

Unaccompanied Foreign Minors in Italy: what paths after the initial reception?

Contribution by Treviso Local Group to 2017 CAPP international Conference

Introduction

In recent years, European policies on immigration have been marked by the lack of a child-centred approach which leads to situations where migrant children come up against regulatory, bureaucratic-administrative and socio-cultural barriers that inevitably threaten their rights and often their lives.¹ Despite the ratification of the New York Convention by all member States, and the knowledge that "*a child is first and foremost a child, (.) and his migrant status is secondary*",² in Europe, many migrant minors still live at high risk of poverty, exploitation, violence and social exclusion; among these, the "unaccompanied" represent a particularly vulnerable population.

The definition of unaccompanied foreign minors (MSNA) describes the condition of "*a minor who arrives in the Member State unaccompanied by an adult responsible for them whether by law or by practice of the Member State concerned, and until such time when the minor is not actually entrusted to such a person; it includes a minor who is left unaccompanied after entering the territory of Member States*" (Directive 2011/95 / EU of the European Commission, 13.01.2011).

The number of unaccompanied minors arriving in Europe and specifically in our country, has dramatically increased in the last four years. Out of a total of 181,436 people who arrived by sea in Italy in 2016, 14.2% were MSNA (8% in 2015; 7.7% in 2014) representing, even compared to the total number of minors who arrived by sea (49% in 2014; 75 % in 2015; 92% in 2016),³ an element in the exponential growth.

Of the MSNA present and numbered on Italian territory (31.03.2017), 15,458 are predominantly male (92.9% of the total) from Egypt (14.8%), the Gambia (13.9%) Albania (10.8%), Nigeria (8.5%) and so on. Of the small percentage of unaccompanied girls (7.1%) almost half (48.4%) consists of Nigerians at risk of trafficking and exploitation.⁴

The most representative age group is between 17 and 18 years (60.5%), and then progressively decreases; unaccompanied foreign minors between 0 and 7 years (0.3%) are mostly children who have lost one or both parents during the crossing.

¹R. M.Riol, F. Sereni, "Il Bambino Migrante – Tavola Rotonda 5 June, 2015". Prospettive in Pediatria, October-December 2015, Vol. 45, Nr. 180, Pp 315-332

²Council of Europe, "undocumented migrant children in an irregular situation: a real cause for concern" Strasbourg, 16 September 2011, page 5. Full text available online at: <http://assembly.coe.int/Documents/WorkingDocs/Doc11/EDO>

³Cruscotto statistico giornaliero – Ministry of the Interior, dept for civil liberties and immigration.

www.libertaciviliimmigrazione.dlci.interno.gov.it

⁴ Report, Ministry for Labour and Social Policies, MSNA <http://www.lavoro.gov.it>.

Among Italian regions, Sicily, in line with a consolidated trend, is home to the largest number of unaccompanied minors (approximately 38.3% of the total) within its reception facilities,⁵ followed by Calabria (8, 2%), Emilia Romagna (6.2%), Lombardy (6.1%), Lazio (5.3%) and Puglia (5.1%).

Migration profiles and vulnerability factors

The migratory profiles of unaccompanied minors in Italy are different and are substantially based on the so-called push and pull factors that prompted the departure:

- minors fleeing wars, persecutions, conflicts, coming mainly from Afghanistan, Eritrea, The Gambia and Somalia. Their migratory path is characterised by a succession of changes in expectations and a continuous redefinition of the goal to be achieved;
- minors sent by their families who emigrated for economic reasons in search of job opportunities; many coming from Morocco joined in recent years by the influx of Egyptian minors;
- minors attracted by "new models and lifestyles", who represent a small part of young migrants, mainly attracted by the the western lifestyle; these are mostly Albanians and Tunisians.

The migratory profile, the more or less established presence in Italy of the community of origin, the precarious conditions in host structures are among the main factors that mostly affect the number of children who disappear after identification and assignment to a Centre ("untraceable").⁶ This phenomenon, on the increase in Italy compared to previous years (5,170 untraceable in March 2017 and 3,707 in December 2014), is mainly found among young Egyptians, Eritreans and Somalis. Untraceable minors, along with those who choose to escape immediately from the Italian institutions to reach other destinations ("transit"), are exposed in their quest for a better life, to even worse situations than those they have left: labour and sexual exploitation, forced organ donation, drug dealing, trafficking, smuggling and begging.

