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Family Life Interrupted: Unaccompanied Asylum-Seeking Children in the Dublin III Family Reunification Procedure.

The case of Greece and Germany

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Abstract

This thesis explores the topic of the legal and practical constraints of the family reunification procedure applied to unaccompanied asylum-seeking children (UASC) under the Dublin III Regulation (DR III). It critically analyses the relevant provisions on the occasion of the multiple rejections of the '*take-charge request*s' from Greece by Germany given their impact on the right of UASC to family life. It also includes selected practical challenges stemming from the Greek and German practice which further prolong the family separations together with the crisis management measures deriving from the tensions at the Greek-Turkish borders as well as Covid-19 related challenges. It stresses that the selective compliance with only some parts of the Dublin provisions, the undue adherence to bureaucratic obstacles and the wrongful interpretation of the respective provisions contravene the purpose and scope of the DR III. Thus, this thesis seeks to explore how the UASC can effectively enjoy their right to family life as it is anchored not only in International and European human rights law but also in EU law. It stresses that a rights-compliant approach can be achieved by merely respecting the hierarchy of the criteria and by using the discretionary clauses when the rigid interpretation of the compulsory responsibility criteria puts family life of UASC at stake. Lastly, it underscores that due regard should be paid to the best interests of the child so as to pave the way towards a child-oriented implementation of the DR III.

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List of Abbreviation

AFSJ	Area of Freedom, Security and Justice
AIDA	Asylum Information Database
APD	Asylum Procedures Directive (recast)
ASC	Asylum Seekers' Card
BAMF	Federal Office for Migration and Refugees
BIA	Best Interests' Assessment
BIC	Best Interests of the Child
CEAS	Common European Asylum System
CFREU	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
CMW	Committee on Migrant Workers
CoE	Council of Europe
CRC	Committee on the Rights of the Child
DRC	Danish Refugee Council
DR II	Dublin II Regulation
DR III	Dublin III Regulation
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EKKA	National Center for Social Solidarity
ELENA	European Legal Network on Asylum
EP	European Parliament
EPRS	European Parliamentary Research Service
ERBB	Equal Rights Beyond Borders
EU	European Union
FRA	Fundamental Rights Agency
GAS	Greek Asylum Service
GC	General Comment
GCR	Greek Council for Refugees
GG	Government Gazette
ICCPR	International Covenant on Civil and Political Rights
IHRL	International Human Rights Law
IOM	International Organization for Migration
IPA	International Protection Act
IR	Implementing Regulation
JGC	Joint General Comment
JMD	Joint Ministerial Decision
MS	Member States
PICUM	Platform for International Cooperation on Undocumented Migrants
QD	Qualification Directive (recast)
RAO	Regional Asylum Office
RCD	Reception Conditions Directive (recast)
RIC	Reception and Identification Centers
RIS	Reception and Identification Service

RSA	Refugee Support Aegean
SOPs	Standard Operating Procedures
TCNs	Third County Nationals
TCR	Take-Charge Requests
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UAM (s)	Unaccompanied Minor (s)
UASC	Unaccompanied Asylum-Seeking Children
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
VCLT	Vienna Convention on the Law of Treaties

Introduction

1. Background Considerations

Following the mass influx of asylum seekers to Europe in 2015, an unprecedented number of 90.000 unaccompanied minors (hereinafter UAMs) arrived in the region.[1] According to official statistics, although the arrivals of UAMs have been gradually decreasing[2] as in 2019, almost 14.000 unaccompanied asylum-seeking children (hereinafter UASC) have registered in the EU,[3] the number of UASC's arrivals in Greece increased compared to 2018.[4] In particular, 5.099 unaccompanied minors, who fled war, violence or armed conflict were found in Greece at the end of April 2020, most of them coming from Afghanistan, Pakistan and Syria.[5] The country has received a considerable number of third country nationals (hereinafter TCNs), including a fairly large proportion of UASC as it constitutes a primary channel through which an overwhelming majority of people coming from the East can enter the European region.[6]

The already strained circumstances on the Aegean islands resulting from the lack of reception capacity, the cramped and unhygienic conditions, have been aggravated by

[1] Eurostat, 'Almost 90 000 Unaccompanied Minors among Asylum Seekers Registered in the EU in 2015 Slightly more than half are Afghans' (2016) < https://ec.europa.eu/eurostat/documents/2995521/7244677/3-02052016-AP-EN.pdf/> accessed 5 August 2020.

[2] Eurostat, 'Almost 20 000 Unaccompanied Minors among Asylum Seekers Registered in the EU in 2018 One Fourth are Afghans or Eritreans' (2019) < https://ec.europa.eu/eurostat/documents/2995521/9751525/3-26042019-BP-EN.pdf/291c8e87-45b5-4108-920d-7d702c1d6990> accessed 5 August 2020.

[3] Eurostat, 'Almost 14 000 Unaccompanied Minors among Asylum Seekers Registered in the EU in 2019 Almost One-Third Are Afghans' (2020) <https://ec.europa.eu/eurostat/documents/2995521/10774034/3-28042020-AP-EN.pdf/03c694ba-9a9b-1a50-c9f4-29db665221a8> accessed 4 June 2020.

[4] Between January and December 2019, 3852 UASC arrived in Greece while in 2018 the number was significantly lower, as 2369 UASC entered the Greek territory; UNHCR, UNICEF, IOM, 'Refugee and Migrant Children in Europe Accompanied, Unaccompanied and Separated' (January-December 2019) <https://data2.unhcr.org/en/documents/download/77274> accessed 5 August 2020.

[5] EKKA, 'Situation Update : Unaccompanied Children (UAC) in Greece' (April 2020) <https://data2.unhcr.org/en/documents/download/76484> accessed 4 June 2020; 3.741 and 3.350 UAMs were found in Greece in December 2018 and 2017 respectively, see: < https://data2.unhcr.org/en/documents/download/67534>; <https://reliefweb.int/report/greece/situation-update-unaccompanied-children-uac-greece-31-december-2017> accessed 5 August 2020.

[6] Victoria Galante, 'Greece's Not-So-Warm Welcome To Unaccompanied Minors : Reforming EU Law to Prevent the Illegal Treatment of Migrant Children in Greece' (2014) 39 Brook J Int'l L 746.

an additional, rather important factor. The Dublin III Regulation[7] (hereinafter DR III), as the cornerstone of the Common European Asylum System (hereinafter CEAS), establishes a common mechanism for the allocation of responsibility regarding the examination of the asylum application lodged in one of the EU Member States (hereinafter MS).[8] The DR III was designed to preventing multiple asylum applications by the same individual and have his/her claim examined by the responsible MS which is determined according to the hierarchy criteria and the discretionary clauses.[9] The applicable rules seem to have a burdensome impact mainly on the southern and eastern MS which are still being asked to deal with all the difficulties arising out of the large-scale of TCNs and be adhered to their human rights obligations.[10] Thus, this has led to an unbalanced distribution of asylum sharing in the EU while at the same time Dublin *take charge* (hereinafter TCR) and *take back* requests often have no tangible effects, when transfer decisions are not implemented.[11]

After the expiration of the EU Relocation Scheme in 2017,[12] particular attention had to be paid to the DR III, as it was the only legal pathway through which UASC could assert their right to family life within the EU. However, the ineffective application of the Dublin rules has led to the separation of children from their families despite the fact that the family unity considerations are the first in the hierarchy of the responsibility criteria.[13] According to the applicable standards, the UASC are entitled to be reunited

[7] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (2013) OJ L 180/31.

[8] Four other States are associated with the DR III, including Norway, Iceland, Lichtenstein, Switzerland.

[9] Amandine Scherrer, ECRE, 'Dublin Regulation on International Protection Applications - European Implementation Assessment' 4 (EPRS, 2020) <https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642813/EPRS_STU(2020)642813_EN.pdf> accessed 7 June 2020.

[10] For example, the UN High Commissioner for Refugees called for urgent improvement of living conditions in the reception centers, urging Greece to ensuring protection of the UASC and effective access to the asylum process <https://www.unhcr.org/news/press/2019/11/5ddfc2ea4/head-unhcr-calls-urgent-response-overcrowding-greek-island-reception-centres.html> accessed 7 June 2020.

[11] Francesco Maiani, 'Responsibility Allocation and Solidarity' in Jean-Louis De Brouwer, Philippe De Bruycker, Marie De Somer (eds), *From Tampere 20 to Tampere 2.0: Towards a new European Consensus* (European Policy Center 2019) 105.

[12] The relocation programme was officially terminated in September 2017 following the Council Decisions (EU) 2015/1523 and 2015/1601. Under this regime and according to the official statistics of the Greek Asylum Service, 492 unaccompanied minors were transferred from Greece to other MS as of 31.12.2017, see: <http://asylo.gov.gr/en/wp-content/uploads/2018/01/Relocation-Closing-Event_Presentation.pdf> and <https://www.asylumineurope.org/reports/country/greece/asylum-procedure/relocation> accessed 7 June 2020.

[13] Art. 8-11 DR III.

with their family or relatives residing in another MS, once the initial stages of the procedure are satisfied. Practice has shown that Germany received the highest number of the TCR from Greece the last years.[14] However, the dramatic increase in the number of refusals by the Federal Office for Migration and Refugees (hereinafter BAMF), mainly rooted in the same formalistic arguments such as the missing of the relevant deadlines, the lack of official translation of the evidentiary requirements or the insufficient proof of family ties has led to an adverse interpretation of the DR III. Hence, the incremental bureaucratic obstacles and the erroneous interpretation of the Dublin provisions on behalf of the BAMF equate to a *de facto* denial of the right to family unity of UASC which do not correspond to the *best interests of the child* principle (hereinafter BIC) nor the legal imperatives deriving from the UN Convention on the Rights of the Child (hereinafter UNCRC),[15] the ECHR and EU law.

UASC have been recognized as one of the world's most vulnerable groups who need special protection and humanitarian assistance.[16] In this regard, their dependency on adults, the support of whom is intrinsically connected with the children's physical and psychological well-being, and the recognition of such vulnerability entail that every child seeking asylum, whether accompanied, unaccompanied or separated, enjoys the applicable rights laid down both in international and European human rights instruments. Thus, States are obliged to take immediate action in order to ensure that the identification, the registration and the processing of the asylum applications of UASC are prioritized and therefore any relevant decision is taken in a prompt and fair manner.[17]

[14] According to the Official Statistics of the Greek Dublin Unit, the number of outgoing TCR sent by Greece to other MS has been considerably decreased in the biennium 2018/9 in relation to the large number of 9.531 requests lodged in 2017. In 2017, over 60% of the TCR went to Germany, in 2018 over 45% and in 2019 approx. 35% were sent to Germany while the rate of the acceptances remained below the one-third of the total outgoing requests. Despite the significant decrease, Germany is still receiving the highest number of the aforementioned requests from Greece; Statistical Data of the Greek Dublin Unit (7.6.2013-29.2.2020, revision date: 4/3/2020) <http://asylo.gov.gr/en/wp-content/uploads/2020/03/Dublin-stats_February20EN.pdf> accessed 5 June 2020.

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

[16] UNHCR, 'Refugee Children: Guidelines on Protection and Care' (1994) <https://www.refworld.org/docid/3ae6b3470.html> accessed 7 June 2020.

[17] Maura Marchegiani, 'The Best Interests Principle's Impact on Decisions Concerning Asylum-Seeking and Refugee Children' in Elisabetta Bergamini, Chiara Ragni, Fransesco Deana (ed), *Fundamental Rights and Best Interests of the Child in Transnational Families* (Intersentia 2019) 39.

Against this backdrop, in this ambiguous environment of arbitrary interpretations of the Dublin system, it is essential that the MS, acting within the principle of solidarity[18] and burden-sharing, closely cooperate, in order to enable the proper functioning of the DR III and ensure that no UASC is left in legal limbo outside of his/her family environment. Moreover, due regard should be paid to the European Commission's (the Commission) guidance concerning the proper implementation of the EU legislation in the area of asylum during the pandemic, mostly because, in these indubitably stressful times, the resulting restrictions on people's movement and access to asylum can disproportionally affect the most vulnerable groups, including UASC. Therefore, the Commission aptly pointed out that as the asylum procedures have been impacted due to Covid-19 pandemic, it is crucial that MS give priority to UASC and family unity cases while applying the DR III.[19]

2. Objectives and Scope of the Study

Considering the background previously described, there is the need of a homogeneous interpretation of the DR III so as to avert any unlawful rejections that deprive children of their families in the future. In light of the importance that the family unity entails for children together with the purpose of the DR III, namely the effective access to the asylum procedure, a best interests' assessment (hereinafter BIA) has been proven to be a child-centered response and an interpretative tool, covering the gaps and the inexpediencies arising out of the implementation of the Dublin provisions. In this sense, as respect for family life, family unity and the BIC form the nexus of the DR III,[20] it is clearly a worrisome trend how the inconsistencies and the misinterpretations of the legal provisions eventually undermine the family reunification procedure exposing UASC to multiple threats.

Therefore, the present study aims to identify the legal and practical deficiencies deriving from the implementation of the DR III in relation to the UASC in the course

[18] Consolidated version of the Treaty on the Functioning of the European Union (2012) OJ C 326/47; According to Art. 80 TFEU, the principle of solidarity is governing all EU Migration Policies.
[19] European Commission, 'COVID-19: Guidance on the Implementation of Relevant EU Provisions in the Area of Asylum and Return Procedures and on Resettlement' (Communication from the Commission, C (2020) 2516 final).
[20] Recitals 13-16 DR III.

of the family reunification procedure by stressing that the adherence to the protection standards and the BIC applied to UASC is not a discretionary duty of States but rather an obligation deriving from various instruments**,** including the DR III, EU primary law as well as the ECHR and the UNCRC. It also seeks to underscore the role of the BIC principle along the whole length of the Dublin process and thus claim that the enjoyment of the right to family life of the UASC would not be attainable, if the BIC was not effectively prioritized. Ultimately, this study will provide a better understanding of the reasons for the refusals of the TCR by the BAMF and will explore how the bilateral limits detrimentally affected the right to family life of UASC. Thus, the present study will explain how the cooperation between Greece and Germany has adversely affected the right to family life of UASC due to the erroneous interpretation and application of the DR III and the failure to incorporate the BIC into the domestic practices, as opposed to the legislative and jurisprudential standards laid down in international and European human rights law.

In a nutshell, the present study aims to answer the following questions:

- What are the legal and practical barriers of the family reunification procedure applied to UASC under the DR III?
- How can the UASC effectively enjoy their right to family life in the course of the Dublin process?

3. Methodology

For the purpose of answering the research questions the thesis is structured in five main chapters:

To begin with, chapter 1 will focus on how the right to family life is entrenched in the international and European Human Rights Law. Key provisions will be examined from the standpoint of the right of children to protection and care. Secondly, Chapter 2 will deal with the right to family life as it is anchored in the EU legal order. For this reason, it will be investigated how the EU primary and secondary law protect the right to family life, taking also into account relevant case law from the CJEU. Both Chapter 1 and 2 serve as a fundamental basis for the legal scrutiny which will be done in the next sections. In addition, the main questions of the thesis are covered under Chapter 3 and 4. The former will examine the family reunification procedure for UASC under the DR

III on the example of Greece and Germany while at the same time the theoretical legal framework will be critically analyzed. The interplay between States' practice allows to ascertain how the law is applied in practice and thus leads to the wrongful implementation of the respective provisions. As the BIC is an integral part of the DR III, its relevance with the international and European human rights as well as EU law will be underscored.

Furthermore, Chapter 4 will present the persistent challenges identified that prevent the UASC from being reunited with their families and further prolong family separations. The respective deficiencies have been viewed on a two-pronged basis. Firstly, bilateral limits on the Dublin transfers will be examined on the occasion of the administrative arrangements concluded between Greece and Germany as they have detrimentally affected the UASC's right to family life. Secondly, main challenges that the UASC face in Greece will be critically analyzed as they affect the well-functioning of the Dublin process, either by hampering the filing of the TCR or by failing to substantially incorporate the BIC into the domestic interrelated practices. Lastly, Chapter 5 will present the findings of the study after having assessed the functionality of the DR III for the UASC in light of the right to family life and the BIC. Accordingly, the same Chapter will equally include key recommendations to overcome the uneven and questionable practices of MS with the intention to pave the way towards a child-oriented implementation of the DR III.

The method of collection of relevant materials has been the online research through the electronic data, e-books, academic journals along with international, European and domestic legal instruments. Relevant reports, working papers and policy documents have been used in order to adequately explain the actual practice of Greece and Germany. Several landmark cases from both the CJEU and the ECtHR have been embodied when pertinent, pointing out that the Greek and German practice contravenes the scope of the DR III by addressing the lack of conformity of the national practices with the jurisprudential standards in the process of family reunification.

4. Delimitations

This study will not address the issue of the allocation of responsibility in the absence of family connections of UASC in one of the MS[21] and therefore the question of which State is competent for the examination of such asylum applications. Also, it will not extensively analyze the case of married UASC,[22] as most of the cases found pertain to unmarried UASC.[23] Notably, it will focus on the family reunification procedure only in the course of the status determination process, namely when those children are still applicants of international protection and not in the framework of Family Reunification Directive[24] which applies to persons who have already obtained refugee status in which case the concept of derivative rights applies.

[21] Art. 8 (4) DR III.
[22] Art. 8 (1) (b).
[23] Therefore, the cases included in section 3.7 focus on Art. 8 (1) (a), (2) and Art. 17(2) DR III, while Art. 16 and 17 (1) are also mentioned in the theoretical analysis, providing an overall assessment of the legal framework applied to UASC.
[24]Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (2003) OJ L 251/12.

1. The Right to Family Life under International and European Human rights Law

1.1 Introductory remarks

Many children fleeing persecution and conflict are often being separated from their families. Some of them may have had to leave their families back in their home countries whereas others are being left alone in the course of perilous journeys seeking the road to safety. Considering that children are even more susceptible in the migration context due to the numerous threats such as sexual and gender-based violence, abduction, recruitment in armed groups, human trafficking or detention while on the move for uncertain periods and in substandard conditions,[25] living in their family environment may alleviate such harmful experiences. It is apparent that at all stages of the migration route, minors are disproportionately vulnerable and this is further escalated for unaccompanied or separated children.[26] In this context, family traditionally stands as a backbone for children's well-being and thus the separation from family members can have dire implications both on their mental health as well as on psychosocial development.

Against this background, there are several provisions in the international and the regional instruments that protect family by safeguarding the right to family life and to family unity and thus such expanded protection could be seen as an indicator of the magnitude of the right. At the same time, the terms *"family life"* and *"family unity"* are often used interchangeably since family is seen as a source of protection and assistance especially within the refugee context.[27] Also, the right to "*family reunification"* has been gradually recognized in both international human rights and European law and accordingly States have the duty to reunite close family members in case they cannot enjoy the right to family life elsewhere.[28] In order to understand the normative pillar

[25] IOM, 'Addressing the Needs of Migrant Children' (Department of Migration Management, 2018) < https://eea.iom.int/sites/default/files/publication/document/7-IOM-Addressing-needs-migrant-children.pdf> accessed 8 May 2020.
[26] Ibid.
[27] Kate Jastram and Kathleen Newland, 'Family Unity and Refugee Protection' in E. Feller, V. Türk, and F. Nicholson, (eds), Refugee Protection in International Law: UNHCR's Global Consultations on International Protection, (CUP 2003) 562-563.
[28] Ibid 576-577. In this sense, it must be highlighted that in the case of recognized refugees, the *'elsewhere approach'* becomes inapplicable due to the '*insurmountable obstacles'* of enjoying their family life in their country of origin.

and the interplay between the right to family life and family unity, the following clarification should be made: *the family unity is substantiated through the family reunification action whilst the latter facilitates the enjoyment of family life*.[29] Thereby, respect for the right to family unity has a two-pronged dimension, since it requires that States steer away from pursuing actions which could possibly amount to family separations and positively take measures to facilitate the family reunification process[30] especially when the family unit has been forcibly detached.[31]

Taking into account the above, the present chapter will primarily focus on the descriptors used in the international and European human rights law in the sphere of the right to family life and family unity. In response to the broad international consensus that children on the move need appropriate protection and assistance, special attention will be paid to the UNCRC and its main attributes identified in connection with the right of the child to protection and care from the standpoint of family unity. Hence, applicable provisions related to the sole protection of children, which are flawlessly embodied in the ambit of family unity, will be discussed accordingly.

1.2 International Level

The United Nations has adopted nine legally binding treaties which along with the Universal Declaration of Human Rights (hereinafter UDHR) [32] constitute the nucleus of the international human rights law (hereinafter IHRL).[33] Although there is not an internationally accepted legal definition for the notion of family, three intertwined concepts can be found in IHRL.[34] Starting from the backbone of IHRL, the UDHR

[29] Dallal Stevens, 'Asylum-seeking families in current legal discourse: a UK perspective' (Journal of Social Welfare and Family Law, 2010) 6-7.
[30] Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee of the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, (2017), CMW/C/GC/4-CRC/C/GC/23, para 27.
[31] UNHCR, 'Summary Conclusions: family unity, expert roundtable, Geneva, November 2001' in Refugee Protection in International Law: UNHCR's Global Consultations on International Protection, (Feller et al. eds), (CUP 2003) 604-608, para. 5.
[32] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III).
[33] List of core international human rights instruments < https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx> accessed 8 May 2020.
[34] Olga A. Khazova, 'International Children's Rights Law: Child and the Family' in Ton Liefaard, Ursula Kikelly (ed), *International Human Rights of Children* (Springer 2019) 162.

recognizes the family as a '*fundamental unit of society'*, which is equally echoed[35] in the International Covenants on Civil and Political Rights (hereinafter ICCPR) and Economic, Social and Cultural Rights, in Articles 23[36] and 10[37] respectively. In reality, the concept of family has been enlarged[38] and may vary due to the cultural differences of States or even from region to region within a State.[39] Diverse forms of families - amongst others, single parents or unmarried couples and their children- are entitled to the same level of protection and therefore States should ensure that such protection is adequately implemented on the national scale.[40] Notably, the protection of such family still remains relevant,[41] despite the geographical separation of family members.

