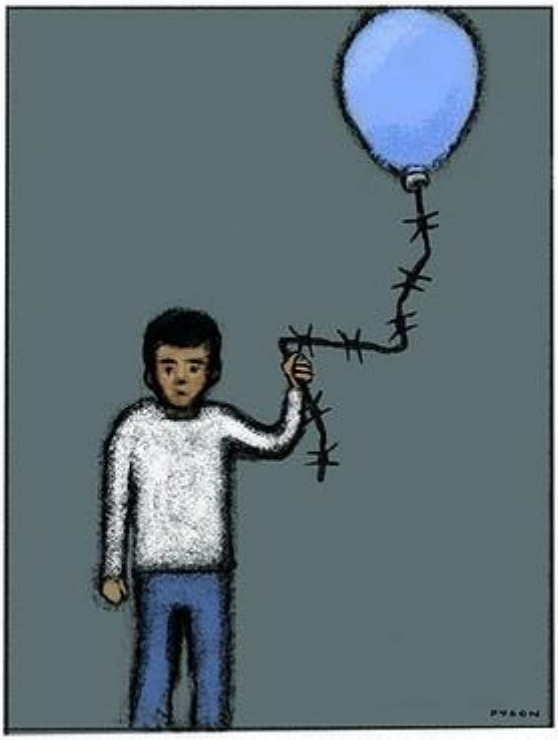
Turning 18: The Consequences for Unaccompanied Minors and Separated, Asylum-Seeking Children Passing Through Asylum Processes

Deyanira Gonzalez Alvarez, 09033629, ES4-4F

Ms. M. Van Den Haspel

Academy of European Studies
The Hague University of Applied Sciences



29 September 2014

Amsterdam, The Netherlands

The author prepared this report for Dissertation, part of the European Studies (ES4) programme. The findings, interpretations and conclusions expressed are those of the author. While various sources are used, it does not represent the official views of the organisations mentioned in this report.

Illustration title page: Andrew Dyson©

Executive Summary

This report examines the consequences of unaccompanied and separated, asylum-seeking children (UASASC) turning 18, that are passing through the asylum process in France, the United Kingdom and the Netherlands. It compares the asylum procedures as well as the practices in the management of unaccompanied and separated, asylum-seeking children in transition to adulthood. With the aim of contributing to the development of a policy that safeguards the protection of these recently turned legal adults. This report presents the complexity behind the creation of a European asylum policy and the notion of 'child-friendly justice' in EU asylum law and policy. In addition, also the assistance and protection provided to unaccompanied and separated, asylum-seeking children in transition to adulthood. The information gathered adds to available information on UASASC in terms of policy and legislation, based on the case studies. The approach that was taken was guided by child-specific legislation and the principle of 'best interest of the child'. The report is based on desk research and two in-depth interviews with two Dutch participants, experts in the field of UASASC in policy.

Creating the Common European Asylum System

The motives behind the creation of a Common European Asylum System (CEAS), derived from several factors. One of the factors included, the abolishment of borders between the European countries, so that the common market could be completed. However, the abolishment of borders made the Member States (MS) vulnerable for irregular entry, therefore, the Schengen Agreements were signed, which included rules and right to asylum. Other factors involved, for instance, the fall of the communist regimes in Eastern Europe, which caused many to seek refuge in the European Countries; and the phenomenon 'asylum shopping', where particular countries were selected on criteria as the level of support and protection provided. Events like these caused for more policy-making with regard to asylum and migration on EU level. However, it was until the entry into force of the Treaty of Amsterdam in 1999, that harmonisation on asylum policies and legislation began. The Tampere Programme was the first stage toward a CEAS, which started with the harmonisation. The second phase included closer cooperation and expanded receptions standards for refugees or asylum seekers. The Stockholm Programme of 2010, a new phase, which was recently completed. This was aimed at expanding the scope of the CEAS.

Key Findings

Children's Rights

Children's rights protection was moved to the forefront of the EU's social agenda around the turn of the Millennium, despite the long efforts made by children's rights movements. Mainly, because children's rights protection was not recognised in EU treaties. However, with the entry into force of the Treaty of Lisbon, the protection of children's rights was for the first time included in an EU treaty. Resulting in child-sensitive provisions being included in the CEAS. Especially, the revised Directives showed improvement of children's rights standards. Nevertheless, regarding unaccompanied and separated, asylum-seeking children (UASASC) turning 18, children's rights will be lost after becoming legal adults.

Best Interest of the Child

Study on the revised Directives of the CEAS showed improvement in terms of mentioning the Convention on Rights of the Child. In particular, the principle of Best interest of the child (BIC) was included. However, research also revealed that the BIC was not always implemented. As for unaccompanied and separated, asylum-seeking children, as they transition to adulthood, the BIC will no longer be considered in dealing with these youngsters.

Case Study

The case study on UASASC turning 18 in the UK, France and the Netherlands has revealed some key findings. The policy on this particular group showed flaws and incompleteness as no specific policy exists. These children are vulnerable and remain vulnerable after turning 18, because of the consequences the transition to adulthood has. It was also brought forward that these youngsters live with fear and uncertainty during this transition phase, as their rights and entitlements are affected. Some of these children became 'rooted' in the host countries, because of lengthy procedures. The Dutch regulation 'children's amnesty' provided for these children a residence permit. However, such regulation was not identified in the other countries.

Some main findings include:

- In the UK it was unclear to UASASC that were turning 18, and who had not received a final decision on their asylum, on what would happen afterwards. Especially, in terms of entitlements as this was also unclear to service providers. Therefore, an insufficiency of knowledge, was identified as an issue. Furthermore, young adults also lost specific procedural safeguard, such as, legal representation.

- In France, child welfare stopped after UASASC became legally adults, as well as their right to accommodation. However, they could seek shelter in reception centres for adults. UASASC younger than 16, which had been supported by child welfare would be granted with a temporary residence permit, after turning 18.
- In the Netherlands, UASASC in transition to adulthood, who were not granted with a residence permit, had to leave the country within 28 days. A part from this, support as well as provisions stopped. However, those who were enrolled in school, could finish their education first, before leaving.
- Furthermore, young adults lost specific procedural safeguards, such as legal representation and mentoring, as was the case for France and the UK.
- Study also revealed that the right to basic health is always kept, irrespective of the type of asylum that was granted. However, specialised care is no longer free of charge as they have become legal adults.
- Concerning child-specific protection and provisions, such as housing and support, these are lost. Since, these provisions only include children below the age of eighteen.
- UASASC, who had to return to the country of origin, because asylum was not granted, or in cases where all appeals had been exhausted, were in some cases forced to destitution or driven to illegality.

The situation was overall more favourable for UASASC that were granted with a type of asylum, and were in the transition to adulthood. Even though, policy seems incomplete, study shows room for improvement. For these reasons recommendations were given. To conclude, the EU should regulate asylum policy in consideration that there are severe consequences for UASASC, who are in the transition to adulthood.

Table of Contents

Preface

This report will present my Bachelor Thesis, which is the final step in completing European Studies at the Hague University. Therefore, I would like in this preface to look back at my student days, the research process, and thank those who have contributed to the realisation of this Bachelor Thesis. After finishing my Hotel management studies at ROC Amsterdam, I was not sure about the career path I was going to follow. However, I was convinced my heart was set on languages, developed after an internship in Paris. In retrospect, I did not know European Studies would give me such more than that. Especially, the minor Philosophy, Culture and Art, which has contributed to my personal development. I can now state European Studies has broadened my knowledge, making me into a person aware of social, political and ethical issues in the world.

The choice to research the fate of unaccompanied and separated asylum seeking children turning 18 in Europe, is therefore not surprising. As it covers elements of my personal interests, such as politics, law, policy-making and the European Union. In addition, these subjects were also covered in the course of European Studies. Because of this, I could use my knowledge attained from my study in the research of this Thesis.

I can describe this final step in my studies, as the last contribution of European Studies to my personal growth. It was a period of ups and mainly downs. Losing a close friend, and a family member in the last year. Losing my focus as grief took over. However, as I continued my research on unaccompanied and separated asylum-seeking children. I kept reading about their stories, living conditions, sometimes terrible fate, gave me more motivation and determination, with support of family and friends to finish my Thesis and present a worthwhile product.

I would like to thank Interviewee 1, from L.O.G.O., and interviewee 2, from organisation Nidos, for their time and contribution to my research. My supervisor Marjo van den Haspel, for her patience and feedback. Cathy Gonzalez for English support, Mikush Faithfull and my little niece Aylen Ridderstap for editing support and last but not least family and friends for their love, patience and support.

Deyanira Gonzalez Alvarez

Amsterdam, September 2014

1. Introduction

Every year, the European Union (EU) is confronted with a significant number of children, arriving without parents or guardians and seeking asylum. They may have become separated from those responsible for them during the journey or may have started this alone. Fleeing from situations occurring in their home country, such as, war or conflicts. Some fear persecution, whilst others try to escape from extreme poverty or abusive environments. Also arriving, are children victims of human trafficking for sexual or labour exploitation. As the world continues to be faced with conflicts and extreme poverty, a vicious circle is maintained. These children are vulnerable, and their situation makes them more at risk for human rights abuses (European Commission, 2012 ; FRA, 2010, p. 3).

This challenges the EU and its Member States (MS) to regulate its policy on unaccompanied and separated, asylum-seeking children (UASASC). So that these children can be protected and taken care off. Resulting in legal provisions specific on unaccompanied minors (UMs) and the EU agenda for the rights of the child. However, research has shown, incompleteness and flaws of the EU's policy. Asylum procedures, for instance, can be arduous and take long time (European Commission, An EU agenda for the rights of the child, 2013 ; FRA, 2010, p. 3). Because of this, some become 'rooted' in the host country. Such as the case of the Angolan boy Mauro Manuel in the Netherlands.

1.1 Problem Indication

In 2011, the asylum case of the 18 year-old Mauro Manuel, attracted much media attention in the Netherlands and resulted in a public debate after his asylum request was rejected in 2007. His case was controversial and proved a challenge for the Dutch government. As a result, the Dutch government proposed a temporary regulation, namely the long-expected 'Kinderpardon' or 'children's amnesty'. After many years of lobbying for such regulation and after the 'Generaal Pardon' or 'amnesty' of 2007 (Interviewee 1, Personal Interview, 8 September, 2014).

Mauro Manuel arrived in the Netherlands as an eight-year-old boy from Angola, after his mother had put him on a plane. On arrival, he received the temporary status as AMA "solitary minor asylum-seeker, because of his young age and because of his arrival without parent or guardian. Unaccompanied minors arriving in the Netherlands have the right to housing and to education, until the age of 18. This was established in The Aliens Act of 2000. However, when Mauro applied for asylum, this was not granted. For the reasons, that his life in Angola was not in danger (Versteegt & Maussen, 2012, p. 60).

In the Netherlands, asylum is namely granted to people who:

- Have sound reasons to fear persecution in their country of origin because of their race, religion, nationality, political beliefs or because they belong to a certain social group.
- Have sound reasons to fear inhumane treatment in their country of origin.
- Have a family member of someone who now holds an asylum residence permit and they travelled to the Netherlands together with this family member or they have arrived in the Netherlands within 3 months from the date on which this family member was granted asylum.

(Immigration and Naturalisation Service, n.d.)

So, Mauro became illegal. However, he did have the right to wait for his deportation in the Netherlands until he would reach majority. He was only allowed to stay on the condition that he would stay longer than three years and if he had no more living relatives in Angola. After his asylum application was rejected, Mauro was placed in a foster family. The family tried adopting him twice, but Mauro was illegal, so this was impossible. The contact between Mauro and his biological mother became less and less, also because Mauro's language skills declined in his native language (Versteegt & Maussen, 2012, p. 60).

In 2007, Mauro was obligated to leave, when his final request for asylum was denied. His foster parents together with the NGO Defence for Children are determined in letting Mauro stay. So they requested a special status for him as "lamentable case," because of his long stay and his family life in the Netherlands. However, to no avail, Minister of Justice, Hirsch Ballin, refuses. Ger koopman, a Member of Parliament of the Christian Democrats, pleads to Albayrak, secretary of State, to use her discretionary ability. However, all to no avail, she also refuses. Even the foster organisation, Nidos, believes it is best for Mauro to stay with his foster family (Versteegt & Maussen, 2012, p. 60).

It is 2010, when a court in Amsterdam decides Mauro is allowed to stay, due to Article 8 of the Convention of the Rights of the Child and Human Rights (right to family life). Since Mauro had become, in this case, part of a Dutch family and should, therefore, not be deported. Despite court's decision, Minister for Immigration, Integration and Asylum Affairs, Gerd Leers, decides to appeal against this decision. His decision is according to The Council of State justified since Mauro still has a mother in Angola. This results in Mauro not granted with a permission to stay.

Not only became this case highly mediatised in the Netherlands, but also in the International press. The reason behind Minister Leers decision, to appeal against court's decision, was because he believed this type of cases would be repeated by hundreds of 'Mauros' (Versteegt & Maussen, 2012, p. 61). The Mauro case was the inducement for the PvdA (labour party) and the Christian Union to file a bill. With the aim of granting asylum to asylum-seeking children, that

have been living in the Netherlands for more than eight years (Novum, 2012). The bill was later approved by the council of ministers in 2012 (van der Laan, 2012).

1.2 Problem Definition, Aim & Research Questions

Becoming 18, a transition universally experienced, whereby one enters adulthood and leaves his childhood behind. A phase with concerns around his/her future, friends, family, education and career. However, whereas this shift is a universal experience, unaccompanied and separated asylum seeking children (UASASC), face additional concerns in comparison to their peers. They face an uncertain period in life with anxieties and have concerns about being removed from the host country; immigration status and their living conditions. Since, these can significantly change from the moment they become legally adults (Coram Children's Legal Centre, 2013, p. 43 ; FRA, 2010, p. 10). Moreover, they risk drifting into irregular status. For instance, when their legal status was not decided by the time they turned 18 or when they received a negative decision on their asylum claim (FRA, 2010, p. 10). Furthermore, according to the research from the European Union Agency for Fundamental Rights (FRA) of 2010 (p.10), practices and legislation concerning this transition phase, differ strongly between Member States (MS).

This report will, therefore, examine the policies of France, the UK and the Netherlands in relation to unaccompanied and separated asylum seeking children in transition to adulthood. The main objective of this report is to compare the policies between these countries and examine the consequences of becoming legal adults for this particular group. The outcome will namely, determine whether the EU should regulate the practices and legislation of UASASC turning 18. Also if these young vulnerable people, similar to Mauro, are safeguarded in the EU. This particular problem area helped shape the research question for this report, and is as follows:

"Should the European Union regulate its policy on unaccompanied and separated, asylum-seeking children turning 18, based on the outcome of the research on France, UK and the Netherlands?"

In order to answer the central question, three sub-questions were formulated.

1. How was the European asylum policy developed?

Within the first sub-questions the EU's asylum system was researched, with the aim of providing background information and comprehension of EU's asylum policy. A more theoretical background and information will, therefore, be given within this first chapter.

2. How is the asylum process and their procedure on asylum-seeking children turning 18 in France and the UK?

The second question was formulated with the purpose of giving insight on the asylum procedure and the practices on unaccompanied and separated asylum-seeking children turning 18 in France

and the UK. With the aim of comparing the practices of the three countries. The outcome contributed to answering the research question.

3. How is the asylum process and its procedure on asylum-seeking children turning 18 in the Netherlands?

The last sub-question will provide a comparison between the countries, in order to finalise the research and come to a conclusion.

1.3 Key Term Definitions

These key terms were determined, in order to prevent misconception, as well as misinterpretations of words.

Asylum	"protection given to someone by a government because they have escaped from fighting or political trouble in their own country" (Longman, 2009, p. 90)
Asylum seeker	"someone who leaves their own country because they are in danger, especially for political reasons, and who asks the government of another country to allow them to live there" (Longman, 2009, p. 90)
Refugee	"As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." (UNHCR, n.d.)
Migration	"when large numbers of people go to live in another area or country, especially in order to find work" (Longman, 2009, p. 1105)
Migrant	"someone who goes to live in another area or country, especially in order to find work" (Longman, 2009, p. 1105)
Asylum-seeking children	Are asylum seekers under 18 years of age
Unaccompanied minors also referred to as 'separated children'	"are children under 18 years of age who have been separated from both parents and are not being cared for by an adult, who by law or custom, has a responsibility to do so" (UNHCR, 1997)

Former unaccompanied minor and separated asylum-seeking child	Legal adults, who as a child had been separated from both parents and were not being cared for by an adult, who by law or custom, had a responsibility to do so

1.4 Scope

This study focused primarily on unaccompanied and separated, asylum-seeking children in transition into adulthood, similar to Mauro as well as the practices and policy concerning this transition phase in France, the UK and the Netherlands. Asylum applications made by children was not researched nor analysed in this report. However, certain remarks about EU's asylum law and the Convention on the Rights of the Child were included in this report. Furthermore, the situation of UASASC was also looked into since benefits and entitlements are lost with reaching the age of majority. The situation, benefits, rights and entitlements of asylum seekers in general are not considered in this report.

1.5 Methodology

For this report, a theoretical research method was more suitable, because this study involved asylum law and policy and used an inductive reasoning. However, the traps that lie in this reasoning must be considered. For instance, generalization and prediction, as well as "inference that leads from empirical data to theoretical explanation" (Ketokiv & Mantere, 2010, pp. 316, 317). For this study, this meant weighing arguments not only because they attempt to determine the veracity of the claim made on the transition of UASASC to adulthood regarding asylum policy.

The first phase of the research, consisted of desk research. Collecting and analysing, secondary data. Such as information on EU's asylum policy, as well as relevant asylum law and child-specific law. After completing the first phase, information was specifically gathered on UASASC turning 18 in France, the UK and the Netherlands, followed by an analysis. These countries were selected for inclusion in this study, based on the following factors:

- The Dutch regulation 'Kinderpardon' or 'children's amnesty'
- The United Kingdom, since guidelines established by the EU, will not apply[1] there
- France, to compare its policy with that of the Netherlands and the UK and to present the research and language skills, as well as the competences of the researcher

This selection is limited in scope; therefore, this report does not intend to present the entire diversity in European practices. It is only taken as a sample. Furthermore, the pronouncements on

[1] Explained in Chapter 4. 3.1 The United Kingdom

the practices of these three countries, should not be interpreted negative nor positive. In fact, research concerning these countries revealed significant differences, which helped answering the research question.

For the second phase a more qualitative approach was taken, with two in-depth interviews, which are annexed to this report. However, the interview documents are only available in Dutch, but to ensure more transparency English summaries were made and enclosed. The interviews helped to determine the differences between policy and practice and collect primary data. Also, to examine the consequences and the practice of the Dutch 'children's amnesty' regulation.

The methods used to collect all relevant information were as follows:

1. Desk-based research and analysis of policy, legislation, NGO country reports, European reports and newspapers
2. The selection of three MS for further desk research
3. Two in-depth interviews. The first with a Nidos employee, a foster organisation for UMs. The second with a jurist/legal counsellor at Het Landelijk Overleg Gemeentebesturen inzake Opvang- en terugkeerbeleid (L.O.G.O.) a cooperation between local authorities, that deliberates on the reception- and return policy.

For this study a combination of information was gathered, even though it was limited in scope. The intention was to present a complete study, including all views and relevant findings. So that the answer could be given on the research question and a justified conclusion and report could be presented. Therefore, governmental and (inter) and non-governmental organisations websites, reports, articles from journals and newspapers were used. The approach taken on each of these methods is as follows:

1.5.1 Desk-based Research

Relevant sources that were reviewed include for instance:

- Relevant EU's and Government websites
- Relevant instruments and reports by the Council of Europe, European Union and UNHCR
- Guidelines on transition to adulthood by organisations, such as Coram Legal Centre and Beyond borders
- Comparative reports on UASASC in Europe from FRA, EMN, France Terre d'Asile
- Articles from journals, in particular articles of Eleanor Drywood published in the International Journal of Children's Rights, because of her expertise in this field.
- Reports and articles on the EU's asylum policy by organisations and experts, for instance, Cear, an ECRE member, Amnesty and Eleanor Drywood

1.5.2 Personal Interviews

For this study, two interviews were conducted. Both interviews were audio-recorded and were transcribed. While the number of these interviews is not a representative sample to assess the difference between policy and practice, they, in themselves, illustrate differences in Dutch policy.

1.5.3 Ethical Considerations

In order to safeguard transparency, the project description was explained by email to the interviewees before the interviews were conducted. At the moment of conducting the interviews, an oral consent from the interviewees was given, which was recorded by audio. The language used in the interviews was adapted to the interviewees. Furthermore, the standard informed consent form was used to safeguard the confidentiality of the interviewees, which was provided by the Hague University, see appendix 5. In addition, the research data that was recorded are only accessible by the researcher.

1.6 Thesis outline

This thesis report consists of six chapters. Firstly, the introduction, which has the purpose to introduce the subject and present the defined problem area. Furthermore, the research methods will be discussed. Secondly, the history behind EU's asylum policy will be given, followed by the evolution of the asylum and immigration policy and the creation of the Common European Asylum System (CEAS). Thirdly, the CEAS is examined with a closer look to unaccompanied and separated, asylum-seeking children and their rights. Furthermore, the Best Interest of the Child (BIC), will serve as a theme in this chapter. Fourthly, the case studies will be presented. These include the asylum procedure, the management of turning 18 for UASASC and inconsistencies of the policies as well as criticism. Fifthly, the research question will be answered in the conclusion, followed by recommendations. Finally, further recommendations will be given regarding further studies.

2. Developing an Asylum Policy in the EU

2.1 Introduction

The Second World War was a tragedy in Europe's history and became a cause for many significant changes in Europe. In the aftermath of the war it created the notion of securing peace in Europe's future, this to prevent a tragedy like this again, resulting in the European Coal and Steel Community (Pinder & Usherwood , 2007). Furthermore, a humanitarian spirit arose, where one longed for a better and peaceful world (Jackson, 1991, p. 403), and as long as the world remained as Jackson (1991) states 'imperfect', refugees should have the right to be treated decently by the international community. Because of this belief, asylum became a fundamental human right in the Universal Declaration (Jackson, 1991). Therefore, European countries have a long tradition of providing protection to refugees. For the European Union (EU), these fundamental rights are the heart of the Union, therefore, protecting these is crucial (UNHCR, n.d.).

In order to understand the reasoning and drive behind the motives for creating a Common European Asylum System (CEAS), the EU's history will be used to analyse and explain this, and the decisions that were made with regard to asylum policy. For instance, the desires and motives to tackle asylum challenges on the European level and establishing the CEAS, not only derived from external factors such as influxes of refugees in several Member States (MS) in the early 90s (ECRE, n.d.), but also from internal factors, in particular, the Schengen Agreement, which caused the phenomenon 'asylum shopping', and created the need for measures concerning asylum (Boswell, 2003, p. 622). This led to the Dublin Convention, which was also followed by important legislative measures adopted by the EU over the following years (UNHCR, n.d.).

Developing an EU asylum policy equals questions, debates and grand challenges for the EU and its MS. For instance, harmonising the asylum policies of all MS, the intergovernmental method and debates concerning the level of government, raising questions as 'who should have the power to regulate migration?' 'Should it be in hands of the MS or the supranational EU institutions?' (Delany, 2013, p. 154). This chapter will provide the outcome of decisions made in relation to asylum, in the EU, focused on asylum-seeking children.

2.2 The Aftermath of the Second World War

2.2.1 Creating the Union

"Europe will not be made all at once, or according to a single, general plan. It will be built through concrete achievements, which first create a de facto solidarity." Schuman predicted with these words how the Community has become the Union of today (Pinder & Usherwood , 2007, p. 9). The EU arose from the political motive to secure peace in Europe, in the aftermath of the Second

World War, by its six founding fathers: Belgium, France, Germany, Italy, Luxembourg and the Netherlands. This new Community was established for the preservation of peace and created the European Coal and Steel Community.

As a result of this successful new Community, the founding fathers took steps towards economic integration, by expanding into other economic sectors (European Union, n.d.). Thus, the Coal and Steel Treaty was followed by the Treaty of Rome, which created the European Economic Community (EEC) in 1958 (Pinder & Usherwood , 2007, p. 4), also known as the 'common market'. This presented the four freedoms of the EU, which includes the free movement of people, which has relevancy to the CEAS.

2.2.2 Geneva Convention Relating to the Status of Refugees

In the aftermath of the Second World War, another important consequence with regard to asylum must not be forgotten, namely the 1951 Convention Relating to the Status of Refugees, which was signed and ratified by all MS (ECRE, n.d.). Aforementioned, the humanitarian spirit that originated in this period was one of the reasons which led to the Convention. There was a need to ensure correct treatment and establish rights for people who were victims of oppression and persecution, and were leaving their country as refugees (Jackson, 1991; (UNHCR, The Legislation that Underpins our Work, n.d.). Most importantly, the term 'refugee' was defined in the Convention, as well as the legal obligations[2] States have towards refugees (UNHCR, n.d.). The Convention can be seen as one of the first legal documents with regard to refugee protection, before this legal protection and assistance was basic and not as developed as it is now (UNHCR, 2001, p. 3).

The Second World War ended a few years before the Convention, which left the European continent with hundreds of thousands of refugees. Thus, the Convention started off as a post-Second World War instrument as well as an instrument of burden sharing. Zimmermann (2011, p. 40) cites in his book the Preamble that states "the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation." Furthermore, Zimmerman (2011, p. 40) explains there was a belief that States should have binding obligations because it would result in a more effective international cooperation. In addition, it also meant equal commitments between the contracting States and a shared responsibility of refugee problems.

Apart from this, the Convention was also the first human rights treaty adopted by the UN, with the aim of protecting the contemporary refugee, as well as futures ones (Zimmermann, 2011, p. 40). Since fundamental human rights lay in the responsibility of States, refugees are not

[2] Can be found in the 1951 Convention and Protocol Relating to the Status of Refugees.

protected by definition (UNHCR, 2011). Furthermore, the cornerstone of this Convention, is the principle of non-refoulement, which can be found in Article 33. This ensures a non-return for refugees, to be more precise they cannot be returned to a country if their lives or freedom is threatened (UNHCR, The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol , 2011; Zimmermann, 2011, p. 40). Even though, the convention ensured protection of contemporary and future refugees, it still was limited, because it only applied to persons fleeing the events occurring before 1 January 1951 and only within Europe. Therefore, the 1967 Protocol was introduced, which removed these limitations. As a result, it gave the treaty a universal coverage (Zimmermann, 2011, p. 69).

Since, all MS have signed and ratified the 1951 Geneva Convention Relating to the Status of Refugees, this meant for the MS implementing the provisions[3] in their national legislation as well as binding legal obligations towards refugees (ECRE, n.d.). Although, the Convention defines the rights, legal obligations of States and a legal definition of the term 'refugee', States may design their own procedures for the determination whether a person is a de facto refugee, because the Convention does not provide for one (Zimmermann, 2011, p. 40). However, the contracting States are expected to this, as Zimmermann (2011) states in his book, by 'good faith' and the States must provide fair procedures. According to ECRE (n.d.), all MS make the distinction between an asylum seeker and a refugee; an asylum seeker is only granted with refugee status when this is examined by the MS, after a defined legal procedure[4] with due respect of Art. 18 of the EU Charter of Fundamental Rights[5]

2.2.2.1 Children under the 1951 Geneva Convention and/or 1967 Protocol relating to the Status of Refugees

In the past, refugees were characterised as male individuals, which were obliged to leave their home country and which were persecuted, because of political beliefs. Nowadays, however, the majority of refugees are, in fact, women and children (Happold, 2002, p. 1131). Regarding asylum-seeking children, research shows the 1951 Geneva Convention has its shortcomings. For instance, it does not cover specific rights or legal obligations for individual States concerning children.

According to the UNHCR (2009, p. 3), refugee claims made by children were incorrectly examined or had been overlooked, due to the fact that Article1(A)2[6], applies to all individuals irrespective of age. Therefore, guidelines were established by the UNHCR in 2009 to include children. These guidelines offer inter alia States guidance to examine asylum claims made by

[3] Can be found in the 1951 Convention and Protocol Relating to the Status of Refugees.
[4] The legal procedure concerning asylum-seeking children turning 18, will be analysed in chapter 4
[5] See appendix, 1. Charter of Fundamental Rights
[6] See Introduction 1.3 Key Term Definitions

children in a 'child-sensitive manner', which result in a more, as the UNHCR (2009, p. 3) states, 'child-sensitive' approach of the Convention. Nevertheless, children are not directly granted with refugee status, they are only entitled to this after establishing they have a fear of being persecuted for reasons stated in Article1(A)2 (UNHCR, 2009, p. 4). As for specific rights, since the Convention did not cover these, the guidelines do point out rights and specific needs of children in asylum procedures.

2.3 Evolution of the Asylum & Immigration Policy in the 1980s and 1990s: The External Dimension

Since the 1970s, West European governments had been trying to limit or manage immigration flows, and despite the 1951 Geneva Convention also refugee flows, into their countries, by introducing measures in order to achieve a migration control policy. This led to an increase of illegal migration, and because of the measures that were introduced to restrict illegal entry, migrants and refugees used dangerous routes to enter Europe or were forced to use services, such as, smuggling or trafficking networks. In addition, the migration policy also affected other policy areas, one could argue, in a negative way. For instance, while some sectors were in need of labour, the supply of workers was limited. Furthermore, the increasingly strained race relations between the West European countries and the migrant-sent countries, also caused tensions between them. So, over the years West European governments searched for alternatives, by cooperating with migrant-sending countries and 'transit' countries[7]. At EU level, this meant recognising migration and asylum goals needed to be integrated into the EU's external policy, and this cooperation became known as the 'external dimension' of the EU cooperation in Justice and Home Affairs (JHA), which will be discussed in detail later (Boswell, 2003, p. 619).

Apart from this, in the late 70s, children's rights movements raised awareness of the position young people had in relation to the framework of legal rules that were governing them, consequently changing the attitudes towards children. Thus, from the 70s and onwards, this resulted in more laws and policies specifically focusing on young people, to ensure their particular rights and needs (Drywood, 'Child-proofing' EU law and policy: interrogating the law-making processes behind European asylum and immigration provision, 2011, pp. 405,406). Despite this, children's rights protection only became relevant to the EU's agenda around the turn of the millennium. Moreover, it was under the Treaty of Lisbon, which is the first treaty, which included the children's rights protection (Canetta, Meurens, McDonough, & Ruggiero, 2012; Child Rights International Network , 2007; Drywood, 2011, p. 410).

