Dublin II Regulation: Exceptions, [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/133153\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133153_en.htm), 5 March 2015

34 Norwegian Organisation for Asylum Seekers, Et uverdig sjansespill om asyl i Europa: Asylprosessen i Hellas og Dublin II-forordningen, April 2008, p.37, [http://www.noas.no/wp-content/uploads/2012/08/Et-uverdigsjansespill-om-asyl-i-Europa\\_Dublin.pdf](http://www.noas.no/wp-content/uploads/2012/08/Et-uverdigsjansespill-om-asyl-i-Europa_Dublin.pdf), 5 March 2015

35 EUROPA, Summaries of EU Legislation, Dublin II Regulation: Summary, [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/133153\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133153_en.htm), 5 March 2015

36 Et uverdig sjansespill om asyl i Europa: Asylprosessen i Hellas og Dublin II-forordningen, p.37

seeker in a highly uncertain situation, but also makes it more difficult for the Member States to maintain the asylum seeker's rights in the asylum process.

### 3.3 Case law in relation to the Dublin Framework

As stated in 3.1 the Dublin Framework has undergone changes with new regulations and amendments. The most recent change in the form of Dublin III was based on an ambition for a more effective and protective legal framework, which partly stemmed from the numerous Court challenges both at European and national level.<sup>37</sup>

Among these is the Case of *M.S.S v. Belgium and Greece* of 21 January 2011<sup>38</sup> by the ECtHR. In this judgment the Court ruled that Belgium had violated ECHR art.3 in regards to prohibition of torture and art. 13 about the right to an effective remedy. The unstable situation awaiting the asylum seekers in Greece was not seen as sufficient to provide them with protection there. Accordingly they should not be sent back to Greece after arriving in Belgium, despite the fact that Greece was the family's first country of arrival. In short, they were not secured their fundamental rights as asylum seekers according to Dublin II if sent back to Greece. Several cases from both the ECtHR and judgments at national level in the Member States confirm the statement about the insufficient reception conditions in Greece made in *M.S.S v. Belgium and Greece*.

The Dublin II Regulation has been subject to critical review in several reports by NGOs. This criticism is mainly linked to the differing practice of the regulation in the Member States, which I will look closer at in 5.3.

### 3.4 Summary

The Dublin Framework has been established as a system of handling the flow of asylum seekers from third-countries arriving in the EU Member States. The framework has undergone changes throughout its existence, but the main principle remains the same: the aim of securing asylum seekers the protection they are entitled to, while at the same time facilitating an effective asylum procedure for the Member States.

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37 European Council on Refugees and Exiles, Dublin Regulation: What is happening now? , <http://www.ecre.org/topics/areas-of-work/protection-in-europe/10-dublin-regulation.html>, 5 March 2015

38 HUDOC European Court of Human Rights, Case of *M.S.S v. Belgium and Greece*, Strasbourg 21 January 2011, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050#{\"itemid\":\[\"001-103050\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050#{\), 5 March 2015

The principles in 3.2 point out the prime considerations the Member States need to take in order to fulfil the objective of the framework.

It is important to note that even though the Dublin Framework aims to protect, it has turned out to suffer from shortcomings in practice. This is especially evident from Court decisions on both European and national level, as remarked in 3.3.

This section has provided a basic comprehension of the Dublin system, which is imperative in order to understand the specific provisions of the Regulations, such as the ones protecting unaccompanied minor asylum seekers.

## **4. Unaccompanied minor asylum seekers in international law**

### **4.1 Overview on relevant conventions**

The focus of this thesis, namely the protection of unaccompanied minor asylum seekers, is dealt with in several conventions. It is vital to obtain knowledge about these, as they provide a broader understanding and create a basis for the protection of this group in the Dublin Regulations.

Examples are the CRC, ECHR and the Convention and Protocol relating to the Status of Refugees. Other similar sources include the Charter of Fundamental Rights of the European Union<sup>39</sup> and the Universal Declaration of Human Rights.<sup>40</sup> The Charter of Fundamental Rights of the European Union is legally binding on the EU and it is consistent with the ECHR.<sup>41</sup>

Of the conventions presented above, it is the CRC that secures the most profound protection, as it concerns children only. The main guideline in the CRC is the consideration of “the best interests of the child” in its art.3, which I will cover in 4.2. As well as the “best interests” - consideration, the CRC contains several articles relevant to unaccompanied minor asylum seekers.

Art.2 on non-discrimination establishes that all children have the right not to be discriminated against. In the context of unaccompanied minor asylum seekers, this means that all minors should be treated equally regardless of where they come from.

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39 European Parliament Website, Charter of Fundamental Rights of the European Union, [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf), 6 March 2015

40 United Nations, The Universal Declaration of Human Rights, <http://www.un.org/en/documents/udhr/>, 6 March 2015

41 European Commission, EU Charter of Fundamental Rights, [http://ec.europa.eu/justice/fundamental-rights/charter/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm), 6 March 2015



Art.22 concerns the treatment of refugee children. According to art.22 (1) refugee children, whether unaccompanied or not, should “(...) receive appropriate protection and humanitarian assistance (...)”. Even though an asylum seeker has not yet acquired the status of a refugee, the extraordinary situation of an unaccompanied minor asylum seeker might suggest that he or she should be treated equally as a refugee child. The article is closely linked to art.12 on the child's views. Art.12 (2) points out the child's right “(...) to be heard in any judicial and administrative proceedings affecting the child (...)”. When arriving as an asylum seeker, the child has the right to make his or her opinions heard, and sound measure should be taken to the information the child provides about his or her situation.

The CRC also contains, as the most detailed and thorough convention on children's rights, other relevant articles that are applicable to unaccompanied minor asylum seekers. An overview of all these articles and their content would, however, exceed the scope of this thesis.

#### **4.2 The principle of “the best interests of the child”**

This fundamental principle was first established in the CRC, and has later been repeated in other conventions, including Dublin III. It is today regarded as customary international law.

The Committee on the Rights of the Child, which is responsible for monitoring the implementation of the CRC, makes General comments on how the CRC should be interpreted. Its General comment No.14<sup>42</sup> on the right of the child to have his or her best interests taken as a primary consideration provides some guidance.

The comment claims that the child's best interests is a threefold concept, as it should be seen as a substantive right, a fundamental, interpretative legal principle and a rule of procedure.<sup>43</sup> In other words, it should be implemented in every part of the process concerning the child.

It is underlined that the concept of the child's best interests is complex and that its content must be determined on a case-by-case basis. Further, it is noted that the term is “(...) flexible and adaptable”, and “(...) the personal context, situation and needs (...)” of the child should be considered.<sup>44</sup> This statement admits that the “best interests of the child” - principle is indeed extensive, and leaves it open to the legislators to specify it.

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42 United Nations Human Rights, General comment No.14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art.3, para.1), [http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC\\_C\\_GC\\_14\\_ENG.pdf](http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf), 6 March 2015

43 General comment No.14, p.4

44 General comment No.14, p.9

The UNHCR has produced guidelines on how to determine the best interests of the child<sup>45</sup>, which aims to give states hands-on advice on how to best implement the principle in practice. These make up a summary based on the various conventions, guidelines and general comments relevant in the field.

The guidelines stress that the CRC does not offer “(...) a precise definition (...)” of the principle, and say that the term “(...) broadly describes the well being of a child”.<sup>46</sup> This statement confirms that the term is relatively unspecified, and leaves it open for the legislator to go into its details.

The guidelines introduce the terms “best interests determination” and “best interests assessment”. The determination describes the formal process to determine the child’s best interests, whereas the assessment is the assessment made with regard to individual children.<sup>47</sup> According to General comment no.6, which is referred to in the guidelines<sup>48</sup>, the “best interests determination” should “(...) be initiated and implemented without undue delay and, wherever possible, immediately upon the assessment of a child being unaccompanied or separated.”