From a child-rights perspective, it should be indicated that the ICCPR devotes a particular provision[42] to the protection of minors which requires that States adopt special measures in addition to the ones applied for all individuals under Art. 2. However, this explicit embedding of Art. 24 does not preclude juveniles from enjoying all civil rights enshrined in the ICCPR.[43] Additionally, the substantial value of the family for the lives of children is contextualized in the way that it is the indispensable and incumbent force needed for ensuring the protection of minors and hence the latter's harmonious advancement lies within the parental responsibility.[44] In this regard, any form of discrimination that prevents children from enjoying their right to family life is prohibited.[45]

[35] The same approach is adopted by the ICMW; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18 December 1990) 2220 UNTS 3.
[36]International Covenant on Civil and Political Rights (adopted 16 December 1966) 999 UNTS 171.
[37]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966) 993 UNTS 3.
[38] Khazova (n 34) 163.
[39] UN Human Rights Committee, CCPR General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, 27 July 1990, para. 2.
[40] Ibid.
[41] In this regard, although no reference is made to the right to family unity in the 1951 Refugee Convention nor its Protocol of 1967, it was unanimously endorsed by the Conference of Plenipotentiaries in its Final Act; Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137; Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267; UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (adopted 25 July 1951) Section IV (B).
[42] Art. 24.
[43] UN Human Rights Committee, CCPR General Comment No. 17: Article 24 (Rights of the Child), 7 April 1989, para. 2.
[44] Ibid, para. 6.
[45] Art. 26 ICCPR.

In the same vein, Art. 17 must be jointly read with the Art. 23 in the family reunification context,[46] meaning that States have a positive obligation to ensure that family life is protected. In such case, even though the ICCPR does not recognize the right of aliens to enter or reside in the territory of a State party,[47] a rejection of family reunification request may be considered an arbitrary or unlawful interference with the right to family life under Art. 17.[48] The latter is in conformity with the prohibition of separation enunciated in Art. 9 UNCRC where the connection with the BIC seems of paramount importance as, for instance, it can impose a lawful hindrance to the family reunification where abuse, violence,[49] neglect or custody arrangements of the child prevail.[50]

In the same vein, the UNCRC became the springboard for many governments to take action towards child-friendly policies and enabled children to make their voices heard and be involved in the society. In fact, the outline and content of the UNCRC leaves no doubt that the rights of the child are indivisible and they should not be viewed in isolation from each other while minors are recognized as rights holders, being afforded individual rights. Thereby, the value of the family for children is solidified by several provisions in the UNCRC, starting already from the fifth preambular paragraph. Thus, the concept of family unity has a wide scope of application, either by explicit or implicit reference to other interrelated rights, as part of the triangular structure composed of protection, provision and participation rights.[51]

In light of the above, the right of children to know and be cared for by their parents and the right to preserve their family relations without an unlawful interference are prescribed in Art. 7 and 8 respectively. Moreover, under Art. 9, children are entitled to enjoy protection against separation from their parents unless it is imperative in

[46] CoE, 'Family Reunification for Refugee and Migrant Children, Standards and Promising Practices' (April 2020) 19 <https://rm.coe.int/family-reunification-for-refugee-and-migrant-children-standards-and-pr/16809e8320> accessed 10 July 2020.
[47] UN Human Rights Committee, CCPR, General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986, para. 5.
[48] CoE (n 46) 21.
[49] UN Committee on the Rights of the Child, General comment No. 13 (2011): The right of the child to freedom from all forms of violence, 18 April 2011, CRC/C/GC/13, para. 46, 54.
[50] UN Committee on the Rights of the Child, General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, para. 81.
[51] Kirsten Sandberg, "Children's right to protection under the CRC" in A. Falch-Eriksen, E. Backe-Hansen (eds.), Human Rights in Child Protection-Implications for Professional Practice and Policy (Palgrave Macmillan 2018) 15.

compliance with the BIC.[52] The right to seek family reunification is stipulated in Art. 10 where both children and parents have the right to apply to enter or leave a State for the purposes of family reunification and which, unlike Art. 9, is relevant to cross-border familial separations.[53] Thereby, children have the right to maintain personal relations and contact with their parents whereas the prohibition of unlawful interference with the right to family life as defined in Art. 17 ICCPR is similarly reflected in Art. 16 UNCRC.[54]

In a similar spirit and by virtue of the manifold dimension of the right to family unity emanating from the numerous relevant provisions, a pivotal distinction should be made; the family unity as a '*concept of derived rights'* and as *'a prohibition on separating the child from his/her parents'*.[55] The former means that children are entitled to derive rights and benefits from the status of their parents,[56] family members or guardians, where appropriate, due to their intrinsic dependence on the family whereas the latter is associated with the obligation of States not to separate the child from his/her parents and further smooth the unity with them.[57] Under the first identified pillar, family unity is conceived as a scheme whereby children can pragmatically enjoy their rights and Art. 18 correspondingly delineates that the child's breeding remains a parental or of a guardian's primary responsibility. On the other hand, the right of the child to be cared for by the parents as well as the right to preserve family relations, which interpretatively fall under the second pillar, are articulated in Art. 7 and 8 respectively.

As the right to family reunification is firmly established in Art. 10 and forms a substantial provision for the protection of family unit under IHRL, it seems rather crucial to shed light on its scope and application where a conflict may arise due to the exclusive jurisdiction of States to control the entry or residence of TCNs. In particular, both children and parents are beneficiaries of the right to apply for family reunification and albeit States are inclined to increasingly reject such requests, they have the onus to

[52] John Tobin and Judy Cashmore, 'Art . 9 The Right Not to Be Separated from Parents' in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (OUP 2019) 308.
[53] Jason M Pobjoy and John Tobin, 'Art . 10 The Right to Family Reunification' in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (OUP, 2019) 344.
[54] Ciara Smyth, *European Asylum Law and the Rights of the Child* (1st edn, Routledge 2014) 140.
[55] Ibid.
[56] In the migration context, this mainly derives from the international refugee law.
[57] Smyth (n 54) 142.

justify any potential refusals,[58] having due account to the requirements of Art. 9, 10, 16 and 3 UNCRC.[59] In view of the fact that Art. 10 explicitly affords children with the right to be reunited with their families, a blanket prohibition on such right is in violation of the said provision.[60] On top of that, the unambiguous linkage with Art. 9 endorse the presumption in favor of approval of the family reunification request on the grounds that stringent limitations are articulated, as any separation of families must be lawfully justified under the BIC imperatives.[61] Besides, given that both Art. 9 and 10 have far-reaching ramifications for UASC or refugee children, the whole process must be conducted in a *'a positive, humane and expeditious manner'*[62] and therefore States shall take appropriate measures to guarantee that the procedure is accessible to children and their parents. In this context, the Executive Committee of the UNHCR endorsed the magnitude of the right to family reunification of separated refugee families in respect of the realization of their right to family unity and urged States to facilitate the family reunification procedure.[63]

Against this backdrop, Art 22 (2) complements Art. 9 and 10 as it stipulates that States shall cooperate with the relevant organizations in order to assist the child be reunited with his/her family. Therewith, the much-needed reference to UASC and children who already have refugee status is actualized, prescribing the obligation of States to trace children's parents or other family members, as family tracing is a substantive component of any search for durable solution inextricably linked with the protection of those children.[64] Most notably, Art. 22 provides for a '*rights-plus framework'* which not only requires that States take necessary measures through which the appropriate level of protection and humanitarian assistance are secured but also urges States to consider any supplementary protection and assistance required with full respect to all rights enshrined in the UNCRC and other international human rights instruments.[65] The

[58] This primarily derives from Art. 16.
[59] Pobjoy, Tobin (n 53) 346.
[60] Ibid, 348.
[61] Ibid.
[62] CMW, CRC (n 30) para 35.
[63] Executive Committee of the High Commissioner's Programme, Family Reunification No. 24 (XXXII) - 1981, 21 October 1981, No. 24 (XXXII), <https://www.refworld.org/docid/3ae68c43a4.html> accessed 10 May 2020.
[64] CRC (n 50) para. 80.
[65] Jason M Pobjoy, 'Article 22 Refugee Children' in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (OUP 2019) 854.

latter can be read in conjunction with the UNHCR Guidelines on Protection and Care where one of the best ways to protect those children is to protect the families and ultimately the communities.[66] Hence, a closer look at the cases of UASC, and where no conflict with the BIC arises, family reunification procedures should be consistently and expeditiously implemented which presupposes a series of coordinated actions such as registration, age assessment and effective family tracing methods.

1.3 European Level

At regional level, the right to live together so that the family relationship may flourish normally is a substantial constituent of family life laid down in Art. 8 ECHR.[67] In particular, Art. 8 protects '*the right to respect for private and family life'* while it can be vindicated not only from the nationals of a State party to the ECHR but also of people who reside at their territory, irrespective of their nationality.[68] Thus, it becomes relevant with the right of refugees and asylum seekers to respect for family life to the extent that they may endure unnecessary incremental suffering as being away from their family members while seeking international protection.[69] In this regard, the Strasbourg court has endorsed the State's right to control the entry and residence of aliens in its soil due to the well-established international law provisions.[70] Nonetheless, if any such refusal to be admitted in a territory or a potential expulsion of an immigrant contravenes the rights entrenched in the ECHR, then the relevant practice may be defied and the court require that States provide them with a legal status equal to a lawful residence. In general terms, the ECtHR has pointed out that the ECHR does not guarantee the right

[66] UNHCR (n 16).
[67] European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5; CoE, European Court of Human Rights, 'Guide on Article 8 of the European Convention on Human Rights - Right to respect for private and family life' (2019) 54 <https://www.refworld.org/docid/5a016ebe4.html> accessed 18 April 2020.
[68] Pursuant to Art. 1 ECHR; *Abdulaziz, Cabales and Balkandali v The United Kingdom* App nos 9214/80, 9473/81 and 9474/81 (ECtHR, 28 May 1985).
[69] CoE, Commissioner for Human Rights, 'Realising the right to family reunification of refugees in Europe' (2017) 5 <https://www.refworld.org/docid/5a0d5eae4.html> accessed 28 April 2020.
[70] *Bouchelkia v France* App no 112/1995/618/708 (ECtHR, 22 January 1997) para. 42; *Beldjoudi v France* App no 55/1990/246/317 (ECtHR, 26 February 1992).

of an alien to enter or to reside in a specific country,[71] since the rationale of these rights are intrinsically connected with the Statehood.[72]

In light of the foregoing, if any possible interference to the exercise of the right to family life, as a qualified right under the Art. 8, is in accordance with the law and necessary in a democratic society for the protection of one of the purposes laid down in Art. 8 (2) ECHR, then a restriction to the right may be lawfully warranted. Thus, the said right is regarded as a freedom from interference reflected in Art. 16 UNCRC and 17 ICCPR[73] respectively though such interference should always be subjected to judicial review.[74] On the opposite site of the spectrum, States have the positive obligation to allow for family reunification of children with their family members, facilitating the enjoyment of their right to family life.[75] Besides, the ECtHR has held that the existence of family life is not interrupted when parent (s) and child are no longer cohabit.[76] Nonetheless, in an effort to fairly balance immigration controls and applicants' right under Art. 8,[77] the ECtHR has taken into account important considerations[78] such as the precarious immigration status[79] of an applicant or even the deceiving conduct of parents where children are used for the fulfillment of their own interests such as the regularization and residence status.[80]

In cases involving children, this practice can adversely affect and disrupt the child's right to family unity and create an unstable environment, especially when deportations or expulsions take place.[81] In this sense, the court has recognized the applicability of Art. 8 where minors are seeking entry in the territory of a State party so as to join their

[71] *Nunez v Norway* App no 55597/09 (ECtHR, 28 September 2011).
[72] However, under the Art. 4 of the Protocol 4 to the ECHR collective expulsions of aliens are prohibited; Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto, 16 September 1963, ETS 46.
[73] CoE (n 46) 23.
[74] The ECtHR has consistently followed a three-pronged test for assessing the limitation of non-absolute rights under Art. 8-11 ECHR pursuant to States' wide margin of appreciation while exercising such powers.
[75] *Sen v The Netherlands* App no 31465/96 (ECtHR, 21 December 2001).
[76] CoE (n 46) 26; *Berrehab v the Netherlands* App no 10730/84 (ECtHR, 21 June 1988) para. 21.
[77] *Osman v Denmark* App no 38058/09 (ECtHR, 14 June 2011).
[78] CoE (n 46) 24.
[79] *Nunez v Norway* (n 71) para. 70.
[80] *Butt v Norway* App no 47017/09 (ECtHR, 4 December 2012).
[81] Eliahu Frank Abram, 'The Child's Right to Family Unity in International Immigration Law' (17 Law & Policy (1995)) 398-399.

family members and fully enjoy their right to family life.[82] In its well-established jurisprudence, the ECtHR has repeatedly stressed that States have the positive obligation to allow the entry of UAMs with the intention to effectively enjoy their right to family life. The extreme vulnerability of children has always been a decisive factor in an attempt to make a fair balance between the applicants' individual circumstances and the exclusive jurisdiction of States to exercise border controls. In the *Mayeka* case, it was made clear that '*UAMs' extreme vulnerability takes precedence over considerations relating to the status of illegal migrant*'[83] and States should facilitate the family reunification process,[84] which can be plausibly justified as such children are a part of a '*particularly underprivileged group'* of asylum-seeking population who due to their age and lack of independence need special care and protection.[85] The court's assessment fully incorporates a rights-based approach for the protection of minors by highlighting that even in cases where States take measures to combat the so-called '*illegal immigration*,' they should always comply with their international obligations, namely the ECHR and the UNCRC.[86]

[82] Hélène Lambert, 'The European Court of Human Rights and the Right of Refugees and Other Persons in Need of Protection to Family Reunion' (OUP 1999) 11 International Journal of Refugee Law 431; *Gül v Switzerland* App no 23218/94 (ECtHR, 19 February 1996).

[83] Zarina Rahman, Amanda Taylor, 'Allocating responsibility for an asylum application through Convention rights: The potential impact of ZAT & Others' (EDAL, 3 March 2016) < https://www.asylumlawdatabase.eu/en/journal/allocating-responsibility-asylum-application-through-convention-rights-potential-impact-zat> accessed 18 June 2020.

[84] *Mayeka and Mitunga v Belgium* App no 13178/03 (ECtHR, 12 January 2007) para. 83.

[85] *Tarakhel v Switzerland* App no. 29217/12 (ECtHR, 4 November 2014) para. 119. The extreme vulnerability of children has been equally recognized for those accompanied by their parents in the context of reception conditions; *Popov v France* App nos 39472/07 and 39474/07 (ECtHR, 19 January 2012).

[86] *Mayeka and Mitunga v Belgium* (n 84) para. 81.

2. The Right to Family Life under EU Law: Child-related Provisions

2.1 EU Primary law

The EU legal order has a two-tier structure regarding human rights protection. The Charter of the Fundamental Rights of the European Union (hereinafter CFREU),[87] and the fundamental rights as general principles[88] are the leading tools through which promotion, respect and protection of human rights are meant to be achieved. However, as for the general principles, after the entry into force of the Treaty of Lisbon,[89] the CFREU has been regarded as the sole source of human rights norms in the EU regime as affirmed by the Court of Justice of the European Union (hereinafter CJEU) in several cases.[90] Therefore, its higher normative status conferred by the Art. 6 (1) of the Treaty of the European Union[91] (hereinafter TEU) , notably its power as a source of EU primary law and its pre-eminence in the relevant jurisprudence of the CJEU have a solid effect in the interpretation of the fundamental rights in the EU legal order.

In light of the aforementioned, the right to family life is unequivocally a much-debated topic in the EU political, legislative and judicial arena. It is acknowledged under Art. 7 CFREU which prescribes that "*Everyone has the right to respect for his or her private and family life, home and communication*s". It must be construed in compliance with the Explanations relating to the CFREU[92] which is a basic reference instrument for the CJEU.[93] At this point, it seems rather critical that the rights guaranteed in Art. 7 commensurate with the Art. 8 ECHR,[94] as they have the same ambit. Due to the fact that Art. 7 is not an absolute right, it is subject to a number of restrictions and therefore MS, which are bound by the CFREU when they are implementing EU law, can only

[87] Charter of the Fundamental Rights of the European Union (2012) OJ C 326/391.
[88] The general principles were originally developed by the CJEU; Their source can be found in Art. 6 (3) TEU.
[89] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (2007) OJ C 306/1.
[90] Steve Peers and Others, 'The EU Charter of Fundamental Rights and Immigration and Asylum Law' in EU Immigration and Asylum Law (Text and Commentary) (Brill Nijhoff 2015) 32.
[91] Treaty of the European Union (2012) OJ C 326/13.
[92] Explanations relating to the Charter of Fundamental Rights (2007) OJ C 303/17.
[93] Art. 6 (1) TEU stipulates that '*the EU Charter shall be interpreted with due regard to the explanations'*. Also, Art. 52 (7) CFREU explicitly indicates that the explanations shall be given '*due regard by the Courts of the Union and of the Member States'.*
[94] Explanations to the CFREU (n 92) 20.

interfere with the enjoyment of the right to family life under the conditions laid down in Art. 52 CFREU.

In addition, the right to family life is naturally relevant with the families that include children and in this context Art. 24 (2) CFREU on the BIC applies.[95] Notably, Art. 7 may overlap with a number of other provisions, though its interaction with Art. 24 (2) seems of utmost importance on the grounds that children as family members are individually entitled to the right to family life themselves.[96] In the migration context, Art. 7 is one of the most frequently used legal routes, as the right to family reunification has been proven to be the biggest source of immigration into the EU, in the absence of which the right to family life would remain impracticable for the majority of immigrants.[97] In fact, the CJEU has underscored that a balanced and reasoned decision must be taken by States with respect to Art. 7 and 24 (2), when family reunification cases are adjudicated and the BIC should always be incorporated in the reasoning.[98] Similarly, inspired by Art. 9 UNCRC, Art. 24 (3) CFREU acknowledges that children have the right to maintain personal relationship and direct contact with both parents on a regular basis, unless it is contrary to their interests.

Equally, the European Parliament (hereinafter EP) invited the Commission and the MS to recognize children as right holders and to ascertain that the BIC is adequately reflected in all policies affecting children. It further called them to '*facilitate family reunification in a positive humane and expeditious manner*' for migrant children[99] in line with Art. 10 UNCRC which constitutes a decisive juncture since the explicit correlation between the CFREU and the UNCRC, as stated in the explanations,[100] is further corroborated by the EU and prominently in the EP resolution. Thereby, the EP indicated that children's rights should be at the heart of the EU policies[101] and that the

[95] The EU competence in the protection of the rights of the child can be found in Art. 3 TEU.
[96] Shazia Choudhry, 'Right to Respect for Private and Family Life (Family Life Aspects)' in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds) *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2014) 193.
[97] Ibid, 191.
[98] *Joined Cases C–356/11 and C–357/11 O and S v. Maahanmuuttovirasto and Maahanmuuttovirasto v L* (2012) ECLI:EU:C:2012:776, paras 76 -82.
[99] European Parliament Resolution on the 25th anniversary of the UN Convention on the Rights of the Child, 26 November 2019, P9_TA(2019)0066.
[100] Explanations to the CFREU (n 92) 25.
[101] The EP called on the Commission to explore how the EU as a body can accede to the UNCRC; EP (n 99) GC 5.

legal obligations enshrined in both the UNCRC and the CFREU should be respected accordingly.

2.2 EU Secondary law

2.2.1 The Common European Asylum System

The secondary legislation of the EU in relation to the right to family life of TCNs is mainly encompassed in FRD, though the CEAS, which is anchored in the abolition of the internal borders between the MS,[102] has a number of relevant provisions, prescribing relevant procedural safeguards applied to UAMs. The CEAS refers to the legal status of those qualified as refugees in accordance with the 1951 Refugee Convention but also it comprises provisions relating to the reception standards of the international protection applicants, the asylum procedures, the determination of the State responsible to examine the asylum claims and new forms of protection such as the subsidiary and temporary protection.[103]

The most relevant provisions linked with the right to family life through the family reunification procedure are contained in four legislative acts, the backbone of the CEAS, videlicet the Reception Conditions Directive (hereinafter RCD),[104] the Asylum Procedures Directive (hereinafter APD),[105] the DR III, and the Qualification Directive (hereinafter QD).[106] In an attempt to elucidate the pertinent substantive and procedural aspect of the right to family life applied to children and more concretely to UAMs, the respective provisions affecting the latter will be examined. In particular, the RCD applies from the moment an international protection request is lodged in one of the MS. Under Art. 23 and 24, '*Member States shall take due account to family reunification*

[102] Art. 3 (2) TEU.
[103] Vincent Chetail, 'The Common European Asylum System: Bric-à-brac or System?' in Vincent Chetail, Philippe De Bruycker, and Francesco Maiani (eds), *Reforming the Common European Asylum System: The New European Refugee Law* (Brill/Nijhoff 2016) 4.
[104] 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 (2013) OJ L 180/96.
[105] 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 (2013) OJ L 180/60.
[106] 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 (2011) OJ L 337/9.

possibilities when assessing the best interests of the child' and '*they shall start tracing the members of UAMs' family as soon as after an application of international protection is made'*. The appointment of a representative is an indispensable procedural safeguard since s/he guarantees the child's well-being and best interests in all proceedings in the same manner that a parent represents his or her child.[107] In the same vein, strengthened procedural rights are accorded to the UAMs under the APD, such as the appointment of a representative who may be the same person as the one appointed under the RCD, aiming to provide stability for the child within the scope of the asylum process.[108]

Regarding the QD, it applies only after the international protection is granted in one of the MS. Thereby, UAMs are acknowledged as a vulnerable group[109] and as such they are entitled to be assisted by a legal representative or a legal guardian, to be placed with relatives and be subjected to a regular assessment of their situation. The family identification is relatively reinforced since the endeavor to trace the family members has to start as soon as after the granting of international protection and only if the process has not already started during the asylum procedure.[110] In light of the maintenance of the family unity, Art. 23 (2) delineates that family members who themselves do not qualify for international protection, they may be entitled to residence status and thus claim benefits under the Art. 24 and 25.[111]

2.2.2 The Dublin III Regulation

Although part of the CEAS, the distinct reference to the DR III is of pivotal importance, as the right to family life is shaped under the Dublin responsibility criteria. The DR III does not provide for a right to family reunification, however the maintenance of family unity is the primary binding criterion for determining the MS responsible for the examination of the asylum application[112] which, if correctly applied, brings about

[107] RCD Art. 24 (1); CRC (n 50) paras. 33-38.
[108] Steve Peers, Violeta Moreno-Lax, Madeline Garlick, and Elspeth Guild, 'EU Immigration and Asylum Law (Text and Commentary)' (2nd end, Brill/Nijhoff, 2015) 244-245.
[109] Art. 20 (3).
[110] Art. 31; Peers and Others (n 108) 176-177.
[111] Ibid, 165-166.
[112] Recital 16.

family reunification for those seeking asylum in the EU.[113] Respect of the right to family life is therefore one of the fundamental components governing the DR III[114] and in the case of UASC, the MS responsible is the one where a family member or a sibling is legally present[115] or where there is a relative who can look after the child[116] on the condition that in both cases it is in conformity with the BIC. By contrast to the FRD, the right to family life under the DR III can be exclusively realized if the parties involved in the Dublin process are already in the EU but in different MS, since it is part of the allocation of responsibility criteria.[117] Thereby, the family unity criteria are laid down under the Art. 8-11, though Art. 8 is solely applied to UASC.