Over the years, the EU found forms of cooperation and policy instruments, in two distinct

[7] These are countries through which migrants or refugee travel

approaches, with the purpose of achieving their goals of an immigration and asylum policy. (Boswell, 2003, pp. 619, 620). Parallel to this, significant changes in the European Community and events occurring in Europe, also gave rise to the development of the EU asylum and immigration policy. For instance, completing the single market, the increase of asylum applications due to influx of refugees, and a new phenomenon that came into existence, which led to more policymaking. In order to better understand the development of the policy, changes in the European Community will be further explained in the subparagraphs, in chronological order and starting with the Schengen Agreement. Furthermore, the two distinct methods, to limit and prevent migration and refugee flows, to the external dimension of the EU will be explained in 2.3.5 The External Dimension: Externalisation & Prevention.

2.3.1 The Schengen Agreement

After establishing the European Economic Community (EEC), the cooperation between the founding fathers slowly shifted from a solely economic cooperation into other levels of cooperation[8] (European Union, n.d.). It was during the 1980s, when Germany, France, the Netherlands, Belgium and Luxembourg realised, it was of high importance to abolish the internal borders among them, this to ameliorate the completion of the single market. An area where not only goods, capital and services could move freely, but also individuals moving between the different countries (European Union, n.d.). They argued that, abolishing the borders would be necessary, because of the 'compensatory measures' that were established and were going to be introduced, such as, strengthening external border controls and cooperation in the field of asylum and immigration. Thus, in 1985 the Schengen Agreement was signed by the five MS (ECRE, n.d.).

The Schengen Agreement established common rules, such as, the right to asylum and introduced visas. Furthermore, border controls between countries were abolished, however, this did not mean borders completely disappeared or became less important. They became part of Europe's 'internal' frontiers, which meant that governments could not have the absolute power to control the movement of people anymore. As for Europe's external borders, they were no longer under 'national' control (ECRE, From Schengen to Stockholm, a history of the CEAS, n.d.; Zaiotti, 2011, p. 2, 3). At first, the Schengen Agreement was concluded outside the EU Treaty framework, however, after signing the Treaty of Amsterdam it was incorporated into the acquis in 1999 (ECRE, n.d.).

With the establishment of Schengen, questions arose regarding the governance of the external borders, since they were shared and not the sole responsibility of individual countries anymore. Questions were raised concerning the executive powers, such as, who should be in

[8] The EEC Treaty also, for instance, established a common agricultural, trade and transport policy

charge? According to Zaiotti (2011, p. 3) the solution in the Schengen Agreement was a hybrid system of governance. The hybrid system being a mix of supranational and intergovernmental features as he states in his book *Cultures of Border Control: Schengen and the Evolution of European Frontiers*.

Even though the Schengen Agreement was a step towards 'a more easily' free movement of persons, the loss of national control over borders made the Schengen countries more vulnerable for irregular entry, as mentioned in this chapter's introduction. According to Boswell (2003, p. 622), this resulted in 'flanking measures'. These measures not only covered the reduction of irregular movement, it was also aimed at limiting movement into the European Community. In order to limit or prevent movement, the MS recognised cooperation was needed on the European level, which, also required a more intensive cooperation with countries of origin and/or transit countries, explained in 2.3.3. The London Resolutions 1992. These measures pointed out by Boswell (2003), are part of the external dimension of the EU and will be explained in 2.3.5 The External Dimension: Externalisation & Prevention.

2.3.2 The Dublin Convention

In the early 1990s, the MS kept cooperating on the asylum policy, when a new phenomenon came into existence 'asylum shopping'; a phenomenon where asylum seekers apply for asylum in more than one MS or when asylum seekers choose a particular MS because of the level of protection that it offers (Hatton, 2012, p. 8 ; UK Parliament Website, 2005). In order to prevent this new phenomenon, again outside the Treaty framework, several governments were negotiating a Convention, named the Dublin Convention and was signed in 1990. The Convention was aimed at naming a single country as responsible for handling an asylum application, to be more precise the country of first entry, would be responsible and would assess the asylum claim, so that asylum claims would be assessed only once. The Dublin Convention of 1990, was followed by the current 'Dublin II' Regulation[9]. (ECRE, n.d.)

With the aim of determining which State has the responsibility to deal with an asylum claim, a set of hierarchical criteria were created in the Dublin System. The general principle is, for instance, those States which have played a major role in the applicant's entry or residence, on the common grounds of the participating States, are responsible for examining those asylum claims. An exception to this is family unity, which needs to be protected. When none of this applies, then as aforementioned, the first country of entry will have the responsibility to examine the asylum claim. Furthermore, the system also provided MS with the possibility to make a request to another MS; for instance, to take over a case, when the application has not yet been examined. Another

[9] See 2.4 Creating the CEAS ¶2

possibility was requesting to take back an asylum case, when, for instance, the application is being examined, withdrawn or rejected by another State (Vink, 2012).

Even though, the European area did not have 'internal' frontiers anymore the 'Dublin System' still evolved in the background (Vink, 2012). Vink (2012) argues that without any compensatory measures[10], States would not have given up their powers to control their own borders. According to him, this was the reasoning behind the Dublin Convention. He also explains that apart from the free movement agenda[11], the Dublin Convention was part of a broader one, namely strengthening migration control[12]. He (2012) also points out that asylum law became politicalised because the amount of refugees varied from one another, especially in times of international crisis, such as the case in Bosnia and Kosovo. Whereas, a burden-sharing scheme was politically impossible to achieve, he states that the Dublin Convention can be seen as a form of burden-sharing. In contrast to this, critics argue that the Convention is aimed more at burden-shifting instead of sharing because it shifts the responsibility to the States on the external borders of Europe to deal with the asylum claims (Vink, 2012).

Nowadays, countries like Italy and Greece are struggling to deal with the many asylum claims. For instance, in 2011 due to the uprisings in North-Africa, which in fact is adding to its burden because of the Dublin Regulation. Especially for Greece, since it has to deal with the financial crisis and large numbers of migrants and refugees. In addition, both countries receive the most returns, because of Dublin, especially since many of the asylum seekers are not willing to stay there, due to minimal welfare provisions (Domokos & John, 2011).

2.3.3 The London Resolutions 1992

After the responsibilities had been determined concerning asylum claims, new questions arose, such as, how to deal with 'safe third countries'? This resulted in the London Resolutions of 1992. It introduced a common definition and an accelerated examination procedure (ECRE, n.d.). In addition, certain third countries were classified as 'safe,' these involved certain countries of origin and transit. Thus, people applying for asylum, which were arriving from or through such countries, were normally considered manifestly unfounded and an accelerated procedure[13] applied for these asylum claims (Hatton, 2012, p. 8 ; Oakley, 2007, p. 6). One could argue if these decisions were in the best interest of refugees and asylum seekers. The UNHCR, for instance, was concerned; giving their recommendation on this matter by arguing that "...the determination of the credibility of the asylum seeker's claim or evidence" should not be determined in these 'fast-track' procedures

[10] Measures concerning rules, and determining States responsibility of asylum applications
[11] The EU Single Market
[12] Part of the external dimension of the EU, 2.3.5 The External Dimension: Externalisation & Prevention
[13] A faster procedure to determine whether a person is granted with refugee status

because "...issues of credibility are so complex that they may more appropriately be dealt with under the normal asylum procedure" (as cited by Oakley, 2007, p. 7).

Apart from this, the London Resolutions was also an element of the EU's external dimension because besides the concept of 'safe third countries' another measure was introduced, namely, readmission agreements with 'safe' transit countries. The concept of 'safe third countries' was aimed at delegating protection duties to these third countries. So, that once they met the minimum protection standards and one could provide this the EU classified these countries as 'safe', and used this as a migration control tool to restrict asylum applications (Wunderlich, 2013, p. 31). The readmission agreements were, in fact, obligations and procedures between these transit countries and MS, which provides the legal basis for the return of people that are residing illegally in the European Community, with the aim in reducing this (European Parliament, n.d. ; Lavenex & Uçarer, 2003, p. 84). In addition, as one might expect, this was criticised[14].

2.3.4 From Maastricht to Amsterdam

During the 1990s, the MS reformed their asylum and immigration policy, by introducing other measures. For instance, the procedure to assess asylum claims became faster, the right to appeal became more limited, and there was more enforcement of deportation of rejected applicants. One of the reasons to introduce one or more packages of reform was because several MS were dealing with large numbers of refugees. This was because of the conflicts on the Balkans and the collapse of the communist regimes in Eastern Europe. Other measures included restrictions, these were namely placed on the living conditions of the asylum seekers, which involved, for instance, limited access to welfare benefits, but also the freedom of movement was limited as well as the right to employment (ECRE, From Schengen to Stockholm, a history of the CEAS, n.d. ; Hatton, 2012, p. 8). Another consequence of the collapse of the communist regimes was the birth of the European Union (EU) created by the Treaty of Maastricht on European Union (TEU) (European Union, 2010).

The Treaty also created the three pillars structure, namely the European Community (EC) pillar, the Common Foreign and Security Policy (CFSP) pillar, and the Justice and Home Affairs (JHA) pillar (European Union, 2010). Under Maastricht, asylum policy was covered in the third pillar, namely in JHA. This is relevant because the decision-making procedure was intergovernmental, this meant that the MS kept their sovereignty (European Union, Community and intergovernmental methods, n.d. ;European Union, Pillars of the European Union, n.d. ; European Union, Treaty of Maastricht on European Union, 2010). As a consequence, policy-makers could avoid judicial control and achieve their objectives, such as, increasing migration

[14] See 2.5 Criticism on the 'Externalisation'

controls. Moreover, the European Court of Justice (ECJ) had no competence to decide on asylum and migration matters (Léonard & Kaunert, 2012, p. 1397). In addition, Léonard & Kaunert (2012, p. 1398) argue, it was also possible to exclude 'enemies' from the decision-making process by restricting the roles of the European Commission (EC), European Parliament (EP) and ECJ, which were considered more, as they write, 'migrant-friendly'. Besides, these non-governmental organisations found it difficult to monitor the policy-making on asylum and migration because this was done at national level and was highly confidential, so it was actually lacking in transparency (Boswell, 2003, p. 623).

Hatton (2012, p. 8) argues that even though common trends in the asylum policies of the MS can be identified, formal cooperation between the countries was minimal. Trends, such as, tightening of border controls and faster procedures were, in fact, a response, aforementioned, to the many asylum claims MS received in this period. On the other hand, ECRE (From Schengen to Stockholm, a history of the CEAS, n.d), claims that these were the first efforts to cooperate on the European Level because several of the MS were facing the same problems. Hatton (2012, p. 8) does point out, burden-sharing through refugee redistribution became a subject matter; however, nothing concrete was determined and there were no legally binding instruments under Maastricht (ECRE, n.d.). This changed with the entry into force of the Treaty of Amsterdam in 1999, when the process to a more harmonised policy began and legally binding instruments[15] were adopted because asylum policy was transferred from the third pillar to the first. The EC now had the right to propose legislation, from 2002, but could also negotiate with third countries on immigration and asylum matters (Boswell, 2003, p. 627 ; European Commission, Common European Asylum System, 2013 ; Hatton, 2012, p. 8). Moreover, the EP was given the powers of co-decision over measures concerning immigration and asylum[16] (Bunyan, 2013, p. 2).

2.3.5 The External Dimension: Externalisation & Prevention

As mentioned before, parallel to the changes happening in the EU, after the establishment of the Maastricht Treaty, migration and asylum goals were integrated into the EU's external policy. In addition, over the years, forms of cooperation and policy instruments were found, in order to deal with migration and refugee flows. Boswell (2003, p. 622) explains two distinct strategies, which became visible in the search for new forms of cooperation. The first was called 'externalisation' of migration control, consisting of two main components. The first involved exporting classical migration control instruments to countries outside the EU, such as, border control and measures in order to combat illegal migration. The second component focused on facilitating the return of

[15] Legislative measures, such as harmonising common minimum standards for asylum, between 1999 and 2005
[16] See Art. 67 (TEU)

asylum seekers and illegal migrants to return to third countries, with establishing readmission agreements with third countries, aforementioned in the London Resolutions.

2.3.5.1 Externalisation of Migration Control

The first strategy was a control-oriented approach, according to Boswell (2003, p. 622) it was a response to the challenges that arose after the Single European Act[17] and the abolition of the borders between the Schengen countries. Even though the European Community was moving towards a free movement of persons, the MS wanted to maintain the exclusive power over immigration. Despite the fact that immigration remained at national level, the completion of the internal market stimulated the MS towards greater cooperation and coordination (Delany, 2013, p. 160). For instance, the EU and the Schengen believed, it was necessary to enlarge the national instruments of control, with the aim to fill new loopholes that arose with the creation of Europe's 'internal' frontiers (Boswell, 2003, p. 622). However, these were not the only reasons to extend the control instruments. According to Hatton (2012, p. 7), in the 1980s many people applied for asylum, which reached a peak in 1992, and led to a 'policy backlash' as he states in his Discussion Paper. He argues that even though the MS were contracting States of the 1951 Geneva Convention, the provisions left room to tighten the asylum policy of the EU. In contrast to Boswell, Hatton (2012, p.7) explains three dimensions and despite the differences both mention tightening of border controls.

2.3.5.2 Preventative Approach

The second approach explained by Boswell (2003, p. 624) is a preventive approach, which according to her was based on a different logic. They namely sought the best solution for dealing with the many migration and asylum flows, which in their point of view was prevention. The purpose was to influence factors, which forced migrants and refugees to travel to the EU and prevent this, by the use of development assistance, but also refugee protection in countries or regions of origin, so that refugees could seek refuge in their home country. As for Hatton (2012, p. 7), his second dimension involved the procedures for the determination whether a person would be entitled with refugee status. This, for instance, involved narrowing the definition of a refugee and tightening the procedure, but also not granting asylum on humanitarian grounds. According to Hatton (2012, p. 7), asylum seekers granted some form of asylum dropped from 50 per cent in 1985, to 30 per cent a decade later. The last dimension focused on toughening the conditions, which asylum seekers could receive from a host country. Aforementioned, these involved restricting access to employment and reducing benefits or welfare payments. Moreover, the use of detention increased.

[17] See Appendix, 2. The Single European Act

So, in the late 1980s and 1990s the interior ministry and police officials believed that the logic behind the use of control methods, namely the externalisation of border control, was the most effective instrument in combating irregular migration, by creating a restrictive asylum system and cooperation to combat migrant smuggling and trafficking (Boswell, 2003, p. 623), yet critics were not convinced and still criticise the 'externalisation' of migration control as well as the preventative approach, see 2.5 Criticism on the Externalisation & the CEAS.

2.3.6 Externalisation & Prevention in the late 1990s

In 1998, the Council of Ministers were debating on possible new strategies concerning migration. At that time Austria was holding presidency and presented a controversial strategy paper on the immigration and asylum policy. It was controversial because the aim was to reduce migration from the main countries of origin of immigrants. Furthermore, it emphasised that the EU had a crucial role in accomplishing this intervention in conflict regions (Boswell, 2003, pp. 627, 628). However, Boswell (2003, p. 628) writes that this approach had not been implemented effectively, and these preventative methods had, therefore, been put back on the agenda. Apart from prevention, it also involved combating illegal flows, though cooperation with countries, such as transit and future MS. The strategy paper featured prevention combined with control instruments.

As previously mentioned, in the external dimension the JHA focused on readmission agreements and measures, such as, border control in order to combat illegal migration. It was, therefore, according to Boswell (2003, p. 628) unexpected when the JHA Council was asked to propose measures to limit migration and asylum flows and pursue the preventative methods. However, there were many factors that influenced this, she explains three factors. The first came from the Dutch Government, because they proposed this, since they had been seeking in developing preventative methods at national level for a number of years. The second was actually a coincidental factor: the time of initiative fell together with an influx of Iraqi asylum seekers in the West European countries. The third, as Boswell explains, was due to the entry into force of the Amsterdam Treaty, since the EC received a more extensive role in the external dimension. Apart from this, also a stronger role for the Council of the European Union was created, and was included in the development of the preventative strategies.

In 1999, an EU Council summit was dedicated to the creation of an Area of Freedom Security and Justice. This was hosted by the Finnish town Tampere. It was under this initiative following the Tampere Program (1999-2004), that the creation of a Common European Asylum System (CEAS) became a matter for negotiations because it became clear there was a need for an external policy adapted towards meeting JHA concerns (Boswell, 2003, p. 629 ; ECRE, From Schengen to Stockholm, a history of the CEAS, n.d.). The CEAS is based on the application of the

1951 Geneva Convention (Hatton, 2012, p. 8). Boswell (2003, p. 629) cites the full text of the Presidency conclusions of Tampere:

> The European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children. To that end, the Union as well as Member States are invited to contribute, within their respective competence under the Treaties, to a greater coherence of internal and external policies of the Union. Partnership with third countries concerned will also be a key element for the success of such a policy, with a view to promoting co-development

She (2003, p. 629, 630) also points out, what she thinks is even a stronger statement, "all competences and instruments at the disposal of the Union, and in particular, in external relations must be used in an integrated and consistent way to build the area of freedom, security and justice. Justice and Home Affairs concerns must be integrated in the definition and implementation of other Union policies and activities." Thus, by late 1999, there was a real drive for developing the external dimension and harmonisation.

2.4 Creating the CEAS

2.4.1 Tampere Programme of 1999

The first stage of the CEAS involved harmonising key elements of the policy, since there were differences in the asylum systems and practices among the MS. Moreover, several MS were facing the same problems concerning asylum and migration, so, a common asylum system was desired. Thus, in order to harmonise the systems and reduce the differences among them, legal binding legislation was brought in. This includes the Reception Conditions Directive, which introduced common standards regarding services asylum seekers are entitled to, during the time their claim is being processed. In addition, the Dublin regulation (Dublin II) got revised, to improve the efficiency of the system and EURODAC fingerprint database was established, in order to combat terrorism and crimes. The Qualification Directive provided common grounds, for refugees, in granting international protection, while the Asylum Procedures Directive aimed at asylum decisions being made faster, better and fair, as well as more protection for unaccompanied minors (European Commission, Common European Asylum System, 2013, ECRE, From Schengen to Stockholm, a history of the CEAS, n.d ; Hatton, 2012, p. 8, 9). Since, aforementioned, the EU's agenda finally focused on young non-national migrants during this time. Moreover, it became clear to them, provisions for children were necessary, one could argue even essential, because of the high level of vulnerability of children (Drywood, 'Child-proofing' EU law and policy:

interrogating the law-making processes behind European asylum and immigration provision, 2011, p. 410). In an earlier article of Drywood (2010, 310), she states: "This strategy to 'mainstream' children's rights into EU asylum and immigration law has been evident over the first decade of law and policy in the area," because of the child-sensitive provisions that were included. Even though the directives were included into the national legislation of the MS, Hatton (2012, p.9) argues, it was not completely harmonised, due to the fact that the directives only laid down minimum standards, moreover, the asylum process was not covered in every aspect. Apart from this, it had taken years of negotiations in achieving these directives, since the Amsterdam approach was modified; this meant that qualified majority voting (QMV) was replaced by unanimity voting (Delany, 2013, p. 163). Moreover, Delany (2013, 164) explains harmonisation was also lagging, due to the fact that some MS wanted to maintain national control on migration matters.

On the other hand, human rights instruments were, in fact, incorporated into the asylum legislation, since the MS made a commitment in achieving this, which is relevant and important to children's rights (Drywood, Challenging concepts of the 'child' in asylum and immigration law: the example of the EU, 2010, p. 309).

2.4.2 The Hague Programme of 2004

The second stage of the CEAS (the Hague Programme) focused on closer cooperation in several areas. For instance, FRONTEX agency was established in 2005, which focused on border management, and was aimed at further harmonisation, by harmonising rules and procedures for the determination of a de facto refugee status and appeals. Another initiative was to expand the reception standards to other areas, such as, education and health (Hatton, 2012, p. 10). Furthermore, in 2006 the Commission presented 'Towards an EU Strategy on the Rights of the Child' COM(2006)367 Final: 7, with the aim to mainstream children's rights into EU law and policy (Drywood, 'Child-proofing' EU law and policy: interrogating the law-making processes behind European asylum and immigration provision, 2011, p. 411).

Apart from this, it should be noted, with the entry into force of the Lisbon Treaty in 2009, the MS and the EU shared power over migration matters. Under Lisbon, a legal basis was provided for supranational action on migration, however, with due observance of the principle of subsidiarity. Thus, the European Institutions must explain, for instance, when MS cannot resolve issues at national level, before it becomes an issue to resolve at supranational level (Delany, 2013, p. 158). Delany (2013, 158) believes that this concept of shared power would have been unthinkable thirty years ago, since MS preferred to maintain control on migration matters at national level and be able to legislate without any constraints. So, the step towards a shared competence between the MS and the supranational institutions was in fact striking because earlier

the MS had been refusing to delegate their sovereignty to the EU institutions and was lacking in transparency. Most importantly, with Lisbon entering into force, the EU charter of Fundamental Rights, became an legally binding instrument and belongs to Europe's core identity. Furthermore, one of the key objectives of the EU is promoting and protecting the rights of the child. Under Lisbon this received more focus (European Commission, Fundamental rights, 2014 ; UNHCR, EU Instruments , 2001-2014).

2.4.3 The Stockholm Programme of 2010

The Stockholm Programme is the name of the new phase the MS are moving forward to, which is part of the Freedom, Security and Justice Initiative, which shall be completed by 2014. This phase has the purpose to expand the scope of the CEAS, for instance, incorporating matters as access to the EU, integrating and resettling refugees, and also responsibility sharing mechanisms between MS (ECRE, n.d.). Over the last ten years, substantial progress and development has been made in the establishment of the CEAS. However, Hatton (2012, p. 10) points out this was mainly focused on the harmonisation of standards and procedures, and therefore, the application of the directives vary among the MS. Also because the MS have the overall responsibility for implementing aspects of the asylum policy into their national legislation. Nevertheless, in the Stockholm Programme children's rights were not forgotten and a new Communication on the Rights of the Child for the period 2011-2014 was presented by the Commission. Noteworthy, outside this programme, the EU Agenda for the Rights of the Child was adopted in 2011. This included, for instance, revising the EU legislation, further protection and promotion of the rights of the child and child-friendly justice (European Commission, An EU agenda for the rights of the child, 2013 ; European Commission, An EU Agenda for the Rights of the Child COM(2011) 60 final, 2011).

2.5 Criticism on the 'Externalisation' & the CEAS

Over the years, many internal and external factors, have caused changes in the EU's, as well as MS's, policy on asylum. Yet, policymaking, the reasoning and motivation behind the policy, has been and still is strongly criticised. For instance, dubbing Europe into 'Fortress Europe', because organisations as Cear, an ECRE member (ECRE, n.d.), and The Jesuit Refugee Service, an international Catholic organisation, believed Europe would become less accessible for asylum seekers and refugees, because of the externalisation of asylum (The Jesuit Refugee Service Europe, n.d.). According to Cear's report, named The Externalization of Borders: Migration Control and the Right to Asylum (n.d., p. 10), policies as these are equivalent to violating human rights, because it violates the right to asylum. Another organisation who shares this belief is Amnesty. According to their report S.O.S. Europe Human Rights and Migration Control (2012, p. 17), agreements between individual European countries and third countries are not transparent and even

include measures that violate human rights. Besides the readmission agreements and the other measures being criticised, the UNHCR, for instance, expressed their concern on the Amsterdam Treaty in 1999. They were concerned that the introduced measures and migration control would affect asylum-seekers (UNHCR, 1999). Even the revised Dublin II, has its shortcomings, because this would not always be applied, with the best interest of the child in mind (France Terre D'asile, 2012, p. 54).

Apart from this, critics and researchers have questioned the measures introduced by the policymakers on asylum and immigration, for instance, the use of detention. People are detained during the asylum process, which happens upon arrival when they apply for asylum and throughout the appeal while it is waiting to be heard. Governments, however, argue that detention is needed because those detained are actually supposed to be deported, thus it is not arbitrary (Schuster, 2004, pp. 9,10). Some EU countries even detain unaccompanied asylum seeking children (France Terre D'asile, 2012, p. 54). Also the preventative method is questioned because even at the entry to a country refugees may be refused and they can even be expelled, as long as this is in accordance with the 1951 Geneva Convention. Therefore, one could question the legitimacy of this strategy because it is controversial (Morgades, 2010, p. 9). As a result, the 1951 Geneva Convention arose from a humanitarian spirit and was signed to protect those in need of protection.

Another aspect which was open to criticism is children's rights under the CEAS. Drywood (2010, 310) for instance, claims "the quality of some of these measures from a children's rights perspective has not always been applauded by the academic and non-government organization (NGO) sector." However, she does agree on the fact that children have been pushed in the forefront of the EU's social agenda. In her article from 2011 (p. 425), she writes:

> "Clearly, mainstreaming children's rights, and the processes associated with this approach to law-making, can be credited with some achievements: in certain policy areas, such as the asylum system, young people are successfully embedded in the conscience of the institutions, with the result that frequent references to their needs and rights are found within legislation"

Whereas Drywood (2011, p.425) believes in these successes, others have argued mainstreaming as a strategy has not been complete and inconsistent. However, she refutes by stating this is not completely true.

Other criticism that the EU and its MS have received is, for instance, right after the fall of the communist regimes, when Western countries were actually in need of unskilled and semi-skilled labour, large numbers of refugees were welcomed with open arms. In other words, economic migrants were desired, since there was a shortage in the labour force. Moreover, since

many of the refugees wished to find refuge in Western countries, Gibney (2005, p. 5) believes that this was the "much needed ideological evidence of the superiority of Western liberal democracy during the Cold War." Yet, as the world began to change, liberalism and democracy expanded, which caused States to be more open, and encouraged more people to move freely than there ever had been. This, however, placed great strains on liberal States, since tensions arose in the liberal political and economic systems. Hollifield (2006, p. 267) calls this the 'liberal paradox.' he explains that in these liberal systems tensions exist between market and rights. Since market liberalism requires openness, other polities need some restrictions, such as citizenship. He does argue, "Equal protection and due process cannot be extended to everyone without undermining the legitimacy of the liberal state itself." He believes States can escape from this contradiction by establishing a migration regime as the EU has done.

To refute its criticism and restore public trust in government's ability to manage, for instance, migration and asylum, recommendations have been given. For instance, the Migration Policy Institute, which is independent, nonpartisan and non-profit, presented their report named: 'Restoring Trust in the Management of Migration and Borders' in 2011. This represents recommendations, such as, how to reduce illegal immigration and in building a new architecture for border management. However, they argue "the challenge for policymakers is thus how to regain control over what does not work well as the prerequisite to earning once more the public's confidence." In addition, they believe this involves hard choices. Nevertheless, they do realise this will not succeed if both State and society do not work with great effort and determination on this (Institute, About MPI, 2001-2013 ; Papademetriou, 2011, pp. 3,4,7).

Interesting quote on the EU website, worth citing, is from the Commission (2013) and is as follows:

> "Asylum must not be a lottery. EU Member States have a shared responsibility to welcome asylum seekers in a dignified manner, ensuring they are treated fairly and that their case is examined to uniform standards so that, no matter where an applicant applies, the outcome will be similar."

2.6 Conclusion

Thus, over the last couple of years the MS and the EU have been working on creating a CEAS. As explained, the motives and reasons behind this derived from a combination of external and internal factors. One of the first external factors was in fact World War II, when a European Community was established in the aftermath of the war, and an economic collaboration began between the founding fathers. This moved slowly into other levels of cooperation, with the aim of creating a common market. The common market intended inter alia the freedom of movement, which has in

way an indirect connection with the asylum and migration policy. So, in order to complete the single market, five MS realised it was necessary to abolish the borders between them and signed the Schengen Agreement. A decade earlier, the West European governments were already working on managing migration and refugee flows into their countries, by introducing measures. With signing the Schengen Agreement, borders between the MS were abolished and meant in turn the need for new measures, as the countries became more vulnerable for irregular entry.

Whereas the countries were dealing with migration and asylum on a national level in the 70s, a new chance arose to collaborate on the European level regarding asylum and migration matters in the late 80s, with Schengen, and kept doing so in the early 90s, especially when the MS faced new challenges in the 90s with the fall of the communist regimes in Eastern Europe and the new phenomenon 'asylum shopping'. This resulted in more policy-making on EU level with regard to asylum and migration. It was not until the entry into force of the Amsterdam Treaty that the asylum policy became more harmonised, as asylum and migration was moved to the first pillar and the EC had a larger role in these matters. So, in order to deal with migration and refugee flows, new forms of cooperation came into existence and new policy instruments were introduced. These were part of the EU's external policy. Even though the introduced measures were to limit migration and asylum flows, others questioned the real motives of the EU and the MS.

As far as children are concerned, it was for children's rights movements in the 70s, which raised awareness. Yet, it was not until the Treaty of Lisbon, that children's rights protection was for the first time included in an EU treaty, and children's rights moved to the forefront of the EU's social agenda. Over the years, the focus was on migration and asylum control, until Tampere. Nevertheless, child-sensitive provisions have been included in the CEAS, which will be further analysed in chapter 3, because of the shortcomings and incompleteness of the policy, according to several researches and critics.

3. CEAS: A Deeper Analysis with Regard to Separated, Asylum-Seeking Children and Their Rights

3.1 Introduction

After years of developing a Common European Asylum System (CEAS), the European Union (EU) and its Member States (MS) finally entered a new phase. A phase where several of the Directives were reformed, especially in the field of children's rights standards. To be more precise, provisions on UMs were improved (Drywood, 2011, pp. 421,422). Since, according to studies and critics, the policy had its shortcomings in this field and was incomplete. An example of this is the Council Resolution of 1997, on unaccompanied minors who are nationals of third countries. The Resolution is the only EU legal instrument that is specifically designed for the protection of unaccompanied minors (UMs), and it is a non-binding instrument. Furthermore, UMs were only referred to in Directives that regulate the status of individuals seeking asylum in the EU. Directives concerning children were only limited to specific aspects (Hancilova & Knauder, 2011, p. 19 ; Kanics & Senovilla Hernandez, 2010, p. 4).

Thus, EU legal instruments specific on UMs and children were absent. However, the situation of this particular group became recognised and was put on the EU's social agenda, especially around the turn of the millennium, parallel to the first steps which were made regarding the CEAS. Furthermore, discrimination was prohibited in the EU Treaties, included in Art. 19(1) TFEU[18] (ex Article 13 TEC), and the Charter was being proclaimed (Drywood, 2010, p. 310 ; European Commission, Fundamental rights, 2014). At Tampere, for instance, the MS committed themselves to incorporating human rights into the asylum legislation (Drywood, 2010, p. 309).

However, Diop (2008-2009, pp. 39, 41), who has researched if the EU asylum and immigration legislation is in line with the Convention on Rights of the Child (CRC), believes the Family Reunification case (C-540/03 European Parliament v Council, judgment of 27.6.2006) could have given insight to the enforcement of children's rights from the EU's perspective. In this case, the CRC was taken into consideration, but it was not legally binding, since the EU is not part of the Convention. Therefore, in this particular case, it seemed the interpretation of children's rights was not followed as a line of approach. Apart from this, was the Charter not a legally binding instrument at that time.