The first step in this process involves family tracing, which is to make efforts to find the family of the unaccompanied minor. If this does not succeed, the state is obliged to take care of the child and provide him or her with all the basic necessities, such as the right to health care.

Based on the situation of the individual child, the future of the child must be determined in terms of where the child should reside. The CRC contains a number of safeguards in this regard, such as the right of the child to say his or her opinion in art.12.

In section 5 and 7 of this thesis I will present the details in the regulations that aim to fulfil the “best interests” - principle in the asylum process of unaccompanied minor asylum seekers.

### **4.3 Protection in the EU**

As well as at international level, there are made soft-law documents for the EU to stress the focus on their EU policies. The EU has made clear through documents such as its Action Plan

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45 UNHCR, UNHCR Guidelines on Determining the Best Interests of the Child, May 2008, <http://www.unhcr.org/4566b16b2.pdf>, 6 March 2015

46 Guidelines p.14-15

47 Guidelines p.8

48 Guidelines p.32

on Unaccompanied Minors (2010-2014)<sup>49</sup> and its Guidelines for the Promotion and Protection of the Rights of the Child<sup>50</sup> that the EU is fully committed to protect children's rights on EU level. These create a background for the protection framework of this group in the Regulations.

The EU Guidelines point out the importance of the CRC<sup>51</sup>, including the "best interests of the child" - principle.<sup>52</sup> The protection also includes promoting compliance with decisions by the European Court of Human Rights.<sup>53</sup>

The Action Plan stresses the same points as the Guidelines, namely the importance of the CRC and international standards and conventions regarding children's rights, as well as the concept of "best interests of the child."

On the other hand, it states that despite numerous directives and international instruments, "(...) a margin of interpretation is left to Member States."<sup>54</sup> Ultimately, the EU Member States themselves have to make the decision on how to best protect the needs of unaccompanied minor asylum seekers.

#### **4.4 Summary**

Unaccompanied minor asylum seekers are secured rights through numerous safeguards in international law, with the CRC securing the most detailed protection.

The focus on children's rights in various conventions stresses the importance of protecting this vulnerable group. The "best interests of the child" - principle further confirms this, as well as the protection focus in soft law instruments such as the General comments, guidelines and EU documents. It is, however, difficult to grasp the exact scope of this broad term.

This section about the fundamental rights of children internationally has created the background for the upcoming sections 5, 6 and 7, which will look at how this protection is specified for unaccompanied minor asylum seekers arriving in the EU Member States.

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49 EUR-Lex, Communication from the Commission to the European Parliament and the Council: Action Plan for Unaccompanied Minors (2010-2014), Brussels, 6.5.2010, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:en:PDF>, 6 March 2015

50 European Council/ Council of the European Union: EU Guidelines for the Promotion and Protection of the Rights of the Child, <http://www.consilium.europa.eu/uedocs/cmsUpload/16031.07.pdf>, 6 March 2015

51 EU Guidelines p.1

52 EU Guidelines p.4

53 EU Guidelines, p.10

54 Action Plan p.9

## **5. The protection of unaccompanied minor asylum seekers in Dublin II**

### **5.1 Short on Dublin II**

The Dublin II Regulation is short for Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. As its full name indicates, its objective is to identify the Member State responsible for the asylum seeker.

The Dublin II Regulation is a result of the Common European Asylum System, agreed on by the Member States in 1999. This system is based on the Convention relating to the Status of Refugees, which also means that it is built on the principle of non-refoulement.<sup>55</sup>

It is noted in the preamble that Dublin II confirms the principles underlying the Dublin Convention of 1990<sup>56</sup>, which was the very first attempt to specify and regulate the flow of asylum seekers to the EU. The preamble further refers to the Charter of Fundamental Rights of the European Union.<sup>57</sup>

In sum, Dublin II is built on the key principles of refugee law and human rights.

### **5.2 The specific protection of unaccompanied minors defined in Dublin II**

Art.6 constitutes the main article regarding unaccompanied minors. It establishes in its first paragraph that “Where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor.” In other words, the paragraph stresses the importance of family unity.

Additionally, the regulation seeks to secure family unity through art.15 (3): “If the asylum seeker is an unaccompanied minor who has a relative or relatives in another Member State who can take care of him or her, Member States shall if possible unite the minor with his or her relative or relatives (...)”. In fact, family unity is first introduced in Dublin II's preamble as an underlying principle that should be considered.<sup>58</sup>

Most notably, art.6 declares the principle of “best interests of the child”. The regulation

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55 Council Regulation (EC) No 343/2003, preamble (2)

56 Preamble (5)

57 Preamble (15)

58 Preamble (6)

provides no input as to how the principle should be understood and interpreted in practice. This leads to making use of the interpretation of CRC art.3 through general comments and guidelines, as stated in 4.3.

In its second paragraph, art.6 expresses that “In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum.” This second paragraph has proved not to work well in practice, as a number of minors have lodged their application in several Member States. In this situation it has remained unclear how the asylum process continues.

### **5.3 Criticism of Dublin II**

The understanding and practices in the EU Member States of the specific articles in Dublin II vary greatly. A comparative report of February 2013 lead by the European Council of Refugees and Exiles, supplied with information from European NGOs<sup>59</sup> describes these practices. I will refer to examples from this report in the following passage, in order to illustrate the problems that have arisen when Dublin II is applied in practice.

As indicated in 5.2, the interpretation of the second paragraph in art.6 has proved to be challenging. This is evident when looking at the diverging practices in some Member States. The report notes that in France and Italy art.6 is applied in such a way that if no family members are located in the territories of the Member States, responsibility is assigned on the basis of the present Member State where the child has lodged an asylum application. This means that unaccompanied minors are not subject to a transfer to another Member State. On the other hand, unaccompanied children in Austria, Switzerland, Slovakia and the Netherlands are usually sent back to the first Member State where they first lodged an asylum application if there is an absence of family in the current Member State.<sup>60</sup>

Furthermore, the emphasis put on the importance of the “best interests of the child” in art.6 first paragraph differs between EU Member States. For instance, Austrian legislation does not refer directly to the principle, whereas a best interests determination is considered to be part of the role of the legal guardian in Bulgaria. The Netherlands has safeguards securing the principle in its legislation. On the other hand, the German administrative authorities do not

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59 European Council on Refugees and Exiles, The Dublin II Regulation: Lives on Hold – Full Comparative Report, <http://www.ecre.org/component/content/article/56-ecre-actions/317-dublin-ii-regulation-lives-on-hold.html>, 26 February 2015

60 Lives on Hold report p.27

view the principle as an integral element when applying the Dublin Regulation.<sup>61</sup>

Although Dublin II states that “family unity should be preserved (...)”<sup>62</sup>, the regulation has no provision related to family tracing. Again, the practices in the Member States differ, but overall it appears that the child concerned will have to provide some relevant information as to identify if a family member is present in the territory of the Member States. In the Netherlands and Switzerland information may be requested to the Member State where the unaccompanied minor claims to have family members.<sup>63</sup> In contrast to such a practice, a family tracing procedure does not exist in Italy with respect to the Dublin procedure.<sup>64</sup>

Dublin II does not have any rules regarding how age determination procedures are undertaken, and consequently this has led to varying practices in the Member States. The age assessment can have important repercussions both with regard to the applicability of Dublin criteria and in relation to the level of support provided with respect to reception conditions and the asylum procedure itself.<sup>65</sup> This supports the idea that the practices in Member States ideally should be the same, in order to best secure the protection of this group. Prior age assessment in another Member State is taken into consideration by the national authorities in Slovakia and the Netherlands. In Germany, on the contrary, an applicant’s registered age in another Member State may not take precedence over the age registered by the German Federal State where the applicant resides.<sup>66</sup>

These examples of the widely varying practices in the EU Member States clearly show that the Dublin II Regulation suffers from significant shortcomings. Based on these data, I am of the opinion that Dublin II is not properly specified. This leads to the unfortunate situation that Member States interpret the regulation in their own way. Sometimes the interpretation benefits the unaccompanied minor, other times not. In other words, some unaccompanied minors might suffer from the strict policies of one Member State, while others profoundly benefit from child friendly practices in another. The way I see it, this is obviously not a desired outcome of the regulation and an unsatisfactory situation, as these practices undermine Dublin II and its objective.