The BIC stands again as a decisive factor in evaluating the relevant request. Special guarantees are foreseen in Art. 6 including -amongst others- the appointment of a representative to ensure that the BIC is taken into consideration during the whole process carried out under the DR III, the tracing of family members or relatives for which a standard form for the exchange of information between the MS is set forth.[118] Despite the fact that the effective application of the DR III has been highly contested while often leading to erroneous implementation of the responsibility criteria, the landmark ruling of the UK Upper Tribunal has offered a promising legal interpretation of the Dublin rules applied to UAMs. The *ZAT* case[119] acknowledged that the DR III was insufficient in providing the necessary protection to the applicants and used Art. 8 ECHR to bypass the Dublin criteria given that the UAMs concerned did not even lodge their asylum claim,[120] albeit it is the legal prerequisite triggering the application of the responsibility criteria.[121] The latter primarily implies that through the Dublin responsibility allocation, MS have a positive obligation to allow the entry of TCNs -notably UAMs- and respect the relevant international law provisions as well as Art. 8

[113] CoE (n 46) 29.
[114] Recital 14.
[115] Art. 8 (1).
[116] Art. 8 (2).
[117] CoE (n 46) 31.
[118] Various provisions are strongly connected with the right to family unity of UAMs and due to their particular relevance with the Dublin process, further analysis is provided in Chapter 3.
[119] *The Queen on the application of ZAT, IAJ, KAM, AAM, MAT, MAJ and LAM v Secretary of State for the Home Department* (2016) JR/154015/2015, UKUT 00061 (IAC).
[120] Paolo Biondi, 'The ZAT case and the far-reaching consequences of the Dublin Regulation' (EDAL, 9 February 2017) <https://www.asylumlawdatabase.eu/en/journal/zat-case-and-far-reaching-consequences-dublin-regulation> accessed 18 July 2020.
[121] Art. 3 (1), 7 (2) DR III.

ECHR, albeit such disputes have always arisen in cases of returns in other MS while submitting a take-back request under Section III of the DR III. Thereby, the UK Upper Tribunal found that Art. 8 ECHR prevails over the maintenance of migration control and allocation of responsibility under the DR III, in the event this qualified right, subjected to the proportionality test, has been flagrantly violated. Hence, in respect of the right to family life, the duty of MS to admit TCNs is described as the *'entry human rights principle'* which is indubitably welcome, especially for cases involving UASC, as it can be used for future policies or legislative reforms.

3. The Dublin III Family Reunification Procedure for Unaccompanied Asylum-Seeking Children: Theoretical Framework and the Actual Practice of Greece-Germany

3.1 The Dublin III Regulation: General Considerations

The allocation of responsibility has been seen as a milestone of the CEAS since 1999, when the EU agreed on a common policy of a comprehensive asylum system within the Area of Freedom, Security and Justice.[122] In this context, the 1999 Tampere conclusions called for *'a clear and workable determination of the State responsible of an asylum application*' as well as *'common standards for a fair and efficient asylum procedure'* which should be based on the principle of solidarity between the MS.[123] The question of responsibility for the examination of the asylum application was initially regulated with the adoption of the Dublin Convention,[124] which was linked with the EU legislation establishing Eurodac,[125] prescribing the relevant database for comparing the fingerprints of asylum seekers.[126] The issue of keeping the families together and thus respect of the right to family unity, while determining the Member State responsible for examining the asylum application, was thereon regarded as the criterion which should prevail over other responsibility criteria in the hierarchy.[127] Accordingly, the Dublin II Regulation[128] provided essential rules forcing States to keep families united during the

[122] The legal basis of the AFSJ is Art. 3 (2) TEU and Art. 67-89 TFEU.
[123] Presidency Conclusions, Tampere European Council 15-16 October 1999.
[124] Convention on determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (1997) OJ C 254/1.
[125] Regulation No. 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L 31/1. It was repealed by Eurodac Regulation (Regulation (EU) No. 603/2013 (2013) OJ L 180/1. The Eurodac Database which is governed by the Eurodac II Regulation, allows the MS to be informed about the applications for international protection submitted earlier in other MS. Persons who are apprehended after they have irregularly crossed an EU external border have to be finger-printed and the MS responsible is the one where the irregular entry happened, on the condition that no higher criteria in the hierarchy apply.
[126] The Dublin system is comprised of three Regulations, namely the DR III, the Implementing Regulation (Regulation (EC) No. 1560/2003 (2003) OJ L 222/3 as amended by the Commission Implementing Regulation (EU) No. 118/2014 (2014) OJ L 39/1, hereinafter IR) and the Eurodac II Regulation.
[127] Ulrike Brandl, 'Family Unity and Family Reunification in the Dublin System: Still Utopia or Already Reality?' in Chetail Vincent, Philippe De Bruycker and Francesco Maiani (eds), *Reforming the Common European Asylum System - The New European Refugee Law* (Brill/Nijhoff 2016) 143.
[128] 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 (2003) OJ L 50/1; hereinafter DR II.

Dublin determination procedure.[129] After several rounds of consultations and following the proposal of the Commission,[130] the new revised DR III[131] was developed in order to ensure effectiveness in the implementation of the Dublin system and higher level of protection for TCNs or stateless persons[132] who are subjected to it.

First of all, the CFREU provides that TCNs or stateless persons present on the territory of the MS have the right to asylum,[133] though according to the DR III only one MS is responsible for the examination of the asylum claim. In this regard, although children have the same human rights as adults, specific child-centered provisions apply for them, in the course of the status determination procedure. Despite the fact that the IHRL does not explicitly provide for the right to seek international protection,[134] the UNCRC stipulates, under Art. 22, specific guarantees for refugee and asylum-seeking children which presupposes the right to seek asylum.[135] By the same token, effective access to the asylum procedures as well as rapid processing of applications for international protection are the main objectives of the DR III which requires a method for the allocation of responsibility leading towards the realization of those goals.[136]

Secondly, the DR III, as a fundamental instrument in the field of asylum in the EU legal order, introduces a number of provisions related to the hierarchy criteria and discretionary clauses[137] and further to the legal apparatus governing the Dublin process.[138] The right to information and to a personal interview are prescribed as essential procedural safeguards[139] along with specific guarantees for minors[140] and the

[129] Brandl (n 127).
[130] Commission of the European Communities, 'Proposal for a Regulation of the European Parliament and of the Council 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)' (3 December 2008, COM(2008) 820 final).
[131] It has been in force as of 1 January 2014.
[132] Art. 3 (1) DR III.
[133] Art. 18 CFREU
[134] In fact, '*Art. 14 UDHR guarantees the rights 'to seek' and 'to enjoy' asylum, and does not assume a right to be granted asylum'*, see: Maarten den Heijer, 'Right to Asylum' in the EU Charter of Fundamental Rights: A Commentary, ed. Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (Hart Publishing 2014) 524. However, the 1951 Refugee Convention does not explicitly contain the right to seek asylum. Therefore, Art. 18 CFREU fills the 'gap' and clearly incorporates the right of the individuals to seek and enjoy asylum; Smyth (n 54) 55.
[135] Smyth (n 54) 56.
[136] Recital 5 DR III.
[137] Art. 7-17.
[138] Art. 18-25.
[139] Art. 4-5.
[140] Art. 6.

right to an effective remedy referring to the Dublin transfers.[141] Lastly, its final sections contain -amongst others- a detention-related provision,[142] the handling of transfers, the cooperation of the MS, including administrative arrangements between the latter. [143] For the well-functioning of the DR III, the system itself requires that asylum seekers are granted equal rights across the MS and each asylum application is examined in a fair manner, regardless of where the claim is lodged within the EU.[144] In this context, the DR III is built upon the principle of mutual trust,[145] particularly referring to the mutual recognition as applied in the field of asylum and the presumption of equivalent protection in all MS associated with the CEAS and the DR III.[146]

Once the asylum application is first lodged in a MS, the procedure of determining the responsibility for the examination of the asylum application is initiated based on the applicant's prevailing circumstances at the time of the respective submission.[147] In light of the principle that only one MS is responsible for the examination of the asylum claim, the DR III lays down a set of criteria according to which the determination of responsibility should be examined in hierarchical order.[148] In particular, family reunification is the primordial criterion to be taken into account when assessing the responsibility allocation.[149] In this context, when the applicant is an UASC, the MS in which s/he has a family member, legally present, has competence to examine the asylum request, on the condition that it is in accordance with the BIC.[150] The criteria based on family ties, including those referring to adult applicants and accompanied children,[151] are placed at the top of the hierarchy and must be examined before the ones pertaining to the documentation, entry or stay[152] as prescribed in Art. 7.

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[141] Art. 27.
[142] Art. 28.
[143] Art. 34-36.
[144] Scherrer (n 9) 10.
[145] The legal principle is emanating from the EU internal market as transferred to the AFSJ; Art. 2, 4 (3) TEU.
[146] Samantha Velluti, 'Reforming the Common European Asylum System - Legislative Developments and Judicial Activism of the European Courts' (Springer 2014) 40.
[147] Articles 7 (2), 20 (1). There are also exceptions as regards the application of Art. 7 (2) which have been analyzed subsequently in the same Chapter.
[148] Chapter III of the DR III.
[149] Scherrer (n 9) 6.
[150] Art. 8 (1), (2), (3).
[151] Art. 9-11.
[152] Francesco Maiani, 'The Protection of Family Unity in Dublin Procedures. Towards a Protection-Oriented Implementation Practice' (2019) 21 <https://centre-csdm.org/wp-content/uploads/2019/10/MAIANI-Dublin-Study-CSDM-14.10.2019.pdf> accessed 28 April 2020; Art. 12-15 DR III.

Moreover, Chapter IV lays down rules on dependent persons and on discretionary clauses.[153] Thus, while respecting the right to family unity, MS *'shall keep or bring together'* applicants with their child, parents or siblings, legally resident in another MS, taking into account particular cases of vulnerability, such as pregnancy, new-born children, severe disability or old age which are inherently connected with the notion of dependency, as such persons are usually in need of special assistance. Equally important is the circumscription of the discretionary clauses under Art. 17 (1) and 17 (2), since their application is inextricably connected with the family unity considerations and the BIC.

In consonance with the ExCom Conclusions,[154] the DR III seeks to ensure effective access to the asylum procedures, prevent the asylum shopping by establishing a list of compulsory responsibility criteria but most importantly to secure the right to family life as an underlying principle which along with the BIC constitute the key components during the Dublin determination procedure. The latter is rather apparent since the family unity criteria are first ranked in the list which, broadly speaking, is in line with the rights-based approach and the obligation of States to respect and protect the right to family life, as referred to already in the preambular paragraphs of the DR III.[155]

3.2 The First Instance Dublin Procedure

The application for international protection may lead to a *TCR*[156] or a *take back*[157] request to transfer the UASC to the MS responsible to examine his/her application given that one of the responsibility criteria applies. Therefore, following the registration of the asylum claim with the Greek Asylum Service (hereinafter GAS),[158] the latter has a three-month deadline in order to submit the TCR to the BAMF.[159] In this regard,

[153] Art. 16 and 17 respectively. Both are examined under section 3.3.2.
[154] UNHCR ExCom, 'Conclusions on Refugees without an Asylum Country' (No.15 (XXX), 1979) < https://www.unhcr.org/excom/exconc/3ae68c960/refugees-asylum-country.html> accessed 17 June 2020.
[155] Recitals 13-17.
[156] Art. 21.
[157] Art. 23.
[158] The GAS has a specific department which handles the Dublin process, namely the (Greek) Dublin Unit.
[159] Art. 21 (1).

Germany must take a decision within two months after the receipt of the TCR,[160] though a failure to issue such a decision equates a tacit acceptance and as a result Germany is assumed with the responsibility to examine the asylum claim.[161] The TCR should be accompanied by documents[162] proving the family ties and the legal status of the family member or relative who is dwelling in Germany. However, '*the requirement of proof should not exceed what is necessary for the proper application of the DR III'* as prescribed in Art. 22 (4) and Germany shall assume responsibility if '*the circumstantial evidence is coherent, verifiable and sufficiently detailed'*.[163] From that time onwards, there can be two possible scenarios that may happen, following the submission of a TCR. Firstly, if the BAMF accepts the TCR, Germany becomes the MS responsible for examining the asylum application. In this vein, the UASC should be transferred within six months from the receipt of the acceptance, however a possibility of extension may apply, if one of the conditions set forth in Art. 29 (2) DR III are met. As long as the latter is not legally feasible, the onus of examining the asylum claim is shifted to the requesting MS, namely Greece. Secondly, if the TCR is rejected, then the negative decision can only be appealed in the German courts[164] and in the best case scenario the latter can oblige the BAMF to accept the request and the transfer of the UASC in respect of their right to be reunited with their family members or relatives, provided that it is in accordance with the BIC.[165]

Equally important is the method of delivery of the Dublin decisions conducted through the DubliNet system which is used for any exchange of information between the MS according to Art. 34 DR III.[166] Under these circumstances, the Greek Dublin Unit issues

[160] However, under exceptional circumstances, Germany can ask for an extension of one month due to the complexity of the case; Robert Nestler, Vinzent Vogt and Catharina Ziebritzki, 'Family Reunion in Germany under the Dublin III Regulation / Requirements – Process – Practical Tips' (refugee law clinics abroad e. V, Diakonie, 2018) 14 <https://www.diakonie.de/fileadmin/user_upload/Diakonie/PDFs/Diakonie-Texte_PDF/Family_Reunion_Dublin_III_advisory_guide_2018.pdf> accessed 19 May 2020.
[161] Art. 22 (7).
[162] Art. 1 (1) (a) IR.
[163] Art. 22 (5).
[164] Such decisions can only be challenged by lawyers based in Germany. However, for UASC living in Greece, the Public Prosecutor (acting as the temporary guardian) has to authorize the lawyer for the legal representation of the child which in some cases is quite challenging, due to the number of UAMs falling under his/her responsibility and the complexity of the cases, as such rejections can only be appealed in the German Administrative Courts.
[165] Art. 8 (1), (2), (3).
[166] The system is dedicated to secure fast and reliable communications between the MS and that both take-charge and take-back requests are sent in a language commonly understood. Standard forms should be used for the exchange of information between the MS, annexed to IR. Also, the requested MS has to ensure that the response is clear and unambiguous in respect of the person concerned; EASO, 'Guidance

a decision according to which the GAS rejects the asylum application,[167] since there is a transfer decision to Germany, deriving from the application of the family unity criteria or discretionary clauses applied for the UASC. Similarly, if the TCR is rejected by the BAMF, there are various considerations that should be taken into account. On the one hand, Greece has a three-week time limit so as to send a re-examination request[168] to the BAMF given that there are either serious concerns of erroneous assessment of the TCR or the GAS has come into possession of additional evidence, which should be examined in the course of the appraisal of such requests. The so-called '*re-submissions'* are of paramount importance when the indispensable documents are missing, usually just before the expiration of the three-month deadline. In order to avoid any risk of losing the application of the family unity criteria, Greece usually sends the TCR to the BAMF even without the adequate evidentiary requirements. In this case, the GAS takes advantage of the three-week time limit, stimulated under Art. 5 (2) IR, with the intention to avoid a delayed TCR and resort to the humanitarian clause of Art. 17 (2) DR III. As an alternative, the GAS may ask the BAMF for a 'holding letter' whose purpose is to provide for an extension of the deadline to submit a TCR or a re-examination request. However, this is only an administrative practice and thus not legally binding.[169]

3.3 The Allocation of Responsibility

3.3.1 Family Unity Criteria under Article 8

The criteria for determining the responsible MS should be applied in the order laid down in Chapter III of the DR III.[170] Although the principle of *'first entry'* as stated in Art. 13 is usually at the forefront of the Dublin fora, the relevant provisions

on the Dublin Procedure: operational standards and indicators' (EASO Practical Guides Series, 2020) 28-29 < https://easo.europa.eu/sites/default/files/EASO-Guidance-Dublin-procedure-EN.pdf> accessed 19 June 2020.

[167] Artemis Tsiakka, 'The Dublin Family Reunification Procedure from Greece to Germany' (stiftung PRO ASYL, RSA, 2 August 2017) 2 < https://www.proasyl.de/wp-content/uploads/2015/12/2017-08-02-Background-Note-Family-Reunification-Dublin_RSA_PRO-ASYL-August-2017.pdf> accessed 18 April 2020.

[168] Art. 5 (2) IR.

[169] Nestler and Others (n 160) 32.

[170] Art. 7 (1) DR III; UK Home Office, 'Dublin III Regulation: Transferring asylum claimants into and out of the UK where responsibility for examining an asylum claim lies with the UK or with another EU Member State or Associated State' (Version 3.0, 30 April 2020) 16 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882400/Dublin-III-regulation-v3.0ext.pdf> accessed 18 June 2020.

safeguarding the right to family unity[171] should always take precedence over the initial entry doctrine or other clauses.[172] In this regard, the Greek Dublin Unit should first examine the higher-ranking criteria, and thus it may not submit the outgoing TCR based on lower-ranking criteria, if evidence shows the applicability of family unity standards.[173] Therefore, the compulsory responsibility provision under Art. 8 applied to UASC encompasses the *'nuclear family'*, videlicet parents, siblings or other relatives,[174] though such family ties are only covered if the family bonds had already existed in their country of origin.[175] The pre-flight requirement may be considered as an anti-abuse yardstick so as to avoid discrimination.[176] In this context, the ECtHR has found that such requirement is in violation of the right to family reunification when it examined an alleged violation of Art. 8 in combination with Art. 14 ECHR and concluded that post-flight marriage should not prevent the right of a family to be reunited.[177]

In fact, according to the definitions provided by the DR III '*UAMs are all TCNs or stateless persons below the age of eighteen years who arrive on the territory of the MS unaccompanied by an adult responsible for them or have been left alone after the entry in the territory of the MS concerned'*.[178] Accordingly, Art. 7 seems of pivotal relevance inasmuch as the crucial time of determining whether the child is accompanied or not should be when the application for international protection is lodged and not when s/he arrived at the EU territory. This primarily derives from the freezing rule of Art. 7 (2).[179] Equally, the person accompanying the minor must unquestionably be an adult, without excluding adult siblings in case they are appointed as legal guardians.[180] Hence, Art. 8 DR III comes first in the hierarchy and sets forth self-contained rules applied to UASC which are of practical importance as will be proved below.

Firstly, Art. 8 of the DR III distinguishes between the family members and relatives residing in another MS, under the first and second paragraph respectively. Here, the

[171] Art. 8-11 DR III.
[172] Nestler and Others (n 160) 7.
[173] Maiani (n 152).
[174] Art. 8 (1), (2) DR III.
[175] Art. 2 (g) DR III. The pre-flight requirement does not apply in case of adopted siblings; Nestler and Others (n 160) 9.
[176] Maiani (n 152) 39.
[177] *Hode and Abdi v The United Kingdom* App no 22341/09 (ECtHR, 6 February 2004).
[178] Art. 2 (i).
[179] Nestler and Others (n 160) 8.
[180] Ibid.

notion of family member is broader than that provided in the Art. 2 (g) DR III, as siblings are included, in addition to the parents. In the event that an UASC applies for international protection, the latter should be examined by the MS in which his/her family members are located. This can be lawfully achieved, only if the family members are legally present in the other MS in obedience to the BIC. Secondly, the inclusion of married unaccompanied minors in the criteria laid down in Art. 8 (1) (indent 2) is also relevant. In this context, the reunification of the married child with his/her parents or siblings is only possible when his/her spouse is not legally present in another MS. This divergence from the rule of Art. 8 (1) (indent 1) is justified given that the DR III itself gives primacy to the BIC,[181] and therefore it is designed to leave no margin to the asylum authorities of leaving the child alone while his/her family members legally reside in another MS. Thirdly, the reunification of UASC with their relatives is also attainable under Art. 8 (2). The notion of relative is defined in Art. 2 (h) and as a result the reunification with the UASC's adult uncle or aunt, and the grandparents can be fulfilled assuming such relative is legally present in the other MS and s/he can look after the minor,[182] all in agreement with the BIC.