As a result of these events, there was a greater understanding of children in the constitutional texts governing the EU. This led to the Strategy on the Rights of the Child (COM(2006)) in 2006 and was followed by other initiatives[19]. Noteworthy is the entry into force of

[18] See Appendix 1 Legislation, 1.1 European Treaties
[19] Such as the Action Plan on Unaccompanied Minors (2010-2014) (COM2013)

the Lisbon Treaty in 2009, when the Charter finally became a legally binding instrument. As for the CRC, the key principles of this Convention were mirrored and included into the Charter, under Art. 24 on the rights of the child[20] (Drywood, 2010, p. 310).

Now, in relation to unaccompanied and separated asylum-seeking children (UASASC), these children's rights will not apply anymore as they reach majority. Therefore, this chapter will focus on the importance of incorporating children's needs into the EU law-making process and children's rights in the EU's asylum legislation. Analysing this will determine if particular rights and provisions need to be extended for this particular group in the EU's asylum legislation.

3.2 The Importance of Child-Friendly Justice in the Asylum System

Since the 1970s, attitudes towards children progressively changed, with the help of children's rights movements. For instance, the Convention on Rights of the Child (CRC) was signed by a majority of countries in 1989. Moreover, the CRC marked an international agreement recognising children as "autonomous social actors" (Bolton, 2012, p. 3; Drywood, 2011, p. 408), which was also included in the Charter. This recognition led to several changes, under which acceptance amongst lawmakers and justice actors to really understand what impact laws and policies had upon children and young people. For instance, the understanding of being a child, having rights and what this means for justice systems. This finally led to incorporating the particular rights and needs of children into laws and policies also known as "child-friendly justice"[21]. Yet, the term "friendly" does not suggest that these particular procedures in EU's asylum law are controlled by rules; they are guidelines and a necessity for fulfilling the rights of the child.

So, over the years more child-focused laws and policies have been developed (Drywood, 2011, p. 40 ; O'Donnell, 2013, p. 508). However, this notion of "child-friendly justice" or incorporating children's rights into the legislative process itself, was in the EU institutions, as Drywood (2011, p. 406) writes in International Journal of Children's Rights, "more muted", despite the fact of the growing child-focused laws on the EU level. Therefore, Drywood (2011) argues the necessity of incorporating children's needs into the EU law-making processes. The EU's asylum and immigration law, for instance, showed an inconsistency in its attention to children's rights. Some Directives explicitly referred to the Best Interests of the Child (BIC) and the importance of guaranteeing this, whilst others did not make any reference to this (Eurochild, 2014, p. 9).

[20] See Appendix 1 Legislation, 1.1 European Treaties
[21] Part of Towards an EU strategy on the rights of the child COM(2006) 367

3.2.1 Risk of Being Marginalised

Moreover, in the formulation of law and policy, asylum-seeking children and immigrant children still face the risk of being marginalised. Even in EU law and policy, albeit, the EU claims to protect the rights of the child in Art. 3(5)[22] of the TEU (Drywood 2011, p. 408). Besides this, Drywood (2011, p. 408) argues, "child immigrants and asylum-seekers do not fit neatly within existing legal structures," since children have different needs compared to adult immigrants and asylum-seekers. She believes that children would experience the asylum determination process differently, than adults would, because of the difference in 'set of life skills'. A child, for instance, would rationalise differently than an adult when being questioned and required to give fingerprints. A study carried out by the European Union Agency for Fundamental Rights (FRA) in 2010, can support this belief. According to their study (p.11), the asylum interviews that were conducted, were experienced as a form of "interrogation" by the children. Moreover, the 'final decision' in the asylum procedure, was an emotional matter for the children, and an adverse decision even perceived as a trauma. Children are vulnerable, especially separated asylum-seeking children, since they belong to the most vulnerable group (European Commission, 2012). Therefore, specific tools and specialised expertise is needed, to ensure their rights are protected and their needs are recognised. Moreover, children must be informed properly, not excluded from justice settings and should be able to receive the right support to guide them in proceedings (O'Donnell, 2013, p. 508).

3.2.2 EU's Asylum Law Needs Adaption

Secondly, according to Drywood (2011, p. 409) the EU's asylum law is not as adapted to children's rights and needs. She believes "particular efforts need to be made to ensure that children are incorporated into asylum and immigration regulation". As previously mentioned, in general asylum-seekers used to be men, fleeing their country, because of their political beliefs, and fearing persecution. Therefore, immigration laws and policy apply to all, irrespective of age and gender, according to Bhabha ; Spijkerboer and van Walsum ; Askola (as cited by Drywood, 2011 p. 409). Moreover, the dynamics between immigration and asylum policies and child protection policies, have caused for underlying tension between them. Resulting in "systematic gaps", because resources to protect and assist UMs are insufficient, and coordination between the involved actors is poor (Hancilova & Knauder, 2011, p. 94). Therefore, one could argue, links are needed between the justice system and child protective systems (O'Donnell, 2013, p. 508).

Furthermore, the Mid-term report on the implementation of the Action Plan on Unaccompanied Minors (COM(2012) 554) of 2012, suggested a common approach by the EU is necessary. Migration by this particular group may have appeared as a temporary feature. However,

[22] See Appendix 1 Legislation, 1.1 European Treaties

the opposite is the case. Therefore, the EU committed itself in revising the asylum *acquis* by 2012 (European Commission, Communication from the Commission to the European Parliament and the Council: Action Plan on Unaccompanied Minors (2010-2014), 2010, pp. 2, 9).

3.2.3 Taking UMs Background Into Consideration

Thirdly, it is clear that asylum and immigration law must incorporate the special needs and experiences asylum-seeking children, and young people have and take this into consideration; irrespective of the chosen approach to incorporate children's rights in this area of law[23]. In assessing if the rights of this particular group are protected, their background must also be taken into account as this can differ among children (Drywood, 2011, p. 409). Drywood (2011, p. 409), for instance, argues that the background from a recently arrived UM would vary strongly from a minor who has arrived with his family as a migrant, and has lived most of his life in Europe; especially differences in terms of mental health, living conditions and vulnerability. As for the EU, Drywood (2011, pp. 409, 425) does point out, it has tried to develop policies in such a way, that these uphold children's rights. Since more laws and policies have a direct impact on them. In particular in the asylum system, the EU has achieved this.

Despite legislation and jurisprudence becoming more complete in relation to children and children's rights, O'Donnell writes in the ERA Forum (2013, p.508) "more needs to be done." Even though, the EU is moving to a complete EU's asylum legislation and having children's rights in their conscience (Drywood, 2011, p.425). Unaccompanied and separated asylum-seeking children (UASASC) turning 18 require other, one could argue even specific protection since this transition period means they are not protected by children's rights anymore.

3.3 Children's Rights in EU Asylum Legislation

The EU's social agenda in relation to UASASC, began to develop parallel to the CEAS. At first, the focus was on harmonising the different asylum policies between the MS. This led to adopting several legislative measures between 1999 and 2005 (European Commission, Common European Asylum System, 2013). However, from the beginning it was clear for the EU that provisions would have to be child-sensitive (Drywood, 2011, pp. 410), since the situation of this particular group gained more importance and was, therefore, moved to the forefront of the EU's social agenda. Moreover, the EU also recognised this group belonged to a vulnerable one and some of the MS had experienced the arrival of UMs. Since the EU had not developed an EU policy that in particular addressed this group, a need was born for creating this (European Migration Network, 2010, p. 6, 160).

As previously mentioned, the Commission proposed, therefore, a strategy, named

[23] Also known as 'Mainstreaming' COM(2006) 367 'Towards an EU strategy on the rights of the child'

'Towards an EU strategy on the rights of the child' (EU COM 2006) in 2006. With this strategy, the Commission hoped in realising protection and promotion of children's rights in EU policies, under the concept 'mainstreaming.' However, this strategy only addressed persons below the age of 18. Three years later, they presented the further development of this strategy and announced their action plan on unaccompanied minors (COM(2010)213). This included, for instance, subjects such as protection and procedures. Despite, the growing awareness, for the situation of these children, this action plan only addressed persons below the age of 18 (European Commission, Communication from the Commission to the European Parliament and the Council: Action Plan on Unaccompanied Minors (2010-2014), 2010, p. 2) ; Farrugia & Touzenis, 2010, p. 45 ; Hancilova & Knauder, 2011, p. 19).

Nevertheless, because of these initiatives, within the EU asylum law, one can find legislation, which in particular refers to children and children's rights. Noteworthy are the number of provisions on UMs. These, for instance, cover matters such as access to education and healthcare (Drywood, 2011, p. 415). So, in the formulation of law, the EU had this group borne in mind. Yet, studies as FRA and France Terre d'Asile, presented its shortcomings in this area. Furthermore critics, like Drywood and O'Donnell, argued its incompleteness. However, as the Directives were recently revised, adaptations can be found, especially in the field of children and children's rights. The revised Reception Directive and Asylum Procedure Directive are not even applicable yet. These will become applicable in 2015. In order to compare the former Directives with the revised ones, a comparison was made in Appendix 2: EU Legal Instruments Concerning Asylum. In particular, the Reception Directive (Directive 2003/9/EC), the Asylum Procedure Directive (Directive 2005/85/EC) and Dublin (Regulation (EC) No 343/2003) were re-designed and will, therefore, be discussed.

3.3.1 The Revised Reception Directive

The Reception Directive (Directive 2003/9/EC), focused on the living condition of asylum applicants. The Directive established common standards for ensuring these standards of living condition were met (European Commission, Reception conditions, 2013). The Directive of 2003, referred only to minors and UMs in two specific articles, which sought to ensure, among other, legal guardianship, placement with adult relatives and access to healthcare. Moreover, the principle of the Best Interests of the Child (BIC) was included in Art. 18 Minors. Furthermore, the EC believes the level of material reception conditions for asylum seekers, could have been insufficient because of the differences in practices among MS (European Commission, Reception conditions, 2013).

The revised Reception Directive (Directive 2013/33/EU), shows changes in terms of

education in a new Article, namely Art. 14 Schooling and Education of Minors; BIC and a broader coverage of Art. 23 Minors (ex Art. 18). A striking change in this revised Directive is the principle of BIC, which was expanded. The "best interests assessment", which assesses whether a child meets the BIC requirement (UNHCR, 2008), now must be assessed with due respect of, inter alia, family reunification possibilities, the minor's background and where there is a risk of the minor being a victim of human trafficking.

Another amendment was a change of legal guardianship to "a representative who represents and assists". Moreover, in terms of their qualifications, specific rules were added. Under the revised Directive, minors now also have the right to access leisure activities. With regard to children reaching the age of majority, MS may not withdraw secondary education based on this sole reason, under Art. 14 Schooling and Education of Minors. Furthermore, the new Directive has adopted specific rules concerning detention, especially in protecting the fundamental rights of asylum seekers. With regard to children, under this Directive, detention is restricted for this vulnerable group (European Commission, Reception conditions, 2013).

3.3.2 The Revised Asylum Procedure Directive

The Asylum Procedure Directive (Directive 2005/85/EC) of 2005, sought to safeguard and guarantee a fair and an efficient asylum procedure. According to the EC, the common standards that were established were "too vague" (European Commission, Asylum procedures, 2013), Furthermore, MS kept their rules, even if these did not met the requirements of the Directive. The revised Directive (Directive 2013/32/EU) has created "a coherent system," according to the EC (European Commission, Asylum procedures, 2013). In addition, it ensures the asylum decision being made more efficiently and more fairly (European Commission, Asylum procedures, 2013).

The most interesting amendment in this new Directive, is Art. 25 Guarantees for unaccompanied minors. This was revised and now has a broader coverage, for instance, the principle of Best Interests of the Child (BIC) was included. Furthermore, it set rules in terms of the asylum interviews. These must be "conducted by a person who has the necessary knowledge of the special needs of minors". Moreover, it includes that representation must be free of charge. Remarkable and noteworthy in this revised article is that MS may decide to not appoint a representative, in case it is almost certain the minor concerned will reach the age of 18 before a decision at first instance is taken, this used to be the age of 16.

Finally, where MS during the asylum procedure identify UMs, they may apply Art. 31(8**)** Examination procedure. This provides special treatment for UMs as an accelerated examination procedure and border procedure (European Commission, Asylum procedures, 2013). Furthermore, the procedure must be "in accordance with the basic principles and guarantees of Chapter II".

Besides this, Art. 43 Border Procedures may also be used or continued in being applied. However, this must be in accordance with Articles 8 to 11 of Directive 2013/33/EU, which regulates rules on detention.

3.3.3 Dublin II Regulation

The Dublin Regulation (Regulation (EC) No 343/2003), determined the MS' responsibility in terms of the examination of asylum procedures. However, this system was highly criticised, mainly because of the burden-shifting instead of sharing. So, there was a need for addressing this, in particular the pressure on MS' and their capacities (European Commission, Country responsible for asylum application (Dublin), 2013). The revised Regulation (Regulation (EU) No 604/2013), aims at improving the Dublin system's efficiency, and more protection for asylum applicants through procedural guarantees (European Commission, Country responsible for asylum application (Dublin), 2013).

As for children and young people, the revised Dublin Regulation, includes new provisions, such as Art. 8 Minors. This includes the principle of 'the best interest of the minor' and safeguards family reunification. More striking, is Art. 6 Guarantees for minors, which was thoroughly revised. The BIC was included as well as the right to representation. Furthermore, the "best interests assessment", which describes which factors must be taken into consideration in assessing a child's best interest, was also included. Furthermore, the new Dublin offers more protection than the Return Directive (Directive 2008/115/EC). Such as in cases where a person may be considered an irregular migrant (European Commission, Country responsible for asylum application (Dublin), 2013).

3.3.4 Legal Instruments Outside CEAS

Two other legal instruments noteworthy to mention are the Returns Directive (Directive 2008/115/EC) and the Long-term Residents Directive (Directive 2003/109/EC). The Returns Directive has provided rules on issues as return and removal, detention and the possibility of re-entry. However, this must be in accordance with the fundamental human rights. The Long-term Residents Directive lays down conditions for rewarding persons with an EU long-term residence permit. These are, for instance, living legally in one of the EU States, having a stable and regular income and a person must not be a threat to public security (European Commission, Long-term residents, 2013 ; European Commission, Return & readmission, 2013). With regard to children, the Return Directives is the only instrument which covers specific articles on UMs and minors. These are Art.10 Return and removal of unaccompanied minors and Art. 17 Detention of minors and families.

The return and removal of unaccompanied minors must be in due respect of the principle

of Best Interests of the Child. In addition, UMs have the right to assistance and must be returned to family, a guardian or to the State of return. However, this must have adequate reception facilities. Besides this, detention of minors may only be used as a measure of last resort. Moreover, in detention minors must have the right to access education and leisure activities. Thereby, the article also refers to the principle of Best Interests of the Child.

3.4 The Four General Principles of the CRC

Study on children's rights and protection in the EU's asylum and immigration law, and whether this is in line with the CRC, has revealed the four general principles must, nevertheless, be complied with. Even if there is no specific mention of the Convention. The four general principles are the Best Interests of the Child (BIC), non-discrimination, children as autonomous social actors and, finally, the evolving capacities of children must be taken into account (Diop, 2008-2009, p. 51). Remarkable are the revised Directives, which explicitly mention the CRC. The previous Directives did not make explicit references to the Convention. Furthermore, in the past, the BIC was not considered as the most important principle, but as "a primary consideration" (Hancilova & Knauder, 2011, p. 28). Moreover, in some European States there was no best interests assessments (Kanics & Senovilla Hernandez, 2010, p. 14). Therefore, this positive change, with regard to children's rights, is quite striking. Especially, since in the Family Reunification case the CRC was not legally binding. Unfortunately, since the Directives were only recently revised, outcome of the asylum and immigration legislation being in line with the CRC, has not yet been researched.

3.5 Conclusion

The creation of the CEAS gave a chance for a new-found child's rights agenda, making its entry into EU law and policy. Especially after the publication of 'Towards an EU strategy on the rights of the child' (EU COM 2006) that resulted in the notion of 'child-friendly justice.' This led to initiatives by the EC, which caused changes in EU law and policy. In particular, the asylum policy saw changes in terms of children's rights and standards. However, the policy still was a subject for criticism. Mainly, because children were marginalised in the formulation of law and their backgrounds were not taken into consideration. In addition, practice showed an incompleteness of the policy and shortcomings in the field of children's standards. Furthermore, the principle of Best Interests of the Child was not always complied with.

Nevertheless, an optimistic result was the new Directives, which explicitly refer to children's rights and have created common standards with regard to children. However, the question concerning UASASC and their rights, in transition to adulthood remains. The EU has proven it can enhance children's rights in EU law and policy, however, as they reach majority these children will not apply anymore. Chapter 4, will, therefore, analyse the asylum process of

France, the UK and the Netherlands in order to determine whether the EU should regulate its policy on unaccompanied and separated asylum-seeking children turning 18.

4. Unaccompanied and Separated Asylum-Seeking Children Turning 18: Case Study

4.1 Introduction

Before the Common European Asylum System (CEAS) was developed and even before the creation of the EU, the European countries had the sovereign power on asylum and migration matters. However, when several countries were facing the same problems regarding asylum and migration, a desire arose. Namely, a desire for a common European asylum policy. Cooperation began and gradually the CEAS was established. In the last couple of years, the EU has been working on improving the legislative framework of the CEAS. Especially, in the field of children's rights and standards. Apart from this, in the development of the CEAS, MS were not eager in transferring their competences to a supranational institution. Moreover, it is the MS' responsibility for implementing the aspects of the CEAS into their national legislation. Because of this, practices concerning unaccompanied and separated asylum seeking-children (UASASC) turning 18, differ across Europe. Especially in this field, there is a significant difference[24]. Therefore, this chapter examines the practices in the management of this transition phase of France and the UK in order to compare this with the practices of the Netherlands. The results will determine whether the EU should extend its asylum policy concerning unaccompanied and separated asylum seeking-children.

4.2 Applying for Asylum According to the CEAS in the EU

In the EU asylum is granted to victims of oppression or persecution, or to people facing serious threats, based on the principles of the 1951 Geneva Convention on the protection of refugees. However, the chances of granting asylum depend strongly on the asylum procedures which are used to assess the asylum claims (European Council on Refugees and Exiles , n.d.). Whilst, Governments have the right to design their asylum procedures, and specific guidelines on these procedures are absent from the Geneva Convention. Furthermore, in the past, tools have been used to manage and control migration and asylum flows. Which has been highly been criticised by human rights organisations. Therefore, the EU proclaims fair and effective procedures throughout the Union and guarantees high standards of protection. Furthermore, the EU believes granting asylum should not be like winning the lottery (European Commission, Common European Asylum System, 2013). Because of these beliefs, the EU has developed the Common European Asylum System and has adopted legislative measures. As for the asylum procedures, the Asylum

[24] See Introduction Chapter: 1.2 Problem Definition, Aim & Research Questions

Procedures Directive (Council Directive 2005/85/EC) was created. In order to analyse the practices concerning unaccompanied and separated asylum seeking-children (UASASC) in transition to adulthood, the asylum procedures will first be analysed. Since according to the EC the process for applying asylum should be similar throughout the EU. The EU has developed guidelines for the MS, to create a coherent and fair system. This will be discussed in the next paragraph.

Asylum seekers applying for asylum in one of the MS, have according to the Reception Directive (Directive 2013/33/EU), access to e.g. housing and food. The process then is followed by taking fingerprints from the applicants, which are sent to the database called EURODAC, which is regulated by the EURODAC Regulation (Regulation (EU) No 603/2013). The reason behind this is to determine which country has the responsibility for an asylum application. This is regulated by Dublin II (Regulation (EU) No 604/2013). Then the process is followed by determining, whether a person is a de facto refugee or qualifies for subsidiary protection, this is conducted in the form of an interview by a case worker. This determination process is regulated by the Qualification Directive (Directive 2011/95/EU) and the Asylum Procedures Directive (Directive 2013/32/EU).

When the outcome of determination process has granted the asylum applicant in question, with refugee status or subsidiary protection, certain rights will become applicable. This is an important outcome since such rights are access to a residence permit, the labour market and healthcare, which is regulated by the Qualification Directive. In case asylum is not granted at "first instance", the applicant may appeal his/her case in court. The court then can confirm the adverse decision that was taken at "first instance" or can overturn this. When the court has confirmed the adverse "first instance" decision, the asylum applicant may be returned by the MS to his/her country of origin or transit. When the negative decision is overturned, the MS will have to grant asylum or subsidiary protection and give the asylum applicant his rights (European Commission;, n.d.).

4.3 The Asylum Process: An Analysis and Comparison

4.3.1 The United Kingdom

Analysing the asylum process of the United Kingdom is interesting. Since decisions, provisions or measures concerning Title IV (free movement of persons, services and capital) of Part Three of the Treaty on the Functioning of the European Union (TFEU) (2012/C 326/01), are namely, not binding upon the UK. This is according to Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, which was annexed to The Treaty on European Union (TEU) and the TFEU (European Union, 2012). Therefore, the established guidelines for creating a coherent asylum system, will not apply to the UK, because of their position. Even though, their special position in respect of the area of freedom,

security and justice, their asylum process does follow in theory the guidelines established by the CEAS. Furthermore, the UK does take part in the adoptions and applications of EURODAC and the Dublin Regulation (European Parliament & Council of the European Union, Regulation (EU) No 603/2013 of the European Parliament and of the Council, 2013 ; European Parliament & Council of the European Union, Regulation (EU) No 604/2013 of the European Parliament and of the Council , 2013).

4.3.1.1 The Procedure

The asylum process starts with applying for asylum in the UK Border Agency (UKBA)[25] at ports of entry. Since UMs are recognised as a vulnerable group, they may also apply for asylum at local immigration service enforcement offices (The Coram Children's Legal Centre, 2011, p. 9). However, before asylum is granted, the asylum applicant, for instance, a child, must meet the 'eligibility requirements'. These requirements are based on the principles of the Geneva Convention (Gov.UK, 2014). Moreover, it is important and recommended for a young person to find a legal representative before applying for asylum. This will help him present his case for asylum to the UKBA. Thereby, are the UKBA required to ensure legal representation for children (The Coram Children's Legal Centre, 2011, p. 11).

After the child has applied for asylum, it officially gets registered at the screening. Here he will undergo a process of being photographed, finger-printed and interviewed. During this interview, information is gathered on the child, however, the asylum claim is not being explored at this stage. Thereby, a child is only interviewed after establishing his capability of being interviewed. In case of a child being over 14, his fingerprints will be sent to Eurodac. For determining whether the child has applied for asylum in another MS (Gov.UK, 2014 ;The Coram Children's Legal Centre, 2011, p. 9).

After the screening, the child also will be able to receive asylum support, such as housing and will be assigned a caseworker trained to deal with children's claims (Gov.UK, 2014). In this phase, he will be also given an application registration card (ARC), confirming that he has formally applied for asylum. Furthermore, the child will receive a Statement of Evidence Form (Self Completion) (ASL1957), which is the asylum application form. The Statement of Evidence Form (SEF) must be completed with the help of a legal representative and submitted within 20 working days. This is important, because if the SEF is not returned within the 20 days, the child risks his claim being refused on non-compliance grounds. Unless he can provide valid reasons for the delay (The Coram Children's Legal Centre, 2011, pp. 11, 14).

The caseworker plays a crucial part in the asylum process, since they conduct the asylum

[25] See Appendix 3.1 for an illustration of the United Kingdom's asylum process

interview and decide on the child's application. However, a child has the right to bring a legal representative to the asylum interview (Gov.UK, 2014), which is funded. Thereby, is it only possible to interview children over 12 on the substance of their application. Children under 12 may only be interviewed if they are willing and 'mature' enough. The decision on applications made by adults, are made within six months, which can take longer in case the application is more complicated (Gov.UK, 2014). In children's cases, UKBA's aim is to decide within 35 working days (The Coram Children's Legal Centre, 2011, pp. 12,13).

4.3.1.2 The Decision

When asylum is granted, permission is given to stay in the UK for 5 years. After 5 years of residence, there is the possibility to apply to settle in the UK. Permission to stay is also granted, when a person does not qualify for refugee status or humanitarian reasons. However, the duration of stay will depend on the asylum applicants' situation. These people nonetheless may apply to extend their stay or to settle in the UK. In case the asylum applicant does not qualify for asylum, he/she will be asked to leave the UK. However, the asylum applicant may appeal his case to the immigration and asylum tribunal. The tribunal will decide on the asylum applicant's appeal. In case the appeal is unsuccessful, the asylum applicant may leave voluntarily, if not he/she will be forced to leave (Gov.UK, 2014). In asylum claims made by children, which were refused, may also have the right to appeal against the decision (The Coram Children's Legal Centre, 2011, p. 13).

4.3.2 France

4.3.2.1 The Procedure

Asylum seekers in France may claim the right to asylum, based on the Geneva Convention and the European Convention on Human Rights (ECHR). France in return can grant an asylum seeker with refugee status, which entitles the asylum applicant with a ten years residence permit and the right to work, or subsidiary protection. The subsidiary protection, however, only entitles a one-year permit and the right to work (Collectif de soutien des exilés du 10e arrondissement de Paris, 2008, p. 1).

The French procedures relating to unaccompanied foreign minors to French territory are regulated by the common law for foreign nationals[26]. These are codified in the *Code de l'Entrée et du Séjour des Etrangers et du Droit d'Asile* (CESEDA – French code on immigration and asylum). UMs, for instance, may lodge for asylum without any identification, and a residence permit is not required. Moreover, a significant right for minors is namely, the right not to be returned to their country of origin. Once on French territory, minors benefit from child-protection legislation. For

[26] See Appendix 3.2 for an illustration of the French asylum process

instance, measures such as the responsibility of the child welfare (ASE - Aide Sociale à l'Enfance), which was implemented into the administrative bodies or *départements.* Besides this, minors also have the right to request for protection to the Juvenile Court. This protection helps UMs being taken into care, such as accommodation and enrolled into school. In return, UMs under 16 must obey the public education law. Furthermore, UMs are not allowed to work during the asylum application process (Collectif de soutien des exilés du 10e arrondissement de Paris, 2008, p. 8 ; Office Français de Protection des Réfugiés et Apatrides , 2014, p. 5 ; Ministry of Immigration, Integration, National Identity and Co-Development, 2009, p. 4).

Applying for asylum involves submitting the asylum claim at the administrative centre called 'prefecture' at the city of residence of the asylum applicant in France. Otherwise, the asylum applicant may not stay in France under the asylum status. At the prefecture, the asylum applicant's fingerprints are taken and send to EURODAC. If the prefecture decides the asylum applicant is allowed to stay, he/she will be granted with a temporary residence permit (APS, green card) (Collectif de soutien des exilés du 10e arrondissement de Paris, 2008, p. 2). Minors may not start the asylum procedures by themselves and are required to have legal representation. In case, the minor does not have legal representation; the prefecture will assign one and he/she will assist with the asylum application. The application form must be written in French, signed by the legal representative and transmitted to the Office Français de Protection des Réfugiés et Apatrides (OFPRA). When the application is complete, the OFRA will confirm this by sending a 'lettre d'enregistrement' or a letter of registration (Office Français de Protection des Réfugiés et Apatrides , 2014, p. 7).

Minors arriving at the border by plane, boat or train, without a visa are not authorised to enter France. Therefore, the police place these children in a closed waiting zone. Here the minors are detained for a limited period. UMs will be appointed with a representative, which will assists during this period of detention. Nevertheless, during this period, UMs may with the assistance of his/her representative, submit an asylum claim. The OFPRA will determine whether the claim fits in the asylum framework, by interviewing the UM. In case of a positive outcome, the UM may enter French territory. In case of an adverse outcome, the UM may appeal against this decision, with the help of his/her legal representative (Office Français de Protection des Réfugiés et Apatrides , 2014, p. 8).

When the asylum application has been processed, the child in question will be interviewed by OFPRA. Nevertheless, the child has the right to have an interpreter and his legal representative present. The interview's objective, is to determine how the child has arrived in France. Also his background and if the child has fears returning to his home country (Office Français de Protection des Réfugiés et Apatrides , 2014, p. 11).

4.3.2.2 The Decision

Decisions made on asylum applications are made by OFRPA. When they accept an asylum application, the asylum applicant is granted with a residence permit, which is renewable for a period of three months. This permit also entitles the refugee with the right to work. In case an asylum applicant is not recognised as a de facto refugee, he or she may be rewarded with subsidiary protection. In order to extend his/her stay in France, the civil status documents and the results of a medical check must be provided to the 'prefecture'. Before the refugee card of ten years can be obtained or the "private and family life" card, valid for one year, if a person has be granted with subsidiary protection. Moreover, UMs younger than 16, also have the right to education, and UMs older than 16 the right to work (Collectif de soutien des exilés du 10e arrondissement de Paris, 2008, p. 5 ; Office Français de Protection des Réfugiés et Apatrides , 2014, pp. 13,14).

In case the OFPRA rejects the asylum request, the asylum applicant has one month to appeal against this decision before the National Court of asylum (CNDA). In case the asylum applicant is a minor, the appeal against the decision of OFRPA must be made by his responsible or "administrateur ad hoc" in French. Legal representation is not obligated, however, recommended, and asylum applicant may apply for legal aid. The CNDA may then grant asylum or subsidiary protection, or may reject the appeal. When the appeal is rejected, the person in question must leave French territory within one month (Collectif de soutien des exilés du 10e arrondissement de Paris, 2008, p. 6 ; Office Français de Protection des Réfugiés et Apatrides , 2014, p. 14).

4.3.3 The Netherlands

4.3.3.1 The Procedure

Applying for asylum in the Netherlands starts with reporting and registering to the Aliens Police in Ter Apel or to the Royal Netherlands Marechaussee at Schiphol airport[27]. They register the asylum applicants details and verify his/her identity. In Ter Apel, photographs and fingerprints are taken of the asylum applicant and he/she is taken to the Central Reception Facility close to the Aliens Police station. The asylum applicant can stay there during the reporting and registration phase, which does not take more than two days. After registration at Schiphol airport, the asylum applicant is brought to the Schiphol reception centre. Here the asylum applicant can submit his/her asylum application (Immigration and Naturalisation Service, n.d.).

In case an UM, or in the Netherlands defined as unaccompanied minor foreign nationals (UMFN), applies for asylum, the Marechaussee will conduct an age assessment. This will namely, determine which asylum procedure the UMFN will follow, since the Dutch Government, has

[27] See Appendix 3.3 for an illustration of the Dutch asylum process

developed a special policy for children younger than 15. This group of children, which are not able to return to their country of origin, in circumstances beyond their control, will be issued with a permit. However, several conditions need to be met, before the IND issues this. UMFNs older than 15, will have to follow the same asylum procedure as adult asylum seekers (The Asylum Information Database , n.d.).