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61 Lives on Hold report p.28

62 Preamble (6)

63 Lives on Hold report p.29

64 Lives on Hold report p.30

65 Lives on Hold report p.31

66 Lives on Hold report p.31-32

## 5.4 Summary

This section shows that unaccompanied minors are regarded as a vulnerable group subject to special care according to art.6 of the Dublin II Regulation. As far as possible, the aim is that unaccompanied minors should be reunited with their family. Still, Dublin II does not expressively mention family tracing.

The main problem of Dublin II seems to be that it is unclear about the exact scope of art.6. As shown in 5.3, there exist varying practices in the Member States, based on differences in their national legislation. The ambiguity of the regulation invites to differing interpretations, leading the national legislation in the Member States to vary greatly as well. At the end of the day, this does not always benefit the group concerned.

## 6. Developing Dublin III

### 6.1 Background

The Dublin III Regulation replaced Dublin II with its entry into force in 2014. The full name of Dublin III is Regulation (EU) No 604/2013 of the European Parliament and the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). As the title indicates, this regulation is a recast, meaning that it is built on the previous regulation, but is now presented in an amended form.

One of the main reasons for creating a recast was the criticism of Dublin II. The critics include for instance the Migration Policy Institute (MPI), an independent research institute that aims to provide a better understanding of migration in Europe and the EU.<sup>67</sup> Its report of March 2015<sup>68</sup> provides viable input to the discussion of the recast, and will henceforth be referred to in this section.

The report presents the following as Dublin III's reply and consequent solution to the criticism given: "The 2013 recast of the Dublin Regulation seeks to address some of these concerns by clarifying how Dublin assigns responsibility for asylum claims, by tightening

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67 Migration Policy Institute, Mission, <http://www.migrationpolicy.org/about/mission>, 22 March 2015

68 Migration Policy Institute, Not Adding Up: The Fading Promise of Europe's Dublin System, <http://www.migrationpolicy.org/research/not-adding-fading-promise-europes-dublin-system>, 22 March 2015

deadlines and by creating an “early warning and preparedness mechanism” to support Member States whose asylum systems are under strain. Most significantly, the recast Dublin states the transferring Member State’s responsibility to ensure that applicants’ rights are respected at destination.”<sup>69</sup>

In other words, Dublin III aims at improving the rights of asylum seekers, both in terms of shortened waiting time as well as securing the fundamental rights of asylum seekers arriving in a Member State.

## **6.2 Overview on some main amendments**

In the following passages I will briefly present some of the main amendments in the recast, in order to illustrate how it differs from Dublin II. This overview will have a general approach, as the amendments naturally do not concern unaccompanied minors only. These main amendments will, however, also have consequences for this group.

### **6.2.1 Information**

One of the primary problems of Dublin II was the inadequate information given to asylum seekers concerning the Dublin procedures.<sup>70</sup> Dublin III contains major amendments in this regard, found in art.4 on the right to information and art.5 on personal interview.

Art.4 presents detailed requirements the Member States must fulfil in order to sufficiently inform the applicant about the regulation and his or her rights according to it. Additionally, art.4 (3) states that the Commission is responsible for drawing up a common leaflet, as well as a special leaflet for unaccompanied minors, containing the relevant information given in paragraph 1. The purpose of these leaflets is to ascertain that the information is also given in written form.

Art.5 requires a personal interview with the applicant, in order to determine the Member State responsible. This determination is closely based on the circumstances of the particular applicant, which is why such an interview is now implemented as a mandatory part of the Dublin procedure.

In my estimation are the requirements given in art.4 and art.5 examples of considerable improvements to the rights of asylum seekers to acquire basic information, on the condition

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69 MPI report, p.1-2

70 MPI report, p.21



that the Member States diligently follow up these amendments in practice. It is also vital that the information given is fully understandable for all parties concerned, for instance that the written information is given in a language the asylum seekers are able to understand, written in an accessible and simplified manner.

### **6.2.2 Family unity**

Dublin III includes a strong emphasis on family unity through art.8-11. Art. 8 on minors establishes which Member State is responsible for the asylum claim of an unaccompanied minor, based on in which Member State family members, siblings or relatives of the unaccompanied minor reside, according to its paragraphs 1 and 2.

Dublin II also stressed the importance of family unity, but it did not require family tracing. Dublin III art.8 (5) states that “The Commission shall be empowered to adopt delegated acts (...) concerning the identification of family members, siblings or relatives of the unaccompanied minor”, indicating that family tracing in favour of the unaccompanied minor should be a priority.

According to art.9 and art.10 both family members who are beneficiaries of international protection and those who are applicants for international protection are included. Previously, the right to be reunited with family who already had international protection within the EU extended only to recognised refugees or those in asylum procedures.<sup>71</sup>

The first paragraph of art.11 on family procedure defines which Member State is responsible where several family members and/or minor unmarried siblings submit applications for international protection in the same Member State simultaneously, and where the application of the criteria set out in this regulation would lead to their being separated. Art.11 (a) and (b) place responsibility on one Member State only, which seems to aim for the goal of family unity, as the family members then face the opportunity to gain asylum in the same Member State.

The presented articles show that Dublin III clearly focuses on the aim of family unity by implementing processes of family tracing. This focus undoubtedly benefits unaccompanied minors in particular. As far as possible, this group should be reunited with their family or relatives according to Dublin III.

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71 MPI report, p. 21

### 6.2.3 Deadlines

In contrast to Dublin II, Dublin III slightly shortens the deadlines for completing certain parts of Dublin procedures. The MPI report points out that the recast sets a deadline for submitting a take back request, and cites this as the most important amendment regarding deadlines, and as filling a major gap in Dublin II.<sup>72</sup> The procedures for take back requests are found in art.23, 24 and 25.

“Take back” is a term used within the Dublin system, meaning that one Member State may request another to take back an asylum seeker when the applicant is found to have a protection claim under review in that Member State. As opposed to the term “take charge”, take back requests are initiated in cases where applicants have submitted claims in more than one Member State.<sup>73</sup>

Shorter deadlines are beneficial for both the asylum seekers and the Member States. These new deadlines force the Member States to process the asylum applications more quickly in order to avoid over capacity, which in turn shortens the waiting time for the asylum seekers.

### 6.2.4 Detention

Another innovation of Dublin III includes article 28 about detention. Its existence follows from the many cases regarding unlawful detention. One example is the Case of *Rahimi v. Greece*,<sup>74</sup> which concerned unlawful detention of a minor asylum seeker in Greece.

According to art.28 (2), Member States may only detain the person concerned when there is a “significant risk of absconding”. How this term will be interpreted in practice remains to be seen. However, it is clear that art. 28 (2) constitutes a safeguard for the reception rights of asylum seekers, who find themselves in a vulnerable position in the country of arrival, and therefore are more likely to be victims of the occasional unlawful behaviour of some Member States.

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72 MPI report, p.21

73 MPI report, p.7

74 HUDOC European Court of Human Rights, Case of *Rahimi v. Greece*, Strasbourg 5 April 2011,

### **6.2.5 Early warning, preparedness and crisis management mechanism**

Art.33 introduces a mechanism for early warning, preparedness and crisis management. The aim is to secure that the Member States are able to fulfil their obligations adequately according to the regulation.