What is absolutely a determining factor where the question of minors "in transit" or otherwise untraceable is concerned, is that a procedure for their *relocation has not yet been perfected*, and the process for them to be reunited under the Dublin III Regulations is still too long and complex.⁷ In fact, current *re-location* interventions are decidedly slow and cannot be guarantors of the protection of people's rights.⁸ On 30/01/2017, only 7,494 adults and children, out of a total of 39,600 people expected in 2017, are involved in the *relocation* programme in Italy; of these, only 2,916 asylum seekers including 220 children who have already been relocated to other European countries (Germany, the Netherlands, Norway, Finland, Switzerland, France, etc.).

Regulatory framework and protection of rights

The complexity of the MSNA condition is determined by their status, which entails confrontation

⁵ Report, Ministry of Work and Social Policies. MSNA <http://lavoro.gov.it> (31/12/2016)

⁶Rome Caritas Report, "The difficult challenges facing MSNA on the path towards growth and integration" 2015, XXV World Day for the Rights of Childhood and Adolescents

⁷9th Updated Monitoring of the 2015-2016 Report of the Convention on the Rights of Childhood and Adolescence in Italy

⁸Final Recommendations of the XIV SIMM Congress 2016,Turin

and often overlapping multiple juridical competencies: being minors, migrants, asylum seekers, victims of trafficking, makes the relationship between the different branches of the law both complex and problematic and requires the coordinated intervention of many people not only in juridical/ administrative fields, but equally in the social and health sectors right from the initial stage of reception and identification. To all of this must be added the difficulties relating to the unpredictability of the influx and consequently the relevant economic burden linked to the reception procedures of these minors: an expense which obviously cannot be planned, since it is connected to the dimensions and dynamics of the migratory influx of the same foreign minors, the modalities of their arrival in Italy and their subsequent movements within our country.⁹

Despite the fact that in the last decade, legislation governing the protection of the rights of unaccompanied minors in Italy has made significant improvements and its reception system has now been defined (both in the 2014 Agreement and in the 2015 Legislative Decree no.142.), nevertheless right now the actual path to the inclusion of these children is still inadequate and not in accordance with the principle of the *"best interests of the child"*.

Law 1658 - "Measures for the protection of unaccompanied minors" was finally approved (29.03.2017) three years after its presentation. Its purpose is to include in a single organic text norms on child protection and immigration that adopt, albeit with room for improvement, (ASGI 2016),¹⁰ the basic principles of the UN Convention on the rights of Childhood and Adolescence.

Critical Issues

The current procedural process recognises that the immediate entry into the first reception structure and the request for the appointment of a guardian are the principal sources of protection and guardianship of the child and permit the completion of various administrative steps (age assessment, reporting to the competent authorities, application for a residence permit, formalising asylum etc.) for the child's subsequent inclusion in the Structures for Protection of Asylum Seekers and Refugees (SPRAR).

Despite significant steps forward from a normative point of view as reported in the previous paragraph, it is evident that the various and diverse methods for local implementation are mostly conditioned by the skills and interaction of the different professionals involved in the management of unaccompanied minors rather than by the specific protocols and shared methods..

The following are the most critical aspects requiring the most urgent corrective public measures are :

- Increase of places in the structured networks of the first and second reception centres. The overall availability of places, both in the very first reception and in SPRAR, is still not commensurate with the number of arrivals, who add to the MSNA already present in the territory. While waiting to be

⁹VI Report 2016. Municipalities and reception policies for MSNA a longitudinal analysis as a guideline to future methods. Cittalia, ANCI Research Foundation

¹⁰ASGI -Observations on the treatment of unaccompanied foreign minors 21.05.2014 <http://www.asgi.it>

transferred to dedicated facilities, unaccompanied foreign minors are held in first aid and reception centres for months in overcrowded conditions and a lack of adequate services (from the point of view of hygiene and sanitation) or within the Extraordinary Welcome Centres (CAS) for adults, with the risk of delaying interventions for protection and security.