After registration in Ter Apel, the asylum applicant will receive a resting and preparation period of at least six days. During this period the asylum applicant is prepared by the Dutch Council for Refugees, which provides information about the asylum procedure. Moreover, the asylum applicant will receive legal assistance and medical advice. During this period, the asylum applicant will stay at the reception location near the IND office, here the asylum applicant can submit his asylum claim. In case the asylum applicant arrived at Schiphol Airport, he will not have a rest and preparation period. However, he/she will also be provided with information by the Dutch Council for Refugees about the asylum process, receive legal assistance and medical advice (Immigration and Naturalisation Service, n.d.). In the Netherlands the general asylum procedure consists of four steps, namely the initial interview, the detailed interview, the intention and the decision, which takes eight days. During the initial interview, an IND worker will speak with the asylum applicant, to determine, for instance, his/her identity and nationality. After the initial interview, the asylum applicant will discuss this with his/her lawyer and prepare for the detailed interview. On the third day, the detailed interview is scheduled. Here, the IND worker will interview the asylum applicant and decide on the asylum application. However, the asylum applicant may with his/her lawyer provide IND with additional information or enhancements after the interview. In case the IND needs more time, the extended asylum procedure will apply. For the asylum applicant, this will mean, changing to a different reception location and that the final decision will be taken within six months. However, this can also be extended with six months, in case more investigation is needed (Immigration and Naturalisation Service, n.d.; VluchtelingenWerk Nederland, n.d.).

4.3.3.2 The Decision

When asylum is granted by IND, the asylum applicant will receive a temporary residence permit. This residence permit will be valid for five years. However, special conditions will apply, for instance attending an integration course and being entitled to work and housing. Furthermore, the asylum applicant may also apply for the Dutch citizenship. In case the IND does not grant asylum, the asylum applicant may appeal against this decision or is required to leave the country. In case of an appeal, the asylum applicant may bring this to the Aliens Chamber, which is free of

charge. However, during this period, the asylum applicant may not stay in the Netherlands (Immigration and Naturalisation Service, n.d.).

4.4 The Management of Turning 18

As mentioned in the Introduction chapter, the transition phase from childhood to adulthood causes anxieties and uncertainties for UASASC. They may experience uncertainty, for instance, about their future, whilst facing a possible return. Furthermore, certain rights and entitlements can be impacted, because of immigrations status and the juridical fact of becoming legal adults.

4.4.1 Overall Findings in the Transition Phase of Turning 18 in Relation to the Asylum Procedure

The study on unaccompanied and separated asylum seeking-children (UASASC) turning 18 in the UK, France and the Netherlands before a final decision on their asylum claim has been taken, has identified specific issues. In the UK, for instance, there was considerable confusion on what would happen after turning 18. In addition, it was also unclear to statutory service providers and the UASASC on which provisions they were entitled to. So, there was a lack of knowledge. Secondly, there is a loss of specific procedural safeguards, such as legal representation[28] and mentoring, as in the case of the UK and France. Thirdly, the right to access to basic health systems is always kept, irrespective of the type of asylum that was granted. However, as they turn 18 specialised care is no longer free of charge (Council of Europe & UNHCR, 2014, p. 38). Finally, most striking finding, is the loss of child-specific protection and provisions, such as housing and support, which caused in some cases UASASC forced to destitution or driven into illegality.

4.4.2 The United Kingdom

In the United Kingdom, UMs granted a leave to remain, become eligible for benefits, however, as they transition into adulthood this leave to remain expires. As a consequence, affecting their entitlements to benefits and housing. Also, their entitlement to Children Act support. However, these entitlements can be protected, if their leave to remain is extended. The young person, however, must apply for an extension in time before it expires. The leave automatically extends, where the application was made in time, resulting in the extension of the benefits the leave extracts. Nonetheless, as the extended leave expires, the benefits once enjoyed come to an end. Nonetheless, besides welfare benefits a majority of UMs turning 18 are entitled to "leaving care"[29] support. This entitlement comes in support such as a personal advisor, pathway planning, financial assistance and general assistance (Coram Children's Legal Centre, 2013, p. 43). The objective of the pathway planning is, for instance, to help the youngster with the transition from local authority

[28] See 4.5.1 The United Kingdom
[29] A process which aims young people to independent living, by providing support

care to independent living. This can be enjoyed up to the age of 21, depending on the situation of a young person (Hancilova & Knauder, Unaccompanied MinorAsylum-seekers:Overview of Protection, Assistance and Promising Practices, 2011, p. 76).

However, unaccompanied and separated asylum seeking-children (UASASC) turning 18, which had exhausted all appeals or are 'end of line' cases, the entitlement to support differs from that of young people who were granted with a leave to remain. These young people, namely have not received, or no longer have a leave to remain. These are also cases, where the young person was refused asylum or any form of temporary protection or their leave to remain has expired, and all appeals have been exhausted (Coram Children's Legal Centre, 2013, p. 44). According to Coram Children's Legal Centre (2013, p. 44) these youngsters, often have not been removed and keep remaining in the UK. For these youngsters, their entitlement to "leaving care" and other types of support is regulated by the Nationality, Immigration and Asylum Act 2002. This Act, however, is to prevent all access to certain types of support (The Children's Society, 2013).

For young people, where a decision on their initial asylum application was not made upon their 18th birthday, or who have an outstanding appeal against a refusal, or have applied for an extension of their leave to remain, after the leave was expired, are entitled to support from the Home Office. However, he or she must be able to demonstrate that they will be destitute after turning 18 and will become eligible. Despite the support young people are eligible for, the possibility of being returned or detained remains after turning 18 (Coram Children's Legal Centre, 2013, pp. 45,46).

4.4.3 France

UMs turning 18 in France, means for the majority of them leaving the Aide Sociale à l'Enfance (ASE) or 'child welfare'. Since, this protection is a requirement for the *départements* or 'administrative bodies' when the youngsters are minors. However, this child protection becomes optional after their 18th birthday, defined in Art. L.112-3[30] du Code de l'action sociale et des familles (CASF) and can be maintained up to the age of 21. The young adult, however, must request for a 'contrat jeune majeur' (CJM) or 'young adult contract'. This will ensure their care, by receiving supports such as accommodation, food, education and allowance. However, before this support is granted, the young adult must attest to the fact that he or she will become in a very difficult position if such support is absent (infoMie, n.d., pp. 2,3).

Despite, the ASE refuses this type of support to asylum seeking young adults, for the reason that they can be accommodated in the 'centres d'accueil et d'hébergement pour demandeurs d'asile' (CADA) or reception centres for asylum seekers. In addition, they can also receive support

[30] See Appendix 1: 5

from ‘allocation temporaire d’attente’ (ATA) or ‘temporary allowance’ (infoMie, n.d., pp. 3,4 ; infoMIE, n.d., p. 2). Even though, the transition to adulthood leaves former unaccompanied and separated asylum seeking-children (fUASASC) with no status and almost no rights (Exiles10, 2014, p. 2), he or she can still apply for some support. For instance, emergency shelter, through Samu social provision, which hosts homeless adults for more than one night, without the condition of a residence permit. Besides accommodation, medical support may be requested at l’ouverture de l’aide médicale d’état (AME). Furthermore, fUASASC will have the following rights, the right to open a bank account, to marry and the right to legal representation (infoMie, n.d., pp. 3,4).

Young adults that have entered France as minors may be issued with a residence card, depending on their location and type of asylum granted. French policy on issuing residence permits to young adults consists of three types. For former unaccompanied and separated asylum seeking-children (fUASASC) only one applies, namely ‘la délivrance d'une carte de séjour aux jeunes majeurs ayant été confiés, mineurs, au service de l’aide sociale à l’enfance’ (ASE) or ‘the issuance of a residence card to young adults who were, minors and under the ‘welfare of Children’ (ASE). For UASASC supported by ASE before his or her 16th birthday, may be issued with a temporary residence permit. This is valid for one year, under ‘vie privée et familiale’ or ‘private and family life’. However, only if: the young adult is enrolled in a course and follows this seriously and lasting; has no ties to his country of origin or justifies not keeping ties with his/her family reaming in his/her country; and ‘la structure d’accueil’ attests to his/her inclusion in French society (Ministère de L'Intérieur, 2014).

For UASASCs that were supported after his/her 16th birthday, and were not granted a temporary residence card, the examination of his situation will take place on a case by case basis in his adulthood. It is more favourable is when the young adult is studying or working. Then he or she will be considered to grant a ‘carte de séjour temporaire’ (CST), or a temporary residence card for “student" or “employee”. Otherwise, the examination must reveal, that the young adult will have permission to stay under exceptional considerations (Ministère de L'Intérieur, 2014). Last note on French policy, due to the length of certain long procedures, some fUASASC have been residing in France for more than five year. However, an ‘obligation de quitter le territoire français’ (OQTF) or ‘obligation to leave French territory’ is given, regardless of the degree of integration of the young adult (Exiles10, 2014, p. 5).

4.4.4 The Netherlands

The Dutch asylum procedure for UMs differs from that of adult asylum seekers, especially in terms of provisions. For instance, UMs are appointed with a guardian until they reach majority; have access to education, financial support, and since 2007, a new policy exists on accommodating

UMs, which regulates accommodation and support. In the Central Agency for the Reception of Asylum Seekers (COA), for instance, special reception facilities exist for UMs. Furthermore, UMs granted with a residence permit also have access to accommodation, offered by the municipalities. However, for UMs that were not granted a residence permit, have 28 days to leave the country as they turn 18. As a consequence leaving the COA and losing most basic rights, they become 'illegal' (Beyond Borders, n.d. ; Government of the Netherlands, 2013 ; LOWAN, 2013).

Even though, some basic rights are lost as UMs turn 18, some rights will still apply after reaching majority. For instance, shelter or accommodation; right to legal representation[31], right to education[32], and right to healthcare[33] (Beyond Borders, n.d.). In cases where young adults have to return to their country of origin, a safe accommodation is sought to help the former UMs with the return (Centraal Orgaan opvang asielzoekers, n.d.). This was also reaffirmed by interviewee 2[34] during the personal interview of this research (16 September, 2014). In cases of return, solutions are sought together with unaccompanied and separated asylum seeking-children, or former (UASASC), and if possible with support of family members.

Dutch policy focuses primarily on return; therefore, no particular policy exists on UASASC turning 18 and fUASASC. However, since 2013 these fUASASC have the possibility to stay in the Netherlands, under regulation 'Kinderpardon' or 'children's amnesty'. Even though, this regulation was intended for children that became 'rooted' in the Netherlands. Nonetheless, fUASASC who have lodged for asylum before they reached the age of 13, have no residence permit and have stayed five years or more in the Netherlands, may receive under this regulation a residence permit (Defence for Children, n.d. ; De Kinderombudsman, n.d.).

A triumph, for organisations that have long lobbied for such regulation. Return is, therefore, not applicable anymore. Important, because according to a study on the development and prospects of asylum-seeking children who have lived in Dutch asylum centres, revealed that these children in some cases had developed 'a Dutch identity'. After living for long-time in the Netherlands. It also suggests that UASASC should get a residence permit after a period of living for five years or more. Mainly, because their vulnerability, which could even be increased by problems that could have been developed as a result of their long stay in the host countries. This was also supported by the interviewees during the personal interviews. Moreover, an enforced return could risks damage to the psyche of these recently turned adults, because of their vulnerability. An enforced return is, therefore, experienced as hurtful, as well as rejection by the society they have been living in (Kalverboer, Knorth, & Zijlstra, 2009, pp. 59,62,64).

[31] If a young person does not have sufficient funds, the majority of the costs will be compensated
[32] If the young person started the study as a minor, he/she may finish the study after turning 18
[33] Only in cases of medical requirement
[34] See Appendix 4.2 Interview 2

However much, the children's amnesty is helping rooted children in the Netherlands, the regulation was a highly debated subject and caused for a political divide between Dutch politicians. Some parties would argue that the regulation would increase the arrival of asylum seekers, however, according to interviewee 2, this is likely to happen[35] (Deira, 2014 ; Interviewee 2, personal interview, 16 september, 2014). Furthermore, Fred Teeven *State Secretary* of Security and Justice and Minister for Migration, refused to liberalise the regulation. Therefore, several organisations such as Defence for Children, Stichting INLIA, Stichting LOS, VluchtelingenWerk Nederland en Kerk in Actie started a champagne named 'Eerlijk Kinderpardon' or 'A fair children's amnesty'. Since some children or young adults are not able to meet the established criteria, also because a large group of young adults are excluded from the regulation, according to the interviewees. The future holds the outcome of this Dutch regulation. Aimed at alien children, that have become rooted and have been for years living in the Netherlands (Beekman, 2014 ; INLIA, 2014 ; Tyler, 2012).

4.4.5 Other Findings

Disturbing are the findings from the study carried out by Council of Europe & UNHCR (2014, p. 24), suggesting the influence of authorities on the duration of the examination of asylum claims. Some of the young asylum seekers interviewed, feared an intentional prolongation of their asylum claim, so that once turned 18, an easier deportation is possible. Besides this, for those who have received a negative decision on their asylum claim, are most affected by the transition into adulthood, since they now can be removed from the host country (Hancilova & Knauder, Unaccompanied MinorAsylum-seekers:Overview of Protection, Assistance and Promising Practices, 2011, p. 72).

Another finding is that for unaccompanied and separated asylum seeking-children that turned 18, access to education and the ability to pursue this was difficult. Even though, MS may not withdraw secondary education based on this sole reason[36]. This access to education, for instance, can be hindered by the age limit for compulsory schooling, as, for instance in the Netherlands[37]. In the UK, for instance, former UMs found it difficult to find student aid, because they were charged international student fees (Council of Europe & UNHCR, 2014, p. 31 ; Hancilova & Knauder, 2011, p. 76).

According to a study carried out by the Council of Europe & UNHCR (2014, pp.34, 35), UASASC that are going to turn 18, are concerned about having to leave the reception centre. Also, not finding a job, in order to become independent. Alarming is that for those who have limited

[35] See Appendix 4.2 Interview 2
[36] See Chapter 3.3.1 The Revised Reception Directive
[37] See paragraph 4.5.3 The Netherlands

support, it is not enough to cover their basic expenses, resulting in becoming homeless. Especially, former unaccompanied minors who had no legal residence status became homeless in the Netherlands and France (Hancilova & Knauder, Unaccompanied MinorAsylum-seekers:Overview of Protection, Assistance and Promising Practices, 2011, pp. 72, 77).

As to integration, referred to the programmes in the EU Qualification Directive, such as language training, UASASC that were well-integrated had an easier transition to adulthood, than those who arrived at a later stage.

Furthermore, a study by Council of Europe & UNHCR (2014, p. 41) has also shown, that is not only favourable for young adults to have a successful transition to adulthood. But favours all, including State authorities. They quote on this a French parliamentarian:

> "From our point of view, it is neither logical, nor "profitable" to welcome these young people, to train them and to then take away any future perspective the day of their majority. The notion of "life project" implies supporting the children, including after they reached the age of majority, until the accomplishment of their project. Besides, a young adult who returns to his country of origin with a qualification or training, will be more able to participate in its development" (2010)

4.5 Inconsistencies & Criticism

Study on the asylum policy and management of the transition phase of unaccompanied and separated asylum seeking-children turning 18 in France, UK and the Netherlands, has shown several inconsistencies. Therefore, an impression will be given of the findings, highlighting some inconsistencies and criticism, categorised in the following sub-paragraphs.

4.5.1 The United Kingdom

The study on the UK has shown, for instance, that the UK Border Agency (UKBA), was not processing all asylum claims under the 'New Asylum Model'. This new model was introduced in 2007, designed to make the asylum process faster and more streamlined. That is to say; the responsibility for an asylum claim was given to a single case worker. However, according to Coram Children's Legal Centre (2011, p.9), not every case was handled under this new model.

Another inconsistency that was revealed, was the detention of children. According to the Governments' website (Gov.UK, 2014), children are not detained. However, Coram (2011, pp. 9, 17) claims the opposite. They namely state that, some children may be even arrested or detained, before they applied for asylum, which is rather disturbing. This fact is also supported by other organisations as mentioned before. Young people were also detained and treated as adults, when immigration officers believed they were 18 years or older. In 2010, the Refugee Council of the UK, raised serious concerns, when children were released after being detained as adults of whom

age were disputed. Coram fears the serious harms this causes these children and believes this negatively influences the asylum claim. Especially, in cases where their asylum claim was determined under adult procedures (The Coram Children's Legal Centre, 2011, p. 17).

Not only detention and not processing all asylum claims under the new system, has revealed some inconsistencies. Also, children are not receiving the help they need, according to Hywel Francis, chair of the MPs committee on human rights (Gentleman, 2013). Besides this, UMs that have turned 18 and are appealing against a refusal of extension of discretionary leave, risk becoming separated young people, as legal representation may be refused. Where could have obtained legal representation as a child, a former unaccompanied asylum seeking child will have more difficulty in obtaining this. Also, alarming is that UMs who have not been granted with asylum or any other form of status, and who have exhausted all appeals, face the risk of being detained before removal. Moreover, the UK is one of those countries where a significantly difference exists, between pre- and post-18 support (Coram Children's Legal Centre, 2013, p. 14, 43 ; Hancilova & Knauder, 2011, p. 76).

4.5.2 France

According to the French organisation, Collectif de soutien des exilés du 10ème arrondissement de Paris (2008, p.4), decisions on asylum applications are sometimes even made without interviewing the asylum applicants, which causes serious concerns. However, if this is also the case for asylum applications made by UMs is not clear. Furthermore, Art. L.221-1 CASF, established by an Act of 2007, provides that social assistance to children is also for the protection of young adults under 21 years. That, for instance, face family, social and educational difficulties that will likely seriously undermine their stability. The article, therefore, suggests that this type of protection is an obligation to support young adults in such situations, however, Art. L.222-5 CASF changed in 2007, stating that the protection is an option and not an obligation. At first instance, most young adults in similar situations would benefit from such support, named the Contrat Jeunes Majeurs (CJM), meeting the criteria. But alongside the criteria set by law, other conditions were added by case law and practice. In practice, the considered criteria by the administrative bodies and the ASE differed from the criteria established by law (infoMie, n.d., pp. 1,2). Law suggests namely that those who find themselves in great difficulties must be supported after they become legal adults. Unfortunately, the opposite happens in practice, according to infoMie (n.d., pp. 1,2), the administrative bodies and ASE base their decisions on other criteria as well. Mainly, because these are not clearly defined (Council of Europe & UNHCR, 2014, p. 32).

Alarming in France is the lack and inappropriate accommodation for UMs. UMs are now sheltered in hotel rooms, however, as they turn 18 they must leave their hotel rooms. They can find

shelter in the emergency shelters for adults. In contrast to this, unaccompanied and separated beneficiaries of international protection, have special accommodation, access to certain support and are prepared for adulthood. On the bright side, the French overall reception system is currently being revised (Council of Europe & UNHCR, 2014, pp. 28, 29 ; infoMie, n.d., p. 3).

4.5.3 The Netherlands

In 2008 a new initiative was introduced for former unaccompanied and separated asylum seeking-children, named 'perspectief-projecten' or 'prospect projects'. The initiative aimed at helping these youngster with the choices they make regarding their future; since the options they have are illegality or return. Therefore, this initiative was introduced, in order to motive them positively and working on the prospect of a possible return or stay. This is often more successful, according to the participant of the first interview[38]. The former UMs, which took part in these projects, received support money and had to participate in the activities. However, in 2011, this support from the government ended by minister Leers of Immigration and Asylum, because the return numbers of former UMs would have been too low. Besides this, the former Minister emphasised, the project was not meant to provide for unlimited provisions. So, return was advised to these former UMs as Dutch policy is focused on return. If possible, as possible (INLIA, 2011 ; Defence for Children & Unicef, 2013, p. 13 ; Kamerman, 2011 ; Overheid, n.d.).

Other inconsistencies in Dutch policy concerning UMs, for instance, revealed that procedures were found not child-friendly. Children are still driven into illegality, even though the Aliens Act 2000 was supposed to offer a more balanced approach and prevent this (Dutch National Contact Point for he European Migration Network, 2010). Despite, in practice the amendments of laws, did not make any difference. Since, it is a choice former unaccompanied and separated asylum seeking-children (fUASASC) make. However, organisations, such as Nidos, aim at helping these youngsters, with the choices they make concerning their future, this was concluded from the personal interview (Interviewee 2, personal interview, 16 September, 2014). Nonetheless, as no specific policy on turning 18 exists, these young adults in some cases turn to illegality.

Furthermore, the return policy is not stimulating return, and the principle of the Best interests of the child (BIC) is not safeguarded. Children, for instance, that are 15 years or older are placed in large shelters, that can cause serious threats to their development (Defence for Children & Unicef, 2013, p. 1). This questions whether the BIC is considered when it comes to UASASC.

Moreover, more alarming is the fact that fUASASC were turned away from school, as they were not able to produce certain documents. As schools are not obligated to accept former UMs, as the age limit is 18. Therefore, it is at the schools discretion to accept or reject these young adults.

[38] See Appendix 4.1 Interview 1

This practice clearly breaches EU law, which ensures that former UMs have the right to finish their studies, where this was started as minors (Hancilova & Knauder, Unaccompanied MinorAsylum-seekers:Overview of Protection, Assistance and Promising Practices, 2011, p. 76). However, the opposite was revealed during the personal interview with Interviewee 2 (16 September, 2014). Claiming that courses could be finished, when these were started as minors. However, new courses could not be started if, for instance, a person stops with a course and would like to start another.

Striking is Dutch policy concerning UMs, in recent past UMs could lodge for a residence permit as 'Alleenstaande Minderjarige Vreemdeling' or 'Unaccompanied Foreign Minor'. However, this permit was dispensed in 2013. The only right to shelter in the Netherlands, is on the condition that a UM is not able to be returned to his country of origin (Stichting LOS , n.d.).

4.6 The Consideration of Best Interest of the Child

Analysing the practices concerning unaccompanied and separated asylum seeking-children and whether the 'Best interest of the child' (BIC) is considered and safeguarded, study shows the BIC is not always considered. However, in some cases it seemed like this, yet, whether the BIC was considered is questionable. Nevertheless, some examples can be given. For instance, in cases where children had to return to their home country, after living for years in the host country, one could question whether the BIC was considered in these cases. Study as well as the interviewees, has stressed that these children became part of the host society. By going to school, making friends and/or going to after school activities and had almost no recollection of their country of origin (Kalverboer, Knorth, & Zijlstra, 2009, p. 57).

Furthermore, aforementioned, policy in the Netherlands was not found child-friendly. Besides this, children under 15 could benefit from the 'through no fault of your own policy' and be granted under this with a residence permit. As for children older than 15, had to follow the 'normal' asylum procedure. Considering this from a legal perspective, youngsters older than 15 are legally still children. So, one could question, therefore, to which degree the BIC was considered. Another example is the detention of children in the UK, since Coram states some were arrested or detained before asylum was applied. If this is in the best interest of the child is questionable. In France, in cases where children were living in France for more than five years, the OQTF was given the 'obligation to leave French territory', regardless of the degree of integration. Also, the European asylum policy, does not consider if the length of stay in the host country by asylum seeking-children is in the best interest of the child. The BIC is, therefore, not considered in relation to the length of stay in host countries. Regardless of the affects the length of stay has on children, as proven by a study carried out by Kalverboer, Knorth, and Zijlstra (2009, p. 64).

This gap in the practical implementation of the best interest of the child is also supported

by a study published by the International Organization of Migration (2011, p. 30). Regarding unaccompanied and separated asylum seeking-children in transition to adulthood and because of their vulnerability, one could question whether the BIC still should be considered after UASASC have turned 18.

4.7 Conclusion

Study on the asylum procedures of the three countries, has shown that procedures are in line with the Common European Asylum System (CEAS). Surprisingly was the result on the United Kingdom, since they followed the guidelines established by the EU, even though it has an opt-out from Directives established by the CEAS. Furthermore, study on the management of unaccompanied and separated asylum seeking-children turning 18 in the three host countries, has mainly shown incompleteness and flaws, as no specific policy exists on this particular group. They are a vulnerable group of youngsters transitioning to adulthood, some having psychological symptoms, some 'rooted' and some have developed the identity of the host country. Facing an uncertain future and challenges, as they are becoming legal adults. Especially, this juridical fact has many effects on their children's rights, affecting their entitlements such as housing, financial support, and in some cases education. Luckily, not all rights and entitlements were lost in these countries.

Especially, for those who could remain in the host country, their situation seemed more optimistic. As these youngster could finish their education, work, apply for certain support and most importantly lodge for a residence permit. For those, who have received an adverse decision on their asylum claim, the situation is more severe. Since, they can be removed from the host country, and in some cases even be detained prior to deportation. They may, of course, leave voluntarily, even receiving support in doing so. However, the risk of not leaving voluntarily, will mean an enforced return. Therefore, some of these youngsters turn to illegality or are forced to destitution and/or even crime.

For UASASC that became legally adults in the process of their asylum claim, the best option for receiving a residence permit was in the Netherlands, under the Dutch regulation 'Kinderpardon'. As such regulation, 'still' does not exist in other countries. The logical explanation for this can be found in Europe's history. As MS used control and prevent methods to manage immigration and asylum; alongside, with political debates/views on migration and asylum matters. The idea of such regulation becoming European regulation is debatable. However, it is clear that EU is in need for specific policy on unaccompanied and separated asylum seeking-children in transition to adulthood, because of their level of vulnerability after turning 18.

Regarding whether the best interest of the child was considered in practices concerning

unaccompanied and separated asylum seeking-children is questionable. As study showed gaps in the practical implementation of this. So, one could question if more guidance is needed in the implementation of this principle. Especially, in situations where children turned legal adults.

Conclusion

This study has analysed whether the EU should regulate its asylum policy on unaccompanied and separated, asylum-seeking children turning 18, based on the outcome of the case study. Analysis of practices in the management of unaccompanied and separated asylum-seeking children in transition to adulthood in France, the UK and the Netherlands, highlights many concerns. One of the main findings is, in fact, the difference in law and practices in this area. Despite, EU's efforts to harmonise asylum policies and the creation of a Common European Asylum System (CEAS). Furthermore, research also revealed the absence of an explicit policy on UASASC turning 18, the vulnerability of this particular group and the loss of child-specific rights and entitlements. Apart from this, research also showed differences between the CEAS and the practical implementation. For instance, between the MS the scope of legal representation varies, detention was allowed in some countries, the Best interest of the child was not always considered, the lack of accommodation facilities, and child-friendly specificities were absent from asylum processes.

Clearly, there has been a greater understanding and recognition for the situation of unaccompanied and separated asylum seeking children (UASASC) in the EU and has gained more importance. That led to the Strategy on the Rights of the Child, and was followed by the Action Plan on Unaccompanied Minors. As a result, child-specific provisions were included in asylum law and policy and were recently improved. In particular, the princple of Best interest of the child (BIC) was included in the revised Directives. However, as UASASC become legal adults, child-specific rights and entitlements are lost. These recently turned adults become vulnerable and, therefore, risk drifting into irregular status or destitution. Especially, in cases where an adverse decision was given on the asylum claim, as host countries now have the right to remove them from their territories. Therefore, to ensure this particular group is safeguarded, directives are needed or to be adjusted.

Moreover, study on the three countries also identified there was no particular policy on the management of UASASC transitioning to adulthood. As a consequence, creating considerable confusion under UASASC as well as service providers, on what would happen after turning 18. Besides this, the transition to adulthood is experienced by UASASC as a phase marked by uncertainty and fear. Caused by the changes of becoming legal adults, the asylum decision and concerns about their future. Thus, an explicit policy at EU level is needed. With the aim of establishing clear directives or adjustments of existing Directives, so that policy can become complete relevant to former UASASC.

Furthermore, research concerning the return of former UASASC showed, that a more

effective policy is needed. For instance, in terms of guardianship, detention and shelter. Since, only children are entitled to guardianship, States are allowing detention. In addition, some youngsters after reaching majority, were forced to turn to emergency shelters for adults. Supporting these young people after becoming legally adults, with the return to their home country, would be more effective. Especially, if the young adults are involved with the return. Besides this, a more successful transition to adulthood with, for instance, education, would favour both young asylum seekers as MS. As these youngsters are returned, prepared and educated to their country of origin, and illegality is prevented.

Study on long staying unaccompanied and separated, asylum-seeking children that turned 18 in the host countries, revealed that these children became 'rooted', through no fault of their own. In fact, they became 'rooted', because of long-standing procedures. This affected the children, however, European asylum policy does not consider if the length of stay in the host country by asylum seeking-children is in the best interest of the child. The EU, therefore, lacks to safeguard these children as they become legal adults. Especially, in cases where they are forced to destitution or driven into illegality. Therefore, this consideration must be taken into account in EU's asylum policy.

To conclude, the EU should regulate its asylum policy on unaccompanied and separated, asylum-seeking children turning 18 because UASASC remain vulnerable after becoming legal adults as child-specific rights are lost. Affecting their situation, in terms of support and housing. Even though, the results seem not very positive on unaccompanied and separated, asylum-seeking children, study showed room for improvement. This will be presented in the following chapter.

Recommendations: Towards the Extension of Child-Sensitive Provisions for Young Adults and a Faster Asylum Procedure

Researching unaccompanied and separated asylum-seeking children turning 18, has revealed that these children are vulnerable, but remain vulnerable after becoming legal adults, as their children's rights and entitlements will not apply anymore. The transition to adulthood affects certain rights, support and entitlements, depending on their immigration status. Beyond the challenges faced during this transition, they also experience uncertainty and fear. During the course of this study, two recommendations arose: one extending rights and provisions of these recently turned legal adults, especially in situations where a negative decision is given on the asylum claim, and removal from the host country has not been possible; and the other after interviewing a Dutch Jurist/Legal Counsellor, ensuring faster procedures for children, so that children will not get 'rooted' in the host country and, therefore, will not have to live with uncertainty and/or fear.

Firstly, in cases where youngsters had not received a final decision on their asylum claim before turning 18, or who had exhausted all appeals, risked to destitution or disappearing into illegality. In addition, turning into a legal adult, caused for these youngsters, the end of child-specific law, resulting in the loss of their legal representative, specialised care and housing. This of course, depending on the host country, since a high contrast exists between MS, concerning the practices of unaccompanied and separated asylum-seeking children turning 18. Despite this, these youngsters became vulnerable, homeless and in some cases even turned to criminality. Taken these situations into consideration, the EU should, therefore, safeguard these recently turned legal adults. Especially, in terms of law and policy, since its incompleteness and flaws. It is, therefore, recommended that EU's asylum law and policy should extent child-sensitive provisions for young adults. In addition, the principle of Best Interest of the Child should still apply after the unaccompanied minor or separated, asylum-seeking child has reached majority. This to safeguard these recently turned 'adults'. Where do we draw the line, if child-sensitive provisions are extended? Is a question for the counterattack. It is likely that MS will not be eager to extend provisions or support for this group, since its history of migration and asylum control. This is understandable; children become adults, everybody should be treated the same way. However, these recently turned adults, are not 'typical' adolescents. Some of these youngsters have been living in fear for most of their childhood, in a foreign country. Some even through no fault of their own, and in some cases were unable to be returned to their country of origin and turned, therefore, turned 18 in the host country. Resulting in a second recommendation.