Case law, such as the Case of *M.S.S. v. Belgium and Greece* referred to in 3.3, shows that a number of applicants are put under unacceptable reception conditions in the countries that receive the most asylum seekers as a first country of arrival, e.g. Greece and Italy. In other words, the shortcomings displayed in practice have led to the creation of art.33. The article aims to prevent such situations from occurring.

### **6.3 Criticism of Dublin III**

Though the aim of Dublin III was to constitute an improvement compared to Dublin II, this has not hindered NGOs and related organizations from putting Dublin III in a critical light. In this following passage, I will present some of the criticism given so far, as well as my own comments on this criticism.

Prior to the implementation of Dublin III, the European Council on Refugees and Exiles (ECRE) presented their comments on some of the amendments in the recast proposal.<sup>75</sup>

ECRE believes that the definition of “family members” in art.2 (g) is unduly limited, as it only encompasses family ties that “existed in the country of origin”. This fails to accommodate the wide-ranging displacement experiences of asylum seekers, meaning that the asylum seekers often move from one country to another before eventually settling.

Furthermore, the definition is not brought into line with art.9, which includes family members “regardless of whether the family was previously formed in the country of origin.”<sup>76</sup>

Summed up, ECRE suggests that the definitions in art.2 (g) and art.9 should be alike, both to benefit the asylum seekers and to avoid confusion when applying the definition in practice.

In my view, ECRE sums up an important point above about the desired harmonization of art.2 (g) and art.9. The differing wording of these articles is prone to create confusion, leading the Member States to interpret the articles differently. This will in turn create varying practices in the Member States, which will put the asylum seekers in a highly unpredictable

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<sup>75</sup> European Council on Refugees and Exiles, Comments from the European Council on Refugees and Exiles on the European Commission Proposal to recast the Dublin Regulation, <http://www.ecre.org/topics/areas-of-work/protection-in-europe/133.html>, 27 March 2015

<sup>76</sup> ECRE Comments p.9

situation, depending on in which Member State they arrive.

According to art.28, Member States may only detain the person concerned when there is a “significant risk of absconding”. ECRE points out that this definition does not specify objective criteria to guide Member States in establishing such a risk, which might lead them to define such criteria broadly. Accordingly the regulation would not comply with its purpose, as the recast would only require Member States to consider alternatives to detention, not necessarily to actually employ them.<sup>77</sup>

The report by MPI further criticizes art.33 about early warning, preparedness and crisis management. For instance, the article does not specify the exact nature, extent and timeliness of the practical support that will be available from EASO (European Asylum Support Office) or other Member States when the mechanism is triggered.<sup>78</sup>

From my point of view, the lack of specification of the exact content and understanding of Dublin III’s articles is an overall weakness of the regulation. In theory the given wording of the articles presents an improvement. However, some terms tend to be broadly formulated and leave the Member States responsible for the exact interpretation of the articles. In turn this once again leads to varying practices, which sometimes rightly benefits the asylum seekers, but sometimes obviously not.

Though Dublin III applies welcomed improvements, the MPI report concludes what might be the main weakness of Dublin III by stating that “(...) it does not touch on the problem at the heart of the Dublin system: the variation in Member States’ capacity for receiving, processing, and integrating asylum applicants.”<sup>79</sup>

Recent developments, such as in Greece and Italy, show that the massive flow of asylum seekers coming by boat to these countries makes it impossible for them to provide all asylum applicants with the rights they are entitled to according to the regulation. The current situation is precarious, as the legal framework of Dublin III is often left behind in the daily practices of the Member States. This has become a legal issue as well as a political one. In order to obtain the aim of the Dublin system, the EU Member States should ideally work more closely together on this matter and assist one another in order to secure all asylum applicants the rights they are entitled to.

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77 ECRE Comments p.7

78 MPI report, p. 21-22

79 MPI report, p.24

## **6.4 Summary**

Dublin III came into existence based on the wish to improve the previous Dublin II. The Dublin Regulation as it stands today constitutes a thorough and ambitious framework, aiming at accuracy in terms of which Member State is responsible, along with better protection of asylum seekers' rights.

Critics point out, however, that Dublin III is far from faultless. This criticism illustrates the complexity of creating a regulation that fully considers and protects all the parties involved, both the Member States exercising it in practice, as well as the asylum seekers who get their rights regulated by it.

## **7. The protection of unaccompanied minor asylum seekers in Dublin III**

### **7.1 The specific protection of unaccompanied minors defined in Dublin III**

In this following passage, I will present the articles provided in Dublin III that expressively mention unaccompanied minors. Special attention will be given to art. 6 on guarantees for minors and art. 8 on minors, as these constitute the major amendments that concern unaccompanied minor asylum seekers.

Dublin III introduces the term “representative” in art.2 (k). This is “(...) a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary.” This amendment provides the unaccompanied minors with basic help and support from an external party independent of the Member State, a new practice that clearly benefits the unaccompanied minors.

The Member States are required to provide the unaccompanied minors with a specific leaflet according to art. 4(3). This innovation secures that information about the Dublin procedure is given in written form, as well as in a manner the unaccompanied minor can understand, as information provided orally might not be clear enough in all situations.

Art.31 regulates the exchange of relevant information before a transfer is carried out. According to art.31 (2) “the transferring Member State shall (...) transmit to the Member State responsible any information that is essential in order to safeguard the rights and immediate special needs of the person to be transferred (...).” In the case of minors, this covers

“information on their education” (letter c). Letter (d) requires “an assessment of the age of an applicant”, which also proves relevant in this context. The information sharing in (c) applies to “minors”, and accordingly also unaccompanied minors, whereas (d) applies to all applicants regardless of age. As discussed in 5.3, Dublin II was criticized for not providing any input on how the age determination should be done. The brief nature of art. 31 (2) (d) shows that such guidelines are not provided in Dublin III either.

### **7.1.1 Guarantees for minors**

Art.6 has the title “Guarantees for minors”, indicating that it is at the core of the protection of this group. Paragraph 1 determines that “the best interests of the child shall be a primary consideration (...)”, and paragraph 3 provides guidelines for how this assessment should be done. The content of paragraph 2 refers to art.2 (k), as it defines the duties of the representative.

Paragraph 4 states the Member States’ responsibility to perform family tracing, by obligating them to “(...) take appropriate action to identify the family members, siblings or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child.” The principle of “best interests of the child” is again acknowledged.

Furthermore, the same paragraph notes that Member States “(...) may call for the assistance of international or other relevant organisations (...)” This recognizes that family tracing often is a both comprehensive and time consuming task, as Member States may require help from external parties in order to fulfil their obligations.

Lastly, paragraph 4 states that “the staff of the competent authorities (...) who deal with requests concerning unaccompanied minors shall have received, and shall continue to receive, appropriate training concerning the specific needs of minors.” In other words, those who work with this vulnerable group shall be qualified to give the unaccompanied minors the protection they are entitled to.

Paragraph 5 looks at the practical aspects of identifying the “(...) family members, siblings or relatives of the unaccompanied minor (...)”, which once again puts focus on family tracing and consequently family unity.

### **7.1.2 Minors**

Art.8 has the headline “Minors”, and determines which Member State is responsible for the unaccompanied minor.

Paragraph 1 states that the Member State responsible shall be that where “a family member” or “a sibling” of the unaccompanied minor is legally present. The definition of “family member” is given in art.2 (g), which includes the closest family of the unaccompanied minor.

Where the unaccompanied minor has “a relative” who is legally present in another Member State and where it is established that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible (paragraph 2). “Relative” is defined as “the applicant's adult aunt or uncle or grandparent” in art.2 (h).

According to paragraphs 1 and 2, the family ties in the Member States determine the state responsible and it is the presence of the closest family that should be the main consideration.