Against this background, UASC living in Greece may be reunited with their family members residing in Germany, on the condition that they are '*legally present'* and it is in conformity with BIC. When the asylum applicant is an unaccompanied unmarried minor, the parents and the siblings are considered family members with whom the UASC can be reunited. However, the lawful presence is not defined in the DR III and thus a number of questions usually arise. In this context, the German law and practice has to be examined on the grounds that the wide term of '*legally present*' rule may include various documents, stretching from an asylum-seeker's card (hereinafter ASC)[183] to a (temporary) residence permit. In fact, the term is also included in the Art. 16 DR III laying down rules on dependent persons, encompassing an extended interpretation of the notion of family members. Nonetheless, an important distinction should be made in view of the reference to the terms '*legally present'* under Art. 8 and *'legally resident'* in Art. 16. In respect of the proper interpretation of the terms in

[181] Recital 13; Art. 6 (1).
[182] This check is based on an individual examination. Art. 8 (2) has a narrower scope in comparison with its counterpart in the DR II (Art. 15 (3)), since it now requires that the relative of the UASC is also legally present in another MS.
[183] This is the document granted to the asylum seekers, once they lodge their application for international protection.

question, the IR in its Annex VII, provides some forms of statuses which are helpful for the definition of the term under Art. 8. In practice, Germany requires for the legal presence either a resident document,[184] or other documentation such as the temporary suspension of deportation, the so-called '*Duldung,'* the ASC 'Aufenthaltsgestattung'[185] or the prohibition of deportation which is mainly granted to Afghan asylum applicants under the German law, namely the '*Abschiebungsverbot'.*[186] At this point, it seems crucial to highlight that under the German version of the DR III no distinction is made as regards the terms *'legally present'* and *'legally resident'* since they are given with the same phrasing *'rechtmäßig aufhältig'*. However, it is not meant to create any deviations in the implementation of the DR III provisions, as EU law must be applied on the basis of the real intention fulfilling its aim, irrespective of the versions found in all other EU languages as it has been settled by the CJEU jurisprudence.[187] The latter is in line with the principle of *'legal certainty'* on the grounds that EU acts which have been relied on as a legal will are not made invalid.

Moreover, the proof and circumstantial evidence furnished to the BAMF, which accompany the TCR, are sometimes a significant obstacle for the UASC while they are pleading Art. 8. The distinction between those two substantial components can be drawn from the imperative of Art. 22 (2) DR III which requires that the asylum authorities take into account all elements of proof and circumstantial evidence as part of the establishment of the alleged family bonds before the determination of the MS responsible as stated in Art. 7 (3).[188] For the proper application of the DR III provisions, such formalities should not be ascribed with the power to solely define the reunification procedures, as a possible dearth of evidence may be attributed to the numerous challenges that UASC face in providing documentary proof and the like. Thus, the BIC

[184] Such documents are provided in the Residence Act - Aufenthaltsgesetz, AufenthG, 'Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory' (Federal Law Gazette I, p. 1106 ff. Valid as from 1 August 2017) < https://germanlawarchive.iuscomp.org/?p=1464> accessed 2 June 2020.

[185] Annex VIII IR, Part B; it is granted in lieu of the first instance decision; Nestler and Others (n 160) 11-12.

[186] Iliana Bompou and Others, 'Dublin III Regulation: The "Exception" That Became the Rule' (2018) 3 <http://www.kspm-erp.com/wp-content/uploads/2018/06/Dublin-III-Regulation-the-exception-that-became-a-rule.pdf> accessed 22 May 2020.

[187] *Case C-298/12 Confédération paysanne v Ministre de l'Alimentation, de l'Agriculture et de la Pêche* (2013) ECLI:EU:C:2013:630; Rafał Mańko, 'Briefing: Legal Aspects of EU Multilingualism' (EPRS, January 2017) <https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/595914/EPRS_BRI%282017%29595914_EN.pdf> accessed 12 July 2020.

[188] Maiani (n 152) 27.

principle becomes operative so as to fill the gaps, when the rejections of the TCR by the BAMF are based on the aforementioned grounds. Besides, the CJEU has held that such evidence shall be taken into account by the MS when examining the family reunification requests under the FRD with due regard paid to the BIC.[189]

As the IR, in its Annex II, provides for a useful list of '*probative'* and '*indicative'* components that would enable the verification procedure and the corroboration of the TCR,[190] the BAMF shall take these elements into consideration, albeit the potential lack of formal proof. If the circumstantial evidence is coherent and verifiable, the establishment of the responsibility shall be acknowledged by Germany, on the condition that it is sufficiently detailed as stipulated in Art. 22 (5) DR III. Similarly, '*the requirement of proof should not exceed what is necessary for the proper application of the DR III' [191]* and as a result the documentation proving family links should not render the family reunification of UASC impossible if, for instance, the relevant documents are not officially translated and certified. Accordingly, any legal material or certificate must be viewed as proof, even if they are not (officially) translated, since neither the DR III (Art. 22 (3)) nor the IR (Annex II) set forth any such requirement. Be that as it may, such documents may be considered as circumstantial evidence, if being consistent with the mandate of Art. 22 (5) DR III.[192] In addition, should the formal proof ascribe responsibility to Germany, any rejection of the TCR on these grounds may be unlawful unless any other document in possession of the BAMF proves the contrary. This entails a reversion of the burden of proof, since now the German authorities have to provide evidence which may substantiate any potential rejection. The latter derives from the inquisitorial nature of the process which implies that the asylum authorities shall exhaustively and objectively examine the information provided, either directly or indirectly,[193] and assume responsibility when this emerges from the assessment of evidence. Besides, this is in agreement with the principle of sincere cooperation which applies to all policy areas of the EU and requires that the EU and MS have the duty to assist each other in the area of asylum and migration, and this

[189] *Case C-635/17 E. v Staatssecretaris van Veiligheid en Justitie* (2019) ECLI:EU:C:2019:192.
[190] See IR, Annex II, List A (I) (1) for the means of proof applied in relation to Art. 8 DR III. As regards the circumstantial evidence and the catalogue of indicative elements see IR, Annex II, List B (I) (1).
[191] Art. 22 (4).
[192] Nestler and Others (n 160) 10. For example, the name of the applicant and those of his/her family members or pictures of those persons shall fall within the scope of Art. 22 DR III and may lead to the acceptance of the TCR by Germany.
[193] Art. 3 (2) IR.

is applicable between the MS where it is imperative for the fulfillment of one the objectives of the EU as outlined in Art. 4 (3) TEU.[194]

3.3.2 Dependent Persons and Discretionary Clauses

The discretionary clauses are set out in Art. 17 of the DR III and they are divided in two categories, the sovereignty clause (para. 1) and the humanitarian clause (para. 2). The former provides that MS may decide to examine an asylum claim once asserted by TCNs or a stateless person while the latter allows States to accept applications for asylum on humanitarian and cultural considerations.[195] Due to their nature, the question on whether the MS have an unfettered discretion on the application of the said clauses remains relevant. Following the CJEU ruling in the case *M.A., S.A., A.Z.,*[196] the use of the sovereignty clause is optional and the exercise of such option is not subject to any particular condition. However, when the applicant is an UASC, the family unity criterion and the BIC have a decisive role on the relevant assessment and, as some German courts held,[197] the obligation of MS to respect Art. 17 (1) is established.[198]

More specifically, emanated from its very wording, Art. 17 entails no obligation on MS to issue a decision for the assumption of responsibility as it has been confirmed by the CJEU.[199] The discretionary clauses are important to the extent that a MS may decide on whether or not it accepts responsibility which may further affect the right to family life of UASC. In fact, taking into account the preambular paragraphs of the DR III, one can notice that the legislator's will is to safeguard the right to family life and the BIC

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[194] Kris Pollet, ECRE, 'Enhancing Intra-EU Solidarity Tools to Improve Quality and Fundamental Rights Protection in the Common European Asylum System' (ECRE, January 2013) 14 < https://www.ecre.org/wp-content/uploads/2016/07/ECRE-Enhancing-intra-EU-solidarity-tools_January-2013.pdf> 18 June 2020.

[195] Sílvia Morgades-Gil, 'The Discretion of States in the Dublin III System for Determining Responsibility for Examining Applications for Asylum: What Remains of the Sovereignty and Humanitarian Clauses After the Interpretations of the ECtHR and the CJEU?' (2015) 27 International Journal of Refugee Law 434.

[196] *Case C-661/17 M.A. and Others v The International Protection Appeals Tribunal and Others* (2019) ECLI:EU:C:2019:53, para. 58.

[197] Administrative Court of Hannover, case no. 1b 5946/15, 7 March 2016, < https://www.asylumlawdatabase.eu/en/case-law/germany-administrative-court-hannover-case-no-1-b-594615-7-march-2016> accessed 4 August 2020.

[198] ECRE, ELENA, 'Case Law Note on the Application of the Dublin Regulation to Family Reunion Cases' (February 2018) 14 < https://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/ECRE%20-%20Case%20Law%20Note%20On%20The%20Application%20Of%20The%20Dublin%20Regulation%20To%20Family%20Reunion%20Cases.pdf> accessed 29 May 2020.

[199] *Case C-56/17 Bahtiyar Fathi v Predsedatel na Darzhavna agentsia za bezhantsite* (2018) ECLI:EU:C:2018:803.

in the relevant cases, and thus when the compulsory family unity criteria fail to be met, the discretionary clauses become applicable. This means that any restrictive application of the discretionary clauses is not ensued from the DR III itself as the latter's principles and objectives entail a broad and systematic implementation of such clauses when the right to family life is jeopardized.[200] Equally significant for the firm establishment of family unity under the DR III is the *K* judgement[201] of the CJEU where the dependency clause was examined.[202] In particular, the old provision has now been replaced by Art. 16 DR III and has a narrower ambit, although it is a binding responsibility criterion[203] and not a discretionary clause as its previous equivalent. The crucial point here is that all those situations of dependency which were previously covered by the *K* ruling and do not now fall under the Art. 16, should be assessed in light of the general discretionary clauses of Art. 17 DR III.[204] Focusing on Art. 17 (2) nothing in this provision entails a restrictive interpretation and thus its scope is wider with the intention to ensure the effectiveness of the provision.

Taking into account the above, the prominence of Art. 17 (2) is extremely relevant with the cases of UASC mainly in the event that any substantive prerequisite does not reach the scale of Art. 8 or even due to other procedural obstacles such as the missing of the three-month time limit[205] or notably when the applicant had no influence on the expiration of the deadline.[206] Thus, Art. 17 (2) comes into play as a legal tool that may be used so as to safeguard the family unity of UASC,[207] when the TCR based on Art. 8 cannot be accepted.[208] Besides, apart from the firm establishment of the family unity criteria and the BIC, its application shall be governed by the international and European human rights standards, which guarantee, inter alia, the right to family life and consider

[200] Maiani (n 152) 44.
[201] *Case C-245/11 K. v. Bundesasylamt* (2012) ECLI:EU:C:2012:685, para. 29.
[202] Art. 15 (2) DR II.
[203] Recital 16 DR III.
[204] Maiani (n 152) 57.
[205] This refers to the deadline for the submission of the TCR.
[206] Administrative Court Berlin, VG 23 L 706.18 A, 15 March 2019, < https://www.asylumlawdatabase.eu/en/case-law/germany-%E2%80%93-administrative-court-berlin-15-march-2019-vg-23-l-70618#content> accessed 7 May 2020.
[207] Safe Passage, Praksis 'Caught in the Middle, Unaccompanied Children in Greece in the Dublin Family Reunification Process' (2019) 102 <https://www.safepassage.org.uk/news/2019/11/5/new-report-lone-child-refugees-in-greece-are-waiting-16-months-to-reunite-with-family-68zdg> accessed 28 May 2020.
[208] Recital 17 DR III.

the BIC principle as the driving force before any decision is taken, that may adversely affect children's rights.[209]

In view of the aforementioned, the humanitarian clause has been increasingly used by Greece the last triennial[210] and its relevance with the outgoing TCR is unequivocally apparent.[211] The humanitarian grounds provided in Art. 17 (2) stipulate that the MS responsible or the intermediary MS[212] may request another MS to take charge of the asylum seeker due to the family links or cultural considerations, regardless of whether that MS is responsible under the family unity criteria.[213] The GAS usually based on the authorisation provided by the said Article, submits a TCR for family reunification in *stricto sensu* cases, following the expiration of the three-month time limit as prescribed in Art. 21 (1) DR III.[214] This could be seen as a step forward in view of the fact that the said Article implies the necessity of the humanitarian interventions especially when UASC face a threat of family separation due to an outright adherence to the DR's III verbatim, albeit the factual existence of the family ties. Hence, family members and relatives[215] of the UASC fall within the scope of the provision on the condition that such request is accompanied by their written consent. This is a major difference as regards the preconditions laid down in Art. 8 where no consent is legally required.

Furthermore, Art. 16 constitutes a mandatory criterion[216] which has a narrower scope than its former counterpart.[217] In the wake of the *K* case[218] and in respect of the family unity clauses, not all cases covered by the said judgement and do now fall within the scope of Art. 16 DR III, shall be examined within the framework of Art. 17.[219] The family reunification grounds, however, are exhaustively listed in Art. 16 as it can only

[209] Such standards are predominantly entrenched in the ECHR, CFREU and the UNCRC.
[210] Greek Dublin Unit (n 13). In total, 3.681 outgoing TCR had been sent by Greece to other MS, based on the Art. 17 (2) DR III.
[211] The previously mentioned data only refer to the total number of the TCR originated in Art. 17 (2) whereas any information as regards the number of such requests in relation to the UASC is missing. The latter has been orally confirmed by the Greek Dublin Unit (20 July 2020).
[212] In the present case study, Greece is the intermediary country, if, under the responsibility criteria, Germany has to examine the asylum claims.
[213] Art. 8-11, 16 DR III.
[214] RSA, 'Refugee Families Torn Apart, The Systematic Rejections of Family Reunification Requests from Greece by Germany and Their Detrimental Impact upon the Right to Family Life and the Best Interest of the Child' (2019) 13 <https://rsaegean.org/wp-content/uploads/2019/09/REFUGEE-FAMILIES-TORN-APART-3-1.pdf> accessed 19 April 2020.
[215] Art. 8 (1), (2).
[216] Recital 16.
[217] Art. 15 (2) DR II.
[218] *Case C-245/11* (n 201).
[219] Maiani (n 152) 57.

be used in exceptional circumstances and thus the BAMF should accept the TCR if the reason of dependency is affirmed and the family link had already existed in the country of origin. Again here, family members should be lawfully residing in Germany and similarly with Art. 17 (2), both parties involved in the process should provide their written consent. In this regard, the Greek Dublin Unit has only sent 657 TCR to other MS based on Art. 16 in the past seven years, which proves the limited use of the dependency clause relating to the general population.[220]

3.4 The Best Interests of the Child: Legislative and Jurisprudential Components

The obligation to ensure the BIC in all actions and decisions affecting children primarily derives from Art. 3 UNCRC.[221] The text itself entails that the implementation of the said principle is not subject to any restrictions, whilst its ubiquity is aimed at ensuring the effective enjoyment of the rights of the child, as recognized in the UNCRC, and thus no such right is meant to be interpreted negatively, as being contrary to the BIC.[222] Not only does it have a tripartite structure, as it is akin to a substantive right, a fundamental interpretative tool and notably a rule of procedure where juveniles are involved, but it is equally a concept which safeguards a rights-based approach in all actions and policies concerning children.[223] A central component of the BIC is its correlation with the other guiding principles of the UNCRC.[224] The principle of non-discrimination is of particular relevance with the UASC, since it prohibits all forms of discrimination and further requires the implementation of proactive measures to ensure equal treatment and opportunities. Therefore, in order to secure an equal access and participation in the course of a BIA, specific safeguards are needed such as the

[220] Greek Dublin Unit (n 14). The number (657) refers to the overall TCR submitted from 2013 to February 2020. Its restricted use is also confirmed by the German case law, as reference is made primarily to Art. 8 and 17 (2) DR III; see section 3.7.
[221] The concept of the BIC was actually established by the 1959 Declaration of the Rights of the Child, specifically proclaimed in the principles 2 and 7; G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) 19, U.N. Doc. A/4354.
[222] UN Committee on the Rights of the Child, General Comment No. 14: The right of the child to have his or her best interests taken as a primary consideration (2013, CRC /C/GC/14) para. 4.
[223] Ibid, paras. 5-6.
[224] Art. 2, 6 and 12 UNCRC.

appointment of guardians,[225] acting during the whole asylum process with due consideration to the UASC's needs and conditions.[226]

Against this background, the child's right to be heard and the respect of his/her views is a fundamental constituent of determining the BIC. The latter indicates that Art. 3 is inextricably connected with Art. 12, entailing the positive obligation on States to establish child-friendly mechanisms when assessing the BIC, considering minors' views taken properly, in accordance with their age and maturity.[227] Hence, there can be no correct application of the BIC unless the major constituents of Art. 12 are respected,[228] and thus the complementarity between those provisions implies a specific methodology facilitating the role of children in the decision-making process. As for the UASC, the contingent lack of interpreters at any stage of the asylum procedure cannot guarantee a reliable communication, and in such a case the right to participation is inevitably put at risk.[229] Similarly, the concept of survival and development, postulated in Art. 6 UNCRC, is clearly an integral part of the BIC which is additionally connected with the right to family unity[230] as long as the family environment is the cradle of a natural and harmonious development of the child's personality since child rearing is naturally the family's primary responsibility.[231]

These standards are channeled in the EU law in a number of ways. Firstly, both the promotion and protection of the rights of the child have been amplified through their recognition as general objectives of the EU, articulated in the TEU.[232] The latter has

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[225] Jyothi Kanics, 'The Best Interests of Unaccompanied and Separated Children: A Normative Framework Based on the Convention on the Rights of the Child' in Barbara Gornik Mateja Sedmak, Birgit Sauer (ed), *Unaccompanied Children in European Migration and Asylum Practices, In Whose Best Interests?* (1st edn, Routledge, Taylor & Francis 2018) 52.

[226] UASC's special needs, in particular the appointment of a special temporary representative in the course of the asylum process, have been embodied in the Greek jurisprudence; Gouncil of State, K.R v. Minister of Public Order, Decision No 4056/2008 (31 December 2008) < https://www.asylumlawdatabase.eu/en/case-law/greece-%E2%80%93-council-state-31-december-2008-40562008#content> accessed 8 June 2020.

[227] The assessment of UASC's age and level of maturity is an integral part of the asylum process as reiterated in the Greek case law; Council of State, Decision No 4055/2008 (31 December 2008) < https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20Judgment%20-%20Council%20of%20State%20-%204055-2008.pdf> accessed 19 May 2020.

[228] UN Committee on the Rights of the Child, General Comment No. 12: The right of the child to be heard (2009, CRC/C/GC/12) para 74.

[229] CRC (n 50) para 25.

[230] Rachel Hodgkin and Peter Newell, 'Implementation Handbook for the Convention on the Rights of the Child' (UNICEF, 2007) 93 <https://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child.pdf> accessed 20 June 2020.

[231] Art. 18 UNCRC.

[232] Art. 3 (3) (5).

utterly affected EU's policies and actions provided that the BIC constitutes a driving force in the legislative power, especially when asylum and migration matters are under the table of discussion.[233] Secondly, as of the advent of the CFREU in the EU constitutional foundations, it became apparent that many of its provisions reflected the UNCRC, with Art. 24 being a vigorous medley.[234] Delineated in paragraph two, the BIC principle is particularly relevant in the EU legal regime, a primary consideration in the policy-making process, though Art. 3 UNCRC seems rather broader as it is explicitly addressed to courts and legislative bodies while Art. 24 (2) refers to public and private institutions.[235]

At the regional context, both Art. 24 CFREU and Art. 3 UNCRC are not reflected in the ECHR, as the latter was not particularly formulated to protect children. However, due to the fact that the provisions of the ECHR are addressed to human beings, they shall equally be used for the benefit of children, as they have the same rights with adults.[236] The reference to the BIC in the ECtHR's jurisprudence is abundant, notably in the asylum context, which proves that the ECHR itself and thus the court operate as an application-driven system, encompassing international specialised child-rights instruments.[237] The Strasbourg court has consistently started incorporating the BIC since 2000[238] which has then been recognized as a primary consideration in all actions affecting minors.[239] Thereby, the inclusion of the BIC in the ambit of Art. 8 ECHR is important as it has led the ECtHR to oblige States to conduct the family reunification procedure timely, expeditiously and humanely, since they have the positive obligation to facilitate the said procedure.[240] In this way, the court proves that the ECHR is not

[233] Marchegiani (n 17) 47.
[234] Smyth (n 54) 45.
[235] Ruth Lamont, 'Article 24 The Rights of the Child' in Jeff Kenner, Angela Ward Steve Peers, Tamara Hervey (ed), *The EU Charter of Fundamental Rights A Commentary* (1st edn, Hart Publishing 2014) 687; Art. 24 (2) must be read in conjunction with Art. 7 CFREU when the person involved in the family reunification procedure is a minor. The latter has been confirmed by the CJEU in a case concerning the FRD's scrutiny: *Case C-540/03 European Parliament v Council of the European Union* 2006 I-05769, paras. 58-59.
[236] Jane Fortin, 'Children's Rights and the Developing Law' (CUP, 3rd edn, 2009) 35.
[237] Aida Grgić, 'Jurisprudence of the European Court of Human Rights on the Best Interests of the Child in Family Affairs' in Milka Sormunen (ed), *The best interests of the child – A dialogue between theory and practice* (Council of Europe Publishing 2016) <https://rm.coe.int/1680657e56> accessed 2 June 2020.
[238] *Ignaccolo-Zenide v Romania* App no 31679/96 (ECtHR, 25 January 2000) para 94.
[239] *Sen v The Netherlands* (n 75); *Neulinger and Shuruk v Switzerland* App no 41615/07 (ECtHR, 6 October 2010).
[240] ECRE, ELENA 'The Best Interests of the Child as a Primary Consideration When Applying the Dublin Regulation: Selected Case Law from European and National Courts' (September, 2017) 3 < https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/ELENA%20Legal%20Query%2C%20sel

read in a vacuum but rather it assesses the BIC and considers the infliction of specific limitations to the State's margin of appreciation, when family unity is allegedly disrupted due to the insurmountable hurdles to developing family life elsewhere.[241]

On the other hand, the DR III is aptly embracing the BIC, by placing it in the heart of the Dublin process,[242] showcasing both the UNCRC and the CFREU.[243] The explicit reference to the BIC concept entails that it is applicable to all children involved in the Dublin procedure, both accompanied and unaccompanied, including a series of special measures to ensure protection and humanitarian assistance,[244] especially in relation to the cases concerning UASC. In order to fully respect and realize the BIC in the context of any Dublin decision affecting the UASC, the DR III provides a number of procedural safeguards which have to be respected and enable applicants of international protection to benefit from their rights under the said instrument. This is corroborated by the concept of *'primary consideration'* indicating that it has a great impact on all decisions affecting UASC, either procedural or substantive, when competing interests have to be balanced in order to reach a decision on admission or return.[245] Besides, in the *MA and Others*[246] ruling, the CJEU found that the BIC is a primary consideration in the course of the Dublin process, aligned with Art. 24 (2) CFREU.