Faster procedures involving children are needed. This to prevent, children becoming

'rooted' in the host countries. Living most part of their lives there, learning the culture, going to school, making friends, and finally risk being deported to their country of origin after turning 18. Especially, in situations where the final decision on the asylum application was adverse. This transition phase is, therefore, experienced as a period of uncertainty and fear. Furthermore, additional challenges are faced as they transition into adulthood. For these reasons, the EU should work towards a policy, which provides information on the asylum decision, within a reasonable time frame, especially in asylum cases involving children.

The Netherlands introduced 'Kinderpardon' or children's amnesty, as a one-time only regulation. Which provides a residence permit for children that did not have any type of status and where living in the Netherlands for more than five years; because of long-standing procedures. This regulation was an outcome for former unaccompanied and separated asylum-seeking children; that now could be entitled with a residence permit, and were now able to enjoy the benefits the residence permit extracts. Even though, a solution was sought for these children, the regulation remains still too strict. In fact, asylum policy should not be regulated in a way, for these situations to arise. Therefore, the EU should regulate its policy on asylum concerning unaccompanied and separated, asylum-seeking children.

In conclusion, it is recommended that the EU should extend child-sensitive provisions in cases where this is needed, such as, Art. 23 and 24 Reception Directive(Directive 2013/33/EU), which ensures the access to rehabilitation services and legal representation. So that, former unaccompanied and separated, asylum-seeking children could benefit from counselling and mental health care. In cases where an adverse decision was given on the asylum claim, the now young adult could together with a representative appeal against this decision. In addition, the EU should with a critical eye analyse Art. 24 Reception Directive (Directive 2013/33/EU), on the placement of children over 16 in accommodation centres for adults; Art. 25 Asylum Procedures Directive (Directive 2013/32/EU), allowing MS to withhold legal representation where it is likely the UM will reach the age of 18 before a decision at first instance is taken. This provision seems like a measure of migration control, part of the externalisation of asylum used in the past. Finally, Directive2003/109/EC, which does not make any reference to minors or unaccompanied minors, should be analysed.

Further Recommendations

This study was limited in scope, therefore, some suggestions will be made relevant for further research.

- Since this study did not include interviews with former unaccompanied and separated, asylum-seeking children. Their experiences of turning 18 and policy was not collected from primary data. Therefore, interviews with this particular group are recommended, in order to establish a complete picture of this transition phase.
- Interviewee 1 explained that former unaccompanied and separated, asylum-seeking children belong to a vulnerable group. This is also recognised in EU law, however; this was not researched. Therefore, research on EU Directives addressing vulnerable people is recommended. In order to establish whether asylum policies are safeguarding vulnerable people, such as, former unaccompanied and separated, asylum-seeking children.
- For this study, only two interviews were conducted. It is, therefore, recommended to include in further research, interviews with, for instance, representatives of local authorities, government officials, non-profit- and intergovernmental organisations of different European countries.
- Furthermore, research on public support regarding these youngsters and policy. In addition, it is also recommended of interviewing politicians.
- More research on the principle 'Best interest of the child', regarding the practical implementation of the BIC. Study revealed that the best interest of the child was not always safeguarded.

References

Amnesty International Ltd. (2012, June). *AI Report: S.O.S. Europe – Human Rights and Migration Control*. Retrieved January 20, 2014, from Migrants at Sea: http://www.amnesty.org/en/library/asset/EUR01/013/2012/en/bc2ed705-d497-4a50-8c47-5995d3e2eb64/eur010132012en.pdf

Beekman, M. (2014, May 9). Teeven: kabinet versoepelt kinderpardon niet. *NRC Handelsblad*, pp. http://www.nrc.nl/nieuws/2014/05/09/kabinet-versoepelt-kinderpardon-niet/.

Beyond Borders. (n.d.). *Over (ex)AMA's*. Retrieved August 30, 2014, from Beyond Borders: http://beyondborders.nu/nl/over-ex-amas

Bolton, S. (2012). *'Best interests': safeguarding and promoting the welfare of children in immigration law and practice.* London: Immigration Law Practitioners' Association.

Boswell, C. (2003, May 23). The 'external dimension' of EU immigration and asylum policy. *International Affairs*, pp. Volume 79, Issue 3, pages 619–638.

Bunyan, T. (2013, January). *How the EU works and justice and home affairs decision-making.* Retrieved February 11, 2014, from Statewatch monitoring the state and civil liberties in Europe: http://www.statewatch.org/analyses/no-205a-cleu.pdf

Canetta, E., Meurens, N., McDonough, P., & Ruggiero, R. (2012). *EU Framework of Law for Children's Rights.* Brussels: Policy Department C - Citizens' Rights and Constitutional Affairs; European Parliament.

Cear-Euskadi. (n.d.). *The Externalization of Borderd: Migration Control and the Right to Asylum.* Retrieved January 2014, 16, from http://idcoalition.org/wp-content/uploads/2013/08/INCIDENCIA_OK_ENGLISH.pdf

Centraal Orgaan opvang asielzoekers. (n.d.). *Amv: helemaal in je uppie in een vreemd land*. Retrieved September 2, 2014, from http://www.coa.nl/sites/www.coa.nl/files/paginas/media/bestanden/basisschool_spreekbeurt_over_amv.pdf

Child Rights International Network. (2007, December 14). *EUROPE: EU leaders sign first Treaty to include children's rights*. Retrieved February 13, 2014, from News Archive:

http://crin.org/en/library/news-archive/europe-eu-leaders-sign-first-treaty-include-childrens-rights

Collectif de soutien des exilés du 10e arrondissement de Paris. (2008). *Guide asile.* Retrieved July 30, 2014, from Sur l'asile : http://www.exiles10.org/spip.php?article1133

Coram Children's Legal Centre. (2013, October). *Support for young people turning 18.* Retrieved August 27, 2014, from Seeking Support: http://www.seekingsupport.co.uk/files/after18support_031113.pdf

Council of Europe & UNHCR. (2014). *Unaccompanied and Seperated Aslyum-seeking and Refugee Children Turning Eighteen: What to Celebrate?* Strasbourg, France.

Council of the European Union. (2003, Novemeber 25). *COUNCIL DIRECTIVE 2003/109/EC.* Retrieved May 5, 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:016:0044:0053:EN:PDF

Council of the European Union. (2003, November 25). *COUNCIL DIRECTIVE 2003/109/EC.* Retrieved May 5, 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:016:0044:0053:EN:PDF

Council of the European Union. (2003, January 27). *COUNCIL DIRECTIVE 2003/9/EC.* Retrieved April 22, 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF

Council of the European Union. (2003, February 18). *COUNCIL REGULATION (EC) No 343/2003 of 18 February 2003.* Retrieved April 22, 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF

Council of the European Union. (2004, April 29). *COUNCIL DIRECTIVE 2004/83/EC.* Retrieved April 22, 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0012:0023:EN:PDF

Council of the European Union. (2005, December 1). *COUNCIL DIRECTIVE 2005/85/EC.* Retrieved April 22, 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF

De Kinderombudsman. (n.d.). *Het Kinderpardon*. Retrieved September 2, 2014, from http://www.dekinderombudsman.nl/223/

Defence for Children & Unicef. (2013, April). *Bescherming alleenstaande minderjarige vreemdelingen in de knel: Zorgpunten & aanbevelingen bij de herijking van het beleid.* Retrieved September 3, 2014, from Defence for Children: http://www.defenceforchildren.nl/images/20/2547.pdf

Defence for Children. (n.d.). *Welke kinderen vallen onder het Kinderpardon?* Retrieved September 2, 2014, from Veel gestelde vragen - Volwassenen: http://www.defenceforchildren.nl/p/258/3027/-/92/mo481-cg339/mo480-cg339/welke-kinderen-vallen-onder-het-kinderpardon%3F-

Deira, S. (2014, May 27). PVV en CDA waarschuwen voor gevolgen ruimer kinderpardon. *Elsevier*, pp. http://www.elsevier.nl/Politiek/nieuws/2014/5/PVV-en-CDA-waarschuwen-voor-gevolgen-ruimer-kinderpardon-1530821W/.

Delany, E. F. (2013). Justifying Power: Federalism, Immigration, and 'Foreing Affairs' . *Duke Journal of Constitutional Law & Public Policy VOL. 8:1*, 153-195.

Diop, M. (2008-2009). *Unaccompanied Minors' Rights within the European Union: Is the EU Asylum and Immigration Legislation in line With the Convention on the Rights of the Child?* Retrieved from http://www.statewatch.org/news/2010/oct/eu-unaccompanied-minors-asylum-and-immigration-legislation-Marie-Diop.pdf

Domokos, J., & John, H. (2011, October 7). *Dublin regulation leaves asylum seekers with their fingers burnt: Refugees are deported back to the first EU country they entered, often Italy or Greece, which have the worst welfare provision.* Retrieved January 14, 2014, from Refugees: http://www.theguardian.com/world/2011/oct/07/dublin-regulation-european-asylum-seekers

Drywood, E. (2010). Challenging concepts of the 'child' in asylum and immigration law: the example of the EU. *Journal of Social Welfare & Family Law*, Vol. 32, No. 3, p. 309–323.

Drywood, E. (2011). 'Child-proofing' EU law and policy: interrogating the law-making processes behind European asylum and immigration provision. *International Journal of Children's Rights*, 19, p. 405–428.

Dutch National Contact Point for he European Migration Network. (2010, February). *Unaccompanied minors in the Netherlands: Policy on reception, return and integration arrangements for, and numbers of, unaccompanied minors.* Retrieved September 3, 2014, from European Commission: http://ec.europa.eu/dgs/home-affairs/what-we-

do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/19a._netherlands_national_report_on_unaccompanied_minors_final_version_2feb10_en.pdf

ECRE. (n.d.). *Alliance*. Retrieved January 20, 2014, from European Council on Refugees and Exiles: http://www.ecre.org/alliance/members/profiles.html

ECRE. (n.d.). *From Schengen to Stockholm, a history of the CEAS*. Retrieved November 13, 2013, from European Council on Refugees and Exiles: http://www.ecre.org/component/content/article/36-introduction/194-history-of-ceas.html

ECRE. (n.d.). *Refugees in the EU*. Retrieved November 28, 2013, from ECRE: http://www.ecre.org/refugees/refugees/refugees-in-the-eu.html

EDAL. (n.d.). *Manifestly unfounded application*. Retrieved November 14, 2013, from European Database of Asylum Law: http://www.asylumlawdatabase.eu/el/keywords/manifestly-unfounded-application

Enenajor, A. (n.d.). *Rethinking Vulnerability European Asylum Policy Harmonization and Unaccompanied Asylum seeking Minors.* Retrieved March 18, 2014, from EVASP: http://www.evasp.eu/attachments/065_Rethinking%20Vulnerability%20European%20Asylum%20Policy%20Harmonization%20and%20%20UAMs.pdf

Eurochild. (2014). *Mainstreaming Children's Rights in EU Legislation, Policy and Budget.* Retrieved from http://www.eurochild.org/fileadmin/ThematicPriorities/ChildrensRights/Eurochild/Mainstreaming_Childrens_Rights_Discussion-paper_Feb2014.pdf

European Basic Treaties. (2010). Deventer: Kluwer.

European Commission. (2000, November 11). *COUNCIL REGULATION (EC) No 2725/2000.* Retrieved May 5, 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:316:0001:0010:EN:PDF

European Commission. (2010). *Communication from the Commission to the European Parliament and the Council: Action Plan on Unaccompanied Minors (2010-2014).* Brussell.

European Commission. (2011). *An EU Agenda for the Rights of the Child COM(2011) 60 final.*

European Commission. (2012, September 28). *Cecilia Malmström*. Retrieved May 1, 2014, from News: http://ec.europa.eu/commission_2010-2014/malmstrom/news/archives/2012/09/20120928_en.htm

European Commission. (2012, September 28). *Mid-term report on the implementation of the Action Plan on Unaccompanied Minors.* Retrieved from http://ec.europa.eu/dgs/home-affairs/e-library/docs/uam/uam_report_20120928_en.pdf

European Commission. (2013 , August 13). *Return & readmission*. Retrieved June 5, 2014, from Home Affairs : http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/return-readmission/index_en.htm

European Commission. (2013, September 18). *An EU agenda for the rights of the child*. Retrieved May 27, 2014, from Justice: http://ec.europa.eu/justice/fundamental-rights/rights-child/eu-agenda/index_en.htm

European Commission. (2013, October 1). *Asylum procedures.* Retrieved April 22, 2014, from Home Affairs: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/common-procedures/index_en.htm

European Commission. (2013, November 15). *Common European Asylum System*. Retrieved November 26, 2013, from Home Affairs: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/

European Commission. (2013, November 5). *Country responsible for asylum application (Dublin).* Retrieved April 22, 2014, from Home Affairs: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/index_en.htm

European Commission. (2013, October 1). *Identification of applicants (EURODAC)*. Retrieved May 5, 2014, from Home Affairs: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/identification-of-applicants/index_en.htm

European Commission. (2013, August 13). *Long-term residents*. Retrieved May 5, 2014, from Home Affairs: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/long-term-residents/index_en.htm

European Commission. (2013, October 14). *Reception conditions*. Retrieved April 22, 2014, from Home Affairs: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/reception-conditions/index_en.htm

European Commission. (2013, October 14). *Who qualifies for international protection*. Retrieved April 22, 2014, from Home Affairs: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/refugee-status/index_en.htm

European Commission. (2014, May 15). *Fundamental rights*. Retrieved May 27, 2014, from Justice: http://ec.europa.eu/justice/fundamental-rights/index_en.htm

European Commission;. (n.d.). *Common European Asylum System (CEAS)*. Retrieved February 16, 2014, from http://ec.europa.eu/dgs/home-affairs/e-library/multimedia/infographics/index_en.htm#0801262489daa027/c_

European Council on Refugees and Exiles . (n.d.). *Asylum Procedures* . Retrieved July 2, 2014, from Topics: http://www.ecre.org/topics/areas-of-work/protection-in-europe/37-asylum-procedures.html

European Parliament ; Council of the European Union. (2013, June 26). *DIRECTIVE 2013/33/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL*. Retrieved April 22, 2014, from http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013L0033

European Parliament. (n.d.). *Migration and Asylum In Central and Eastern Europe : Summary*. Retrieved January 24, 2014, from European Parliament: http://www.europarl.europa.eu/workingpapers/libe/104/summary_en.htm

European Parliament; Council of the European Union. (2008, December 16). *DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCILof 16 December 2008.* Retrieved April 22, 2014, from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF

European Parliament; Council of the European Union. (2011, December 13). *DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL*. Retrieved April 22, 2014, from http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0095

European Parliament; Council of the European Union. (2013, June 26). *Regulation (EU) No 603/2013 of the European Parliament and of the Council.* Retrieved May 5, 2014, from http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0603

European Parliament; Council of the European Union. (2013, June 26). *Regulation (EU) No 604/2013 of the European Parliament and of the Council.* Retrieved April 22, 2014, from http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0604

European Union. (2010, October 26). *The Single European Act*. Retrieved January 15, 2014, from Building europe through the treaties : http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_singleact_en.htm

European Union. (2010, October 15). *Treaty of Maastricht on European Union*. Retrieved January 28, 2014, from Building europe through the treaties: http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_maastricht_en.htm

European Union. (2012). Consolidated Verison of the Treaty on the Functioning of the European Union. *Official Journal of the European Union* , C 326/47.

European Union. (n.d.). *A peaceful Europe – the beginnings of cooperation*. Retrieved November 13, 2013, from European Union: http://europa.eu/about-eu/eu-history/1945-1959/index_en.htm

European Union. (n.d.). *A peaceful Europe – the beginnings of cooperation*. Retrieved december 12, 2013, from European Union: http://europa.eu/about-eu/eu-history/1945-1959/index_en.htm

European Union. (n.d.). *Community and intergovernmental methods*. Retrieved January 28, 2014, from Glossary: http://europa.eu/legislation_summaries/glossary/community_intergovernmental_methods_en.htm

European Union. (n.d.). *Europa - Summaries of EU Legislation*. Retrieved January 13, 2014, from Internal Market / Treaty establishing the European Economic Community, EEC Treaty - original text (non-consolidated version): http://europa.eu/legislation_summaries/internal_market/index_en.htm

European Union. (n.d.). *Pillars of the European Union*. Retrieved January 28, 2014, from Glossary: http://europa.eu/legislation_summaries/glossary/eu_pillars_en.htm

Exiles10. (2014, March). *RAPPORT : MIE et Jeunes Majeurs.* Retrieved September 3, 2014, from http://www.exiles10.org/IMG/pdf/Rapport_MIE_68_mars_2014_.pdf

Farrugia, R., & Touzenis, K. (2010). The international protection of migrant children in Europe. In *Migrating Alone: Unaccompanied and Separated Children's Migration to Europe* (pp. 21-57). Paris: UNESCO Publishing.

FRA. (2010). *Separated, asylum-seeking children.* Luxembourg: Publications Office of the European Union.

FRA. (2010). *Separated, asylum-seeking children.* Luxembourg: Publications Office of the European Union.

France Terre D'asile. (2012). *Right to asylum for unaccompanied minors in the European Union.* France Terre D'asile.

Gentleman, A. (2013, June 12). Children seeking asylum should 'be better cared for' by the state: Human rights committee of MPs warns that many children trafficked into the UK are not given the help they need. *The Guardian*, pp. http://www.theguardian.com/uk/2013/jun/12/children-seeking-asylum-better-care.

Gibney, M. J. (2005, January http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/gmp/gmp22.pdf). Beyond the bounds of responsibility: western states and measures to prevent the arrival of refugees. Geneva, Switzerland.

Gov.UK. (2014, June 27). Retrieved July 10, 2014, from Claim asylum in the UK: https://www.gov.uk/claim-asylum/help-you-can-get

Government of the Netherlands. (2013). *Unaccompanied minor aliens (AMV)*. Retrieved August 30, 2014, from Aslyum Policy: http://www.government.nl/issues/asylum/unaccompanied-minor-aliens-amv

Hancilova, B., & Knauder, B. (2011, December). Unaccompanied MinorAsylum-seekers:Overview of Protection, Assistance and Promising Practices. Budapest, Hungary, http://www.lowan.nl/documenten_vo/AMA_onderzoek_EU_2012.pdf: InternationalOrganizationforMigration .

Hancilova, B., & Knauder, B. (2011, December). Unaccompanied MinorAsylum-seekers:Overview of Protection, Assistance and Promising Practices. Budapest, Hungary,

International Organization for Migration, http://www.lowan.nl/documenten_vo/AMA_onderzoek_EU_2012.pdf: InternationalOrganizationforMigration .

Happold, M. (2002). Excluding Children from Refugee Status: Child Soldiers and Article IF of the Refugee Convention. *American University International Law Review 17, no. 6*, 1131-1176.

Hatton, T. J. (2012). *Asylum Policy in the EU: The Case for Deeper Integration.* University of Essex and Australian National University.

Hollifield, J. F. (2006). *Trade, Migration, and Economic Development: The Risks and Rewards of Openness.* Retrieved from Dallasfed: http://www.dallasfed.org/assets/documents/research/pubs/migration/hollifield.pdf

Immigration and Naturalisation Service. (n.d.). *Aslyum.* Retrieved July 24, 2014, from Residence wizard: https://ind.nl/EN/individuals/residence-wizard/asylum/#paragraph3

infoMie. (n.d.). *Demander l'Asile.* Retrieved September 3, 2014, from Autonomie: http://infomie.net/IMG/pdf/autonomie-guide-fiche10.pdf

infoMie. (n.d.). *L'arrivée à la Majorité.* Retrieved September 3, 2014, from Autonomie: http://infomie.net/IMG/pdf/autonomie-guide-fiche8.pdf

INLIA. (2011). *Rijk stopt steun aan Perspectief-projecten voor jongvolwassen asielzoekers (11-07-11)*. Retrieved September 2, 2014, from Nieuws: http://www.inlia.nl/news/show/rijk-stopt-steun-aan-perspectief-projecten-voor-jongvolwassen-asielzoekers

INLIA. (2014). *Manifestatie voor Eerlijk Kinderpardon in Den Haag (24-06-14)* . Retrieved September 2, 2014, from Nieuws: http://www.inlia.nl/news/show/manifestatie-voor-eerlijk-kinderpardon-in-den-haag

Institute, M. P. (2001-2013). *About MPI.* Retrieved February 6, 2014, from Welcome to the Migration Policy Institute: http://www.migrationpolicy.org/about/index.php

Interviewee 1. (2014, September 8). Turning 18: The Consequences for Unaccompanied Minors and Separated, Asylum-Seeking Children Passing Through Asylum Processes. (D. Gonzalez, Interviewer)

Interviewee 2. (2014, September 16). Turning 18: The Consequences for Unaccompanied Minors and Separated, Asylum-Seeking Children Passing Through Asylum Processes . (D. Gonzalez, Interviewer)

Jackson, I. C. (1991). The 1951 Convention relating to the Status of Refugees: A Universal Basis for Protection. *International Journal of Refugee Law*, Vol. 3 No. 3.

Kalverboer, M. E., Knorth, E. J., & Zijlstra, A. E. (2009). The Developmental Consequences for Asylum-seeking Children Living With the Prospect for Five Years or More of Enforced Return to Their Home Country. *European Journal of Migration and Law*, 41–67.

Kamerman, S. (2011, March 28). Best wel zonde van m'n leven, zeggen de illegale jongeren. *NRC Handelsblad*, pp. 8 - 9.

Kanics, J., & Senovilla Hernandez, D. (2010). Migrating Alone: Unaccompanied and Separated Children's Migration to Europe. In P. o. Europe, *3-21*. Paris: UNESCO Publishing.

Ketokiv, M., & Mantere, S. (2010). Two Strategies for Inductive Reasoning in Organizational Research. *Academy of Management Review*, Vol. 35, No. 2, 315 - 333.

Lavenex , S., & Uçarer, E. M. (2003). Migration and the Externalities of European Integration. In E. M. Sandra Lavenex, *Migration and the Externalities of European Integration* (p. 84). United States: Lexington Books.

Legifrance. (2007, March 6). Retrieved August 3, 2014, from Loi n° 2007-293 du 5 mars 2007 réformant la protection de l'enfance : http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000823100

Legifrance. (2007). Retrieved August 4, 2014, from Article L222-5: http://legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006796803&cidTexte=LEGITEXT000006074069&dateTexte=20090327

Léonard, S., & Kaunert, C. (2012). The development of the EU asylum policy: venue-shopping in perspective. *Journal of European Public Policy*, 19:9, 1396-1413, DOI: 10.1080/13501763.2012.677191.

Longman. (2009). Longman Dictionary of Contemporary English. Essex: Pearson Education Limited.

LOWAN. (2013, May 2). *Opvangbeleid: AMA's*. Retrieved September 2, 2014, from LOWAN: http://www.lowan.nl/vo/opvangbeleid/opvangbeleid_ama.html

Ministère de L'Intérieur. (2014, February 5). *La délivrance d'un titre de séjour aux jeunes majeurs, entrés mineurs en France* . Retrieved September 3, 2014, from http://www.immigration.interieur.gouv.fr/Immigration/L-immigration-familiale/Le-sejour-des-mineurs-etrangers/La-delivrance-d-un-titre-de-sejour-aux-jeunes-majeurs-entres-mineurs-en-France

Ministry of Immigration, Integration, National Identity and Co-Development. (2009, June 10). *Policies relating to the Reception, Integration and Return of Unaccompanied Minors.* Retrieved August 28, 2014, from European Commission: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/09a._france_national_report_on_unaccompanied_minors_version_10june09_en.pdf

Morgades, S. (2010). The Externalisation of the Asylum Function in the European Union. *GRITIM-UPF Working Paper Series*, p. Number 4.

Nations, O. o. (1997). *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum.* http://www.unhcr.org/3d4f91cf4.pdf.

O'Donnell, R. (2013). The role of the EU legal and policy framework in strengthening child friendly justice. *ERA Forum*, Volume 14, Issue 4, pp 507-521.

Oakley, S. (2007). *Accelerated Procedures for Asylum in the European: Fairness Versus Efficiency.* University of Sussex: Migration Working Paper no. 43.

Office Français de Protection des Réfugiés et Apatrides . (2014, Avril 30). *Guide de l'asile: pour les mineurs isolés étrangers en France.* Retrieved July 30, 2014, from Asile: http://www.ofpra.gouv.fr/documents/OFPRA_Guide_de_lasile_MIE_en_France.pdf

Overheid. (n.d.). *Beleidsregels beëindiging verstrekking leefgelden aan ex-ama's*. Retrieved September 2, 2014, from Wet- en regelgeving: http://wetten.overheid.nl/BWBR0017548/geldigheidsdatum_07-12-2009

Papademetriou, D. G. (2011, November). *Restoring Trust in the Management of Migration and Borders.* Washington: Migration Policy Institute.

Parliament, E. (n.d.). *Migration and Asylum In Central and Eastern Europe : Summary*. Retrieved January 24, 2014, from European Parliament : http://www.europarl.europa.eu/workingpapers/libe/104/summary_en.htm

Pinder, J., & Usherwoord , S. (2007). *The European Union.* Oxford: Oxford University Press.

Schuster, L. (2004). The Exclusion of Asylum Seekers in Europe. *COMPAS, University of Oxford*, Working Paper No.1 .

Stichting LOS . (n.d.). *Verblijf als AMV*. Retrieved September 6, 2014, from Stichting Landelijk Ongedocumenteerden Steunpunt: http://www.stichtinglos.nl/content/verblijf-als-amv

The Asylum Information Database . (n.d.). *Age Assement and Legal Represenation of Unaccompanied Children: Netherlands*. Retrieved July 24, 2014, from Asylum in Europe.org: http://www.asylumineurope.org/reports/country/netherlands/age-assessment-and-legal-representation-unaccompanied-children

The Children's Society. (2013, October). *Refugee Children's Consortium* . Retrieved August 28, 2014, from http://www.childrenssociety.org.uk/sites/default/files/tcs/rccbriefing_amendment234_welfareofmigrantcareleavers_hol_committee_oct13_final.pdf

The Coram Children's Legal Centre. (2011, November). *Asylum Process* . Retrieved July 10, 2014, from Seeking Support : http://www.seekingsupport.co.uk/images/pdfs/Asylum_process.pdf

The Jesuit Refugee Service Europe. (n.d.). *Externalisation of Asylum*. Retrieved February 3, 2014, from The Jesuit Refugee Service Europe: http://www.jrseurope.org/AdvocacyPages/Externalisation%20of%20Asylum/EXTERNALISATIONcampaign.htm

The Telegraph. (2009, September 14). *Timeline: history of the European Union*. Retrieved November 13, 2013, from The Telegraph: http://www.telegraph.co.uk/news/worldnews/europe/6181087/Timeline-history-of-the-European-Union.html

Tyler, J. (2012, January 30). Children's amnesty divides Dutch politicians. *Radio Netherlands Worldwide*.

UK Parliament Website. (2005). *Chapter 4: Asylum: A Common European Asylum System*. Retrieved January 20, 2014, from European Union: http://www.publications.parliament.uk/pa/ld200405/ldselect/ldeucom/84/8407.htm

UNHCR. (1999, April 30). *Treaty of Amsterdam: UNHCR calls for a fair asylum policy in the European Union*. Retrieved February 3, 2014, from http://www.unhcr.org/3ae6b81130.html

UNHCR. (2001). 50 th Anniversary: The Wall Behind Which Refugees Can Shelter. *Refugees*, N° 123.

UNHCR. (2001-2014). *EU Instruments* . Retrieved May 27, 2014, from UNHCR: http://www.unhcr.org/pages/4e0adfce6.html

UNHCR. (2008, May). *UNHCR Guidelines on Determing the Best Interest of the Child.* Retrieved from UNHCR : http://www.unhcr.org/4566b16b2.pdf

UNHCR. (2009). *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.*

UNHCR. (2011, September). *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.* Retrieved January 9, 2014, from UNHCR: http://www.unhcr.org/4ec262df9.html

UNHCR. (n.d.). *Convention and Protocol Relating to the Status of Regufees.* Retrieved from UNHCR: http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf

UNHCR. (n.d.). *European Union asylum policy*. Retrieved November 28, 2013, from UNHCR: http://www.unhcr-centraleurope.org/en/what-we-do/ensuring-legal-protection/european-union-asylum-policy.html

UNHCR. (n.d.). *The Legislation that Underpins our Work*. Retrieved January 9, 2014, from The 1951 Refugee Convention: http://www.unhcr.org/pages/49da0e466.html

Versteegt, I., & Maussen, M. (2012). *Contested policies of exclusion in The Netherlands: The lamentable asylum cases of Sahar and Mauro.* San Domenico di Fiesole: European University Institute.

Vink, M. P. (2012). *Dublin System* . Retrieved November 14, 2013, from Maastricht University: http://www.fdcw.unimaas.nl/staff/files/users/215/Dublin%20System_EGHM.pdf

VluchtelingenWerk Nederland. (n.d.). *Algemene asielprocedure: van dag tot dag*. Retrieved July 24, 2014, from Asielprocedure: https://www.vluchtelingenwerk.nl/node/228259

Wunderlich, D. (2013). Towards Coherence of EU External Migration Policy? Implementing a Complex Policy. *International Migration*, Volume 51, Issue 6, 26-40.

Zaiotti, R. (2011). *Cultures of Border Control: Schengen and the Evolution of European Frontiers.* Chicago : The University of Chicago Press .

Zimmermann, A. (2011). *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary.* Oxford: Oxford University Press.

Appendices

Appendix 1: Legislation

1.1 European Treaties

Charter of Fundamental Rights

Art.18 Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union"." (ECRE, n.d.).