In the situation where family members, siblings or relatives stay in more than one Member State, the responsibility is decided based on “the best interests of the unaccompanied minor” (paragraph 3).

Alternatively, there is the case of no family members, siblings or relatives present in the Member States. If so, the Member State responsible “shall be that where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interests of the minor” (paragraph 4). This specification in itself is clear, but it does not cover the situation where the unaccompanied minor has lodged his or her application in several Member States.

Lastly, paragraphs 5 and 6 note the importance and practical aspects of information sharing between Member States regarding family tracing.

### **7.2 The specific protection of unaccompanied minors defined in the Directives**

In addition to the regulation, the Dublin Framework contains directives. Three major directives supplement Dublin III: the Qualification Directive (2011/95/EU), the Asylum Procedures Directive (2013/32/EU) and the Reception Conditions Directive (2013/33/EU). In this following passage, I will give a brief summary of relevant articles in these directives that refer to unaccompanied minors.

The Qualification Directive<sup>80</sup> provides guidelines for the fundamental protection that asylum seekers from third-countries are entitled to when they reach EU territory.

Its preamble states that “the best interests of the child”-principle should be implemented, with reference to the CRC, as well as providing guidelines for the assessment of best interests.<sup>81</sup>

Art.31 on unaccompanied minors contains the specific rights of this group. Paragraph 1 and 2 point out the right to have a representative, which refer to Dublin III art.2 (k) and art.6. Paragraph 3, 4 and 5 all aim to secure that the unaccompanied minor is united with his or her family as far as possible. Paragraph 6 stresses that those working with unaccompanied minors should be trained for this task, as also stated in Dublin III art.6.

The Asylum Procedures Directive<sup>82</sup> presents the procedures that Member States are obliged to practice when asylum seekers from third-countries are concerned.

As well as the Qualification Directive, the preamble of the Asylum Procedures Directive notes that “the best interests of the child” should be a “primary consideration”, in accordance with CRC. In addition, it contains some instructions on the assessment.<sup>83</sup>

Art.15 discusses the procedural rights during the personal interview, in which the Member States are obliged to perform according to Dublin III art.5. According to art. 15 (3) (e) of the directive special care should be taken to minors in this process.

Art. 25 on guarantees for unaccompanied minors provides detailed instructions about the procedures that apply when unaccompanied minors are affected. Paragraph 1 – 4 present the procedural aspects concerning the representative of the unaccompanied minor and the personal interview. Paragraph 5 presents the procedure for the determination of the age of the unaccompanied minor through a medical exam, which refers to Dublin III art.31 (2) (d). Paragraph 6 notes the “best interests of the child” as a guiding principle, as well as presenting the practical aspects of the asylum procedure and in which cases the unaccompanied minor is not granted asylum.

The Reception Conditions Directive<sup>84</sup> provides the guidelines for the reception conditions

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80 EUR-Lex, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF>, 3 April 2015

81 Qualification Directive, preamble (18)

82 EUR-Lex, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0032>, 3 April 2015

83 Asylum Procedures Directive, preamble (33)

84 EUR-Lex, Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying



that apply when asylum seekers from third-countries arrive in the Member States.

Similar to the aforementioned directives, the preamble of the Receptions Conditions Directive stresses the importance of “the best interests of the child”, with reference to the CRC.<sup>85</sup>

Art. 23 on minors refers to the “best interests of the child” - principle in paragraph 1, whereas paragraph 2 includes factors that should be taken into consideration in this assessment. Paragraphs 3 – 5 contain the reception conditions minors are entitled to.

Art.24 applies to unaccompanied minors only. Paragraph 1 covers the representative of the unaccompanied minor, as defined in Dublin III art.2 (k). Paragraph 2 and 3 stress the importance of family unity and family tracing. Lastly, paragraph 4 states that those working with unaccompanied minors should be trained for this purpose.

Summed up, the directives affirm what is already stated in the Dublin III Regulation. According to their purpose, they include the specifics of the process in terms of the qualification, asylum procedure and reception conditions respectively. In other words, they supplement the regulation with detailed guidance of how the regulation should be applied in practice.

### **7.3 Summary**

The overview in this section shows that Dublin III provides unaccompanied minors with a considerable protection framework. The “best interests of the child” - principle constitutes the overall guideline, as it is continuously repeated in the regulation and its directives.

Unaccompanied minors are regarded as a particularly vulnerable group, a fact the regulation and its directives emphasize by providing specific articles containing the rights of this group. According to these articles, the unaccompanied minor should be reunited with family or relatives as far as possible, and this is something the Member States should strive to accomplish.

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down standards for the reception of applicants for international protection (recast), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0033>, 3 April 2015  
85 Reception Conditions Directive, preamble (9)

## 8. Case law related to Dublin III

As stated in 2.4, there exists some relevant case law related to Dublin III that falls within the scope of this thesis. In the following passages I will present two judgments, with the aim of using these as an illustration of the content of Dublin III, with particular focus on unaccompanied minors. I have chosen these cases because they offer some vital points about the content and understanding of Dublin III in general, as well as in relation to unaccompanied minors.

Firstly, I will look at *Tarakhel v. Switzerland*, which gives some guidance on the understanding of Dublin III and the position of children in particular.

Secondly, I will look at *MA and Others v. Secretary of State for the Home Department*, as it concerns unaccompanied minor asylum seekers specifically. This judgment led to the proposed amendments to art.8 (4), and I will look into the discussion of these amendments accordingly.

### 8.1 Case of *Tarakhel v. Switzerland*

The case of *Tarakhel v. Switzerland* concerned an Afghan family of a married couple and six children, who first arrived in Italy when they reached European territory. They claimed to be put under poor living conditions there in breach of ECHR art.3 on prohibition of torture and art.8 on the right to respect for private and family life. As a consequence they travelled to Austria, and eventually to Switzerland. As Italy was the family's first country of arrival, Switzerland claimed Italy to be the responsible Member State in accordance with the Dublin procedure. The Tarakhel family, on the other hand, claimed that Switzerland could not send them back to Italy due to the poor reception conditions they had experienced there.

The ECtHR concluded that Switzerland should have received assurance from Italy that the family would not be put under insufficient living conditions and that they would not be separated. The judgment was given on 4 November 2014, closely following the implementation of Dublin III the same year.

The Court notes that the regulation “(...) is designed to make the Dublin system more effective and to strengthen the legal safeguards for persons subjected to the Dublin procedure.”<sup>86</sup> This is in line with Dublin III’s objective of constituting an improved framework compared to the previous Dublin II.

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86 Case of *Tarakhel v. Switzerland*, para.35, p.12

It also stresses that “(...) one of its aims is to ensure that families are kept together, and it pays particular attention to the needs of unaccompanied minors and other persons requiring special protection.”<sup>87</sup> In other words, the Court acknowledges the importance of family unity and the special care that should be taken to unaccompanied minors. As previously stated in this thesis, these elements should be particularly considered according to Dublin III.

Following these comments, the Court refers to art. 6, 31, 32 and 33 of Dublin III. Art.6 and art.31 are both innovations with regards to the rights of minors compared to Dublin II, whereas art. 33 on early warning, preparedness and crisis management constitutes a new major safeguard in the Dublin procedure as previously noted. Art.32 concerns the exchange of health data before a transfer is carried out, indicating that the Member States should exchange such data if relevant.

As six children were involved in this case, the Court provided some comments aimed at the treatment of children in particular. The Court compares the case to previous case law, and refers first to the case of *M.S.S v. Belgium and Greece*, where it was stated that asylum seekers make up a “particularly underprivileged and vulnerable” population group who require “special protection.”<sup>88</sup>

The Court continues by noting that the requirement of “special protection” of asylum seekers is particularly important when the persons concerned are children, in view of their specific needs and their extreme vulnerability. With reference to previous case law, the Court stresses that “(...) the reception conditions for children seeking asylum must be adapted to their age (...)”<sup>89</sup>.