3.5 The BIA and Procedural guarantees under Article 6

As the BIC permeates the DR III, specific child-related guarantees will be unfolded as applied in the Greek and German context. First and foremost, a close cooperation between the MS is needed while assessing the BIC in all contexts covered by the DR III. This particularly requires an individual examination of all circumstances of the minor concerned in respect of his/her right to be heard and the concept of participation,

ected%20case%20law%20on%20BIC%20when%20applying%20DR%20III.pdf> accessed 15 June 2020.

[241] *Mayeka and Mitunga v Belgium* (n 84).

[242] Art. 6 (1); recitals 13 and 16.

[243] Art. 3 and 24 (2) respectively.

[244] This is aligned with the Art. 22 UNCRC.

[245] Paolo Biondi, The Best Interests of the Child and the Right to Family Unity under the EU Law' (IARMJ, 11th World Conference, 2017) 20 <https://www.iarmj.org/images/11th_world_conference_2017/papers/HRN_WP_Paper_Athens_P_Biondi.pdf> accessed 2 July 2020.

[246] *C-648/11 The Queen, on the application of MA and Others v Secretary of State for the Home Department* (2013) ECLI:EU:C:2013:367.

imposing on MS '*the obligation to assess the capacity of the child to form an autonomous opinion to the greatest extent possible'*, with due respect to his/her age and maturity.[247] In practical terms, the latter implicates all relevant actors involved in the process, stretching from administrative (asylum) authorities to other specialists, such as guardians or legal representatives whose expertise is decisive for safeguarding a multi-disciplinary approach for the purpose of the BIA.[248] However, a prominent level of disparity has been noticed between the BIA and family unity under the DR III, on behalf of the Greek-German practice, especially in the manner in which any possibilities for family reunion are defied, due to the lack of consistency when assessing the BIC. In this regard, under Art. 6 (3) DR III, the BIA comprises various important key-factors, such as family reunification possibilities, the well-being and social development of juveniles, the risk of being a victim of human trafficking[249] and the right to be heard. Those elements have to be properly taken into account, especially because neither the DR III nor the IR[250] include a standardized process or specific form for the BIA.[251]

Against this background, the Greek Dublin Unit established a new practical tool with the intention to facilitate family reunification requests lodged on behalf of UASC, aiming at gathering all necessary information by the MS involved in the Dublin process. A BIA form and checklist[252] are part of the procedure, as a child-centered development was necessary. The new apparatus has been a significant prerequisite for the TCR sent by the GAS, since its omission usually leads to rejections of such requests by the BAMF. However, the full compliance with the BIA does not necessarily entail the acceptance of the TCR, given that the BAMF sets a number of other practical conditions to prove the family link, including the ability of the relative to take care of the child.[253]

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[247] CRC (n 228) para 20.

[248] ECRE, 'Comments on Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)' (2015) 16 <https://www.ecre.org/wp-content/uploads/2016/07/ECRE-Comments-on-the-Dublin-III-Regulation_March-2015.pdf> accessed 28 May 2020.

[249] Part of safety and security considerations.

[250] The IR provides a standard form for the exchange of information between the MS in the Annex VIII.

[251] Safe Passage, Praksis (n 207) 12.

[252] Greek Dublin Unit of the Asylum Service, 'Best Interests Assessment for Dublin UAM's cases – A new tool to serve the needs of family reunification applications of unaccompanied minors' (2018) <http://asylo.gov.gr/en/?p=3788> accessed 2 June 2020.

[253] GCR, 'Country Report: GREECE', ECRE (ed) (AIDA, 2019 Update) 74 <https://search.ebscohost.com/login.aspx?direct=true&db=bth&AN=138217235&site=eds-live> accessed 29 June 2020.

The BIA coincides with a series of additional guarantees for UASC provided by the DR III, such as the appointment of a representative and the identification of family members or relatives of the minor concerned. The appointment of the representative is placed at the heart of the Dublin procedural guarantees,[254] as his/her expertise and qualifications may ensure an effective BIA in the execution of the DR III. There are not specific requirements included in the DR III so as to define the qualifications or professional capacity of such representative, however it can be a natural or legal person/organization, having the legal capacity to act on behalf of the UASC.[255] In the Greek context, the Public Prosecutor for minors, or in the absence thereof the Public Prosecutor at First Instance Court, is considered the temporary guardian and should promptly provide the USCA with legal representation until the appointment of a permanent guardian.[256] Thus, the role of the representative is concurrent with the one of the guardians. This has to be underpinned especially due to the obligation to send all the relevant documents produced during the Dublin process to the competent Prosecutor or guardian, in order to ensure that everything has been held in accordance with the BIC. In particular, according to the newly established guardianship scheme, under the Greek Law 4554/2018,[257] '*a guardian should be appointed to an alien or stateless person under the age of 18 who arrives in Greece without being accompanied by a relative or non-relative exercising parental guardianship or custody'*.[258] As previously mentioned, the appointment of a permanent guardian lies within the competence of the Public Prosecutor for minors or the local prosecutor at First Instance, who shall act in the shortest possible time, and notify both the guardian and the EKKA by any appropriate means.[259]

[254] At this point, it is important to make a distinction between procedural guarantees and procedural safeguards as part of the Dublin process. The former refers to specific support measures required in order to enable UASC have full and effective access to asylum procedures and benefit from their rights, while the latter is mentioned in the Section IV of the DR III, including primarily the right to appeal; EASO, 'Practical guide on the best interests of the child in asylum procedures' (EASO Practical Guide Series, 2019) 12 <https://www.easo.europa.eu/sites/default/files/Practical-Guide-Best-Interests-Child-EN.pdf> accessed 25 May 2020.

[255] Safe Passage, Praksis (n 207) 86.

[256] Art. 16 (1) Law 4554/2018.

[257] Law 4554/2018 (GG A' 130) on the Social Security and Pension Provision, Addressing Undeclared Work, Reinforcing of Workers' Protection, Guardianship for Unaccompanied Minors and Other Provisions, (18 July 2018). See unofficial translation in English: <https://www.refworld.org/docid/5d47e08b4.html> accessed 12 May 2020.

[258] GCR (n 253) 122.

[259] Art. 16 (4).

Furthermore, the establishment of the Supervisory Guardianship Board, is one of the major developments provided in the said legislation, as the latter is responsible to ensure, amongst others, the BIA notably when the case in question involves issues, such as disability, religious beliefs, neglect or exploitation and family reunification possibilities.[260] Accordingly, given due consideration to the BIC**,** Art. 21 prescribes the creation and functioning of the *Standard Operating Procedures* (hereinafter SOPs) which have to be pursued on the basis of the BIA where appropriate. Equally important is the Department for the Protection of UAMs prescribed in Art. 27 of the Law 4554/2018, operated under the umbrella of EKKA, which has, inter alia, the responsibility of guaranteeing safe accommodation for UAMs and monitor the operation of such services.[261]

Along the same lines, Art. 6 DR III refers to the family tracing as a specific guarantee applied, once the UASC has lodged his/her application for international protection and in respect of the BIC.[262] Firstly, family tracing constitutes an integral part and crucial component of any search for a durable solution for the UASC and as such, it should be prioritized unless the act of tracing or the manner it is conducted contravenes the BIC or fundamental rights of the UASC concerned. Also, during the tracing process, the legal status of the child is not a decisive factor and thus no reference should be made as to whether the child is an asylum seeker or refugee. In this regard, family tracing has been accurately recognized by the Commission, as a key element of ensuring the family unity of UAMs.[263] In practical terms, as soon as the family member or relative of the UASC is identified in Germany, a BIA form is to be submitted with the TCR by the Greek Dublin Unit,[264] especially when there is a lack of documentation proving the family ties from the country of origin, as required by Art. 7 (2) DR III. Although

[260] Art. 19 (5).
[261] GCR (n 253) 123.
[262] Art. 6 (4).
[263] Commission (n 19) 11.
[264] In fact, according to the Art. 60 (3) (a) of the Greek Law 4636/2019 (hereinafter IPA) (as recently modified by the Art. 4 of the Law 4686/2020) the *Special Secretary for the Protection of UAMs* is the competent authority, founded under the Ministry of Migration and Asylum, which has to take all necessary steps in order to identify family members of UAMs, once the latter lodge the application for international protection; Law 4636/2019 (GG A 169) on International Protection and other provisions (1 November 2019), available in Greek < https://www.e-nomothesia.gr/kat-allodapoi/prosphuges-politiko-asulo/nomos-4636-2019-phek-169a-1-11-2019.html> accessed 13 May 2020.

according to relevant reports, this has been practiced in a very limited way in the first phase of the TCR, it is used more often in the re-examination procedure.[265]

3.6 Time Limits of Transfers and Appeals

As it was mentioned above, the acceptance of a TCR request entails that the BAMF sends the decision through the DubliNet system and after the notification, the UASC is informed that a phone call will be carried out at a later stage for the travel arrangements and particularly the day of the flight.[266] In this context, a decision rejecting the asylum claim will be issued by the GAS, on the grounds that Germany assumes such responsibility, and there is a 15-day time limit to appeal.[267] However, Art. 27 DR III is basically applied for the unwanted transfers and the applicant does not usually have a legitimate interest to submit such an appeal, as remedies are mostly provided against a transfer decision which may affect the applicant's rights often due to the lack of reception capacity or the detention conditions of a MS.[268] On the other hand, if the TCR is rejected no remedies are provided in the DR III itself which raises serious concerns as to whether the right to an effective remedy, as stipulated in Art. 47 CFREU, is respected. National courts have not taken a uniform approach regarding the justiciability of a MS's refusal to accept the TCR and some MS have been rejecting such appeals[269] as inadmissible on the grounds that asylum seekers cannot act directly against such negative decisions, since it is only an inter-governmental procedure.[270]

In response to a positive decision on the TCR, the transfer to Germany has to be performed within six months, after the acceptance of the TCR, either it was explicit or by default.[271] The transfer is implemented in line with the national law of Greece, in this case the requesting MS, as stated in Art. 29 (1) DR III.[272] If the transfer is not

[265] Safe Passage, Praksis (n 207) 74.
[266] Tsiakka (n 17) 2.
[267] Under Art. 84 (1) (b) and 92 (1) (d) IPA, the appeal is lodged before the competent Regional Asylum Office (RAO) against the decision of the GAS, which rejects the asylum application as inadmissible due to the fact that Germany is the MS responsible to examine the application of international protection.
[268] *M.S.S v Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011).
[269]Federal Administrative Court of Austria, Decision W175 2206076-1, 1 October 2018.
[270] ECRE, 'The Implementation of the Dublin III Regulation in 2018' (AIDA, March 2019) 12 < http://www.asylumineurope.org/sites/default/files/aida_2018update_dublin.pdf> accessed 13 June 2020.
[271] Art. 22 (1), (7) DR III.
[272] Minors under the age of 12 are accompanied by a person of the organization taking care of them, such as Metadrasi or IOM, who is authorized by the Public Prosecutor accordingly.

carried out within the six-month time limit, then Greece may assume responsibility as, under Art. 29 (2) DR III, Germany, shall be relieved of its obligation to take charge of the UASC concerned. The provisions of the IR are also relevant for this process, given that Art. 7 IR lays down a number of prerequisites in relation to the transfers. Accordingly, such transfer may be conducted in three ways. Firstly, a *laisser-passer* document may be issued and an independent departure within a specific time-limit will be arranged. Secondly, the UASC must be accompanied to the point of boarding while the burden of providing the rest of the necessary conditions, such as the time and the place is carried out by the MS responsible and lastly, the UASC may be escorted all the way to Germany and be delivered to the relevant authorities.[273] The laisser-passer document is provided in all previously mentioned cases, though in the third case it may be provided only if the UASC has no identity documents.

3.7 Rejections of the Take-Charge Requests by the BAMF

Despite the fact that the principles of family unity and the BIC are entrenched at the very heart of the DR III, they have been often set aside, as regrettably proved by the alarming number of rejections of the TCR by the BAMF in family reunification-related cases. This practice creates a number of procedural and substantive impediments as regards the implementation of the DR III and further prolong the examination of the asylum application, circumventing one of the core objectives of the Dublin system, the fair and affective access to the asylum process. Additionally, it has been observed that mainly in cases falling under the scope of the humanitarian clause, the BAMF's responses are often insufficiently justified which, if combined with the prompt pace of responses, is raising serious concerns as to whether the relevant requests have been substantially examined.[274]

By the same token, the policy of systematically rejecting the TCR[275] was coupled with the landmark ruling of the CJEU in the *Mengesteab* case.[276] In fact, the court held that the lodging of the asylum application in the DR III does not have the same meaning as

[273] Nestler and Others (n 160) 28. This is the most common way used by the MS.
[274] Iliana Bompou and Ohers (n 186) 1.
[275] RSA (n 214).
[276] *C-670/16 Tsegezab Mengesteab v Bundesrepublik Deutschland* (2017) ECLI:EU:C:2017:587.

in APD.[277] The judgement gave the German authorities the legal excuse to reject the TCR based on the expiration of the three-month deadline as provided in Art. 21 (1) DR III. Thereby, the main argument of the BAMF was that the starting point of the three-month time limit was when the applicant expressed his/her intention to lodge an asylum application and not the time of the registration of such application with the GAS, which is also the only competent authority to send the TCR under the DR III. This stringent interpretation of the Dublin provision forced the Greek authorities to overthrow their long-established practice and thus they started to send the TCR to the BAMF within the three-month time limit, starting from the registration of the intention to lodge an asylum request.[278] Under the Greek asylum context, such an intention is usually expressed at a very early stage, when the TCNs have to go through the reception and identification process where the GAS is informed about the registration of the intention and wish of the applicant to be reunited.

Taking into account the above, through a thorough analysis of selected case law from the German Administrative Courts, one could see that the UASC often have to fight for their right to family life by challenging the decision of the BAMF, despite the gap in the DR III and the right to appeal relating to the negative decisions.[279] In the cases examined below, the German courts have recognized the right to appeal against such rejections and thus only positive court decisions will be analyzed below.

To begin with, in a case concerning two UASC residing in Greece and their father, living in Germany, the BAMF rejected the TCR submitted by the GAS, due to the fact that the father had already been recognized as beneficiary of international protection in Romania and he had to be transferred there. While his appeal was pending at the time the appeal of the two UASC was examined by the German Court, the Greek Dublin Unit invoked the applicability of Art. 8 (1) DR III, yet the BAMF rejected the TCR twice, given that the family should be reunited in Romania. After all, the BAMF was obliged to accept the TCR under Art. 17 (2) DR III.[280] The reasoning was basically

[277] ECRE (n 270).
[278] RSA (n 214) 7.
[279] For example, in a recent case, the Administrative Court of Berlin (n 206) held that although the DR III (Art. 27 (1)) only grants the right to an effective remedy against a transfer decision, the provision does not preclude a higher national standard of legal remedies as it is line with Art. 47 CFREU. The court recognized that under Art. 9 and 17 (2) DR III, the applicants have individual, subjective rights and therefore they can file an appeal against the rejection of the TCR by the BAMF.
[280] ERBB, 'Litigation', (VG WIESBADEN, 23 September 2019, 6 L 1158/19.WI.A) <https://www.equal-rights.org/litigation> accessed 30 May 2020.

rooted in the potential violation of Art. 3 ECHR, in view of the substandard living conditions in Romania for a single-parent family with two minor children, recognized as refugees, since they would hardly manage to cover even their basic needs. The latter is perfectly aligned with the *Jawo case* of the CJEU,[281] under which such return to the MS responsible may not be carried out where the conditions in the respective country would expose the applicant to a high risk of extreme material poverty, equivalent to inhuman or degrading treatment under Art. 4 CFREU. The CJEU judgement stands as a solid instance on how the principle of mutual trust can be refuted in exceptional circumstances so as to maintain the well-functioning of the DR III. It also provides a number of criteria which have to be respected while the national courts are assessing the situation in the responsible MS and more specifically as to whether the systematic deficiencies are able to reach a high level of severity amounting to a real risk of inhuman or degrading treatment.[282] Having said that, Germany while exercising its discretion, had to eventually accept the TCR and the transfer of the two UASC in its territory in respect of their right to family life and fundamental rights guaranteed under the ECHR and the CFREU.

Another important case refers to the BAMF's responses where siblings are involved in the process. In this context, the GAS sent a TCR to its German counterpart for the transfer of an UASC residing in Greece, since the latter's older brother was found to be in Germany.[283] In the first place, the BAMF rejected the older brother's asylum claim as inadmissible considering that he had entered Germany via Sweden and thus the former was not responsible for examining his asylum application. While the decision on the appeal was pending, the German Administrative Court held that Germany had to assume responsibility of the UASC, under Art. 17 (2) DR III, having due regard to the BIC when applying the humanitarian clause. The fact that the asylum application of his older brother was declared inadmissible was not a decisive factor upon which the

[281] *Case C-163/17 Abubacarr Jawo v Bundesrepublik Deutschland* (2019) ECLI:EU:C:2019:218.
[282] Anthea Galea, 'The Jawo case: The limits of the principle of mutual trust' (European Law Blog: News and Comments on EU Law, 13 May 2019) < https://europeanlawblog.eu/2019/05/13/the-jawo-case-the-limits-of-the-principle-of-mutual-trust/> accessed 10 June 2020.
[283] ERBB, 'Litigation-Family reunion' (VG Hamburg, Decision 06 December 2019 – 4 AE 5344/19) < https://www.equal-rights.org/litigation-family-reunion> accessed 7 May 2020.

rejection of the TCR could be justified, mainly due to the suspensive effect of the appeal,[284] as he did not have to forcibly leave Germany.

Although, as a general rule, the humanitarian clause is not part of the compulsory responsibility criteria, its application may become mandatory whenever there is a need to adhere to international and European standards which protect the right to family life.[285] Equally, nothing in the DR III implies a narrow interpretation of the Art. 17 (2) as has been confirmed by the CJEU ruling in the *K case.*[286] Both the right to family life and the BIC principle constitute primary considerations in the DR III and therefore the humanitarian clause should be used systematically for the maintenance of the family unit when the rest of the responsibility criteria fail to be met.[287] In this sense, the German Court has aptly asked the BAMF to accept the TCR, since a restrictive implementation of the Art. 17 (2) would have given rise to serious concerns as to whether the rationale of keeping families together could only be feasible under the compulsory criteria, which often fall short because of maladministration or deficiencies in the Greek asylum system[288] and not following applicants' own faults.

In a similar case concerning siblings, an UASC residing in Greece and her adult sister lawfully living in Germany, had a close family bond when they were living in Syria.[289] The GAS failed to send the TCR, based on Art. 8 (1) DR III, within the three-month deadline and used the humanitarian clause as an alternative which does not include any time limit. Nonetheless, the BMF rejected the TCR twice on the grounds that the UASC had already reached the age of maturity and thus there was no indication of dependency.[290]

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[284] Under the German law, since there is no automatic suspensive effect of the appeal, the appellant has to submit an additional request for the restoration of the suspensive effect. No transfer can be carried out as long as the court has not decided on the appeal; Section 29 and 34a (1) (2) of the German Asylum Act; Asylum Act in the version promulgated on 2 September 2008 (Federal Law Gazette I, p. 1798), last amended by Article 2 of the Act of 11 March 2016 (Federal Law Gazette I, p. 394) <https://www.gesetze-im-internet.de/englisch_asylvfg/englisch_asylvfg.html#p0468> accessed 12 June 2020.

[285] Maiani (n 152) 42.

[286] *Case C-245/11* (n 201).

[287] Maiani (n 152) 44.

[288] RSA (n 214) 8.

[289] DRC, 'When the Dublin System Keeps Families Apart' (May 2018) 7 < https://drc.ngo/media/4530554/drc-policy-brief-when-the-dublin-system-keeps-families-apart-may-2018-final.pdf> accessed 5 May 2020.

[290] According to the information provided, it is not clear whether an appeal was lodged at the time the DRC's report was issued (May 2018). Hence, even if no reference is made to a German court's decision, the present case serves as a good illustration for critically analyzing what is the main issue of '*ageing-out'* and family reunification requests under the DR III.

Regrettably, in this case the misinterpretation of the Dublin provisions has a manifold dimension. Firstly, the freezing clause of Art. 7 (2) DR III is only applicable to the compulsory criteria under Chapter III and it could be invoked, for instance, if the applicant was an UAM when s/he entered the EU territory but s/he had already turned eighteen when first applied for international protection.[291] Besides, the discretionary clauses are built upon humanitarian considerations which naturally may arise at a later stage.[292] Secondly, the notion of dependency is not part of the legal contour of Art. 17 (2), even though it can be considered as a decisive criterion therein only in exceptional circumstances.[293] In the same direction, when UASC reach the age of maturity and the outcome of the family reunification procedure is still pending, there is a risk of being treated as adults and therefore being deprived of the rights and guarantees as defined in the DR III and/or relevant instruments. The so-called *'ageing-out'* phenomenon has been a matter of judicial scrutiny mainly following the landmark case *A and S* of the CJEU[294] being an important step towards the protection of UAMs involved in the family reunification procedures.[295] The court recognized the right to family reunification as a self-standing right protected under the FRD which requires MS to allow the entry and residence of refugee minors' parents or children to join their parents. Accordingly, it afforded additional guarantees to them with the intention to ensure their right to family life.[296] The court also found that the decisive moment of time in order to assess whether the applicant can benefit from the more favorable provisions applied to UAMs is the date of application for international protection.[297] Thereby, it seems that the judgment took substantially into account the BIC principle as prescribed in Art. 24 (2) CFREU, whilst it was equally in line with the principle of legal certainty, effectiveness and equal treatment as the entitlement of the right to family reunification for unaccompanied refugee children can eventually be predictable.