Art. 24 The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interest must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests (European Basic Treaties, 2010, p. 161)

The Single European Act

The Single European Act (SEA) revises the Treaties of Rome in order to add new momentum to European integration and to complete the internal market. It amends the rules governing the operation of the European institutions and expands Community powers, notably in the field of research and development, the environment and common foreign policy. (European Union, 2010)

The Treaty On European Union

Art. 3

5. In its relations with the wider world, the Union shall uphold and promote its values and Interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well

as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter (European Basic Treaties, 2010, p. 5)

Treaty on the Functioning of the EU

Art. 19 (ex Article 13 TEC)

1.Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

1.2 French Legislation

Loi n° 2007-293 du 5 mars 2007 réformant la protection de l'enfance (1) (French Law)

Code de la famille et de l'aide sociale

Art. L112-3

La protection de l'enfance a pour but de prévenir les difficultés auxquelles les parents peuvent être confrontés dans l'exercice de leurs responsabilités éducatives, d'accompagner les familles et d'assurer, le cas échéant, selon des modalités adaptées à leurs besoins, une prise en charge partielle ou totale des mineurs. Elle comporte à cet effet un ensemble d'interventions en faveur de ceux-ci et de leurs parents. Ces interventions peuvent également être destinées à des majeurs de moins de vingt et un ans connaissant des difficultés susceptibles de compromettre gravement leur équilibre. La protection de l'enfance a également pour but de prévenir les difficultés que peuvent rencontrer les mineurs privés temporairement ou définitivement de la protection de leur famille et d'assurer leur prise en charge.

Art. L.221-1

Le service de l'aide sociale à l'enfance est un service non personnalisé du département chargé des missions suivantes :

1° Apporter un soutien matériel, éducatif et psychologique tant aux mineurs et à leur famille ou à tout détenteur de l'autorité parentale, confrontés à des difficultés risquant de mettre en danger la santé, la sécurité, la moralité de ces mineurs ou de compromettre gravement leur éducation ou leur développement physique, affectif, intellectuel et social, qu'aux mineurs émancipés et majeurs de moins de vingt et un ans confrontés à des difficultés familiales, sociales et éducatives susceptibles de compromettre gravement leur équilibre ;

2° Organiser, dans les lieux où se manifestent des risques d'inadaptation sociale, des actions collectives visant à prévenir la marginalisation et à faciliter l'insertion ou la promotion sociale des jeunes et des familles, notamment celles visées au 2° de l'article L. 121-2 ;

3° Mener en urgence des actions de protection en faveur des mineurs mentionnés au 1° du présent article ;

4° Pourvoir à l'ensemble des besoins des mineurs confiés au service et veiller à leur orientation, en collaboration avec leur famille ou leur représentant légal ;

5° Mener, notamment à l'occasion de l'ensemble de ces interventions, des actions de prévention des situations de danger à l'égard des mineurs et, sans préjudice des compétences de l'autorité judiciaire, organiser le recueil et la transmission, dans les conditions prévues à l'article L. 226-3, des informations préoccupantes relatives aux mineurs dont la santé, la sécurité, la moralité sont en danger ou risquent de l'être ou dont l'éducation ou le développement sont compromis ou risquent de l'être, et participer à leur protection ;

6° Veiller à ce que les liens d'attachement noués par l'enfant avec d'autres personnes que ses parents soient maintenus, voire développés, dans son intérêt supérieur.

Pour l'accomplissement de ses missions, et sans préjudice de ses responsabilités vis-à-vis des enfants qui lui sont confiés, le service de l'aide sociale à l'enfance peut faire appel à des organismes publics ou privés habilités dans les conditions prévues aux articles L. 313-8, L. 313-8-1 et L. 313-9 ou à des personnes physiques.

Le service contrôle les personnes physiques ou morales à qui il a confié des mineurs, en vue de s'assurer des conditions matérielles et morales de leur placement.

L.222-5
Sont pris en charge par le service de l'aide sociale à l'enfance sur décision du président du conseil général :

1° Les mineurs qui ne peuvent demeurer provisoirement dans leur milieu de vie habituel et dont la situation requiert un accueil à temps complet ou partiel, modulable selon leurs besoins, en particulier de stabilité affective, ainsi que les mineurs rencontrant des difficultés particulières nécessitant un accueil spécialisé, familial ou dans un établissement ou dans un service tel que prévu au 12° du I de l'article L. 312-1 ;

2° Les pupilles de l'Etat remis aux services dans les conditions prévues aux articles L. 224-4, L. 224-5, L. 224-6 et L. 224-8 ;

3° Les mineurs confiés au service en application du 3° de l'article 375-3 du code civil, des articles 375-5, 377, 377-1, 380, 433 du même code ou du 4° de l'article 10 et du 4° de l'article 15 de l'ordonnance n° 45-174 du 2 février 1945 relative à l'enfance délinquante ;

4° Les femmes enceintes et les mères isolées avec leurs enfants de moins de trois ans qui ont besoin d'un soutien matériel et psychologique. Ces dispositions ne font pas obstacle à ce que les établissements ou services qui accueillent ces femmes organisent des dispositifs visant à préserver ou à restaurer des relations avec le père de l'enfant, lorsque celles-ci sont conformes à l'intérêt de celui-ci.

Peuvent être également pris en charge à titre temporaire par le service chargé de l'aide sociale à l'enfance les mineurs émancipés et les majeurs âgés de moins de vingt et un ans qui éprouvent des difficultés d'insertion sociale faute de ressources ou d'un soutien familial suffisants.

Appendix 2: EU Legal Instruments Concerning Asylum

Legislation	Specific Article for UMs	Specific Article for Minors (including UMs)	Rights addressed in each Article		Other Articles with specific mention of UMs and/or Minors	Mention of CRC
Reception Directive (2003)[1] (Directive 2003/9/EC)	Art. 19 (*Unaccompanied minors*)	Art. 18 (*Minors*)	Art. 19 Legal guardianship Placement with adult relatives; foster-family; in accommodation centres with special provisions for minors; in other accommodation suitable for minors Minors aged 16 or over may also be placed in accommodation centres for adults Siblings shall be kept together Family unity Best interest Safety Confidentiality	Art. 18 Best interests of the child Access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflict Appropriate mental health care qualified counselling	Art. 2(h) (Definition of UM) Art. 10 (Schooling and education of minors) Art. 13(2) (Standard of living) Art. 14(3) (Lodging of minors) Art. 17 (Provisions for persons with special needs)	X
The revised Reception Directive (2013) (Directive 2013/33/EU)	Art. 24 (*Unaccompanied minors*)	Art. 14 (*Schooling and education of minors*) Art. 23 (*Minors*)	Art. 24 A representative who represents and assists Placement with adult relatives; foster family; in accommodation centres with special provisions for minors; in other accommodation suitable for minors Minors aged 16 or over may also be placed in accommodation centres for adults, if it is in their best interest Siblings shall be kept together Tracing the members of the unaccompanied minor's family Best interest Safety Confidentiality	Art. 14 Access to the education system Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority. Access to the education system shall not be postponed for more than three months Education arrangements where access to the education system is not possible Art. 23 Best interests of the child Best interest will be assessed with due account of: family reunification possibilities; the minor's well-being and social development, into particular consideration the minor's background; safety and security, in particular where there is a risk of the minor being a victim of human trafficking; the views of the minor in accordance with his or her age and maturity Access to leisure activities Access to rehabilitation services Appropriate mental health care Counselling Placement with parents; or unmarried minor siblings; or adult responsible for them	Art. 2(d) (Definition of minor) Art. 2(e) (Definition of UM) Art. 11(2)(3) (Detention of vulnerable persons and of applicants with special reception needs) Art. 17(2) (Standard of living) Art. 21 (Provisions for Vulnerable Persons)	• Preamble, rec. 9

[1] The Reception Directive is valid until 2015 (European Commission, Reception conditions, 2013)

Legislation	Specific Article for UMs	Specific Article for Minors (including UMs)	Rights addressed in each Article	Other Articles with specific mention of UMs and/or Minors	Mention of CRC
Qualification Directive (2004)[2] **(Directive 2004/83/EC)**	Art. 30 (*Unaccompanied minors*)	Art. 30 ✓ Legal guardianship ✓ Minor's needs are duly met ✓ Placement with a adult relatives; foster family; in accommodation centres with special provisions for minors; in other accommodation suitable for minors ✓ Age and degree of maturity will be taken into account ✓ Siblings shall be kept together ✓ Best interests of the minor ✓ Trace the members of the minor's family ✓ Confidentiality	• Preamble, Rec. 12, 20 • Art. 2(i) (Definition of UM) • Art. 9(2) (Acts or persecution, child-specific nature) • Art. 20(3), (5) (International Protection) • Art. 27(1) (Access to education) • Art. 29(3) (Healthcare)	X
The Revised Qualification Directive (2011) (Directive 2011/95/EU)	Art. 31 (*Unaccompanied minors*)	Art. 31 ✓ Legal guardianship ✓ Minor's needs are duly met ✓ Placement with a adult relatives; foster family; in accommodation centres with special provisions for minors; in other accommodation suitable for minors ✓ Age and degree of maturity will be taken into account ✓ Siblings shall be kept together ✓ Best interests of the minor ✓ Trace the members of the minor's family ✓ Confidentiality	• Preamble, Rec. 27, 28, 38 • Art. 2(k) (Definition of minor) • Art. 2(l) (Definition of UM) • Art. 9(2)(f) (Acts or persecution) • Art. 20(3),(5) (International Protection) • Art. 27(1) (Access to education) • Art. 30(2) (Healthcare)	• Preamble, Rec. 18

[2] The Qualification Directive is valid until 2013

Legislation	Specific Article for UMs	Specific Article for Minors (including UMs)	Rights addressed in each Article	Other Articles with specific mention of UMs and/or Minors	Mention of CRC
Asylum Procedures Directive (2005)[3] (Directive 2005/85/EC)	Art. 17 (*Guarantees for unaccompanied minors*)		Art. 17 ✓ Representation ✓ Personal Interview ✓ MS may refrain from appointing a representative where the unaccompanied minor is 16 years old or older ✓ Special needs must be ensured ✓ Age determination by medical examination ▪ Information provided prior to the examination, in a language they can understand, UMs and/or their representatives consent to carry out examination, an UM may refuse the examination, the final decision shall not be based solely on that refusal ✓ Best interest of the child	• Preamble, Rec. 14 • Art. 2(h) (Definition of UM) • Art. 6(4)(a)(b) (Access to the procedure) • Art. 12(1) (Personal Interview) • Art. 35(3)(f) (Border procedures)	X
The Revised Asylum Procedures Directive (2013) (Directive 2013/32/EU)	Art. 25 (*Guarantees for unaccompanied minors*)	Art. 7 (*Applications made on behalf of dependants or minors*)	Art. 25 ✓ Representation ✓ Best interest of the child ✓ To be informed ✓ Personal interview ✓ MS may refrain from appointing a representative where the unaccompanied minor will in all likelihood reach the age of 18 before a decision at first instance is taken. ✓ Personal interview conducted by a person who has the necessary knowledge of the special needs of minors ✓ Representatives shall be provided, free of charge, with legal and procedural information ✓ Age determination by medical examination ▪ Information provided prior to the examination, in a language they can understand, UMs and/or their representatives consent to carry out examination, an UM may refuse the examination, the final decision shall not be based solely on that refusal ✓ Where Member States, in the course of the asylum procedure, identify a person as an unaccompanied minor, they may: apply or continue to apply Article 31(8) only if (i, ii, iii) and apply or continue to apply Article 43, in accordance with Articles 8 to 11 of Directive 2013/33/EU, only if: (i, ii, iii, iv, v, vi) Art. 7 ✓ The right to make an application for international protection ✓ for returning illegally staying third-country nationals have the right to lodge an application for international protection on behalf of an unaccompanied minor ✓ MS may determine in national legislation: the cases in which a minor can make an application on his or her own behalf; the cases in which the application of an unaccompanied minor has to be lodged by a representative as provided for in Article 25(1)(a)	• Art. 2(l) (Definition of minor) • Art. 2(m) (Definition of UM) • Art. 14(1) (Personal Interview) • Art. 15(e) (Requirements for a personal interview) • Art. 31(7)(b) (Examination procedure)	• Preamble, Rec. 33

[3] The Asylum Procedures Directive is valid until 2015 (European Commission, Asylum procedures, 2013)

Legislation	Specific Article for UMs	Specific Article for Minors (including UMs)	Rights addressed in each Article	Other Articles with specific mention of UMs and/or Minors	Mention of CRC
Dublin Regulation (2003)[4] (Regulation (EC) No 343/2003)	Art. 6		Where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor. In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum	• Art. 2(h) (Definition of UM) • Art. 15(3) (Humanitarian Clause)	X
Dublin II (2013) (Regulation (EU) No 604/2013)	X	Art. 6 (*Guarantees for minors*) Art. 8 (*Minors*)	✓ Best interest of the child ✓ Representation ✓ Best interest will be assessed with due account of: ▪ family reunification possibilities; ▪ the minor's well-being and social development, into particular consideration the minor's background; ▪ safety and security, in particular where there is a risk of the minor being a victim of human trafficking; ▪ the views of the minor in accordance with his or her age and maturity ✓ Identify the family members, siblings or relatives of the unaccompanied minor on the territory of Member States Art. 8 ✓ Best interest for the minor ✓ Family reunification	• Preamble, Rec. 34 • Art. 2(i) (Definition of minor) • Art. 2(j) (Definition of UM) • Art. 4(3) (Right to information) • Art. 29(4) (Modalities and time limits)	• Preamble, Rec. 13

Legislation	Specific Article for UMs	Specific Article for Minors (including UMs)	Rights addressed in each Article	Other Articles with specific mention of UMs and/or Minors	Mention of CRC
EURODAC Regulation[6] (Regulation (EC) No 2725/2000)	X	X		• Preamble, Rec. 6 • Art. 4(1) (Collection, transmission and comparison of fingerprints) • Art. 8(1) (Collection and transmission of fingerprint data)	X
The Revised EURODAC Regulation (Regulation (EU) No 603/2013)	X	X		• Preamble, Rec. 35 • Art. 9(1) (Collection, transmission and comparison of fingerprints) • Art. 14(1) (Collection and transmission of fingerprint data) • Art.17(1) (Comparison of fingerprint data) • Art. 29(2) (Rights of the data subject)	• Art. 3(5) (System architecture and basic principles)

[4] The Dublin Regulation is valid until 2014 (European Commission, Country responsible for asylum application (Dublin), 2013)
[5] The EURODAC Regulation is valid until 2015

Legislation	Specific Article for UMs	Specific Article for Minors (including UMs)	Rights addressed in each Article	Other Articles with specific mention of UMs and/or Minors	Mention of CRC
Long-term Residents Directive (2003)[7] (Directive 2003/109/EC)	X	X		• Preamble, Rec. 14, 20	X

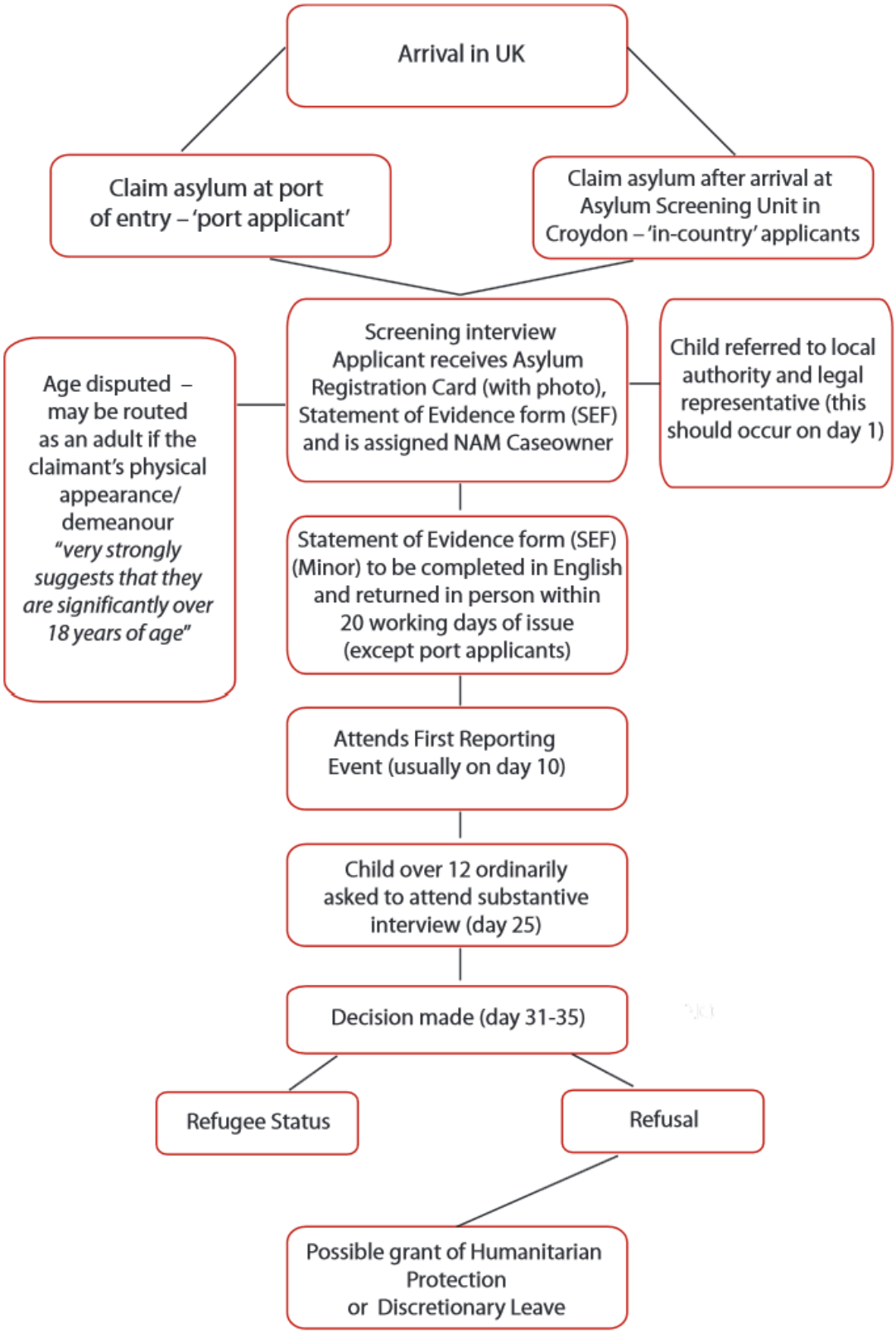
Legislation	Specific Article for UMs	Specific Article for Minors (including UMs)	Rights addressed in each Article		Other Articles with specific mention of UMs and/or Minors	Mention of CRC
Returns Directive (2008) (Directive 2008/115/EC)	Art. 10 (*Return and removal of unaccompanied minors*)	Art. 17 (*Detention of minors and families*)	Art. 10 ✓ Assistance shall be granted ✓ Best interest of the child ✓ Returned to family, a nominated guardian or adequate reception facilities in the State of return	Art. 17 ✓ Detention only a measure of last resort ✓ In detention access to leisure activities ✓ In detention access to education ✓ Provided with accommodation Best interest of the child	• Art. 3(9) (Definition 'vulnerable persons') • Art. 5 (Non-refoulement, best interests of the child, family life and state of health) • Art. 7(2) (Voluntary departure) • Art. 14(1)(c) (Safeguards pending return)	• Preamble, Rec. 22

[6] Does not apply for The United Kingdom, Ireland and Denmark. Furthermore, this Directive will be extended (European Commission, Long-term residents, 2013)

Appendix 3: Flow Charts

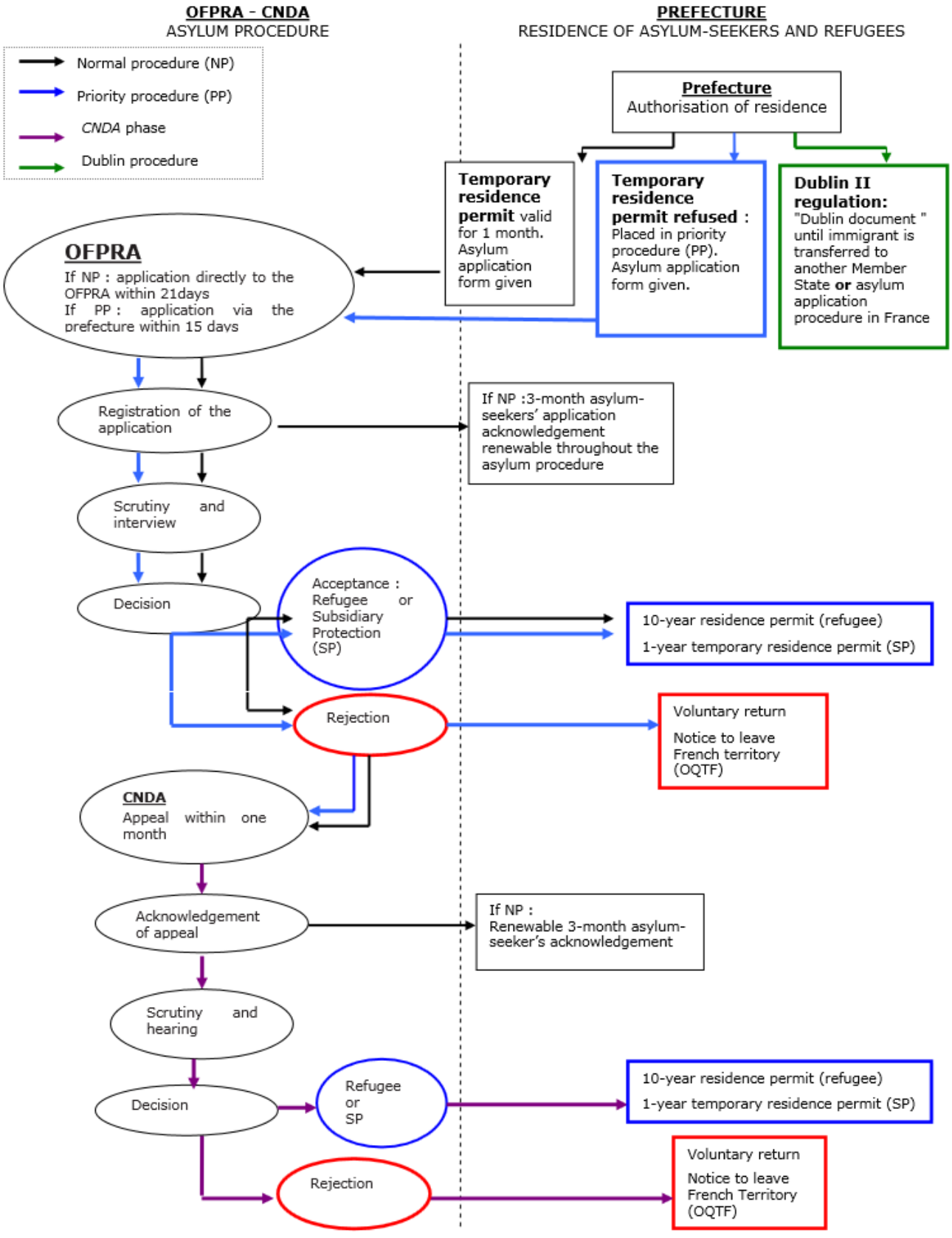
Appendix 3: Flow Charts

3.1 The United Kingdom



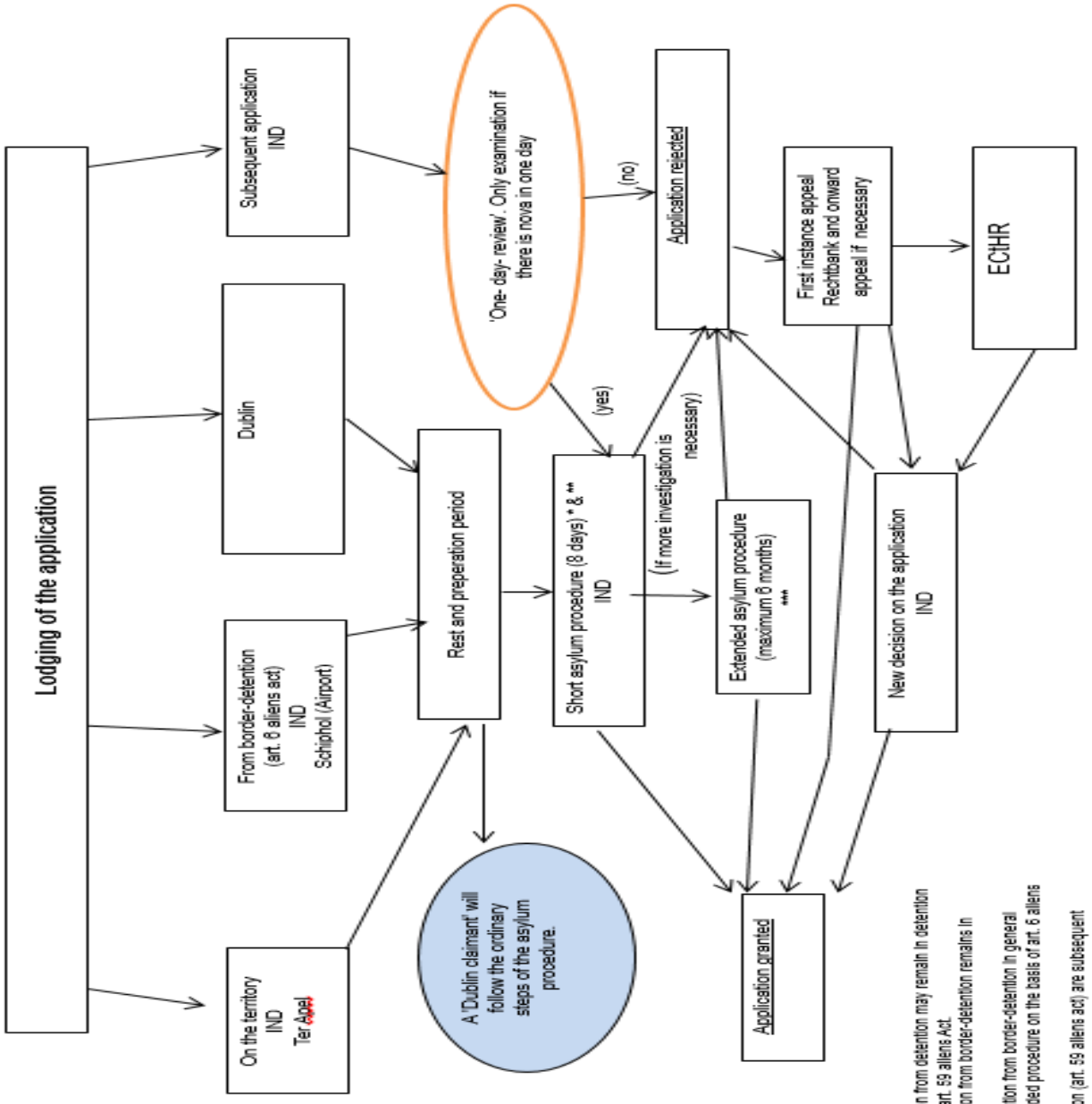
Source: Coram Legal Centre

3.2 France



Source : Ministère de L'intérieur, De L'Outre-Mer, Des Collectivités Territoriales et De L'Immigration

3.3 The Netherlands



Source: Asylum Information Database

Appendix 4: Interviews Summaries

4.1 Interview 1

The first interview conducted was with interviewee 1 a jurist/legal counsellor at L.O.G.O, which is a cooperation between local authorities. It deliberates on issues in the reception and return policy. In particular, it deliberates on asylum seekers who have become homeless, as their right to stay at reception locations is lost. As a result, local authorities are confronted with homeless asylum seekers. Some still have pending cases, which are allowed to stay in the Netherlands, but not in reception locations. As a consequence, people can barely survive and support is not given to them, resulting in 'more' problems for local authorities. With regard to unaccompanied and separated asylum seeking children (UASASC) turning 18, similar problems are occurring, possible in a higher degree. For these reasons, L.O.G.O. has always sought solutions. This resulted in the 'Project-Perspectief' or 'prospect projects'. Unaccompanied and separated asylum seeking children who had turned 18, a vulnerable group, ended up in deprived situations, basically because provisions were lost after becoming legally adults. The main reasoning was 'you have to return', even though some were not required to return, however, the main thought was 'the asylum procedure is completed, so provisions stop'. The situation of these vulnerable recently turned adults, increased the attention from local authorities, that sought expanding support for this particular group, as this was not provided by the State.

Concerning the 'Kinderpardon' or 'children's amnesty', for years were local authorities confronted with long-staying families with children and children that had become 'rooted'. These children became part of society, going to school, making friends and going, for instance, to sport clubs and church. However, as these children were asked to return to their country of origin, campaigns were set up by friends and local communities, so that the child in question could stay. Mayors were confronted with this, a few times per year. Moreover, local authorities recognised the consequences for an enforced return of these 'rooted' children. A part from this, the 'Pardon' or 'amnesty' of 2007, resolved some of these issues, however, mainly for long-staying asylum seekers. At present, more public support was given to resolve the issues concerning long-staying children. As for former unaccompanied and separated asylum seeking children (fUASASC), that had been living for years in the Netherlands, now could under 'children amnesty' be granted with a residence permit.

Yet, interviewee 1, highlighted that this regulation, is still not a solution for all long-staying former minors and fUASASC, due to the established criteria (Interviewee 1, personal interview 8 September, 2014). As this is the case for adults older than 21, who have been living for

more than five years in the Netherlands and for children that were put under State supervision. Above all, it was State's mistake, that these children were put under State's supervision, because until 2010, policy did not ensure reception locations to families with children that were not eligible for reception provisions. As a result, families with children had to leave reception locations, which affected the children. Furthermore, policy was breaching the Convention on rights of the Child.

Regarding solutions, from the point of view of interviewee 1, cooperation with UASASC and fUASASC is needed, in cases of possible return or in cases were staying belongs to a possibility (Interviewee 1, personal interview, 8 September, 2014). Facilitating this, would have more success. Furthermore, cases should individually be looked into, since a lot is invested in these children, for instance, in terms of education. This would also prevent illegality.

Furthermore, as for policy on fUASASC, interviewee 1 stressed provisions are needed for this group, because of their vulnerability and apart from this, should not be living on the streets (Interviewee 1, personal interview, 8 September, 2014). As to the EU, a standard for provisions for this particular group, could be, in the Interviewee's opinion, a solution, as well as more cooperation on EU level. A European 'children's amnesty' was advised against, solely for the reason that policy should be in such a way that an 'amnesty' is not needed. That is to say, policy should prevent situations like these.

Finally, as regards to children's rights and UASASC in transition to adulthood, interviewee 1 suggests distinction is necessary in terms of vulnerability, which in most cases is made (Interviewee 1, personal interview, 8 September, 2014). For this reason, people, in particular this group, should not be left without shelter or provisions. Since, this is violates human rights. Moreover, vulnerable people are safeguarded in EU law, therefore, such distinction is needed, so that fUASASC are protected as children's rights will not apply anymore.

4.2 Interview 2

For more research regarding unaccompanied and separated asylum-seeking children (UASASC) and former unaccompanied and separated asylum-seeking children (fUASASC), a second interview was conducted, with interviewee 2, an employee of Nidos, a foster organisation for unaccompanied and separated asylum-seeking children. The organisation also helps UASASC in transition to adulthood, ensuring accommodation, the possibility to enrol in a course and/or employment. Furthermore, the organisation reaches out to other organisations, that can acts as 'buddy' after UASASC have legally become adults. However, this support depends on the status UASASC have.