In addition to referring to case law, the Court observes the CRC: “(...) the Convention on the Rights of the Child encourages States to take the appropriate measures to ensure that a child who is seeking to obtain refugee status enjoys protection and humanitarian assistance, whether the child is alone or accompanied by his or her parents.”<sup>90</sup>

Summed up, these findings confirm what has been stated throughout this thesis. Children, including minors and unaccompanied minors, should benefit from strong safeguards in light of making up a particularly vulnerable group. Through the implementation of Dublin III, the protection and rights of unaccompanied minors have been further emphasized. The Court implies through its comments that breaches of this protection is not accepted, by stressing that certain considerations should be done when children are concerned.

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87 Case of *Tarakhel v. Switzerland*, para. 35, p.12

88 Case of *Tarakhel v. Switzerland*, para. 118, p.47

89 Case of *Tarakhel v. Switzerland*, para. 119, p.47

90 Case of *Tarakhel v. Switzerland*, para. 99, p.43

In my opinion, the Court reached a correct result in this judgement based on the circumstances of the particular case and the current sources of law. The Tarakhel family risked to be separated due to the reception practices in Italy. The focus on family unity throughout the regulation suggests that separation of family members should be avoided, especially when minors are concerned.

## **8.2 Case of *MA and Others v. Secretary of State for the Home Department***

This case will be referred to as the MA- judgment in the following passages for the sake of simplicity.

The MA- judgment concerned two minors of Eritrean nationality and a minor of Iraqi nationality, who applied for asylum in the United Kingdom. No members of their families were legally present in another Member State. As the minors had already lodged applications for asylum in other Member States, it was decided that the minors would be transferred to those States, which were considered responsible for examining their asylum applications.<sup>91</sup> The ECJ concluded that the minors should not be sent back to the countries where they first applied for asylum, but be granted the opportunity to stay in the state they were currently in.

The main principle that can be derived from the judgment is that “The Member State responsible for examining an asylum application made in more than one Member State by an unaccompanied minor is the State in which the minor is present after having lodged an application there.”<sup>92</sup>

The outcome of this judgment led to a proposal for significant upgrades to Dublin III art.8 (4). This followed from the Commission's announcement to address the ambiguity of the provision on unaccompanied minors who have no family, siblings or relatives on the territory of the Member States, and to take account of the relevant ruling of the MA-judgment.<sup>93</sup>

The proposal presented by the European Commission on 26 June 2014 adds to art.8 paragraph 4 the letters a-d, which specify the rights of unaccompanied minors and include the main principle of the MA-judgment.<sup>94</sup>

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91 Court of Justice of the European Union, Press release No 71/13, Luxembourg 6 June 2013, <http://curia.europa.eu/jcms/upload/docs/application/pdf/2013-06/cp130071en.pdf>, 4 April 2015

92 Press release 71/13

93 European Commission Press Release Database, Clearer EU rules for unaccompanied minors seeking international protection, Brussels 26 June 2014, [http://europa.eu/rapid/press-release\\_IP-14-723\\_en.htm](http://europa.eu/rapid/press-release_IP-14-723_en.htm), 4 April 2014

94 European Parliament Website, Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 604/2013 as regards determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or

This proposal of the Commission has been and is currently being discussed by the European Parliament and the Council of the EU. In its document of 20 November 2014, the Council proposed changes to the Commission's proposal.<sup>95</sup> These changes go against the outcome of the MA-judgment and the position of the European Parliament's Rapporteur.<sup>96</sup> For this reason the Council document has been criticized by NGOs.<sup>97</sup>

On 6 May 2015, the Civil Liberties Committee of the European Parliament stated that EU asylum applications for unaccompanied minors should be processed in the EU country where the child is present, which means that negotiations with Member States about the implementation of the proposed amendments will start shortly.<sup>98</sup>

I am of the opinion that the principle stated in the MA-judgement should be given in a provision, such as the suggested amendments to art.8 (4). The situation that occurred in the MA-case is not covered in the regulation. It will continue to prove difficult to solve similar cases in the future if the regulation does not expressly state how such situations should be handled. Furthermore, I personally think the outcome of the MA-judgment presents a desirable solution. It takes into consideration that the applicants are minors and unaccompanied. The hurdle of moving between Member States is straining for all asylum seekers. However, unaccompanied minors might experience this as especially demanding. For this reason it makes sense that the unaccompanied minor should be granted the opportunity to stay in the Member State he or she is currently in when there is an absence of family, siblings or relatives in the other Member States.

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relative legally present in a Member State, Brussels 26.6.2014,

[http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/com/com\\_com%282014%290382\\_/com\\_com%282014%290382\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/com/com_com%282014%290382_/com_com%282014%290382_en.pdf), 4 April 2015

95 Statewatch, Council of the European Union: Council document 15567/14, Brussels 20 November 2014, <http://www.statewatch.org/news/2014/nov/eu-council-int-prot-minors-15567-14.pdf>, 4 April 2015

96 European Parliament Website, Committee on Civil Liberties, Justice and Home Affairs, Draft report, 6.1.2015,

[http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/libe/pr/1045/1045170/1045170en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/libe/pr/1045/1045170/1045170en.pdf), 4 April 2015

97 Jesuit Refugee Service Europe, Comments on the European Commission's proposal for amendments to the Dublin III Regulation regarding unaccompanied minors, Brussels 23 January 2015,

[https://jrseurope.org/assets/Regions/EUR/media/files/150123\\_JRS\\_Europe\\_Christian\\_Group\\_Comments\\_on\\_COM\(2014\)0382.pdf](https://jrseurope.org/assets/Regions/EUR/media/files/150123_JRS_Europe_Christian_Group_Comments_on_COM(2014)0382.pdf), 4 April 2015

98 European Parliament, Press release, Unaccompanied minors' asylum applications: process where the kids are, says MEPs, 6.05.2015, <http://www.europarl.europa.eu/news/en/news-room/content/20150504IPR49610/html/Unaccompanied-minors'-asylum-applications-process-where-the-kids-are-say-MEPs>, 13 May 2015

### **8.2.1 Criticism of the amendments to art.8 (4)**

As cited above, the discussion of the proposed amendments is still ongoing and it remains to be seen when these amendments will be implemented. Critics within the legal community and NGOs have touched upon the amendments in art. 8(4) as well.

The legal scholar Steve Peers has commented on some shortcomings of the amendments in the blog post mentioned in 2.6, which I will present in this following passage.

Firstly, he points out that the proposal does not cover the position of those whose application for asylum has already been rejected in another Member State. The MA-judgment notes that in such cases the second Member State has the option to treat the application as inadmissible in accordance with the EU's asylum procedures. As the proposal does not cover the situation, it might be referred to the MA-judgment if the problem comes up in future cases.

Secondly, he notes that the new amendments would not clarify what is meant by the obligation to “inform” the child about applying for asylum and give him or her “effective opportunity” to apply, as stated in art.8 (4) (b) of the proposal. The current rule in the regulation to inform asylum seekers about the Dublin rules only applies once the person has applied for asylum, and not for individuals who have not applied yet. In Peers’ opinion there should be express rules on this issue, in order to ensure that the child is made fully aware of the choice of making a fresh application.

Thirdly, he sees it as problematic that the Member States themselves get to decide what is in the “best interests of the minor.” As discussed in 4.2, this principle is wide and open to interpretation.

He also mentions the controversial practice of trying to determine the age of teenagers who claim to be minors. Though the Asylum Procedures Directive has rules on this issue, there are no rules on what happens if the person turns 18 during the procedure.