[291] This is an example to highlight the applicability of the freezing clause, however there have been cases where UAMs, due to structural inconsistencies in the asylum procedures mainly existing in the EU's external borders, failed to be registered as soon as they entered the EU country and in the meantime the age of maturity had already been reached.
[292] Nestler and Others (n 160) 26.
[293] Ibid 25.
[294] *Case C-550/16 A and S v Staatssecretaris van Veiligheid en Justitie* (2018) ECLI:EU:C:2018:248.
[295] ECRE, ELENA, 'Legal Note on Ageing Out and Family Reunification: The Right of Unaccompanied Children Who 'Age Out' to Family Reunification in Light of International and EU Law' (2018) 2 <https://www.ecre.org/wp-content/uploads/2018/06/Legal-Note-4.pdf> accessed 18 June 2020.
[296] Ibid, 3.
[297] Also, a recently published judgement confirmed the same: *Case C-133/19 B. M. M. and Others v État belge* (2020) ECLI:EU:C:2020:577, paras. 48-58.

Against this backdrop, although the instrument under scrutiny was the FRD, it was made clear that the right to family reunification is the legal prerequisite for the enjoyment of the right to family life. In this sense, MS must also act proactively by taking all the necessary measures to identify the family members or relatives of the UASC and by considering all the information provided by the minor with the view to facilitate the family reunification procedure under the DR III.[298] More importantly, MS while applying the compulsory family unity criteria must implement the freezing clause of Art. 7 (2) DR III and give precedence to the benefit of the doubt principle when, during the age assessment procedure, it is not sufficiently clarified whether the applicant is a minor (or not) and ensure that undue reliance on medical methods is avoided. Despite the fact that the national practice of Germany has reportedly endorsed that the crucial time, while assessing a family reunification request, is the day of the issuance of the relevant decision, the German Federal Administrative Court held that it is an extraneous factor whether an applicant has become an adult after the submission of the asylum claim, even if this is in violation of domestic provisions.[299]

Another indicative example pertains to the reunification of an UASC residing in Greece with his aunt, living lawfully in Germany and the iterative wrongful implementation of the DR III provisions by the BAMF.[300] In this case, the TCR submitted by the GAS following the application of Art. 8 (2) DR III, according to which the UASC has a right to be reunited with his/her aunt, who falls within the meaning of relative, as defined in Art. 2 (h) DR III. The TCR was rejected on the basis of insufficient proof of family link and thus a DNA test was subsequently submitted, confirming the kinship relationship between the two persons involved. Notwithstanding, the BAMF did not reply and it started assessing the aunt's capability of taking care of the child,[301] trying to ostensibly apply any other legal requirement, falling under the scope of Art. 8 (2) DR III. The German court upheld the family ties between the UASC and his aunt as part of the legal framework of Art. 8 (2). It also underscored that the essential requirement of looking after the minor does not imply the financial capacity of the relative given that the minor

[298] Art. 12 IR.
[299] Federal Administrative Court of Germany, BVerwG 1 C 4.15, 16 November 2015, < https://www.bverwg.de/161115U1C4.15.0> accessed 2 August 2020; ECRE, ELENA (n 295) 6-7.
[300] ERBB, 'Litigation-Family reunion' (VG Bremen, Decision of 7 February 2020, 5 V 2557/19) <https://www.equal-rights.org/litigation-family-reunion> accessed 10 April 2020.
[301] The assessment was purportedly conducted by the youth welfare service.

would be entitled to social benefits in Germany and most importantly, it was in compliance with the BIC.

In spite of the fact that a DNA test was submitted, the German authorities failed to accept the TCR preventing the UASC in question from enjoying his right to life. This practice runs counter to Art. 22 (3) DR III combined with the requirements laid down in Annex II[302] IR, under which a DNA test may be requested, although it is a probative element which may be deployed as a last resort and if no other evidentiary means are available. In consonance with the Commission's guidance on the application of the Dublin system, DNA testing is costly, time consuming and not relevant for every case and it should only be used as *ultima ratio,* in the event that the provision of any other probative or circumstantial evidence is unattainable.[303] Apart from that, the establishment of the family ties in the refugee context can be often intricate mainly due to the lack of documentary proof. As a result, in the absence of such documents, the respective interview could be viewed as a form of oral evidence which can be used so as to avoid any contact with the country of origin authorities that may put the lives of refugees at serious risk. Further, DNA testing remains a solution of last resort, notably only in order to cover fraudulent practices, which are unlikely to be used by innocent children, seeking safety and protection.[304] On top of that, a purely biological relationship proved by the DNA test and the use of any means of biotechnology can meet the requirements of the legal definition of family, however it can also provide evidence of a social relationship which is often contestable by the immigration officials or national policies, such as polygamy.[305] Thus, the social validity aspect of DNA testing implicates multiple challenges that cannot be abated without addressing cultural, societal and political questions of the notion of family.[306] Nonetheless, the biological proof of family bonds does not entail that such process is capable of assessing the quality of family life, as the latter is much more than a biological appraisal. Hence, in cases concerning UAMs, the BIC is a decisive factor requiring that the relevant

[302] List A, Means of Proof, 1 (1).
[303] European Commission, 'Commission Staff Working Document: Accompanying to the Report from the Commission to the European Parliament and the Council on the Evaluation of the Dublin System' (6 June 2007, SEC (2007) 742) 24.
[304] UNHCR, 'Note on DNA Testing to Establish Family Relationships in the Refugee Context' (2008) 4 <https://www.refworld.org/docid/48620c2d2.html> accessed 2 July 2020.
[305] Catherine Lee and Torsten H Voigt, 'DNA Testing for Family Reunification and the Limits of Biological Truth' (ST&HV, 2020) 45 (3) 445.
[306] Ibid 446.

stakeholders take action and include BIA at every stage of the asylum process, considering all appendant repercussions that such measures may have on the rights of children. Taking into account the above-said analysis, the German court duly considered the legal branches of Art. 8 (2) DR III and ordered the BAMF to accept the TCR of the UASC.

Lastly, there have been noticed cases where the evidentiary documents[307] accompanying the TCR led to the rejection of the latter,[308] imposing a stringent standard of proof which should indubitably be avoided as it equates an overwhelming calcification of the Dublin system, making the whole process ineffective. In the cited case, the court underscored that the translation of such document is immaterial, hence the rejection on that basis may be considered unlawful.

Having said that, the UASC who are forced to stay in Greece, following the unlawful rejections of the TCR by the BAMF, have to challenge such decisions in order to eventually reach their families in Germany. However, this time-consuming process can have a detrimental impact on the UASC's daily life as they are usually obliged to stay in inappropriate facilities with deplorable living conditions, having pernicious effects on their well-being, physical and mental development, as an adequate standard of living and a caring family environment are integral parts of the harmonious development of the child. In this context and after the multiple unlawful rejections of the TCR, not only are UASC deprived of their right to be reunited with their families, but also the German authorities fail to take into account the BIC when applying the DR III., which includes an evaluation of the possible impact of the decision on the child concerned. This practice defies the right of children to actively participate in all procedures that affect them, in line with their evolving capacities, while their views must also be taken substantially into consideration especially when there are no clashing interests at the family level.[309]

[307] In the said case, the relevant document was an extract from the registry, the so-called Tazkira, applicable to Afghan nationals.
[308] ERBB, 'Litigation-Family Reunion' (VG Ansbach, Decision of 2 October 2019, AN 18 E 19.50790) <https://www.equal-rights.org/litigation-family-reunion> accessed 3 May 2020.
[309] Jaap E Doek, 'Child Well-Being: Children's Rights Perspective' in Jill E Korbin, Asher Ben-Arieh, Ferran Casas, Ivar Frønes (ed), *Handbook of Child Well-Being, Theories, Methods and Policies in Global Perspective* (Springer Link 2014) 208.

4. Selected Practical Challenges with regard to the Family Reunification Procedure for Unaccompanied Asylum-Seeking Children Stemming from the Cumbersome Greek-German Practice

4.1 Questionable Practice in Germany: Bilateral Limits on the Right to Family Life for UASC

The DR III provides specific deadlines for any act that has to be carried through in order to be properly and lawfully implemented. In the event of a delayed transfer, the MS responsible can reject it and the responsibility is conveyed to the requesting MS.[310] The adherence to such deadlines entails the rightful implementation of the Dublin provisions and guarantees that the organizational rules governing the family unity criteria, notably as regards the UASC, are respected. Against this background, the CJEU in the cases *Karim*[311] and *Ghezelbash*[312] held that the correct application of the responsibility criteria under the DR III is an individual right and therefore applicants have the right to appeal against any erroneous application of the criteria and to any tardiness of the relevant procedural steps.[313]

Despite the firm legislative and jurisprudential establishment of the procedural rules applied to Dublin transfers, an agreement between Greece and Germany seemed to have set a limit on the number of people who were waiting for joining their family members in Germany in 2017. In fact, the said agreement between Germany and the Greek Ministry of Migration Policy[314] inserted a new practice of capped transfers, affecting mainly those who were subjected to the family unity provisions under the DR III.[315] Thereby, as of 1st of April 2017, Germany was bound to accept only 70 persons[316] per

[310] Art. 29 (2).
[311] *Case C-155/15 George Karim v Migrationsverket* (2016) ECLI:EU:C:2016:410.
[312] *Case C-63/15 Mehrdad Ghezelbash v Staatssecretaris van Veiligheid en Justitie* (2016) ECLI:EU:C:2016:409.
[313] Vinzent Vogt, 'Family Life Temporarily not Available – Bilateral Limits on Family Unity within the Dublin-System' (Verfassungsblog, 13 July 2017) <https://verfassungsblog.de/family-life-temporarily-not-available-bilateral-limits-on-family-unity-within-the-dublin-system/> accessed 10 May 2020.
[314] According to the Greek press 'efsyn', the existence of such deal was confirmed by the former Minister of Migration, Ioannis Mouzalas, who admitted to his German counterpart, Thomas de Maizière, that the delayed transfers have caused serious difficulties to those subjected to it, available in Greek <https://www.efsyn.gr/ellada/dikaiomata/111921_politiko-paihnidi-stis-plates-ton-prosfygon> accessed 2 July 2020.
[315] ECRE, 'Greece/Germany: Cap on transfers under Dublin family provisions' (12 May 2017) < https://www.ecre.org/greece-germany-cap-on-transfers-under-dublin-family-provisions/> accessed 6 June 2020.
[316] Data on the number of UASC, who were waiting to be transferred, are missing.

month from Greece which further heightened the UASC's fear of being trapped in limbo and losing their chance to be reunited with their family members or relatives. This unacceptable policy added insult to injury, since the UASC were dealing with a dysfunctional system due to the shortage of staff to escort them during the phase of the Dublin transfers and, as a consequence, further prolonged such delays which could reportedly last up to eighteen months.[317] The alleged agreement appeared to flagrantly violate the right to family life of the UASC,[318] as entrenched in both Art. 7 CFREU and Art. 8 ECHR. Besides, the great value devoted to the right to family life within the Dublin scheme indicates that its *effet utile* requires the pragmatic realization of the family unity, as corroborated by the use of the humanitarian clause even in cases that the relevant deadlines have been expired preventing the family members from being separated.[319]

In view of the aforementioned, the BAMF was obliged to comply with the six-month time limit,[320] after the relevant decision of the Administrative Court of Wiesbaden. In this case, an UASC from Syria living in Germany was waiting to be reunited with his family, who had already applied for asylum in Greece, and whose transfer was pending after the acceptance of the TCR by the BAMF in March 2017.[321] The court[322] held that the applicants have a subjective right to be timely transferred in line with Art. 29 DR III while underscoring that the cap on the monthly transfers resulting in the expansion of the six-month timeframe does not relieve Germany of its obligation to carry out the transfer in due time as required under Art. 29 (1) DR III.[323] The German court had actually considered the landmark ruling in the *Mengesteab* case,[324] which referred inter alia to the timeframes set forth in the DR III. The opinion of the Advocate General[325]

[317] GCR, 'Country Report: GREECE' ECRE (ed), (AIDA, 2016 Update) 49 < http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2016update.pdf> accessed 5 May 2020.
[318] and all those who were entitled to be transferred to Germany.
[319] Vogt (n 313).
[320] Art. 29 (1).
[321] ECRE, 'Germany: BAMF must comply with Dublin timeframes to transfer applicants from Greece' (AIDA, 22 September 2017) < https://www.asylumineurope.org/news/22-09-2017/germany-bamf-must-comply-dublin-timeframes-transfer-applicants-greece> accessed 30 June 2020.
[322] Ibid. Administrative Court of Wiesbaden, Decision of 18 September 2017, available in German < http://www.asylumineurope.org/sites/default/files/vg_wiesbaden_family_greece.pdf> accessed 1 July 2020.
[323] Lastly, the court held that the family should be transferred before the expiration of the six-month deadline (by the 30th of September 2017), albeit the transfer in question was planned for October 2017.
[324] *C-670/16* (n 276).
[325] Ibid, Opinion of AG Sharpston, ECLI:EU:C:2017:480, paras. 77-110.

emphasized that the applicants should be able to challenge a transfer decision when MS fail to meet the applicable time limits and thus rejected the claim that the prescribed deadlines only govern inter-state relations, especially because they have substantial ramifications for those subjected to them.

Another critical issue is the lack of transparency, since the exact terms and conditions of the deal are unavailable[326] and the only evidence was the response of the GAS to a question submitted by civil society organizations.[327] In this context, the letter received from the GAS[328] confirmed that the content of the deal has not been precisely elucidated and therefore the compatibility with Art. 36 DR III is called into question. The latter only covers administrative arrangements which may be agreed on a bilateral basis so as to facilitate the application and effectiveness of the DR III and expedite time limits concerning the examination of the take charge or take back requests. Hence, the Greek-German deal led to a considerable number of delayed transfers, preventing the respective beneficiaries from being reunited with their families in contrast with the overriding objective of the DR III, and therefore is deemed incompatible with Art. 36. Apart from that, the Commission was not aware of the agreement in defiance of Art. 36 (5) and then concluded that it is not an administrative arrangement under the meaning of Art. 36.[329] In this case, instead of having a lawful agreement which would enable asylum seekers, including UASC, realizing their right to family life aligned with the lawful and consistent application of the DR III, regrettably both Greece and Germany decided to erroneously adjusting the legal provisions to their political intentions. The Commission eventually asked for compliance with Art. 36 DR III.[330]

[326] According to the Greek press 'efsyn', the actual terms of the said deal were not even known to the Members of the Hellenic Parliament who claimed that the agreement is unlawful and contrary to the EU law as setting substantial restrictions to the asylum seekers and their right to join their families in Germany, available in Greek <https://www.efsyn.gr/ellada/koinonia/112294_erotiseis-se-boyli-kai-eyroboyli-gia-tin-epistoli-moyzala> accessed 2 July 2020.

[327] Solidarity Now, 'Asylum Seekers' Transfers from Greece to Germany for Family Reunification under EU Regulation 604/2013', (Solidarity Now, 26 July 2017) <https://www.solidaritynow.org/en/asylum-seekers-transfers-greece-germany-family-reunification-eu-regulation-6042013/> accessed 22 June 2020.

[328] Ibid.

[329] Vogt (n 313).

[330] ERBB, 'Swapping asylum seekers, reuniting families? The counterpart of returns to Greece in accelerated pro' (14 November 2018) <https://www.equal-rights.org/post/2018/11/18/swapping-asylum-seekers-reuniting-families-the-counterpart-of-returns-to-greece-in-accele> accessed 6 May 2020.

Taking as point of departure the informal and unlawful arrangement of 2017, a year later and in the course of a fierce debate on the prevention of secondary movements in Germany, the Ministry of Migration Policy of Greece and the Federal Ministry of Interior of Germany agreed upon the terms of a bilateral political deal, the so-called '*Seehofer Deal'*, which was only published by the RSA and PRO ASYL on the 1st November 2018,[331] almost three months after it has entered into force on the 18th of August 2018. While the focus of the present subsection is the impact of such arrangements on the right to family life in relation to the UASC, an overall assessment of the agreement has been included with the intention to better discuss its legality and institutional foundation, given its influence on a great number of people falling under its scope of application.

The agreement is divided into three chapters, including fifteen Articles in total.[332] The first part refers to the procedure in the event a person is refused entry in the context of temporary checks at the internal German-Austrian border,[333] however these provisions remain inapplicable to UAMs.[334] This measure has been highly criticized as it equals to a fast-track implementation of returns[335] despite the returns' procedure has already been regulated by the DR III. In light of the application of the newly established procedure to an Afghan national who was refused entry into Germany in May 2019, the Administrative Court of Munich[336] debunked any doubts as regards the legality of such measures and held that the applicant's rights under the DR III were not respected, since the deal introduced a pre-Dublin procedure which was not prescribed in the DR III,

[331] RSA, 'The Administrative Arrangement between Greece and Germany' (1 November 2018) <https://rsaegean.org/en/the-administrative-arrangement-between-greece-and-germany/> accessed 8 May 2020.

[332] Stathis Poularakis, 'The Case of the Administrative Arrangement between Greece and Germany: A tale of 'paraDublin' activity'?' (EDAL, 5 November 2018) <https://www.asylumlawdatabase.eu/en/journal/case-administrative-arrangement-between-greece-and-germany-tale-%E2%80%9Cparadublin-activity%E2%80%9D?fbclid=IwAR2teuAFCiw-1NqnzNS-w3fprY3Q5unVwxYhapZscr-lXiFlLvEX3HwrfQ4> accessed 18 April 2020.

[333] This practice is actually based on Art. 13 DR III where the 'first entry' criterion applies as proved by Eurodac hit 1.

[334] Constantin Hruschka, 'The border spell: Dublin arrangements or bilateral agreements? Reflections on the cooperation between Germany and Greece / Spain in the context of control at the German-Austrian border' (EU Immigration and Asylum Law and Policy, 26 February 2019) <https://eumigrationlawblog.eu/the-border-spell-dublin-arrangements-or-bilateral-agreements-reflections-on-the-cooperation-between-germany-and-greece-spain-in-the-context-of-control-at-the-german-austrian-border/> accessed 5 May 2020.

[335] RSA (n 331).

[336] EDAL, 'Germany: Administrative Court of Munich finds German-Greek Administrative Agreement violates European law and orders return of applicant from Greece' (8 August 2019) <https://www.asylumlawdatabase.eu/en/content/germany-administrative-court-munich-finds-german-greek-administrative-agreement-violates> accessed 5 May 2020.

establishing a grey zone within the Schengen area. In this regard, the court ordered the return of the applicant from Greece to Germany,[337] given that no effective take-back request was submitted by the BAMF as required in Art. 23 (1) DR III.[338]

Moreover, the impact of the Seehofer Deal on the family reunification procedure under DR III had a multiform dimension. Firstly, under part two, Germany undertook the obligation to transfer all those whose TCR were accepted before the 1st of August 2018. As previously mentioned, such transfers have to be completed within six months from the acceptance of the TCR, however the capped transfers of 2017 had abruptly surged the backlog and many applicants, UASC included, were stuck in Greece, usually waiting twice as long than legally foreseen.[339] Secondly, Germany declared that all pending TCR would be examined within the two-month deadline as stipulated in Art. 22 (1) DR III. Thirdly, both parties agreed on adhering to the timeframes provided in the DR III, in particular those concerning the TCR's response,[340] the answer on the re-examination process[341] and ultimately the transfer itself.[342] In addition, all pending re-examination requests were promised to be examined in due time. For the latter, Art. 5 (2) IR foresees a two-week deadline which if there is no reply, no acceptance by default applies as opposed to the initial TCR.[343]

Regrettably, even though the deal entails the legal obligation for Germany to swiftly handle family reunification cases which at the moment of the entry into force were still pending, it is apparent that it did not make any use of the substantive rules under Art. 36 DR III, since instead of coming along with a simplification process and facilitate the application of the family unity provisions, it re-stated the already established requirements as prescribed in the DR III. Germany actually undertook the obligation to comply with the time-limits but this was part of a lawful and consistent implementation of the DR III and therefore an additional agreement on these points was rather

[337] The deficiencies of the Greek asylum system were shrewdly mentioned in the court's reasoning as the applicant was refused access to the asylum procedure while he was being detained for over two months (in Greece).
[338] ERBB, 'Decision of Court of Munich: Refusals at the border are illegal - and thus the "Seehofer Deal" ' (14 August 2019) <https://www.equal-rights.org/post/decision-of-court-of-munich-refusals-at-the-border-are-illegal-and-thus-the-seehofer-deal> accessed 2 June 2020.
[339] ERBB (n 330).
[340] Art. 21 (1).
[341] Art. 5 (2) IR.
[342] Art. 29 (1) DR III; ERBB (n 330).
[343] Art. 21 (1) (7) DR III; RSA (n 214) 9.

superfluous.[344] Thus, the procedures, formalities and communication channels, such as DubliNet, coordinating the family reunification requests and the transfers thereafter, are already provided in the DR III and the IR, so in this context the said agreement is just a duplication[345] which however is set against the highly contested return procedure applied at the German and Austrian borders.[346] As for the legal nature of the agreement, it has been characterized as an international treaty in compliance with the Art. 13 of the VCLT,[347] though it was not under the Greek parliament's scrutiny as always required in such cases according to Art. 36 of the Constitution of the Hellenic Republic.[348] On a final note, it seemed that the said agreements were not in line with the family unity considerations, provided that the political deal of 2017 only prolonged family separations whereas the *Seehofer deal* just repeated the Dublin rules and failed to introduce a simplification process which falls under the scope of Art. 36 DR III.