With regard to UASASC in transition to adulthood, that have to return to their country of origin, the organisation tries to help these youngsters with the return, before the child in question

has reached 18. However, some of these recently turned adults choose to leave the Netherlands and move to another European country, whilst other choose illegality. Some of these youngsters are capable of surviving very well, whilst others are not. Either way, these young adults are, according to interviewee 2, informed on the consequences of turning 18. They are allowed to finish their study, if this was started as a minor, however, a new course cannot be followed (Interviewee 2, personal interview, 16 September, 2014).

Furthermore, there was long lobbied for the Dutch regulation 'Kinderpardon' or 'children's amnesty, since children were not considered in the previous 'amnesty', even though, they were living in the Netherlands for a lengthy period of time. In the interviewee's opinion, this would put a burden on children. This was, therefore, made known to politicians. However much, the children's amnesty seemed a solutions for some, others were not included. According to interviewee 2, the amnesty is applied too strict, which causes children not meeting the established criteria. Especially, considering the situations of some children. The interviewee believed, therefore, that cases should be examined individually, in order to determine the level of 'strictness of the amnesty (Interviewee 2, personal interview, 16 September, 2014).

Interviewee 2 also believed that children who have been living for long time in the Netherlands, through no fault of their own, should not be expelled. These cases should be examined with a critical eye. Besides this, interviewee 2 also stressed the importance of expanding the 'buitenschuld beleid' or 'through no fault of your own policy'. Since it is 'more' difficult to be granted with a residence permit under the 'normal' asylum procedure, than through the through no fault of your own regulation. This has been pleaded, however, without result (Interviewee 2, personal interview, 16 September, 2014).

Finally, with regard to provisions and support, which stops after the UASASC have turned 18, the interviewee supported an idea for expanding guidance of these recently turned adults. However, the interviewee believed the length of guidance should be defined (Interviewee 2, personal interview, 16 September, 2014).

Appendix 5: Interview Transcripts

5.1 Interviewee 1: Interview Transcript

Interviewee 1: Jurist/Legal Counsellor at *Stichting INLIA/* L.O.G.O.
Duration: 31 minutes
Date: 8 September 2014

Deyanira Gonzalez:	Allereerst wil ik u bedanken voor het interview.
Interviewee 1:	Graag gedaan.
Deyanira Gonzalez:	Dit interview is bedoeld om onderzoek te doen naar alleenstaande minderjarige die 18 worden in Nederland en om u eerst te introduceren, zou ik u graag vragen wat uw functie en ervaring is?
Interviewee 1:	Mijn ervaring met de alleenstaande minderjarige asielzoekers?
Deyanira Gonzalez:	Nee uw functie bij de stichting LOGO.
Interviewee 1:	Bij LOGO ben ik secretaris van het LOGO, dat betekent dat je ondersteunde activiteiten verricht voor het secretariaat van het LOGO en het LOGO is een samenwerkingsverband van gemeentes die dus geconfronteerd worden met het problematiek van dakloze asielzoekers en ja, en zich bezig houdt ook met knelpunten die zitten in het opvang.. Rijksopvang en terugkeerbeleid.
Deyanira Gonzalez:	Oké
Interviewee 1:	En daar worden gemeentes in toenemende mate mee geconfronteerd, eigenlijk gewoon mee geconfronteerd omdat Nederland een beleid kent van dat er einde aan de opvang komt..
Deyanira Gonzalez:	Ja
Interviewee 1:	Nou, eigenlijk al na de beroepsfase van de eerste asielprocedure, dan komt er eigenlijk al een einde aan de opvang en mensen hebben dan vaak nog procedures lopen en mogen nog gewoon in Nederland zijn, maar mogen eigenlijk niet, hebben eigenlijk geen mogelijk om te overleven hier...
Deyanira Gonzalez:	Nee
Interviewee 1:	Die mogelijkheid wordt ze eigenlijk niet gegeven, nou dat levert voor problemen, voor gemeenten allemaal problemen op ook, omdat je zit met een groep uit daklozen mensen. Nou je ziet de gevolgen daarvan onder andere bijvoorbeeld weer in Amsterdam... Dat soort toestanden krijg je dan meer in het verleden speelde zich dat heel erg in verborgenheid altijd af…
Deyanira Gonzalez:	Ja
Interviewee 1:	Op kleinere schaal en nu wordt dat heel manifest met bijvoorbeeld inderdaad die groepen die in Amsterdam en Den Haag zitten.
Deyanira Gonzalez:	Ja.. en voor de jongeren die zeg maar net 18 worden?
Interviewee 1:	Ja
Deyanira Gonzalez:	Wat ziet u met deze groep? Wat ziet u gebeuren?

Interviewee 1:	Ja, eigenlijk hetzelfde probleem en misschien nog wel in verhevigde mate omdat ook de LOGO gemeenten hebben eigenlijk altijd al meegedacht met oplossingen voor deze doelgroep…
Deyanira Gonzalez:	Ja
Interviewee 1:	Zo is onder andere.. dat ex-AMA... is dan ooit een project ontworpen. Project-Perspectief was juist bedoeld voor ex-AMA's, AMA's die net 18 jaar werden, omdat die inderdaad standaard op straat terecht kwamen. Nou wat zagen we toen, toen kwamen mensen vaak in verkeerde handen terecht, kwamen nou in meest schrijnende toestanden bij jonge eigenlijk kwetsbare mensen en dan omdat hun voorziening gewoon, ja eigenlijk stop gezet werd op hun achttiende en de gedachte was toen van ja dan moet u maar terugkeren, en zelfs al hoeven ze niet terug te keren, want dan was de gedachte van een asielprocedure is afgerond dus houdt de ondersteuning op
Deyanira Gonzalez:	Ja
Interviewee 1:	En zo gaat dat ook bij gewone asielzoekers, nou voor deze groep die eigenlijk net, te puber af is om zo maar te zeggen, of deels nog puber is, en het is gewoon een kwetsbare groep dus
Deyanira Gonzalez:	Ja
Interviewee 1:	Daarom heeft dat ook verhoogde aandacht gevraagd van gemeentes, omdat juist een kwetsbare groep is, en men heeft ook in de ondersteuning vaak gekeken naar.. ja, en verruimende ondersteuning ook voor deze groep, maar puur omdat dat geen andere mogelijk was, omdat het Rijk geen ondersteuning bood
Deyanira Gonzalez:	Nee, oké en is er daarom gelobbyd voor een Kinderpardon?
Interviewee 1:	Nou, het Kinderpardon, die kwestie kwam eigenlijk .. ja ook voor dat feit dat je te maken hebt met, en als gemeentes daar ook mee geconfronteerd wordt, met langdurende verblijvende gezinnen en met minderjarige kinderen, maar ook kinderen die hier al geworteld zijn en…
Deyanira Gonzalez:	Ja
Interviewee 1:	Daar worden gemeentes ook mee geconfronteerd, want ze gaan in die gemeentes naar scholen en dus gaan naar de sportclub, dus op diverse manieren worden gemeentes daar mee geconfronteerd, die vindt vaak als eerste, nou ja dat er ook vaak bijvoorbeeld ook mensen niet uitgezet worden en dat mensen, ja het leven ondertussen toch verder gaat. Dus die zien ook, mensen krijgen vrienden, maken vriendinnetjes, zelfs kinderen hier.. ja dus en als iemand dat goed ziet qua overheid is het vaak de gemeente die dat heel goed zien...
Deyanira Gonzalez:	Ja
Interviewee 1:	En, nou heel vaak gaan die gezinnen met kinderen zijn ook heel erg geworteld in die gemeentes, je ziet ook heel vaak bijvoorbeeld acties van scholen voor leerlingen om niet te… dat ie mag blijven..
Deyanira Gonzalez:	Ja
Interviewee 1:	Nou, daar worden burgemeesters eigenlijk per jaar, vaak wel een paar keer mee geconfronteerd, dus nou ja goed, en je hebt gewoon een groep van langdurige verblijvende kinderen en ook is het gemeentes bekend dat, dat ook op een gegeven moment voor kinderen zelf niet meer goed is om ze dan het land weer uit te zetten

Deyanira Gonzalez:	Ja
Interviewee 1:	Dus ja en, nou ja over het algemeen zien gemeentes ook inderdaad een groep is die, die van kinderen die er al heel lang, lang is… en dat is eigenlijk hoe het LOGO ermee geconfronteerd werd, ook met dit vraagstuk en tegelijkertijd, ja dat is eigenlijk toen werd het LOGO en de gemeentes al, eigenlijk worden gemeentes daar al jaren lang mee geconfronteerd. Nou vorig pardon heeft toen ook heel veel, dat was eigenlijk het pardon uit 2007, heeft toen ook heel veel voor langdurig verblijvende kinderen opgelost, maar überhaupt voor langdurige verblijvende asielzoekers en nu ja was er ook draagvlak voor breder dan nog gemeentes draagvlak ook voor, voor deze kinderen met name dus en dat zou ook ja voor die gemeentes die dan heel veel veelvuldig geconfronteerd worden met kinderen die hier al lang zijn, kan dat ook weer… (interview stopped)
Deyanira Gonzalez:	(Interview resumed) We hadden het over het pardon uit 2007, dat het zeg maar voor kinderen dus had opgelost, en voor jongeren die dan net 18 zijn geworden denkt u dan dat er voor die jong volwassenen ook zeg maar wat wordt opgelost of?
Interviewee 1:	Je bedoelt die nu 18 worden of die…
Deyanira Gonzalez:	Die toentertijd zeg maar 18 zijn geworden…
Interviewee 1:	Met het kinderpardon?
Deyanira Gonzalez:	Ja
Interviewee 1:	Ja, nou ja niet zonder meer, omdat ze, ja die moesten eigenlijk voor hun 13e hier zijn gekomen, nou het gaat om AMA's, en dat is eigenlijk.. de minderheid van de AMA's is jonger dan 13 jaar voor dat ze hier komen dat was een der mate eigenlijk strenge voorwaarde, aan de ene kant is dat ook wel logisch, omdat je dan.. ja, vaak moet er toch ergens een streep gezet worden en dan mag je in ieder geval wel een vijfjarige, een minderjarige hier… alleen het merkwaardige is steeds geweest van dat de ook groep daarbuiten viel die inmiddels ouder dan 21 jaar was.. dus ook die groep die voor hun 13e in Nederland kwamen, en inmiddels na die peildatum ouder dan 21 jaar waren, dat hebben wij ook als L.O.G.O. ook nooit begrepen, omdat je dan eigenlijk de mensen die eigenlijk nog meer zijn geworteld, als bijvoorbeeld een Mauro, dat die dan buiten dat pardon vallen, dus Mauro viel der net in, maar met de andere afgelegen asielzoeker uit Limburg die eigenlijk nog een jaar langer in Nederland was, die viel er bij wijze van spreken buiten, puur omdat ie ouder dan 21 was, en dat hebben wij nooit zo heel goed begrepen.. waarom niet.. en het ging ook niet om een hele grote groep, dus wat dat betreft, dus zou dat met die, met het openen van die 21 jarige leeftijd daardoor honderden extra mensen toegelaten moesten worden, maar het gaat ook om een stukje ja, rechtvaardigheid en principes wat dat betreft, dus de 13 jaar is goed te verdedigen op zich, dat je op een gegeven moment inderdaad ga je...dat de criterium is vijf jaar of minder jaar in Nederland, daar valt niks over te zeggen, maar dan een bovengrens is… dan hebben we 21 jaar, omdat je kennelijk ja.. die door de Kamer willekeurig is ingesteld en dat ging… dat gaat om de meeste gevallen om mensen die eigenlijk langer in Nederland zijn, dan die personen die er wel onder vielen, dus

	dat is heel raar… Dus dat hebben we altijd ook heel vreemd gevonden. Dat er nog steeds aan gekoppeld zit…
Deyanira Gonzalez:	Ja, en wordt er daarom zeg maar nu opgeroepen voor een eerlijk kinderpardon? voor het versoepelen eigenlijk, van die regels van de criteria?
Interviewee 1:	Ja omdat, kijk het is een kwestie van burgemeesters die moeten het ook kunnen uitleggen aan hun onderdanen en bij de mensen die bij hen aan de bel trekken, en een aantal dingen kun je niet uitleggen, nou die kwesties waren ook dat van dat gemeentetoezicht, dat konden zij ook niet uitleggen, van hoe leg je dat uit dat als je wel gewoon eigenlijk na een lange tijd bekend was, dat je naar school ging, dat je naar die sportvereniging ging, nou al die zaken.. ja dat kunnen burgemeesters, ja voor hen is dat gewoon heel moeilijk om uit te leggen van waarom die mensen dan niet onder het pardon zouden vallen en andere mensen wel die… want het had ook nog te maken met… het beleid van Nederland was op een gegeven moment, om… Rijksoverheid is altijd geweest tot 2010, tot juli 2010 om gezinnen met minderjarige kinderen die kwamen ook niet meer voor opvang in aanmerking, dus die werden eigenlijk standaard op straat gezet en in juli 2010 is daar toen een einde aangekomen, omdat dat gewoon niet mocht van de rechter en toen zijn mensen eigenlijk altijd in het beeld van de Rijksoverheid gebleven… en nu dreigen we die fout van de Rijksoverheid van destijds, die mensen vallen er juist weer buiten, omdat de Rijksoverheid toen eigenlijk ten onrechte mensen op straat zette .. zijn ze nu in een aantal gevallen, zijn ze daardoor hebben ze hun Rijks toezicht kwijtgeraakt en daardoor vallen ze dus ook niet onder het pardon.. dat is gewoon heel triest eigenlijk dat, dat door die foute handeling van de overheid zelf, die mensen nu met brute woorden van.. dat ze daardoor nu niet onder het pardon vallen... en dus dat is ook altijd een van de redenen geweest waarom men dit niet terecht vond dat er geëist werd van dat er per se, dat er alleen bij rijk toezicht kon
Deyanira Gonzalez:	Ja, en welke gevolgen had dat voor de kinderen die op straat werden gezet?
Interviewee 1:	Nou ja, vergaande gevolgen, je komt in een afhankelijke situatie terecht. Sommige mensen komen in een noodopvang terecht, nou dat is dan nog een van de redelijke, een van de prettigere opties, maar ja niet iedereen komt met een heel gezin in een noodopvang terecht want, niet iedere noodopvang, niet iedere gemeente doet iets aan noodopvang, dus kwamen mensen soms in ja bij kennissen terecht en of moeten van dag naar dag ergens naar toe trekken en ook hier zie je dus niet altijd dat mensen, die uitgeprocedeerd waren, want dat wordt vaak gezegd, maar het ging heel vaak om mensen die ook nog gewoon in procedure waren, maar die procedure geeft dan geen recht op opvang en daarom werden mensen op straat gezet, ze waren niet verwijderbaar, maar men mag dus gewoon in Nederland zijn, maar desondanks, wordt er niet voorzien in de mogelijkheid om te overleven, nou ja, die mensen komen dan soms in hele afhankelijke situaties terecht en ook die kinderen krijgen daar natuurlijk iets van mee
Deyanira Gonzalez:	Ja
Interviewee 1:	En vaak moeten die kinderen al, krijgen al veel verantwoordelijkheid op de schouders, omdat ze bijvoorbeeld moeten tolken voor de ouders, omdat ze onderwijs hebben gedaan, zie je eigenlijk een omkering van de rollen dat kinderen de ouders op sleep nemen, omdat zij de samenleving beter begrijpen en ook zij de taal spreken dus, je krijgt daar heel veel, die krijgen sowieso al heel vaak de ellende van de

	ouders krijgen ze ook nog een keer op hun nek
Deyanira Gonzalez:	Ja
Interviewee 1:	Dat speelt soms ja, dat zie je bij veel kinderen en dan met name iets oudere kinderen, speelt dat ook een rol dus je ziet dat, dat op straat zetten, dat dat ook niet helpt, nou gelukkig is dat uiteindelijk door de Hoge Raad is ook erkend van nee Nederland mag helemaal geen gezinnen met minderjarige kinderen op straat zetten, maar als het aan de Minister had gelegen dan was dat nog heel lang doorgegaan
Deyanira Gonzalez:	Klopt
Interviewee 1:	Want, hij heeft dan Het hoogste is dan, die heeft het benodigde al geprocedeerd, terwijl dat toen al vanuit de Europese Comité, en na herhaling van klachtenbrieven en soort asiel berm, was er toen ook al eigenlijk aangegeven dat dat niet kon dat het in strijd was met ook het kinderrechtenverdrag
Deyanira Gonzalez:	Ja
Interviewee 1:	En, met het sociaal handvest, maar desondanks wilde destijds Minister Leers, wilde niet van ophouden weten, dus toen is Minister Leers, is ook nog weer uiteindelijk moest hij door de Hoge Raad op de vingers getikt worden, om ja om, nu een redelijke fatsoenlijk gelegen uitspraak te krijgen, dat Nederland geen gezinnen met kinderen op straat zet en dat was iets wat gemeentes bijvoorbeeld met die noodopvang voelde zich daardoor toen ook heel erg in gesterkt, door die uitspraak van de Hoge Raad, want dat deden gemeentes ook al, gemeentes die aan een noodopvang deden, die vonden juist ook, dat het niet aanging om gezinnen met minderjarige kinderen op straat te hebben
Deyanira Gonzalez:	Ja, dit zijn dus natuurlijk kinderen en zij hebben natuurlijk nog hun kinderrechten zoals u al zei, maar bijvoorbeeld voor kinderen die net achttien worden, die verliezen dan hun kinderrechten en ook natuurlijk die, ja in Europese Wet zijn er wel bepaalde bepalingen gekomen voor deze, ja kinderen maar ja, zodra zij achttien worden, vervallen dat natuurlijk allemaal en wat is eigenlijk in uw mening de beste oplossing voor deze kinderen, of ja deze jonge volwassene? En qua beleid?
Interviewee 1:	Nou kijk, in ieder geval is het zo van, en daar zijn alle gemeentes eigenlijk van de drongen van.. en daar hebben ook juist de gemeentes met het project perspectief willen benadrukken van ga er nou voor zorgen, dat ze in ieder geval niet met onbekende bestemming vertrekken oftewel en ook niet dat ze zonder voorzieningen op straat komen te staan en ga nou met die jongeren werken naar, nou het project zegt het al, naar een perspectief en dat kan zijn een perspectief hier in Nederland, als daar goeie kansen voor bestaan, even los van het Kinderpardon, of een perspectief op een terugkeer naar het land van herkomst, ga daar met die jongeren mee aan de slag, want dat zijn ook jongeren die hebben een opleiding gedaan, er is veel in geïnvesteerd en je moet met die jongeren gewoon naar een realistisch perspectief kijken, voor de situatie waarin iemand zit, want de ene minderjarige ex-asielzoeker minderjarige asielzoeker, is de andere ook niet en je hebt ook nog een keer te maken met meerderjarige asielzoekers die bijvoorbeeld uit, of ex-minderjarige asielzoekers die uit oorlogsgebieden komen..
Deyanira Gonzalez:	Ja
Interviewee 1:	Daar verandert de situatie weer, dus je moet het op individueel niveau eigenlijk bekijken, maar wel de algemene lijn is: kijk gewoon naar het perspectief, dus dan wel naar het perspectief op hervestiging en

	land van herkomst, of wel kijk naar als het perspectief dan nog op verblijven is, dan kan dat nog een optie zijn
Deyanira Gonzalez:	ja
Interviewee 1:	En ga je jongeren niet ondertussen op straat zetten, niet tot ze daadwerkelijk het land hebben verlaten of bijvoorbeeld echt een vergunning hebben en zelfstandig kunnen leven van een uitkering, of van werk, of van studiefinanciering, maar ga tot die tijd die jongeren in ieder geval niet op straat zetten, dat is eigenlijk wat het LOGO, de LOGO gemeentes voor staan
Deyanira Gonzalez:	Ja, en u bent dus wel van mening dat het toekomst-perspectief project weer terug zou moeten komen?
Interviewee 1:	Nou, het zal niet moeten gebeuren, want kijk ja er wordt ook wel begrepen dat niet iedereen een vergunning hier kan krijgen, dat valt onder beleid
Deyanira Gonzalez:	ja
Interviewee 1:	En, ja laat dus ook tegelijkertijd wel veel voorbeelden waar je jongeren alsnog wel een vergunning na hun achttiende krijgen en dat hebben we ook in project perspectief gezien, dat ze soms nog wel, nou ik weet het percentage niet uit mijn hoofd, maar dat was een hoog percentage dat alsnog een vergunning krijgt, na hun achttiende, dat moet je dan als gemeente en je moet dan als hulpverlener, kun je zeggen van ja je moet terug, maar ja als je dan tegelijkertijd ziet dat er best wel een redelijke kans is, en niet in alle gevallen, maar je kunt soms best aan de hand van procedures, best kijken van.. dat toch een groot percentage nog een vergunning krijgt, dat is gewoon realiteit.
Deyanira Gonzalez:	ja
Interviewee 1:	Dus je moet met die realiteit moet je gewoon ja ‘dealen’ mee omgaan en kijken of daar inderdaad goede mogelijkheden op staan en ja en aan de hand daarvan naar een perspectief toe werken en als dat perspectief, dat kan dus inderdaad zijn hier toch nog op een verblijf in Nederland, maar het kan ook zijn als er echt geen perspectief hier op een verblijf in Nederland is, dan zou dat richting het terugkeer moeten zijn..
Deyanira Gonzalez:	ja
Interviewee 1:	Maar wel vanuit het bewustzijn en dan ook samen met die jongeren daar naar te kijken, omdat dat het beste werkt vaak…
Deyanira Gonzalez:	Ja, dat snap ik en in theorie zou het Kinderpardon voor deze groep ook een uitkomst kunnen bieden?
Interviewee 1:	Ja
Deyanira Gonzalez:	maar wat gebeurt er daarna? Want stel zij krijgen dan een verblijfsvergunning, in theorie dan onder het Kinderpardon, maar wat is dan de volgende stap? Krijgen zij dan nog voorzieningen? Of is het dan helemaal dus niks?
Interviewee 1:	Nee, kijk als jij een verblijfsvergunning krijgt of een pardonvergunning, dan is het zo, dan zitten daar ook alle materiele voorzieningen aan gekoppeld, dus een verblijfsvergunning kun je gewoon, dat is gewoon binnen het systematiek van het vreemdelingenwet en eigenlijk op volgens mij bijna alle vergunningen, nou misschien is er een uitzondering, maar in ieder geval met dit soort vergunningen kun je bijvoorbeeld

	gewoon een uitkering aanvragen, of kun je gewoon studiefinanciering krijgen, dat zit dan gekoppeld aan die verblijfsvergunning, die mensen kunnen gewoon in feite vanaf dan een zelfstandig leven.., ze mogen ook werken bijvoorbeeld dan ook met die vergunning, dus met een pardonvergunning kunnen wij eigenlijk meteen hun toekomst een invulling geven om zomaar te zeggen.
Deyanira Gonzalez:	U zou ook kunnen zeggen, dat het stimuleert om jongeren in ieder geval de goede kant op te sturen en dat ze zeg maar niet de criminaliteit of illegaliteit ingaan, omdat ze de verkeerde keuzes maken?
Interviewee 1:	Ze hoeven inderdaad niet meer de illegaliteit in, en kijk criminaliteit dat kun je nooit helemaal voorkomen, maar het doet ze fijn niet meer gedwongen de illegaliteit in te gaan of bijvoorbeeld ook overlevingscriminaliteit, daar zijn sommige ook toe gedwongen geweest, om zomaar te zeggen en dat soort situaties voorkom je dan, dus je geeft net zoals ja, als alle Nederlandse jongeren, daarvan kun je criminaliteit bij wijze van spreken nooit 100% voorkomen, maar je creëert wel voorziening, waardoor iemand zelf ja zijn eigen leven kan vormgeven en in ieder geval een minimum heeft ook.
Deyanira Gonzalez:	Ja, en er bestaat zeg maar een soortgelijke regeling niet, ik heb onderzoek gedaan naar Engeland en Frankrijk, en een soortgelijke regeling bestaat daar niet. Wat kan er gedaan worden voor die kinderen en die landen?
Interviewee 1:	Bedoel je een Kinderpardon regeling bestaat niet in Engeland en Frankrijk?
Deyanira Gonzalez:	Ja
Interviewee 1:	Ja, kijk het is altijd een beetje.. dit Kinderpardon is in feite ook maar eenmalig, want je hebt weliswaar een structurele regeling en een eenmalige regeling...
Deyanira Gonzalez:	Ja
Interviewee 1:	Maar zoals het nu voor staat in die structurele regeling, die is dusdanig zwaar qua bewijslast dat, dat ook op dit moment althans denk ik vrij zelden een uitkomst zal bieden
Deyanira Gonzalez:	Oké
Interviewee 1:	Die eenmalige regeling daar, daar ja zijn al veel jongeren onder gevallen en dat kan alsnog een uitkomst bieden, maar ja die eenmalige regeling is eigenlijk weer in ieder geval, de intentie is geweest om het oude beleid gewoon voort te zetten
Deyanira Gonzalez:	Ja
Interviewee 1:	En dus het is dus weliswaar een eenmalige regeling, dat ja eigenlijk, het is wel een structurele regeling, maar zoals het er op dit moment voor staat, zie je, de structurele regeling ziet er, ja ziet er gewoon uit dat het nou vrij moeilijk zal worden of zo niet vrij onmogelijk zal worden om op die gronden makkelijk een verblijfsvergunning te krijgen als je vijf jaar in Nederland bent als minderjarige
Deyanira Gonzalez:	Ja
Interviewee 1:	Omdat, de criteria heel streng zijn dus in die zin blijkt dat het probleem in Nederland is, dan ook niet opgelost
Deyanira Gonzalez:	nee
Interviewee 1:	Maar in Engeland en Frankrijk, ja kijk daar heeft men weer ja andere vormen van beleid, eerlijk gezegd

	weet ik dat ook niet precies, maar ja ook jongeren kunnen gebaad zijn van bijvoorbeeld: bij gewoon beleid wat bepalend is voor meerderjarige asielzoekers dus als het gaat om een asielzoeker uit Afghanistan, een minderjarige asielzoeker uit Afghanistan en het beleid van Afghanistan zou bij wijze van spreken gewijzigd worden, dan kan ook een minderjarige daarvan kunnen profiteren dus ja wat bij Engeland en Frankrijk zie je vooral, is dat bij de trein tunnels zie je wat voor toestanden ja soms Europese beleid oplevert en dat neemt ook ten onrechte, denk ik wel eens, het idee dat Engeland heel soepel is en dat men daar altijd terecht kan, wat ook niet altijd klopt
Deyanira Gonzalez:	Ja
Interviewee 1:	Dus maar ja Engeland en Frankrijk die, ik weet niet precies wat het beleid inderdaad is, ik geloof het zeer van je als je zegt dat daar geen Kinderpardon is
Deyanira Gonzalez:	nee
Interviewee 1:	maar ja daar heb je wel weer ander beleid, en daar heb je bijvoorbeeld ook, heb je weer het beleid van dat als je geen vergunning krijgt en niet uitgezet kan worden krijg je een soort uitkering en dan wordt je in ieder geval… krijg je gewoon voorzieningen tot het moment dat je er daadwerkelijk uitgezet kan worden
Deyanira Gonzalez:	Ja
Interviewee 1:	Dat is nou bijvoorbeeld al waar wat het LOGO en gemeentes daar ook voor staan, dus geef mensen gewoon in ieder geval voorzieningen zolang ze in Nederland zijn en zolang ze niet uitgezet kunnen worden
Deyanira Gonzalez:	Ja
Interviewee 1:	Maar, dat is iets waar al lang al gepleit voor wordt en ook voor juist voor AMA's of ex-AMA's om dat te doen, juist omdat dat al een kwetsbare groep is voor wie het al helemaal niet goed is om op straat te overleven
Deyanira Gonzalez:	Nee, en denkt u zeg maar dat voor die jongeren een soort Europees norm zou moet komen?
Interviewee 1:	Nou, uiteindelijkmoet je denk ik wel kijken naar dat je daar een Europees norm voor hebt voor minimale voorzieningen en je zou ook meer misschien moeten kijken überhaupt naar maar meer samenwerkend ja, samenwerking op Europees vlak of terugkeer aangaan verbod ook daar zou je meer naar moeten kijken
Deyanira Gonzalez:	Ja, want ik denk dat het Kinderpardon omdat het zeg maar zo omstreden is geweest en omdat er zoveel ja bezorgdheid is geweest en ook in de media en politiek dat het misschien qua Europese regeling dat het misschien hetzelfde effect zou hebben of denkt u dat het toch misschien ja...
Interviewee 1:	Bedoel je een Europees Kinderpardon?
Deyanira Gonzalez:	Ja
Interviewee 1:	Nou ja kijk, eigenlijk moet je niet aan een pardon willen eerlijk gezegd en dat klinkt misschien een beetje gek, eigenlijk is het pardon eigenlijk al een maatregel die je niet zou moeten willen, omdat het ook betekent dat je zit met een situatie die niet wenselijk is
Deyanira Gonzalez:	nee
Interviewee 1:	Maar soms is er geen andere oplossing mogelijk, maar eigenlijk zou je moeten komen met een dusdanig

	goed beleid dat je geen pardon nodig hebt, daar moet je eigenlijk naar streven, denk ik
Deyanira Gonzalez:	Ja
Interviewee 1:	Omdat, je.. een pardon is een maatregel omdat dat ja, omdat iets.. een situatie te lang heeft geduurd of omdat er niet de nodige maatregelen heeft genomen die voldoende waren om het probleem mee op te lossen en dat doe je dan met zo een ja een pardonregeling die ook weer ja in zekere zin weer allerlei beperkingen met zich mee, omdat het soms ook hele ja forse grenzen trekt tussen groepen bijvoorbeeld, iemand die bijvoorbeeld net ja, laat benners die krijgen bijvoorbeeld geen pardon, iemand die een dag te vroeg is die krijgt wel een pardon en ja dat zijn nou allemaal redenen voor waarvoor dat is, dus daarvoor eigenlijk is dat ook geen ideale maatregel, eigenlijk is dat iets waar je een rechtstaat denk ik überhaupt niet te veel naar zou moeten kijken tenzij het een oplossing is voor een jaar lang met een slepend probleem, wat je echt iets hebt kunnen oplossen, dus er kunnen wel redenen zijn om dat te doen, maar eigenlijk zou je moeten streven naar een beleid wat dit soort problemen voorkomt
Deyanira Gonzalez:	oke
Interviewee 1:	En wat ook niet... wat eigenlijk maakt dat je geen pardon nodig hebt.
Deyanira Gonzalez:	Ziet u zoiets ook voor Europa? Want u zei dat er een norm moet komen?
Interviewee 1:	Ja nou ja, je zou wel kijk op vele terreinen migratie is gewoon een zaak van grensoverschrijdend iets, dus je zou in Europa moeten kijken hoe werk je samen op het gebeid van asiel en hoe eigenlijk eerlijk dat iemand die bij wijze van spreken in Italië terecht komt en daar tot bepaalde bevolkingsgroep behoort dat heel anders behandeld wordt dan die gene van hetzelfde bevolkingsgroep in Nederland behandeld wordt
Deyanira Gonzalez:	Ja
Interviewee 1:	En dat zou eigenlijk meer overeen moeten komen, stel in die zin zou er een standaard moeten komen voor ja het hele beleid bij wijze van spreken, natuurlijk zal er kleinere variaties altijd kennen, maar het is ja, het zou goed zijn om een aantal punten gewoon inderdaad een heel duidelijk gemeenschappelijk normen te hebben en die zijn er ook wel en die komen er in toenemende mate hoor..
Deyanira Gonzalez:	Ja
Interviewee 1:	Maar ja, dat is, lijkt wel wenselijk zijn
Deyanira Gonzalez:	Ja, en denkt u zeg maar voor de ex-AMA's die dan geen kinderrechten meer hebben, dat bepaalde rechten eigenlijk nog wel breder gemaakt moeten worden?
Interviewee 1:	Ja, nou kijk sowieso geldt ook voor ex- minderjarige, is het een technisch juridische kwestie van die is net meerderjarig geworden, dus geen kind meer, dus kinderrechten verdragen niet meer van toepassing
Deyanira Gonzalez:	Klopt
Interviewee 1:	Eigenlijk zou je ja moeten kijken en dat gegeven wordt ook wel vaak gedaan van dat je, ja dat het toch wel een kwetsbare groep is en daar moet je rekening mee houden en volgens mij wordt het ook wel, staat het ook wel in Europese richtlijnen, dat je daar ook wel, daar wordt een groep minderjarige ook vaak genoemd hoor
Deyanira Gonzalez:	Ja, klopt