Finally, he points out that the rules will only be relevant for those minors who have the effective possibility of moving between Member States, which excludes a number of minors from the new safeguards given in art.8 (4). One minor might want to stay in another Member State than the one he entered, and accordingly he travels to the other Member State. In light of being an unaccompanied minor, he is granted to have his application examined there according to the amendments. On the other hand, an unaccompanied minor who wants to apply for asylum in another Member State than the one he first entered, but who is not able to move to the other Member State, is only entitled to an examination of his application in the country he is currently in.

In its comment referred to in section 1, Save the Children elaborates on some of the same criticism given by Steve Peers.

Save the Children states that the practice of the child's best interests varies greatly across EU Member States. For this reason they suggest amending the proposal in order to ensure a coherent interpretation of this principle. They refer to art.23 (2) of the Reception Conditions Directive and claim that its list of factors is only indicative. Instead, they think the competent authorities should follow the detailed guidance provided by the Committee on the Rights of the Child, in particular in its General Comment no.6, 12 and 14, as well as UNICEF and UNHCR joint guidelines.<sup>99</sup> The Committee's most recent comment, no. 14, is referred to in section 4.2. As of their status of today, these comments are merely guidelines. If the comments should be implemented in the directive, regulation or both, Save the Children believes this would create clarity as to the understanding of the regulation's specific articles and the practices thereof.

Furthermore, Save the Children focuses on the vagueness of the amendment, by stressing that it "(...) is quite unclear about the exact scope of the cooperation and where lies the final responsibility for taking the final decision (...)." <sup>100</sup> For this reason they think implementing measures should be revised and it should be established standard operating procedures spelling out clearly the scope of such cooperation, the information to be exchanged and the timeframe for such procedure.<sup>101</sup> Dublin III opens for wider cooperation and information sharing between Member States, however the specification of such cooperation should not be undermined. In my opinion, precise rules on this matter would be advantageous for both the Member States and the asylum seekers.

Similar to Peers, Save the Children comments on the concept of "effective opportunity" in art.8 (4) (b). They maintain that the concept is not properly defined under the Recast Asylum Procedures Directive.<sup>102</sup>

Summed up, these examples show that though the amendments to art.8 (4) are in line with the MA-judgment, the amendments could still be further specified.

From my point of view, both Peers and Save the Children rightly present legitimate criticism of the amendments. If the wording of the amendments suffers from vagueness, this conflicts with their objective. Firstly, the objective is to comply with the MA-judgement, secondly to secure unaccompanied minor asylum seekers the protection they are entitled to. The outcome

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99 Save the Children comment, p.4

100 Save the Children comment, p.7

101 Save the Children comment, p.7-8

102 Save the Children comment, p.7

of the MA-case is considered in the amendments, however the specification of the further protection could ideally be improved. This should be done in order to simplify the interpretation of the amendments, and to avoid misinterpretations and conflicting outcomes, which might in turn lead to new judgments. Furthermore, it is in the interest of the Member States as well as the Courts that judgements are avoided as far as possible, as they are time consuming and expensive for all parties concerned.

### **8.3 Summary**

Even though Dublin III was recently implemented, case law has provided the regulation with significant input so far, especially in the area of unaccompanied minors through the MA-judgment. The Commission decided to await the outcome of this case, and amend the regulation accordingly. Legal scholars and NGOs both agree that the amendments constitute an improvement. On the other hand, they also point out areas in need of further modification.

### **9. Conclusions**

The previous sections have provided an overview of the Dublin system as it stands today, with particular focus on unaccompanied minors. This group is secured comprehensive protection in Dublin III art.6 and art.8 particularly. Dublin III represents an effort to improve and specify the rights of unaccompanied minors compared to Dublin II. An example is art.6 on guarantees for minors, which has no equivalent in Dublin II. Other examples include family tracing and the introduction of a representative for the unaccompanied minor.

The principle of “the best interests of the child” is continuously repeated throughout Dublin III. Maintaining this principle should be an aim for all acts based on the regulation. The repetition of this principle underlines its importance, and encourages Member States to implement it fully in all areas of the asylum process.

However, both Dublin II and Dublin III have been subject to criticism, and this has in turn led to a number of suggested improvements. These recommendations show that the practices in Member States so far have revealed that Dublin III does not fully work according to its objective.

Furthermore, it is still too early to evaluate whether or not the obligations concerning unaccompanied minors have been sufficiently fulfilled in practice in the Member States, taking into consideration Dublin III's recent implementation. The future practices as well as



court decisions will reveal if or to what degree the new obligations of Dublin III have been fulfilled.

As shown throughout this thesis, Dublin III contains new, detailed safeguards especially aimed at unaccompanied minors. This might suggest that Dublin III has strengthened the protection of this group.

As I see it, Dublin III constitutes a clear improvement of the rights of this group, at least on paper. The Regulation specifies the rights of unaccompanied minors to a larger extent than before. The suggested amendments to Dublin III art.8 (4) as a consequence of the MA-judgement further confirm the fact that the legislators aim for a more profound protection of this group. This is a clear recognition of unaccompanied minors as a particularly vulnerable group that should be subject to special care because of the extraordinary situation these children are in.

As a whole, these safeguards strengthen the rights of unaccompanied minors, provided that the Member States fully oblige to the new provisions.

On the other hand, the practices in the Member States do not always correlate with the regulation. This lack of correlation can occur due to vagueness in the regulation or from lacking implementation in the Member States, due to for instance over capacity, as seen in Greece and Italy. This development shows that de facto protection might prove more difficult.

In my opinion, the Dublin Regulation lacks a clear system of sanctioning the States that do not comply with the provisions. A system of sanctioning will encourage the Member States to act in accordance with the Regulation as far as possible in that State. If the State fails to do this, the State should seek help from other Member States. Alternatively, other Member States should be obliged to offer help to Member States that are not able to provide asylum seekers with sufficient reception conditions and protection. Only in this way are asylum seekers secured the support they are entitled to. Otherwise, Member States will continue to breach certain provisions of the Regulation, due to reasons such as over capacity and poor economy, which has been the case in e.g. Greece.

In answer to the main research question, when considering the Dublin III Regulation of today, the conclusion is that the protection of unaccompanied minor asylum seekers has been strengthened on paper. The de facto protection, on the other hand, is more uncertain. Only time will tell through the practices in the Member States if the protection stated on paper will be maintained de facto.

## 10. Bibliography

### 10.1 Books and articles

Doe, Susan/Furlong, John: *Researching European Law – a Basic Introduction*,  
*Legal Information Management*, 2006

Malanczuk, Peter: *Akehurst's Modern Introduction to International Law*, 7<sup>th</sup> edition, 1997

Shelton, Dinah: *Routledge Handbook of International Law*, 2009

### 10.2 Cases

HUDOC European Court of Human Rights, Case of *M.S.S v. Belgium and Greece*,  
Strasbourg 21 January 2011,  
[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050#{"itemid":\["001-103050"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050#{), 5 March 2015

HUDOC European Court of Human Rights, Case of *Rahimi v. Greece*, Strasbourg 5 April  
2011,  
[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"languageisocode":\["FRA"\],"itemid":\["001-104366"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{), 23 March 2015

HUDOC European Court of Human Rights, Case of *Tarakhel v. Switzerland*, Strasbourg 4  
November 2014, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-148070#{"itemid":\["001-148070"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-148070#{), 1 March 2015

InfoCuria – Case-law of the Court of Justice, Judgment of the Court (Fourth Chamber) 6 June  
2013,  
<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30ddf2df136276b74d50bc7291237abf87e9.e34KaxiLc3qMb40Rch0SaxuPaNf0?text=&docid=138088&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=148541>, 1 March 2015

### **10.3 Legislative materials**

EUR Lex, Council Regulation (EC) No 343/2003 of 18 February 2003,  
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003R0343&from=EN>,  
26 February 2015