4.2 Questionable Practice in Greece

4.2.1 Barriers to Family Reunification of UASC through Procedural Complexity

In 2019, the Greek government came up with a new asylum law with the intention to comprehensively embody all asylum-related provisions in one single document, accelerate the asylum procedures and provide efficiency. However, the new IPA[349] which came into force as of 1st January 2020,[350] has been strongly criticized since it brought several constraints on individual rights and procedural guarantees, tightening asylum procedures and increasing returns.[351] Following the alarming situation in

[344] ERBB (n 330).
[345] ECRE, 'Bilateral Agreements: Implementing or Bypassing the Dublin Regulation? ECRE's Assessment of Recent Administrative Arrangements on Transfer of Asylum Seekers and their Impact on the CEAS' (2018) <https://www.ecre.org/ecre-policy-paper-bilateral-agreements-implementing-or-bypassing-the-dublin-regulation/> accessed 28 April 2020.
[346] Ibid.
[347] Vienna Convention on the Law of Treaties (adopted in 23 May 1969) 1155 UNTS 331.
[348] Poularakis (n 332); Constitution of the Hellenic Republic, as lastly amended in 25 November 2019 (GG A' 211, 24 December 2019), available in Greek < https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/FEK%20211-A-24-12-2019%20NEO%20SYNTAGMA.pdf> accessed 6 July 2020.
[349] Law 4636/2019 (n 264).
[350] Some provisions had already entered into force upon the publication of the law on the official government gazette in November 2019.
[351] ECRE, 'Greece: New Restrictions on Rights and Procedural Guarantees in International Protection Bill (31 October 2019) <https://www.ecre.org/greece-new-restrictions-on-rights-and-procedural-guarantees-in-international-protection-bill/> accessed 28 May 2020.

northeastern Syria where 160.000 people had reportedly been displaced after the Turkish military operations in early October 2019,[352] the newly introduced IPA set forth a series of dysfunctional measures allowing inter alia the asylum claims of UAMs to be processed under the accelerated border procedure[353] which raises serious concerns as regards the quality of the decisions, respect of other procedural safeguards and notably whether the BIC has been taken into account already in the legislative process. In addition, within the framework of the European Agenda on Migration,[354] the Commission adopted the hotspot approach as an urgent response to the mass influx of TCNs in 2015 and as a means of providing assistance to the EU's frontline countries which were faced with a disproportionate number of arrivals.[355] Subsequently, the EU-Turkey statement[356] confirmed the operation of the new regime which had a detrimental effect on the lives of TCNs hosted on the Greek islands. The reason behind is the transformation of the hotspot arrangements into closed detention centers, since people arriving after the 20th of March 2016 were automatically detained within the hotspot facilities, many UASC amongst them,[357] in order to be readmitted to Turkey in the event they did not lodge an asylum claim, or their applications for international protection were rejected either as inadmissible on the grounds of *'protection elsewhere clauses'*, namely the *Safe Third Country*[358] or *First Country of Asylum*[359] concepts or on the merits.[360]

In this regard, the hotspot approach has been implemented in Greece after the adoption of the law 4375/2016,[361] regulating -amongst others- the reception and identification

[352] ECRE, 'Greece: Legislation Reform and Chaos on the Islands amid Expected Surge in Arrivals' (18 October 2019) < https://www.ecre.org/greece-legislation-reform-and-chaos-on-the-islands-amid-expected-surge-in-arrivals/> accessed 6 June 2020.
[353] Art. 90 (4) IPA. Under Art. 75 (7) IPA, only UASC under the age of 15 or victims of torture have access to the regular procedure.
[354] European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration' (15 May 2015, COM (2015) 240 final).
[355] Maria Margarita Mentzelopoulou and Katrien Luyten, 'Hotspots at EU external borders – State of play' (EPRS, Briefing, June 2018) <https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/623563/EPRS_BRI(2018)623563_EN.pdf> accessed 15 April 2020.
[356] EU-Turkey Statement, Press Release No 144/16, 18 March 2016.
[357] For example, 1501 UAMs were found to be in the RICs in April 2020; EKKA (n 5).
[358] Art. 86 IPA, transposing Art. 38 APD, as amended by Art. 16 and 61 of the L 4686/2020.
[359] Art. 85 IPA, transposing Art. 35 of the APD.
[360] GCR (n 253) 37.
[361] Law No. 4375 of 2016 on the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC, (GG A' 51/3.4.2016) < https://www.refworld.org/docid/573ad4cb4.html> accessed 8 July 2020.

procedure for TCNs and stateless persons who enter the country irregularly as well as the functioning of the Reception and Identification Centers (hereinafter RICs). In particular, Art. 9 provides inter alia the relevant process for the registration, identification of vulnerable groups, medical examinations and psychosocial support for those in need, falling under the responsibility of the Reception and Identification Service (hereinafter RIS). In addition, Art. 39 of the new IPA prescribes all the relevant details and the five stages of the reception and identification procedures and explicitly recognizes the vulnerability of minors, regardless of whether they are unaccompanied or not[362] and the RIS is designated to be the competent authority for the reception and identification of UAMs.[363] Once UAMs have entered the Greek territory, the competent authorities shall notify the nearest public prosecution authority, or the EKKA or any other authority responsible for the protection of UAMs.[364] The recently amended provision, Art. 60 (3)[365] stipulates that the Special Secretary for the Protection of UAMs is the competent authority for the protection of UAMs and in cooperation with the EKKA shall take all the necessary measures for the family tracing of UAMs as soon as possible, once the application for international protection is lodged. Equally, the said authority is under the obligation to ensure appropriate and safe accommodation facilities for UAMs, along with monitoring and regular evaluation of the quality of such services.[366]

Despite the new legislative amendments referring to the protection of UAMs, the lack of reception capacity has regrettably led to the *de facto* detention of UAMs in the various RICs on the islands or at the land borders,[367] as regrettably the Greek law does not prohibit the detention of UAMs.[368] On top of that, they are often detained in the pretext of '*protective custody'* in police stations for a long period of time despite that Art. 118 of the PD 141/1991[369] is not intended to be used for UAMs and does not provide for a time limit. This practice has received wide condemnation from the ECtHR as it constitutes a blatant infringement of Art. 3 and 5 ECHR and it is contrary to the

[362] Art. 39 (5) IPA as amended by Art. 2 (3) Law 4686/2020.
[363] Art. 60 (2) IPA.
[364] Art. 60 (1) IPA.
[365] Amended by Art. 4 (1) Law 4686/2020.
[366] Art. 60 (3) (b) (bd) IPA.
[367] RIC Fylakio.
[368] Under Art. 48 (2) IPA, as amended by Art. 61 Law 4686/2020, the detention of children can only be used as a measure of last resort, only if no other alternative measures can be used and it can last up to 25 days.
[369] Presidential Decree 141/1991 (GG A-58/30-4-1991).

BIC.[370] Besides, migration-related detention of children can never be justified under Art. 37 (b) UNCRC, as it is not aligned with Art. 3 UNCRC.[371]

Against this backdrop, the correct implementation of the rules governing the reception and identification procedures as well as the whole asylum process presupposes an effective and fair age assessment mechanism[372] which shall be carried out with full respect for the individual's dignity, using the least intrusive method by a qualified medical professional as required by Art. 25 (5) APD. The Greek legislation regulates the age assessment procedure in various legislative acts. Firstly, Art. 6 of the JMD 92490/2013[373] sets forth the relevant process within the framework of the reception and identification procedures, while secondly the JMD 1982/2016[374] encompasses provisions related to the age assessment for those seeking international protection. However, not only isn't there any specific reference to UAMs who are under the responsibility of the Hellenic Police,[375] but also the foresaid instrument appears to be a real challenge for UASC, especially due to the shortage of qualified staff on the islands. The new IPA provides that UAMs may be referred to the age assessment procedure by the competent receiving authorities in cases of doubt and in line with the JMD 1982/2016.[376] In this context, a number of procedural guarantees have to be respected along the whole process, such as the appointment of a guardian, the provision of prompt information concerning inter alia the method as well as the possible outcome of the results, the consent of UAMs and lastly the prohibition of rejecting the asylum claim solely on the grounds of the UAM's refusal to undergo such examination.[377]

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[370] *H.A and others v Greece App. no 19951/16* (ECtHR, 28 February 2019). Also, several interim measures have been issued, asking for the immediate release of UAMs and their placement in appropriate settings, see amongst others: *N.A. v Greece App no 55988/19* (ECtHR, 28 October 2019).

[371] Manfred Nowak, 'The United Nations Global Study on Children Deprived of Liberty' (November 2019) 491 < https://omnibook.com/Global-Study-2019> accessed 8 June 2020.

[372] FRA and CoE, 'Handbook on European law relating to the rights of the child' (Luxembourg: Publications Office of the European Union, 2015) 166 < https://fra.europa.eu/en/publication/2015/handbook-european-law-relating-rights-child> accessed 18 April 2020.

[373]Joint Ministerial Decision 92490/2013 on the Programme for medical examination, psychosocial diagnosis and support and referral of third-country nationals entering without documentation to first reception facilities (GG 2745/B/29-10-2013), available in Greek <https://www.synigoros.gr/resources/docs/fek-prosfyges.pdf> accessed 23 July 2020.

[374] Joint Ministerial Decision 1982/2016, Verification of minority of applicants for international protection (GG 335/B/16-12-2016), available in Greek <https://www.e-nomothesia.gr/kat-allodapoi/prosphuges-politiko-asulo/koine-upourgike-apophase-1982-2016.html> accessed 23 July 2020.

[375] Under protective custody; GCR (n 253) 112.

[376] Art. 75 (3) IPA.

[377] GCR (n 253) 115.

In the course of the reception and identification procedure, it has been observed that there were various drawbacks as regards the length of the age assessment process or the lack of qualified experts in the hospitals of the Greek hotspot islands whereas at the land borders at Evros, such decisions were merely based on X-ray examinations, albeit the law provides that any referral to the public hospital should be used as a last resort and after the completion of the medical and psychosocial assessment. This practice have repeatedly resulted to false determinations which not only entails the persistent exposure of the UASC to the deplorable living conditions,[378] but also it looms over the risk of being erroneously registered as adults, despite that the benefit of the doubt is explicitly prescribed in the Greek law.[379] Similarly, during the asylum process, the UASC are facing various challenges mainly due to the steady gaps in the child protection system, which requires the involvement of different actors in the age assessment procedure, as previously noticed. In fact, several reports have shown that the GAS in Lesvos, for instance, refers the presumed minors to the local public hospital for dental examination in the absence of pediatrician or child psychologist.[380] Therefore, the incorrect application of the legal rules and procedural safeguards may lead to the false registration of the UAMs as adults, preventing the application of the Dublin provisions applied to UASC and unlawfully allowing the prolongation of family separation.

The Greek practice assuredly disregards several international and European norms while determining the chronological age of the individual. On the one hand, Art. 25 of the APD, which has been transposed into the Greek legislation,[381] prescribes that such examination shall be performed in cases of doubts and by qualified medical professionals so as to increase the possibility of having reliable results. Also, the appointment of a guardian, as a pivotal procedural guarantee, creates significant hurdles throughout the whole process mainly because the guardianship system provided in Law

[378] Ibid 113-114.
[379] Art. 6 (10) JMD 92490/2013; A (10) JMD 1982/2016; Art. 75 (4) IPA.
[380] Elina Sarantou and Aggeliki Theodoropoulou, 'Children cast adrift – The exclusion and exploitation of unaccompanied minors (UAMs) – national report: Greece' (Rosa Luxembourg Stiftung, November 2019) 52 <https://rosalux.gr/en/publication/children-cast-adrift-greece> accessed 18 June 2020.
[381] Art. 75 IPA.

4554/2018 lacks implementation, as the ministerial decisions required for its operation have not yet published.[382]

On the other hand, since the principle of the benefit of doubt should be always applied in favor of the presumed child and s/he should be treated as a minor, while the results of the assessment are pending, s/he should be afforded due access to fundamental rights and safeguards applied to children. The latter has been underlined by the CRC Committee in the General Comment no. 6 according to which *'in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such'*.[383] In this respect, both physical and psychological maturity of the individual should be examined, forming a comprehensive age assessment procedure,[384] as part of a child-friendly approach. Lastly, by erroneously implementing the method in question, the Greek authorities fail to ensure protection and care for the UASC despite Art. 20 CRC requires that States are obliged to provide such protection and assistance to all children deprived of their families. Besides, all actors involved in the age assessment procedure should take into consideration the BIC as being a guiding tool, in view of the fact that it is guaranteed in all actions affecting children, including not only decisions or legislative acts but also services, conduct and relevant procedures.[385]

4.2.2 The Suspension of the Asylum Law in Greece and the Impact on the Right to Family Life of UASC

In February 2020, President Erdogan decided to induce refugees crossing over the Greek-Turkish borders, following the escalation of conflict in Syria and the killing of at least 34 Turkish soldiers in Idlib.[386] This decision actually shredded the EU-Turkey statement of 2016, through which Turkey undertook the responsibility of preventing

[382] GCR (n 253) 123; Art. 32 Law 4554/2018 as amended by Art. 85 Law 4611/2019 and Art. 73 (1) Law 4623/2019.
[383] CRC (n 50) para. 31 (1).
[384] UNHCR, 'Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees' (HCR/GIP/09/08, 22 December 2009) para. 75 <https://www.unhcr.org/publications/legal/50ae46309/guidelines-international-protection-8-child-asylum-claims-under-articles.html> accessed 13 July 2020.
[385] CRC (n 49) IV, A (1) (a).
[386] Xavier Francis, '34 Turkish Soldiers Killed in Syria – Who Is to Be Blamed' (The Guardian Times, 19 March 2020) <https://eurasiantimes.com/russia-or-us-who-killed-34-turkish-soldiers-in-idlib-syria/> accessed 13 July 2020.

such crossings bartered for 6 billion Euros from the EU[387] which would be used to support refugees residing in Turkey.[388] On the other side, Greece's response attracted international disapprobation[389] as it encompassed a series of questionable measures such as heavily armed Greek border guards, tear gas and a razor wire.[390] Apart from that, the Greek government made a decision to suspend the asylum law[391] (hereinafter emergency act) on 2nd of March 2020,[392] as an urgent measure to come up against the *'asymmetrical threat'* posed by Turkey's decision to abruptly instigate the mass influx of TCNs in the EU. However, such highly contested practices were endorsed by the EU, given that the President of the Commission explicitly declared that *'I thank Greece for being our European shield in these times'*[393] and further engaged in providing financial assistance so as to support Greece in setting up and managing the infrastructure needed and strengthening cooperation between the MS by making use of the Civil Protection Mechanism.[394] Although the Commission was able to corroborate the Greek policy of blockading the borders, apparently its President could not furnish any comment[395] on Greece's unprecedented decision concerning the derogation from International and EU asylum law, by suspending the submission of asylum applications for one month and thus return of all those who irregularly entered the Greek territory to their country of origin or transit, namely Turkey.[396]

[387] EU-Turkey Statement (n 356) para. 6.
[388] Chris Jones, Jane Kilpatrick and Yurema Pallaré, 'Analysis EU/Greece/Turkey Crisis not averted: security policies cannot solve a humanitarian problem, now or in the long-term' 1 (Statewatch, March 2020) <https://www.statewatch.org/media/documents/analyses/no-359-crisis-not-averted.pdf> accessed 20 June 2020.
[389] The UNHCR called the Greek authorities to refrain from any use of excessive and disproportionate force that could increase the suffering of vulnerable people and further maintain the asylum procedures in an orderly manner; UNHCR, 'Statement on the situation at the Turkey-EU border' (2 March 2020) <https://www.unhcr.org/news/press/2020/3/5e5d08ad4/unhcr-statement-situation-turkey-eu-border.html> accessed 20 March 2020.
[390] Amnesty International, 'Explained: The situation at Greece's borders' (Amnesty International, 5 March 2020) <https://www.amnesty.org/en/latest/news/2020/03/greece-turkey-refugees-explainer/> accessed 13 July 2020.
[391] Emergency Legislative Order, 'Suspension of Asylum Applications' (GG No 45/A/02.03.2020), available in Greek <https://www.asylumlawdatabase.eu/el/content/government-gazette-%E2%80%994502032020> accessed 12 June 2020.
[392] It applied retroactively, starting from the 1st of March 2020.
[393] European Commission, 'Statement/Kastanies, Remarks by President von der Leyen at the joint press conference with Kyriakos Mitsotakis, Prime Minister of Greece, Andrej Plenković, Prime Minister of Croatia, President Sassoli and President Michel' (3 March 2020) <https://ec.europa.eu/commission/presscorner/detail/en/statement_20_380> accessed 28 March 2020.
[394] Ibid.
[395] EU Observer, 'Commission silent on Greece suspending asylum claims' (4 March 2020) <https://euobserver.com/migration/147621> accessed 12 April 2020.
[396] Art. 1 (1), (2) of the emergency act.

At this point, one could wonder how all these crisis management measures could affect the right to family life of the UASC residing in Greece. The application of the CEAS provisions and in particular those of APD, RCD, QD and the DR III can only be initiated after an asylum application is lodged. This means that the asylum request is triggering the implementation of the EU asylum law.[397] Since the respective persons, amongst whom UASC, were excluded from the scope of the EU asylum law as they could not lodge their asylum claim for one month, they were prevented from enjoying their right to family life under the DR III.[398] As stated in chapter 3, applicants have an individual right to the rightful implementation of the DR III provisions and equally the Greek authorities have the obligation to forward the informal asylum applications to the GAS at the earliest possible time.[399] In this context, the implementation of the DR III rules were unlawfully set aside by the adoption of the emergency act which not only precluded the realization of the right to family life of UASC through the application of the family unity criteria but also it failed to guarantee effective access to the asylum procedure[400] and therefore meet one of the primary objectives of the DR III.[401]

Against this background, the legality of the derogations from the asylum law was aptly stressed in the UNHCR's statement[402] where it was made clear that neither the 1951 Refugee Convention nor the EU asylum law provide the legal excuse for the suspension of the asylum claims. In fact, both EU primary and secondary law provisions include

[397] Nora Markard, Robert Nestler, Vinzent Vogt and Catharina Ziebritzki, 'Expert Opinion: No State of Exception at the EU External Borders. The Implications of the Rule of Law in the Context of the Greek-Turkish Border Closure and the Temporary 'Suspension' of the Asylum Law in Greece' (Expert Legal Opinion commissioned by Erik Marquardt MEP, 30 March 2020) 21 <https://750025df-472c-4390-a6e1-210ba5963d02.filesusr.com/ugd/c7db89_901fcc576e244849a53a8776ec5f7b1a.pdf> accessed 8 May 2020.

[398] The said measures come as an additional hurdle for UAMs, since their registration has reportedly been problematic due to several reasons. On the mainland, for instance, the system for granting appointments for registration through Skype remains problematic because of the limited hours available for booking an appointment resulting in lengthy waiting periods, despite that the intervention of professionals could lead to a prompt registration of UAMs; Sarantou, Theodoropoulou (n 3) 83.

[399] Art. 64 (9) IPA. This obligation derives from Art. 6 of the APD which has been transposed in the Greek law under Art. 65 IPA.

[400]In the case of an UAM who entered Greece while the emergency act was still in force and where the relevant authorities failed to register his asylum claim and ordered his deportation as he irregularly entered Greece on the 1st of March 2020, the Administrative Court at First Instance held that the applicant, as an UAM, is of particularly young age and the Public Prosecutor was appointed as a temporary guardian while he does not seem to be a threat to the public order and security. Thus, the suspension of his deportation was ordered while the examination of his asylum application is now pending; Decision No 15/2020, Administrative Court of Mytilene, available in Greek at: <http://www.immigration.gr/2020/07/dioikhtiko-protodikeio-mytilhnhs-15-2020-anastolh-apelashs-afiksh-diarkeia-isxyos-pnp-anastolh-ypobolhs-aithseon-asyloy.html> accessed 27 July 2020.

[401] Markard and Others (n 397) 23.

[402] UNHCR (n 389).

specific grounds for derogations which allow the MS to deviate from their asylum obligations.[403] More specifically, under Art. 72 of the TFEU, the relevant emergency measures may be lawfully justified as an exemption[404] and only if they are based on national security grounds and the maintenance of public order, while implementing the general provisions under the Title V of the TFEU pertaining to the AFSJ. On the other hand, a series of EU secondary law provisions prescribing certain grounds for derogations,[405] however the national emergency measures have to be adopted in full compliance with EU law, and thus be necessary as provided under the relevant secondary law. In addition, the Greek government evoked Art. 78 (3) TFEU which stipulates that provisional measures may be adopted in the event of a sudden influx from TCNs in the EU, though such measures have to be adopted *by 'the Council and after a proposal from the Commission and in consultation with the European Parliament'* which apparently was not the case for the practice in question.[406]

4.2.3 Covid-19 Cross-Cutting Challenges: The Prolongation of Family Separation

The outbreak of Covid-19 has put once again migration related policies at the top of the Greek government's agenda. The escalation of the global pandemic has amounted to the adoption of containment measures so as to reduce the contagion and transmission of the virus at national level.[407] Despite Greece's remarkable efforts to halt the first wave of the pandemic across the country,[408] it has been a highly significant threat for the refugee communities in view of the lack of basic protective measures in the refugee camps[409] and accommodation arrangements. As a result, once it became evident that Greece had the additional burden to confront a potential public health crisis in the refugee settings, the restriction of freedom of movement in and out of the refugee camps

[403] ECRE, ELENA, 'Derogating from EU Asylum Law in the name of Emergencies: The Legal Limits under EU Law' (June 2020) 2 <https://www.ecre.org/wp-content/uploads/2020/06/LN_6-final.pdf> accessed 18 July 2020.
[404] *Joined Cases C- 715/17, C-718/17, C-719/17 Commission v Poland, Hungary and the Czech Republic* (2020) ECLI:EU:C:2020:257, paras. 143-145.
[405] ECRE, ELENA (n 403) 9-11.
[406] UNHCR (n 389).
[407] EASO, 'Covid-19 emergency measures in asylum and reception systems' (2 June 2020) 5 < https://www.easo.europa.eu/sites/default/files/covid19-emergency-measures-asylum-reception-systems.pdf> accessed 10 June 2020.
[408] Iliana Magra, 'Greece has 'Defied the Odds' in the Pandemic' (The New York Times, 28 April 2020) < https://www.nytimes.com/2020/04/28/world/europe/coronavirus-greece-europe.html> accessed 3 July 2020.
[409] This refers to the RICs as well as to the refugee camps in the mainland.

and the RICs was shortly adopted[410] which essentially led to a unmitigated confinement, allowing the residents to leave only in exceptional circumstances.[411] Equally important was the temporary suspension of the administrative services provided by the GAS as of 13 March 2020, since the protection of public health by curbing the further dissemination of the virus was a priority.[412] Following the termination of the suspension, the GAS announced that the provisions of relevant services would be gradually resumed as of 18 May 2020[413] and subsequently a number of administrative actions could be held via online platforms.[414]

In light of the foregoing, persistent challenges remain apparent for the UASC residing in the Greek territory. First of all, the shutdown policy in the refugee settings further prolonged the deprivation of liberty of those children since they had been stuck in unacceptable living conditions, without having the appropriate health protective measures. Many UASC have reportedly been detained[415] because of the implementation of the pandemic-related measures, despite the fact that in various cases the Covid-19 testing had hardly been used and the respective authorities were only taking their temperature upon arrival. This exposes them to the risk of being infected rather than protect them. Taking into account the obligation of States to provide adequate care and protection in line with the CRC imperatives, Greece has to take all the necessary steps to eliminate the overcrowding conditions in the refugee centers and

[410] J. Kessler and Others, 'Abandoned and Neglected: The failure to prepare for a Covid-19 outbreak in the Vial refugee camp' (ERBB, May 2020) 9 < https://750025df-472c-4390-a6e1-210ba5963d02.filesusr.com/ugd/c7db89_ff79ead7b8d94b9ba36d712d076a8d6b.pdf> accessed 18 June 2020.