- Quick and accurate identification and age assessment in respect of the fundamental rights of the child. There is no scientific method to date that can determine legal age accurately because of the different skeletal, growing and pubertal maturing processes between people of the same age are frequent, extensive and physiological. In addition, the currently most widely used method, the evaluation of bone maturation of the wrist and hand (developed for the study of disorders of growth and puberty, and not for forensic purposes) carry a margin of error of ± 2 years. Moreover, dpCmn 234/16 specifies procedures to be adopted to determine the age of trafficked children and introduces some basic guarantees in this regard; since the mechanisms for determining the age do not differ depending on whether the unaccompanied minors are trafficked or not, it is hoped that the anticipated provisions contained therein are similarly applied to all unaccompanied minors.¹¹

- Maximum speed in applications for the appointment of a guardian. The majority of unaccompanied minors are given an institutional person as a final guardian, a representative of a welfare institution, followed later by the appointment of a voluntary guardian. Only a minimum percentage of unaccompanied foreign minors are entrusted to close relatives or someone related to the child not in compliance with the family welcome measures provided for by Law 184/1983 which would place them on an equal footing with other minors in Italy. The late appointment of a guardian to take charge of the child, increases the risk of bureaucratic / administrative impediments with regard to both the correct path to follow in the legal field (eg. asylum request) and the full exercise of rights recognised for each minor, first and foremost the right to health and education.

- Public administration delay in the release of the decision necessary for the conversion of the residence permit on the minor coming of age. In fact, there are many rejections based solely on the non-receipt of that decision by the competent institutions.

Legislative and institutional responses

As part of Law 1658, "Measures for the protection of unaccompanied minors", which was drafted with the input of many associations involved in assistance to unaccompanied minors in Italy and Europe, various critical aspects of the host and post-reception system were addressed and the Law outlined intervention programmes aimed at overcoming these obstacles

In this regard, the points most important are:

- Absolute prohibition from refusing entry at frontiers to unaccompanied minors; that refusal cannot be accepted under any circumstances.
- Prohibition to expel foreign minors which at present can only be waived for reasons of

¹¹ See www.asgi.it for the ASGI Communique on ascertaining the age of foreign non-accompanied minors

public order and state security. The expulsion may be adopted only on condition that it does not involve a "risk of serious danger" to the child."

- Reception, with respect to the provisions established by Decree No. 142, 2015 (art. 4):
 - the maximum period of detention of minors in the first reception structures is reduced from 60 to 30 days and for identification operations to 10 days, whereas previously there were no limitations;
 - The principle of *specifications for reception structures* reserved for children and extension of access to SPRAR services for all MSNA, has in general, received confirmation.
- Legal protection, includes the creation of lists of voluntary guardians throughout the national territory and promotion of family foster care.
- A single identification procedure for the minor, introduction of greater procedural safeguards including the presence of cultural mediators and the co-ordination of age assessment practices as part of a multidisciplinary approach to avoid unnecessary invasive medical examinations. It reaffirms presumption of the younger age, should there still be doubts about the age even after verification.
- MSNA National Information System that includes the collection of *social files* containing all the elements needed to decide the next stage in the child's life, including administrative and judicial proceedings which are in the child's "greatest interest."
- Accompanying measures for the MSNA almost reaching maturity, where lack of a decision requested from the institutions, cannot justify refusal to renew the residence permit on reaching 18 years of age.
- Long-term integration measures involving the social services for those MSNA up to 21 years of who are more exposed to vulnerable situations, but who nevertheless have embarked on a path of integration in our region.

Conclusion

In the current European political, economic and social context, what is emerging is a progressive increase in the number of unaccompanied minors in migration profiles characterised by particular vulnerabilities that require a targeted, equitable and inclusive administration.

The dramatic conditions experienced by unaccompanied minors within the various reception and post-reception systems, highlight the inability of European countries and in this instance Italy, "*gateway to Europe*", to protect these minors.

Let us hope that Law 1658 "Provisions for the protection of unaccompanied minors", the first of its kind in Europe, will be an example to other Member States to develop and implement common methods for the protection of these children. Methods marked by unequivocal criteria and standards that put "*the best interests of the child*" at the centre of multi-level governance where, among other issues, the role of regional and local authorities with the support of its civil society organisations, is paramount.

In this regard, the Veneto section of the Centesimus Annus Pro Pontifice Foundation which for years has concerned itself with the condition of unaccompanied minors within the region, in full respect of the Foundation's cornerstone principles, has had some initial fact-finding meetings with various stakeholders in the region leading, it is hoped, to a speedier integration process through training programmes for inadequate areas of professional skills. A bridge between reception and formation.

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