Interviewee 1:	Maar, kijk Nederland kiest ervoor om eigenlijk helemaal ja robuust een verschil te maken tussen kinderen die achttien jaar zijn en personen die achttien jaar worden en dat een hele formalistische uitleg van verschil tussen een juridisch kind en een volwassene, om door een uitsluit te komen om zomaar te zeggen en dus is het een kwetsbare groep, daar moet je rekening mee houden en vaak Europa is ook wel gezegd, en er zijn allemaal richtlijnen voor, bijvoorbeeld terugkeer richtlijn, die zegt ook met kwetsbare groepen moet je gewoon zorgvuldige maatregelen nemen
Deyanira Gonzalez:	Ja
Interviewee 1:	En wij hebben ook bijvoorbeeld artikel 8 van het Europese verdrag, dat ook eigenlijk zegt, voor kwetsbare groepen, personen moet je eigenlijk.. moet je eigenlijk… die hebben, recht op een privé leven, maar dat houdt ook in dat je mensen niet helemaal zonder voorzieningen, bijvoorbeeld moet laten bestaan, dat staat er niet letterlijk in, maar zo een uitleg wordt er wel gegeven, we hebben zo een uitspraak gezien van een Duitse rechter, die bijvoorbeeld zegt van nou het onthouden van voorzieningen dat is gewoon een aantasting van de menselijke waardigheid, nou menselijke waardigheid is ook wat vermeld staat in Europees handvest voor de grondrechten, artikel 1
Deyanira Gonzalez:	Ja, klopt
Interviewee 1:	Dus, los van of iemand nou een kind is of net technisch gezien een meerderjarig is geworden, moet je ook kijken vanuit de gedachte van he gaat om kwetsbare personen? Of.. en vaak gaat het bij jongeren ook om kwetsbare personen, los daarvan heb je het ook over menselijke waardigheid waarin het überhaupt op straat zetten bij wijze van spreken zonder voorzieningen het gedwongen zonder voorzieningen zien te overleven dat lijkt al strijdig te zijn met de menselijke waardigheid ook
Deyanira Gonzalez:	Ja, klopt
Interviewee 1:	Dus, dat is eigenlijk ook vanuit de mensenrechten geredeneerd en zou dat een ja, is dat een argument voor om mensen niet helemaal kwetsbare mensen, niet helemaal zonder voorzieningen te laten staan…
Deyanira Gonzalez:	Dus, kortom u zou dus niet streven naar een Europees Kinderpardon, maar wel dus wel naar een beleid waar er voorzieningen ja komen of in ieder geval of een Europese norm voor deze groep zeg maar?
Interviewee 1:	Nou kijk je moet in ieder geval.. het Kinderpardon zou je moet doen op het moment dat je met zijn allen constateert van he dit werkt niet en mensen zijn daar het slachtoffer van dan is het volgens mij een pardon aan de orde, je moet überhaupt voorkomen dat mensen het slachtoffer worden
Deyanira Gonzalez:	Oké
Interviewee 1:	Dus, je moet eigenlijk komen met een beleid waardoor dit, deze situaties niet ontstaan en natuurlijk zou je altijd wel misschien dit soort situaties houden, maar als het grootschalig is en veelvuldig ja dan moet je misschien toch kijken naar een pardon of het hoeft niet eens te zijn een pardon, je zou ook eens een keer kunnen afwijken van de regels
Deyanira Gonzalez:	Ja
Interviewee 1:	Je zou het ook individueel kunnen bekijken, ja er zijn allemaal opties, maar eigenlijk moet je er wel streven dat je naar een beleid gaat waarin mensen binnen aanzienbare tijd duidelijk krijgen en mogen blijven of niet, en als ze niet mogen blijven, dat ze dan ook terugkeren en nou daar moet je met zijn allen,

	denk ik, dat zou een mooi streven zijn voor ook het Europese beleid
Deyanira Gonzalez:	Ja
Interviewee 1:	Nederlands maar ook voor het Europese denk ik
Deyanira Gonzalez:	Dan zou ik u graag willen bedanken voor dit interview
Interviewee 1:	Graag gedaan
Deyanira Gonzalez:	Mag ik u benaderen via de email, als ik nog vragen heb?
Interviewee 1:	Ja hoor
Deyanira Gonzalez:	Nou, heel erg bedankt hoor
Interviewee 1:	Oke, graag gedaan!
Deyanira Gonzalez:	Dank u wel! Dag
Interviewee 1:	Oke, dag.

5.2 Interviewee 2: Interview Transcript

Interviewee 2: Employee at *Nidos* - legal department
Duration: 19:54 minutes
Date: 16 September 2014

Deyanira Gonzalez:	Allereerst wil ik u bedanken voor het interview.
Interviewee 2:	Graag gedaan.
Deyanira Gonzalez:	Om een beeld te krijgen van de expertise zou ik u willen vragen wat uw functie en ervaring is.
Interviewee 2:	Ja, ik werk al 20 jaar bij Nidos en Nidos is een voogdijinstelling voor alleenstaande minderjarige asielzoekers (the rest of the sentence was left out, in order to guarantee the interviewee's identity)
Deyanira Gonzalez:	Oké, uit onderzoek is gebleken dat Nederland geen specifiek beleid heeft voor AMV's die achttien worden. Kunt u mij precies vertellen wat er met deze jongeren gebeurt zodra zij achttien worden?
Interviewee 2:	Dat is een beetje afhankelijk van hun verblijfstatus hé, in principe probeer je voor dat iemand achttien wordt te regelen dat ie ... dat iemand een woonruimte heeft, een opleiding kan volgen, werk heeft na zijn achttiende en dan kijk je of je een overdracht kan verzorgen met bijvoorbeeld vluchtelingenwerk die als maatje nog kan optreden na achttien jaar, maar voor ons houdt het helemaal op na achttien. Dus wij zijn voogd en voogdij stopt bij achttien jaar dus we kunnen verder ook geen begeleiding meer bieden, daarna…
Deyanira Gonzalez:	En stel dat iemand is uit geproduceerd wat gebeurt er daarna als diegene achttien is worden?
Interviewee 2:	Dan… je moet terugkeren, in principe, naar je land van herkomst als je uit geproduceerd bent. Dus ook dat probeer je van tevoren te bewerkstelligen als je denkt dat dat in het belang is van een jongere. Als dat niet lukt, en die jongere maakt daarin zijn eigen keuze dan probeer je daar bij te begeleiden, bij het maken van een keuze in zover je dat een keuze kan noemen, maar jongeren kiezen er soms ook voor om dan te vertrekken voor hun achttiende en naar een ander Europees land te gaan of om in de illegaliteit te gaan leven.
Deyanira Gonzalez:	Ja.. en wat ziet u als gevolg voor deze jongeren die na hun achttiende geen voogdij meer hebben en dus eigenlijk terug moeten keren… Dat ze dus de illegaliteit ingaan en wat voor gevolg heeft dat dan voor hun levensonderhoud, woonsituatie…
Interviewee 2:	Ja, dat kan je zelf bedenken… dat weet ik ook niet, sommige redden het heel goed, sommige niet
Deyanira Gonzalez:	Zijn daar geen gegevens van bekent?
Interviewee 2:	Nee
Deyanira Gonzalez:	En voordat zij achttien worden, hoe zit het met de informatie verstrekking? Worden ze daarop voorbereid door jullie?
Interviewee 2:	Uiteraard! Dat is onze taak.
Deyanira Gonzalez:	Dus u zou wel kunnen zeggen dat de jongeren op de hoogte zijn van de gevolgen?
Interviewee 2:	Ja, dat wordt besproken, ja natuurlijk

Deyanira Gonzalez:	En voor de AMV's die achttien zijn, die zijn natuurlijk niet meer leerplichtig. Mogen zij hun studie dan ook niet meer afmaken nadat zij een definitief besluit op hun asielaanvraag hebben gekregen?
Interviewee 2:	Nee, je mag een aangevangen studie afmaken.
Deyanira Gonzalez:	Dat wel?
Interviewee 2:	Ja, maar geen nieuwe studie starten, als je stopt mag je geen nieuwe studie starten.
Deyanira Gonzalez:	Oké, ik had nog een vraag over de illegaliteit. De Aliens act van 2000 zou ervoor zorgen dat de AMV's minder snel de illegaliteit ingaan. Wat ziet u daarvan in de praktijk?
Interviewee 2:	Nee daar is geen verschil in. Daar is geen…. Wetswijzigingen hebben er niet toe geleid dat er minder jongeren…. Het is een keuze die zij maken en je probeert jongeren daarop voor te bereiden. Als ze een negatief besluit krijgen dan.. Niemand… Iedereen weet dat leven in de illegaliteit niet oké is. Dus dan probeer je tot een oplossing te komen met die jongeren om te kijken of terugkeer, als je denkt dat dat een optie is, of dat dan niet beter zou zijn. Daar werk je dan aan. Ook met steun van familie, want je probeert de familie erbij te betrekken uit het land van herkomst. Dus dat gebeurt allemaal heel zorgvuldig… om te kijken… en als je dan tot de conclusie komt, van het kan echt niet.. dan kan je een nieuwe procedure starten, snap je? Dus zo zijn wij daarmee bezig.
Deyanira Gonzalez:	Oké, is het makkelijk voor de jongeren om een nieuwe procedure te starten, aangezien zij volgens de wet volwassen zijn?
Interviewee 2:	Als ze eenmaal volwassenen zijn?
Deyanira Gonzalez:	Ja
Interviewee 2:	Ja, dat weet ik niet, als ze eenmaal volwassen zijn dan zijn wij uit beeld. Maar er moeten nieuwe feiten zijn hé in verhouding, om een nieuwe procedure te kunnen starten..
Deyanira Gonzalez	Zijn er wel instanties die ze daarbij helpen?
Interviewee 2:	Ja, vluchtelingenwerk en er zijn allerlei organisaties die zich met illegalen bezig houden.
Deyanira Gonzalez:	Jullie zijn er dus tot achttien?
Interviewee 2:	Ja dat klopt.
Deyanira Gonzalez:	Voor het kinderpardon is er heel lang voor gelobbyd en weet u toevallig hoe lang hiervoor is gelobbyd?
Interviewee 2:	Nou, we hebben al heel lang kenbaar gemaakt dat er iets voor… dat is eigenlijk vanaf… weet je dat ontstond na het vorige pardon, het algemene pardon en daar gingen heel veel kinderen nog niet in mee. Dus, wij hadden kinderen die al heel lang hier zijn en vervolgens niet…nou geen verblijfsvergunning hadden, dus dat legt een hele zware last op jongeren en dat is dus al heel vaak kenbaar gemaakt aan de politiek. Al jaren!... Hoe lang kan ik je niet precies zeggen...
Deyanira Gonzalez:	Ja.. en zeg maar… want het Kinderpardon is een heel omstreden regeling geweest in de media en politiek, hoe ziet u voor een soortgelijke regeling in Europa, als daarvoor gelobbyd wordt? Wat zou je daar kunnen verwachten, denkt u?

Interviewee 2:	Weet ik niet, ik weet niet hoe het in andere Europese landen zit, geen idee..
Deyanira Gonzalez:	Het kinderpardon is nu eindelijk van kracht, maar alsnog is niet iedereen tevreden hoe denkt u dat dit komt?
Interviewee 2:	Nou, er vallen heel veel jongeren buiten. Het wordt heel strikt toegepast.
Deyanira Gonzalez:	En welke oplossing denkt u dat er voor deze kinderen gezocht moet worden, omdat ze dan buiten de regeling vallen?
Interviewee 2:	Nou ja, hij had wat ruimer kunnen zijn.. hè, je hebt een heel beperkte regeling. ..Dat.. de nu definitieve regeling is dat je er een beroep op kan doen, tot je negentiende jaar en dan stopt het en er zijn bij ons heel veel jongeren die daar buiten vallen of die net die termijn niet halen van.. wat is het? 5 jaar, en dan net niet en dan is het klaar. Dus er zijn een aantal punten waarvan je zegt van nou dat is toch wel echt heel heftig ook gezien de omstandigheden van kinderen, dus je hebt altijd wel maatwerk je moet altijd de omstandigheden in oogschouw nemen en dan kijken van kan je dit wel zo strak toepassen. Het wordt gewoon heel strak toegepast.
Deyanira Gonzalez:	Ja en wat zou in uw mening de beste oplossing zijn qua regeling? Dat die criteria een beetje ruimer worden?
Interviewee 2:	Ja, daar hebben we ook voor gepleit. Dat we 21 jaar willen en die 5 jaar is ook wel heel lang.
Deyanira Gonzalez:	Ja en bijvoorbeeld dat er per individueel zaak gekeken moet worden? Ja, dat er per kind/ jonge volwassene gekeken…
Interviewee 2:	Ja… Dat gebeurt ook wel hoor, maar dan krijg je alleen geen vergunning op basis van het Kinderpardon maar op basis van schrijnendheid en dat zou vaker kunnen denk ik… ja
Deyanira Gonzalez:	Ja.. oké en Staatssecretaris meneer Teeven die regelt aanpassingen van het kinderpardon, waarom denkt u dat hij deze niet wilt versoepelen? Is hij bang dat er meer kinderen onder die regeling gaan vallen?
Interviewee 2:	Ja.. Nou, dat is gewoon vanwege politiek draagvlak. Dit is hoe ruim het kon en dat weet je natuurlijk ook wel… dus op dit moment is het draagvlak er gewoon niet, dus daarmee maak je je niet populair mee, zo simpel is het.
Deyanira Gonzalez:	Ja oké, en er wordt ook heel veel gesproken over het Kinderpardon, van gaat het meer asielzoekers aantrekken en ja… dat zie je.. lees je wel.. wat is u kijk hierop? Denkt u echt dat er wat gaat gebeuren?
Interviewee 2:	Nee… nee mensen gaan niet uit vrije wil zolang uitgeprocedeerd in Nederland zijn. Dat wil niemand. Dat is echt onzin.
Deyanira Gonzalez:	Vanwege de onzekerheid ook, die mensen vaak krijgen..
Interviewee 2:	Ja, tuurlijk… dat wil je niet… nee
Deyanira Gonzalez:	Voor jongeren is dat natuurlijk nog moeilijk, lijkt mij, dan natuurlijk een volwassene
Interviewee 2:	Ja

Deyanira Gonzalez:	Het Kinderpardon roept dus heel veel vragen op, juist omdat ze niet haaks staat op het huidige toelatingsbeleid, maar wat is in uw opinie het beste beleid voor ex-AMA's of ja ex-AMV's? Wat zijn in uw ogen het beste beleid voor deze jongeren zijn nadat zij achttien worden?
Interviewee 2:	Jeej…
Deyanira Gonzalez:	Hoe zou dat in uw perfecte wereld er uitzien?
Interviewee 2:	Ja, dat vind ik wel een lastige.. kijk, het toelatingsbeleid is er op dat moment als ze hier komen en als ze dan minderjarig zijn, begeleid je ze en dan kijk je wel hoe je reëel het is als iemand een verblijfsvergunning… ik bedoel daar heb je zelf natuurlijk ook wel al een idee over, dus hoe het toelatingsbeleid is na hun achttiende.. Ik weet niet precies wat je met die vraag bedoelt..
Deyanira Gonzalez:	Nou, voor de jongeren die achttien worden, het hangt natuurlijk van hun verblijfstatus af, maar meer in de zin of bepaalde voorzieningen verlengd moeten worden? Of bijvoorbeeld de voogd, of ze langer begeleiding zouden moeten krijgen of bepaalde rechten verlengd zouden moeten worden…?
Interviewee 2:	Ja, dat is maatwerk, soms zou dat nodig kunnen zijn en daar heb ik ook wel ideeën over, maar niet een standaard…
Deyanira Gonzalez:	Ja
Interviewee 2:	Nee, soms zou dat nodig zijn, omdat iemand gewoon te kwetsbaar is om allemaal.. maar dat is helemaal los van verblijfstatus, maar dat kan al dan met verblijfstatus, dus het kan met en het kan zonder.. en die mogelijkheid is er dus niet, dus zouden we wel graag willen, ja...
Deyanira Gonzalez:	Ja, en bijvoorbeeld studiefinanciering en uitkering, want is natuurlijk ook een beetje afhankelijk…
Interviewee 2:	Ja tuurlijk, ik bedoel dat het duidelijk is dat je terug moet en als de omstandigheden zo zijn dat je terug kan, is het natuurlijk raar om te zeggen je krijgt studiefinanciering hier...
Deyanira Gonzalez:	Ja oké, dus je zou echt individueel…
Interviewee 2:	Je moet kijken naar de situatie en is het reëel.. en bestaat de kans dat deze jongeren een verblijfsvergunning krijgen, net als bij volwassenen dat is niet anders, dat is exact het zelfde als iemand op achttien en halve jarige leeftijd hier komt natuurlijk
Deyanira Gonzalez:	Ja, ja klopt, maar dat is natuurlijk… die zijn hier niet op jonge leeftijd hier gekomen, dus ook niet geworteld..
Interviewee 2:	Nee, maar je bent jong
Deyanira Gonzalez:	Ja, dat is waar
Interviewee 2:	Ja, ik zie daar eigenlijk geen verschil in. Wat ik wel vind, is als je hier lang bent, dat is eigenlijk een ander verhaal, als je hier lang hebt verbleven en ze hebben je niet kunnen uitzetten dat er dan gekeken moet worden of je niet alsnog in… en het is buiten je schuld, er is ook een heel buitenschuld beleid he?
Deyanira Gonzalez:	Ja, ja klopt
Interviewee 2:	Of je dan niet in aanmerking kan komen voor een verblijfsvergunning en daar zou je heel kritisch naar moeten kijken, ja…
Deyanira Gonzalez:	Oké

Interviewee 2:	En dat is denk ik waar je wel eigenlijk op moet focussen, omdat je hebt een buitenschuld beleid dus niet voor AMV's, maar voor jongeren onder de 15 en voor boven 15 geldt het volwassen asielbeleid en dat is gewoon heel strenger. Veel moeilijker om een verblijfsvergunning te krijgen en dat is eigenlijk heel gek, want je zou moeten zeggen van alle jongeren geldt die specifieke buitenschuld beleid voor AMV's, want het zijn allemaal minderjarigen.
Deyanira Gonzalez:	Ja, ja klopt
Interviewee 2:	Dus dat is wel een punt, denk ik, daar hebben we allemaal voor gepleit, maar het is niet zo overgenomen…
Deyanira Gonzalez:	En met het buitenschuld beleid wat, waar hebben zij, bijvoorbeeld die jongeren die onder de 15 jaar zijn, waar hebben zij recht op?
Interviewee 2:	Op alles, dan krijgen ze gewoon een verblijfsvergunning buitenschuld en krijg je een reguliere verblijfsvergunning, daar kan je gewoon... het is gewoon een verblijfsvergunning
Deyanira Gonzalez:	Ja, oké en bijvoorbeeld voor landen waar je zeg maar soortgelijke regeling dus niet bestaat of het Kinderpardon, wat zou in uw mening zeg maar... hoe zou de veiligheid en welzijn van die jongeren gegarandeerd kunnen worden?
Interviewee 2:	Als ze achttien worden?
Deyanira Gonzalez:	Ja, voor ex-AMA's zeg maar
Interviewee 2:	Ja, ja, dat is niet anders dan volwassenen dus daar kan ik niet meer van maken
Deyanira Gonzalez:	Oké
Interviewee 2:	Nee.. je gunt iedereen natuurlijk veel meer, maar ik zie dat snel niet gebeuren
Deyanira Gonzalez:	Het is natuurlijk wel een lastige kwestie ja.. maar wat ik ook wilde vragen is, dat ex-AMA's die.. uit onderzoek is namelijk gebleken dat zij vaak meer spanning, angst en bezorgdheid hebben eigenlijk, in vergelijken met hun leeftijdgenoten en denkt u dat voor deze groep extra hulp of begeleiding moeten komen, omdat het na hun achttiende natuurlijk stopt.. Ja ze kunnen natuurlijk bij andere instanties wel hulp krijgen, maar zou dat een bepaling moeten worden?
Interviewee 2:	Ja, ja dat zou goed zijn! Dat geldt overigens niet circa hetzelfde, niet alleen.. het geldt ook voor jong volwassenen die op jonge leeftijd zijn.. die op jong volwassen leeftijd zijn gekomen, niet anders he?
Deyanira Gonzalez:	Ja, oké maar als je nog een kind bent, heb je natuurlijk nog wel je kinderrechten dus dan zijn er nog wel bepalingen voor deze kinderen...
Interviewee 2:	Ja, maar dan is het misschien nog wel erger, als je hier komt als je net achttien bent
Deyanira Gonzalez:	Ja, dus zou u zeg maar.. iemand die net achttien wordt die hier net aankomt, zou die wel recht hebben op begeleiding, zou u dat wel zo zien?
Interviewee 2:	Das een moeilijke vraag denk ik… nou goed daar kan ik weinig over zeggen weet je, want de voogdij stopt en ik denk dat het heel fijn zou zijn als jong volwassenen nog wat extra begeleiding zouden kunnen krijgen, en dan moet je kijken tot wel leeftijd, je zou moeten begrenzen en wanneer dat stopt, want ook volwassenen van eind twintig of dertig of veertig of vijftig hebben spanningen en zijn bang als ze in een

	ander land leven, dus dat is geen verschil hoor
Deyanira Gonzalez:	Oké en denkt u dat deze bepalingen in de Nederlands wetgeving zou moeten komen?
Interviewee 2:	Dat kan niet, want waar leg je de grens dan? Wat je wel zou kunnen zeggen is vanuit de voogdij aantal jongeren nog door begeleiden, omdat je denkt dat dat nodig is, omdat ze kwetsbaar zijn
Deyanira Gonzalez:	Dat zou ook advies kunnen zijn voor Europese wetgeving, want daar zijn nu wel bepaalde bepalingen in opgenomen, maar ja dat is alleen maar tot achttien dus dat zou misschien wel een regeling kunnen worden eigenlijk
Interviewee 2:	Ja
Deyanira Gonzalez:	Wat denkt u dat de voordelen zijn van een makkelijke overgang naar meerderjarigheid voor AMV's? Zal dit motiveren voor een terugkeer? Of een betere keuze maken, denkt u? als ze goed worden begeleid voor hun achttiende?
Interviewee 2:	Ja, dat worden ze
Deyanira Gonzalez:	In andere landen is namelijk gebleken dat, dat ze niet goed worden begeleid en ook qua informatieverstrekking...
Interviewee 2:	Nee, dat maakt uit, tuurlijk dat maakt uit voor het maken van een keuze… ja dat moet je wel in oogschouw nemen, dat je moet weten hoe lang ze begeleid worden en hoe de situatie is, want je hebt niet in alle landen, want dat is een beetje lastige vraag, dat is overal anders georganiseerd, je hebt ook niet in elk land voogdij of volgens mij is het wel geregeld, maar dan is het de burgemeester die vierhonderd kinderen onder zich heeft, maar dan is het een formaliteit, dus dan begeleidt je verder niet dus in die zin ja, denk ik tuurlijk, tuurlijk is het antwoord ja.
Deyanira Gonzalez:	Dan wil ik u heel erg bedanken voor dit interview.
Interviewee 2:	Nou succes!
Deyanira Gonzalez:	Dank u wel hoor, dag.
Interviewee 2:	Oké dag.

Appendix 6: Informed Consent Forms

6.1 Interviewee 1

1) Project Title: Turning 18: The Consequences for Unaccompanied Minors and Separated, Asylum-Seeking Children Passing Through Asylum Processes

2) Project Description

Voor deze scriptie is er onderzoek gedaan naar het asielbeleid t.o.v. alleenstaande minderjarige vreemdelingen (AMV) die de meerjarige leeftijd bereiken in Groot-Brittannië, Frankrijk en Nederland, naar aanleiding van het Kinderpardon; met de vraag of het Europees asielbeleid zou moeten worden uitgebreid voor deze specifieke groep.

If you agree to take part in this study please read the following statement and sign this form.
I am 16 years of age or older.

I can confirm that I have read and understood the description and aims of this research. The researcher has answered all the questions that I had to my satisfaction.
I agree to the audio recording of my interview with the researcher.
I understand that the researcher offers me the following guarantees:
All information will be treated in the strictest confidence. My name will not be used in the study unless I give permission for it.
Recordings will be accessible only by the researcher. Unless otherwise agreed, anonymity will be ensured at all times. Pseudonyms will be used in the transcriptions.
I can ask for the recording to be stopped at any time and anything to be deleted from it.
I consent to take part in the research on the basis of the guarantees outlined above.

Signed:  **Date:** 19-9-2014

6.2 Interviewee 2

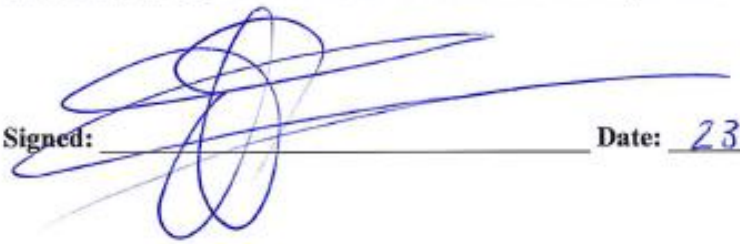
1) Project Title: Turning 18: The Consequences for Unaccompanied Minors and Separated, Asylum-Seeking Children Passing Through Asylum Processes

2) Project Description

Voor deze scriptie is er onderzoek gedaan naar het asielbeleid t.o.v. alleenstaande minderjarige vreemdelingen (AMV) die de meerjarige leeftijd bereiken in Groot-Brittannië, Frankrijk en Nederland, naar aanleiding van het Kinderpardon; met de vraag of het Europees asielbeleid zou moeten worden uitgebreid voor deze specifieke groep.

If you agree to take part in this study please read the following statement and sign this form.
I am 16 years of age or older.

I can confirm that I have read and understood the description and aims of this research. The researcher has answered all the questions that I had to my satisfaction.
I agree to the audio recording of my interview with the researcher.
I understand that the researcher offers me the following guarantees:
All information will be treated in the strictest confidence. My name will not be used in the study unless I give permission for it.
Recordings will be accessible only by the researcher. Unless otherwise agreed, anonymity will be ensured at all times. Pseudonyms will be used in the transcriptions.
I can ask for the recording to be stopped at any time and anything to be deleted from it.
I consent to take part in the research on the basis of the guarantees outlined above.



Signed: _____ **Date:** 23-9-'14

Appendix 7: Student Ethics Form

European Studies
Student Ethics Form

Deyanira Gonzalez Alvarez

Supervisor: Marjo van den Haspel

Section 1

Project Outline

(i) Title of Project:

Turning 18: The Consequences for Unaccompanied Minors and Separated, Asylum-Seeking Children Passing Through Asylum Processes

(ii) Aims of project:

The aim of the project is to establish whether child-specific rights and provisions should be extended for unaccompanied minors and separated, asylum-seeking children in transition to adulthood.

(iii) Will you involve other people in your project – e.g. via formal or informal interviews, group discussions, questionnaires, internet surveys etc. (Note: if you are using data that has already been collected by another researcher – e.g. recordings or transcripts of conversations given to you by your supervisor, you should answer 'NO' to this question.)

YES

Student's signature: Deyanira Gonzalez Alvarez- date 25 September 2014

Section 2

(i) What will the participants have to do? (v. brief outline of procedure):

Participants will only be asked to answer the interview questions.

(ii) What sort of people will the participants be and how will they be recruited?

The participants will be persons working with Unaccompanied Minors and Separated, Asylum-Seeking Children or have great knowledge on the situation of this particular group. They will be recruited by e-mail.

(iii) What sort stimuli or materials will your participants be exposed to, tick the appropriate boxes and then state what they are in the space below?

Questionnaires[ ]; Pictures[ ]; Sounds [ ]; Words[ ]; Other[X].

The participants will be interviewed and recorded.

(iv) **Consent:** Informed consent must be obtained for all participants before they take part in your project. Either verbally or by means of an informed consent form you should state what participants will be doing, drawing attention to anything they could conceivably object to subsequently. You should also state how they can withdraw from the study at any time and the measures you are taking to ensure the confidentiality of data. A standard informed consent form is available in the Dissertation Manual.

The Consent form is send by e-mail to the participants.

(v) What procedures will you follow in order to guarantee the confidentiality of participants' data? Personal data (name, addresses etc.) should not be stored in such a way that they can be associated with the participant's data.

In order to guarantee confidentiality, names will not be used, unless permission is given by the participants. Furthermore, recordings will only be accessible for Deyanira Gonzalez and will not be published without consent of the participants.

Student's signature: Deyanira Gonzalez date: 25 September 2014

Supervisor's signature (if satisfied with the proposed procedures)**: ..... date: .....**