[411] Ministerial Decision No. 20030/2020 (GG B 985/22.03.2020) 'Measures against the appearance and spread of Covid-19 in Reception and Identification Centers, through the territory, from 21.3.2020 to 21.4.2020'. The lockdown in the RICs and any other accommodation arrangement hosting TCNs has been protracted until 02.08.2020 by subsequent decisions, as lastly amended by JMD 42069/2020 (GG B 2730/03.07.2020) and JMD 45681/2020 (GG B 2947/17.7.2020).

[412] Ministry of Migration and Asylum, 'Important Announcement of Greek Asylum Service: Temporary Suspension of Administrative Services to the Public' (13 March 2020) < http://asylo.gov.gr/en/wp-content/uploads/2020/03/Announcement-Suspension-of-Services-to-the-Public-English.pdf> accessed 12 May 2020.

[413] Ministry of Migration and Asylum,' Announcement: Provision of services to the public by the Asylum Service from 18.5.2020-29.5.2020' (18 May 2020) < http://asylo.gov.gr/en/wp-content/uploads/2020/05/English.pdf> accessed 30 May 2020.

[414] Ministry of Migration and Asylum, 'Announcement: Provision of Services from 1.6.2020' (28 May 2020) < http://asylo.gov.gr/en/wp-content/uploads/2020/05/Announcement-5-28-20201.pdf> accessed 30 May 2020.

[415] Human Rights Watch, 'Greece: Nearly 2,000 New Arrivals Detained in Overcrowded, Mainland Camps' (31 March 2020) < https://www.hrw.org/news/2020/03/31/greece-nearly-2000-new-arrivals-detained-overcrowded-mainland-camps> accessed 18 May 2020.

further ensure UASC's placement in safe non-custodial, family or community-based settings, all guided by the BIC[416] and adequately assessed on a case by case basis.

Secondly, despite the controversial suspension of the asylum applications in response to the influx of TCNs crossing over the borders from Turkey, the length of the suspension was protracted because of the urgent measures adopted in respect of the coronavirus pandemic.[417] Due to the suspension of the asylum procedures, the reception of public at the GAS was intercepted for a period of approximately two months[418] and applications for international protection were not registered. Therefore, the denial of the right to family life of UASC came as a collateral consequence following the government's decision to temporarily shelve the access to asylum, since none of those who wanted to lodge their asylum claims could then do so. As it has been reiterated, the asylum request triggers the application of the Dublin rules and only after the submission of the asylum claim, the Greek Dublin Unit can send the TCR to the BAMF. Besides, the ongoing pandemic brought into the spotlight another crucial issue; the suspension of Dublin transfers.[419] As a delay on transfers can shift the responsibility, Greece may be obliged to assume the responsibility of examining the asylum request due to the applicability of Art. 29 (2) DR III. In this respect, the Commission underscored that no derogation is permitted under Art. 29 (2) in a situation resulting from the Covid-19 pandemic.[420] Nonetheless, it aptly pointed out that the family reunification procedure pertaining to the UASC could be resumed even after the expiration of the time limits set forth in Art. 29, on the condition that such transfer is in line with the BIC and where the duration of the procedure for placing the minor amounted to a failure to observe the time limit, as stated in Art. 12 (2) IR.[421] The Commission explicitly stated that the TCR may be rooted in Art. 17 (2) where the transfer failed to be carried out due to the Covid-19 pandemic.[422] This means that the importance of the right to family life and the maintenance of family unity have been

[416] The Alliance for Child Protection in Humanitarian Action, UNICEF, 'Technical Note: Covid-19 and Children Deprived of their Liberty' (8 April 2020) 2 < https://alliancecpha.org/en/child-protection-online-library/technical-note-covid-19-and-children-deprived-their-liberty> accessed 27 April 2020.
[417] Marion MacGregor, 'Greece ends month-long freeze on asylum applications' (Infomigrants, 3 April 2020) <https://www.infomigrants.net/en/post/23810/greece-ends-month-long-freeze-on-asylum-applications> 2 July 2020.
[418] From 13 March to 15 May; GCR (n 253) 16.
[419] EASO (n 407) 13-14.
[420] Commission (n 19) 8.
[421] Ibid.
[422] Ibid.

acknowledged as required by the DR III itself. Hence, in the event that an UASC qualifies for such transfer, both Greece and Germany should apply the respective rules and be consistent with the rights-compliant approach.

5. Conclusions

The aim of the present thesis was to study the cumbersome practice between Greece and Germany in relation to the family reunification procedure under the DR III, in cases where UASC are involved. The analysis conducted by a legal standpoint with the intention to identify the structural inconsistencies ensuing from the erroneous application of the Dublin provisions and possible recommendations that would allow UASC to effectively enjoy their right to family life. After having conducted the analysis of the legal framework applied to UASC, critically examined specific cases pertaining to the handling of the TCR between the GAS and the BAMF, as well as cross-cutting related challenges that prevent UASC from joining their families in Germany, the following key observations should be made so as to succinctly ascertain the fragmented practices deriving from the implementation of the DR III and the urgent child-centered responses needed both at regional and national level.

Starting from the persistent unlawful rejections of the TCR, one of the major issues emerged is that the selective compliance with only some parts of the DR III is unambiguously in contravention of the purpose and scope of the said instrument. Firstly, such practice fails to incorporate the respective fundamental rights and principles governing the DR III itself, namely family life, family unity and the BIC and disregards that the Dublin mechanism is the only safe legal route for UASC to enjoy their right to family life under the family unity provisions and humanitarian clauses. Secondly, the onerous German practice often requires a formalistic approach to the legal provisions, including undue adherence to the relevant deadlines and specific evidentiary requirements often translated or DNA methods proving the family links, which has certainly subverted the hierarchical order of the responsibility criteria amounting to scant application of the family unity provisions, failing to incorporate a genuine assessment of the BIC principle. Thirdly, the total absence of a decision on the re-examination request or the lack of a legal justification of a decision rejecting the TCR have failed to primarily take into account the BIC, relying on haphazard legal steps which, from the point of view of UASC, constitute ill-suited protection for children. Similarly, when applying Art. 8 (2), the ability of the relative to take care of the minor should not be determined through the financial means available but rather, the relevant individual assessment should be dwelt on the capability and the willingness

of the relative to look after the minor while the relationship that they may have had in the past can be considered accordingly.[423] Equally, the phenomenon of *ageing – out* after the submission of the asylum application should not constitute a ground for rejection of the TCR, as neither the DR III nor the relevant jurisprudential standards allow for such discriminatory treatment.

Another critical consideration is that nothing in the DR III hampers the wide and systematic application of the discretionary clauses, where family life is at stake.[424] On the contrary, as the intentions of the legislator demonstrate, the right to family life, family unity and the BIC stand as guiding tools which should be taken substantially into account already by the first instance authorities. This means that the BAMF is under the obligation to apply Art. 17 (1) or accept the TCR under Art. 17 (2) where the rigid application of the compulsory responsibility criteria may have a negative impact on the right to family life of UASC.[425] This, aside from being consistent with the underpinning rule governing the application of the Dublin provisions as stated in recital 14, it would notably espouse a rights-based approach throughout the Dublin process which proves that State-centered interests should not prevail over fundamental rights of UASC.

In addition to the compounding conditions for UASC deriving from the stringent application of the family unity provisions, the current practice betokens a perturbing political decision.[426] The adverse interpretation of family unity provisions under the DR III that infringe fundamental rights and guarantees entrenched in the CFREU, and which under certain circumstances may amount to the instigation of the infringement procedure,[427] may similarly indicate that the purpose of those rejections is rooted in the overall security rationale governing the EU migration policies.[428] Regrettably, such

[423] Nestler and Ohers (n 160) 15.
[424] Maiani (n 152) 7.
[425] Recital 17; Council of the EU, 'Proposal for a Regulation of the European Parliament and of the Council 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' (no. 12364/09, 23 July 2009) 35.
[426] RSA (n 214) 14.
[427] Art. 258-259 TFEU.
[428] For instance, such policies include the latest trend *of offshoring responsibility for asylum seekers* and the creation of the extraterritorial processing centers the potential of which has been highly contested, as being contrary to several human-rights based principles, such as the *non-refoulment;* Sara Vassalo Amorim, 'Is Offshoring the Solution? The EU and the Extraterritorial Processing of Asylum Claims' (Global Campus Europe, The European Master's Programme in Human Rights and Democratisation,

political decisions engender a logic of deterrence and as such the redistribution of TCNs in the European North is rather impracticable, given the misuse of the responsibility criteria. Therefore, these practices run counter to the right of UASC to join their families and manifestly disregard the principle of solidarity in the EU's asylum policies, which is not only a normative requirement under Art. 80 TFEU but also a functional necessity[429] aligned with the context of one single market without internal frontiers, in which the free movement of persons shall be practicably attained.[430]

As regards the interrelated practical challenges, this thesis found that the bilateral limits on the family reunification of UASC were unlawful, since those agreements posed unjustified restrictions on Dublin transfers while they failed to introduce a streamlined Dublin process consistent with their purpose. Similarly, it seemed that both States acted beyond their powers in an area of shared competence in which the EU has already acted as they attempted to circumvent the DR III through the adoption of bilateral agreements whose provisions either conflict with DR III or frustrate the application of DR III.[431] Hence, this troublesome trend of adjusting the legal provisions to political intentions should be avoided whatsoever given that political expediencies cannot be used as an excuse for ignoring EU law.

Within the Greek context, multiple challenges appeared to pose limits on the right to family life of UASC. Firstly, the lack of reception capacity and the migration-related detention of children are further delaying the registration of the asylum claims which have to be prioritized in cases involving UASC. Inconsistencies in the interpretation and implementation of the DR III accumulated with the prolonged exposure of the UASC to degraded living conditions on the Aegean islands may amount to a treatment of the child edged away from the imperatives of the BIC and thus have long-lasting effects on his/her ability to thrive, being away from a family environment.[432] Secondly,

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2017/2018) 43 <https://repository.gchumanrights.org/handle/20.500.11825/1015> accessed 12 June 2020.

[429] Recital 25 DR III.

[430] Esin Küçük, 'The Principle of Solidarity and Fairness in Sharing Responsibility: More than Window Dressing?' (2016, 22 European Law Journal) 449.

[431] Hannah Bru, Aikaterini Anastasopoulou, Heini Hyrkkö, 'The circumvention of the Dublin III Regulation through the use of bilateral agreements to return asylum seekers to other Member States' (EDAL, February 2019) 20 <https://www.asylumlawdatabase.eu/en/content/circumvention-dublin-iii-regulation-through-use-bilateral-agreements-return-asylum-seekers> accessed 3 July 2020.

[432] For a thorough analysis of the effects of the global displacement on the well-being and development of the refugee and asylum-seeking children see: Ziba Vaghri, Zoë Tessier and Christian Whalen, 'Refugee and Asylum-Seeking Children : Interrupted Child Development and Unfulfilled Child Rights' (Children, MDPI, 6, 2019) 3.

the Dublin process has been more intricate since the Law 4554/2018 still lacks implementation rendering the guardianship scheme ineffective in practice while UASC's access to consistent legal support is restricted.[433] Thirdly, this thesis found that an intersectional age assessment procedure should be practically used, including medical and psychosocial support in the RICs, while direct referrals to the hospitals should only be the last step of a holistic process.[434] In this way, the wrongful registration of UAMs will be avoided whilst the consistent application of procedural guarantees and other provisions directly pertaining to UASC would prevent the prolongation of family separations.

In addition, the suspension of the registration of the asylum applications stemming from the emergency act and the Covid-19 related measures have directly impacted the family reunification of UASC, given that the asylum application triggers the DR III provisions. Such practices should always be avoided as they are in breach of substantive provisions of International and EU asylum law. For UAMs who arrive in Greece either by land borders or sea, and get in contact with a national authority before which they do not explicitly proclaim that they are not seeking asylum, the respective authorities should promptly register their application as stated in Art 6 APD, even though UAMs do not appear before the GAS.[435] On a second level, the resumption on transfers of UASC should be attainable and in case the six month time-limit elapses, both States should make sure that the UASC will not be prevented from joining their family members in Germany, ensuring that the Commission's recommendation is respected.[436]

In an attempt to provide prompt responses while building up a comprehensive framework enabling UASC to be reunited with their families, key recommendations should be equally made for the European level. Firstly, the forthcoming *'New Pact on Migration and Asylum'*, is a key component to the long-awaited reform of the DR III, after the proposal of a new Dublin IV Regulation[437] failed at large. The Pact is an opportunity for the EU to promote an increasing rights-based compliance of the existing

[433] Safe Passage, Praksis (n 207) 10.
[434] GCR (n 253) 45.
[435] Markard and Others (n 397) 22.
[436] Commission (n 19) 8.
[437] European Commission, 'Proposal for a Regulation of the European Parliament and of the Council 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)' (COM(2016) 270 final, 2016/0133 (COD)).

system, mainly because the current health emergency of Covid-19 has considerably impacted the status and living conditions of all migrant children. The new EU plan, should ensure that the BIC principle is predominant in the course of the asylum procedure[438] and further prioritize durable solutions safeguarding that no child is left behind.

Secondly, family reunification for UASC under the DR IIII should be prioritized and facilitated shortly after the registration phase.[439] Pending any potential reform of the DR III, MS should implement the system in a more rights-compliant way which can be effectively achieved by merely respecting the hierarchy of the criteria and use the discretionary clauses[440] when family unity is jeopardized. However, since the reform of the DR III seems to be on the table of discussion again, it should be guaranteed that family unity of UASC takes precedence over admissibility and safe third countries procedures, on the grounds that the Dublin IV proposal introduced a compulsory admissibility check[441] of the asylum application before the examination of the family unity provisions for the determination of the responsible MS.[442] This would entail a '*blanket deprivation'* of the family reunification possibilities of UASC, which raises serious concerns as to whether the requirements of Art. 52 (1) CFREU are met while imposing limitations on Art. 7 CFREU. Similarly, it is doubtful if the principle of equality enshrined in Art.20 CFREU is respected provided that in many cases the processing of the asylum claims were prolonged, especially for nationals of Afghanistan, Iraq or Iran.[443] Besides, the principle of non-discrimination entrenched in Art. 2 UNCRC guarantees that the right to family life must be realized without any kind

[438] PICUM, 'Statement on the Upcoming EU Pact on Asylum and Migration' (26 May 2020) <https://picum.org/statement-on-the-upcoming-eu-pact-on-asylum-and-migration/> accessed 19 July 2020.
[439] UNHCR, 'Recommendations for the European Commission's Proposed Pact on Migration and Asylum' (January 2020) <https://www.unhcr.org/publications/euroseries/5e60d1847/unhcr-recommendations-european-commissions-proposed-pact-migration-asylum.html> accessed 26 June 2020.
[440] ECRE, 'Joint Statement: The New Pact on Asylum and Migration: An Opportunity Seized or Squandered?' (14 February 2020) < https://www.ecre.org/joint-statement-the-new-pact-on-asylum-and-migration-an-opportunity-seized-or-squandered/> accessed 12 July 2020.
[441] Art. 3 of the proposal.
[442] FRA, 'Opinion of the European Union Agency for Fundamental Rights on the impact on children of the proposal for a revised Dublin Regulation (COM(2016)270 final; 2016/0133 COD)' (23 November 2016, FRA Opinion 4/2016) 21 < https://fra.europa.eu/en/publication/2016/fra-opinion-impact-children-proposal-revised-dublin-regulation> accessed 3 April 2020.
[443] Ibid 22-23.

of discrimination on the basis of the residency and nationality status of the minors or those of their parents,' legal guardians or family members.[444]

Thirdly, the EU's emergency response framework seems to have a pivotal role in the protection of UASC.[445] The new voluntary initiative, the so-called '*relocation scheme'*[446] pertains to the transfer of 1.600 UAMs living in Greece to other MS in a spirit of solidarity and fair-sharing, considering the needs of the most vulnerable group of refugee population, following the increased migratory pressure in Greece and notably the tensions at the Greek – Turkish borders.[447] However, the relocation procedure is initiated only when there are no family reunification possibilities under the DR III[448] provided that it is an emergency response mechanism, filling the protection gaps that many UASC face within the EU.[449] This means that family tracing remains at the top of the priorities in line with Art. 7 CFREU and Art. 6, 8 DR III and thus only after a thorough investigation of the family links, the alternative plan can be pursued.[450] In this regard, the Greek Special Secretary for the protection of UAMs is in charge of coordinating all the necessary actions needed for the relocation programme in the framework of inter-governmental agreements with other MS.[451]

However, the inefficient implementation of the previously adopted relocation scheme in 2015[452] which intended to alleviate the migratory pressure on Greece and Italy, indicates that important steps needed for the well-functioning of the current plan.

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[444] CoE (n 46) 36.
[445] European Commission, 'Migration: Commission takes action to find solutions for unaccompanied migrant children on Greek islands' (Press release, 6 March 2020) <file:///C:/Users/%CE%92%CE%B1%CF%83%CE%B9%CE%B1/Downloads/Migration__Commission_takes_action_to_find_solutions_for_unaccompanied_migrant_children_on_Greek_islands.pdf> accessed 9 May 2020.
[446] The scheme is part of the Action Plan for immediate measures to support Greece, adopted on the 4th March 2020, <https://ec.europa.eu/commission/presscorner/detail/en/ip_20_384> accessed 9 May 2020.
[447] Ingeborg Odink, 'Unaccompanied migrant children in Greece: New relocation scheme' (EP Briefing, May 2020) <https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651917/EPRS_BRI(2020)651917_EN.pdf> accessed 29 June 2020.
[448] FRA, 'Relocation of unaccompanied children from Greece - FRA input on the initiative of the European Commission and a group of Member States to relocate unaccompanied children' (17 March 2020) <https://fra.europa.eu/en/publication/2020/relocation-unaccompanied-children-greece> accessed 6 April 2020.
[449] Odink (n 447).
[450] FRA, 'Relocating unaccompanied children: applying good practices to future schemes' (2020) < https://fra.europa.eu/en/publication/2020/relocation-unaccompanied-children> accessed 2 June 2020.
[451] Art. 60 (3) (st) IPA, as amended by Art. 4 Law 4686/2020.
[452] Sertan Sanderson, 'EU relocation scheme ends to mixed reviews' (Infomigrants, 26/09/2017) < https://www.infomigrants.net/en/post/5270/eu-relocation-scheme-ends-to-mixed-reviews> accessed 4 August 2020.

Recognizing the inherent vulnerability of all UASC, the actions of the relevant authorities should be tailored to child protection standards referring to the identification of UASC, the assessment as to whether the child falls under the family unity provisions of the DR III and conduct a BIA so as to find the most sustainable solution for the UASC.[453] Since the vulnerability of UASC is an evolving context affected by various factors, the age, gender, medical or disability status of the UASC should have a decisive role during the relocation process in conformity with the BIC and the views expressed by the minor.[454] It is encouraging though that, despite the border closures related to Covid-19, as of April 2020 and up until the 7th of July, approximately 120 UAMs[455] have already been relocated to other MS with the support of EASO, IOM, UNHCR and UNICEF which proves that when there is political will, actions follow.

On a final note, as the legal and structural deficiencies pertaining to the family reunification procedure of UASC under the DR III have appalling implications on their right to family life, States should step up and be engaged in implementing the DR III in a humane and child-oriented manner which can pragmatically be achieved when a BIA is successfully incorporated in the Dublin process. The latter should be combined with a child-centered protection scheme, for which the so-called '*Child-Protection Case Management SOPs'* is required. It refers to the guiding principles, including best practice, which respect the protection needs of children at risk and help at ensuring transparency, efficiency and accountability. The relevant toolkit developed by the UNHCR should be consulted as specific instructions on how to deal with different types of cases are provided.[456] Similarly, any wrongful interpretation of the respective provisions on the sole purpose of attaining political objectives should be avoided and make a wide use of the humanitarian clause in order to allow UASC fully enjoy their right to family life. Hence, it is crucial that all aspects included in the present thesis are

[453] UNHCR, IOM, UNICEF, 'Minimum Child Protection Standards for Identification of Unaccompanied Children to be Relocated from Greece to other countries in the European Union' (April 2020) <https://eea.iom.int/sites/default/files/publication/document/Minimum-Child-Protection-Standards-Identification-Unaccompanied-Separated-Children.pdf> accessed 17 May 2020.
[454] Ibid.
[455] European Commission, 'Relocation of unaccompanied children from Greece to Portugal and to Finland – Questions and Answers' (Press release, 7 July 2020) <https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1291> 18 July 2020.
[456] UNHCR, 'Guidelines on Assessing and Determining the Best Interests of the Child' (2018 Provisional Release) 41 <https://www.refworld.org/pdfid/5c18d7254.pdf> accessed 19 May 2020.

given due consideration by all actors and that no compromises are made which may contravene EU law and the UNCRC.

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