EUR Lex, Regulation (EU) No 604/2013 of 26 June 2013,  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>,  
26 February 2015

EUR-Lex, Directive 2011/95/EU of the European Parliament and of the Council of 13  
December 2011 on standards for the qualification of third-country nationals or stateless  
persons as beneficiaries of international protection, for a uniform status for refugees or for  
persons eligible for subsidiary protection, and for the content of the protection granted  
(recast),  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF>,  
3 April 2015

EUR-Lex, Directive 2013/32/EU of the European Parliament and of the Council of 26 June  
2013 on common procedures for granting and withdrawing international protection (recast),  
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0032>, 3 April 2015

EUR-Lex, Directive 2013/33/EU of the European Parliament and of the Council of 26 June  
2013 laying down standards for the reception of applicants for international protection  
(recast),  
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0033>, 3 April 2015

### **10.4 Treaties**

European Court of Human Rights, European Convention on Human Rights,  
[http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf), 1 March 2015

EUR-Lex, Convention determining the State responsible for examining applications for  
asylum lodged in one of the Member States of the European Communities, <http://eur->

[lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41997A0819\(01\)&from=EN](http://lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41997A0819(01)&from=EN), 5 March 2015

European Parliament Website, Charter of Fundamental Rights of the European Union, [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf), 6 March 2015

United Nations, Statute of the International Court of Justice, [http://legal.un.org/avl/pdf/ha/sicj/icj\\_statute\\_e.pdf](http://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf), 13 March 2015

United Nations, The Universal Declaration of Human Rights, <http://www.un.org/en/documents/udhr/>, 6 March 2015

United Nations Human Rights, Convention on the Rights of the Child, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>, 4 March 2015

UNHCR, Convention and Protocol relating to the Status of Refugees, <http://www.unhcr.org/3b66c2aa10.html>, 4 March 2015

United Nations Treaty Collection, Vienna Convention on the Law of Treaties, Vienna 23 May 1969, <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>, 13 March 2015

### **10.5 United Nations documents**

United Nations Human Rights, General comment No.14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art.3, para.1), [http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC\\_C\\_GC\\_14\\_ENG.pdf](http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf), 6 March 2015

UNHCR, UNHCR Guidelines on Determining the Best Interests of the Child, May 2008, <http://www.unhcr.org/4566b16b2.pdf>, 6 March 2015

## **10.6 European Union documents**

European Council/Council of the European Union: EU Guidelines for the Promotion and Protection of the Rights of the Child,

<http://www.consilium.europa.eu/uedocs/cmsUpload/16031.07.pdf>, 6 March 2015

EUR-Lex, Communication from the Commission to the European Parliament and the Council: Action Plan for Unaccompanied Minors (2010-2014), Brussels, 6.5.2010, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:en:PDF>, 6 March 2015

European Parliament Website, Committee on Civil Liberties, Justice and Home Affairs, Draft report, 6.1.2015,

[http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/libe/pr/1045/1045170/1045170en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/libe/pr/1045/1045170/1045170en.pdf), 4 April 2015

European Parliament Website, Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 604/2013 as regards determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or relative legally present in a Member State, Brussels 26.6.2014,

[http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/com/com\\_com%282014%290382\\_/com\\_com%282014%290382\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/com/com_com%282014%290382_/com_com%282014%290382_en.pdf), 4 April 2015

Statewatch, Council of the European Union: Council document 15567/14, Brussels 20 November 2014, <http://www.statewatch.org/news/2014/nov/eu-council-int-prot-minors-15567-14.pdf>, 4 April 2015

## **10.7 Internet materials**

Court of Justice of the European Union, Press release No 71/13, Luxembourg 6 June 2013, <http://curia.europa.eu/jcms/upload/docs/application/pdf/2013-06/cp130071en.pdf>, 4 April 2015

EUROPA, Summaries of EU Legislation, Dublin II Regulation,

[http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/l33153\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33153_en.htm), 5 March 2015

European Commission, EU Charter of Fundamental Rights,  
[http://ec.europa.eu/justice/fundamental-rights/charter/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm), 6 March 2015

European Commission Press Release Database, Clearer EU rules for unaccompanied minors seeking international protection, Brussels 26 June 2014, [http://europa.eu/rapid/press-release\\_IP-14-723\\_en.htm](http://europa.eu/rapid/press-release_IP-14-723_en.htm), 4 April 2014

European Council on Refugees and Exiles, Dublin Regulation,  
<http://www.ecre.org/topics/areas-of-work/protection-in-europe/10-dublin-regulation.html>, 5 March 2015

European Court of Human Rights, Accession by the European Union to the European Convention on Human Rights, [http://www.echr.coe.int/Documents/UE\\_FAQ\\_ENG.pdf](http://www.echr.coe.int/Documents/UE_FAQ_ENG.pdf), 1 March 2015

EU Law Analysis, “Unaccompanied minor asylum-seekers: a step in the right direction?”, published 27 June 2014 by Steve Peers,  
<http://eulawanalysis.blogspot.no/2014/06/unaccompanied-minor-asylum-seekers-step.html>, 5 March 2015

European Parliament, Press release, Unaccompanied minors’ asylum applications: process where the kids are, says MEPs, 6.05.2015, <http://www.europarl.europa.eu/news/en/news-room/content/20150504IPR49610/html/Unaccompanied-minors'-asylum-applications-process-where-the-kids-are-say-MEPs>, 13 May 2015

United Nations Human Rights, Committee on the Rights of the Child,  
<http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>, 5 March 2015

## 10.8 Comments and reports

European Council on Refugees and Exiles, Comments from the European Council on Refugees and Exiles on the European Commission Proposal to recast the Dublin Regulation, <http://www.ecre.org/topics/areas-of-work/protection-in-europe/133.html>, 27 March 2015

European Council on Refugees and Exiles, The Dublin II Regulation: Lives on Hold – Full Comparative Report, <http://www.ecre.org/component/content/article/56-ecre-actions/317-dublin-ii-regulation-lives-on-hold.html>, 26 February 2015

Jesuit Refugee Service Europe, Comments on the European Commission's proposal for amendments to the Dublin III Regulation regarding unaccompanied minors, Brussels 23 January, [https://jrseurope.org/assets/Regions/EUR/media/files/150123\\_JRS\\_Europe\\_Christian\\_Group\\_Comments\\_on\\_COM\(2014\)0382.pdf](https://jrseurope.org/assets/Regions/EUR/media/files/150123_JRS_Europe_Christian_Group_Comments_on_COM(2014)0382.pdf), 4 April 2015

Migration Policy Institute, Mission, <http://www.migrationpolicy.org/about/mission>, 22 March 2015

Migration Policy Institute, Not Adding Up: The Fading Promise of Europe's Dublin System, <http://www.migrationpolicy.org/research/not-adding-fading-promise-europes-dublin-system>, 22 March 2015

Norwegian Organisation for Asylum Seekers, Et uverdigg sjansespill om asyl i Europa: Asylprosessen i Hellas og Dublin II-forordningen, April 2008, [http://www.noas.no/wp-content/uploads/2012/08/Et-uverdigg-sjansespill-om-asyl-i-Europa\\_Dublin.pdf](http://www.noas.no/wp-content/uploads/2012/08/Et-uverdigg-sjansespill-om-asyl-i-Europa_Dublin.pdf), 5 March 2015

Save the Children, Addressing Protection Needs of Unaccompanied Children within the Context of the Dublin related Procedures, [http://resourcecentre.savethechildren.se/sites/default/files/documents/150127\\_sc\\_comments\\_amendments\\_dublin\\_regulation\\_jan\\_2015.pdf](http://resourcecentre.savethechildren.se/sites/default/files/documents/150127_sc_comments_amendments_dublin_regulation_jan_2015.pdf), 26 February 2015