

# UNACCOMPANIED CHILDREN OUTSIDE THE LEVEL TELLING FIELD AND PROTECTION SYSTEMS

Dora Kostakopoulou



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# Unaccompanied Children Outside the Level Telling Field and Protection Systems

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**Authors: Dora Kostakopoulou**

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# 1. UNACCOMPANIED CHILDREN OUTSIDE THE LEVEL TELLING FIELD AND PROTECTION SYS- TEMS

## 1.1 PROBLEM STATEMENT

The concept of the level telling field is a key metaphor of the OPPORTUNITIES project. It underpins a distinct normative conception of the public sphere. It is premised on participants' commitment to a democratic world view anchored on human rights, commonly accepted standards for evaluating the merits and veracity of claims, opinions and arguments and to engaging in democratic debates with honesty, integrity and sincerity.<sup>1</sup>

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The foregoing definition thus assumes that the telling field is an inclusive and open, or relatively open, field where one's participant status is guaranteed. One's party status cannot depend on morally irrelevant characteristics, such as gender, race, class, ethnic origin, religion, sexual orientation, disability, nationality and so on. If such limitations are formally accepted, then the democratic orientation and purpose of the level telling field is seriously undermined, for such a hypothetical telling field would be exclusionary and thus unequal. This, in turn, would undermine human rights, democracy as well as the commitment to the plural and inclusive dialogues required for the resolution of disputes and the design of appropriate policies to address human needs.

Differentiations among participants owing to their age are largely permitted. Such differentiations are not frequently deemed to be problematic in so far as minors and juniors have their interests and their life stories represented by their parents, guardians and anybody else endowed with a duty of care towards them. However, there are large groups of minors and juniors who need protection but lack carers and representatives with voice. These groups do not merely operate on the margins of the level telling, but they are outside it. They are completely excluded despite the facts that they are physically present in

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<sup>1</sup> OPPORTUNITIES, Migration and Narrative: Key Terms and Concepts, Edited by C. Gebauer and R. Sommer, 2021, pp. 36-7.



societies, socially entangled, and that their life worlds are directly affected by the structures and systems of society. We are referring, here, to unaccompanied migrant and refugee children in the European Union's Member States.

For those children fleeing prosecution in their home countries, the asylum regimes of the host countries provide, and/or ought to provide, a level of protection. The degree to which this level of protection is acceptable and holistic remains debatable and needs to be verified by statistics on whether minors' applications for refugee status are increasing, processed without obstacles and are successful. But migrant children who are not in the asylum system remain exposed to very serious, and often life threatening, risks. They have travelled to the EU alone, may lack documentation, are alone in host countries and face serious risks of exploitation, abuse and neglect.

Unaccompanied children's life stories are 'broken narratives'<sup>2</sup> which might never reach the level telling field's dynamics. They are untold stories condemned to silence and, consequently, to societal indifference. This, in turn, leads to a general disregard for the rights and needs of under-age persons. When this happens, and some truths remain unspoken, rights are not done and injustice invades every aspect of a child's life, then the general principles of the public sphere are laid bare and cast light on the whole frame of society.

But the law does not permit this. Article 20 of the United Nations Convention on the Rights of the Child,<sup>3</sup> which has been ratified by all EU member states, prescribes that any child deprived of parental care is entitled to special care and assistance. Article 20 knows no nationality, ethnic origin, migration status or residency. Its scope of application is universal; every child is entitled to special protection.

The European Social Charter also provides for the protection of children.<sup>4</sup> It includes provisions on children and young persons having the right to special protection against the physical and moral hazards to which they are exposed (Article 7), the right of everyone to benefit from any measures enabling one to enjoy the highest possible standard of health attainable (Article 11), the right of everyone to social and medical assistance (Article 13), the right of children and young persons to appropriate social, legal and economic protection (Article 17), and the rights of everyone to protection against poverty and social exclusion (Article 30) and to housing (Article 31). In particular, Article 17 provides:

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<sup>2</sup> OPPORTUNITIES, Migration and Narrative: Key Terms and Concepts, p. 37.

<sup>3</sup> United Nations Convention on the Rights of the Child, UN Treaty Series 1577, p. 3.

<sup>4</sup> European Social Charter (Revised), European Treaty Series – No 163, Strasbourg 3.5.1996.

‘With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1 a ....

b to protect children and young persons against negligence, violence and exploitation;

c to provide protection and special aid from the state for children and young persons temporarily or definitely deprived of their family’s support;

2 to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.’

The EU Charter of Fundamental Rights,<sup>5</sup> on the other hand, which is legally binding primary law since December 2019 and applies to EU institutions, bodies offices and agencies as well as the Member States when they implement, or derogate from, EU law prescribes in Article 24 that:

‘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 interests must be a primary consideration.’

Certainly, the areas that fall within the EU’s responsibility are not many and are centred on EU asylum law; the Reception Conditions Directive (2013/33/EU), Qualification Directive (2011/95/EU), Asylum Procedures Directive (2013/32/EU), Reception Conditions Directive (2013/33/EU) and Return Directive (2008/115/EC)’s Article 5, 10 (1) and 17 (5)). The Anti-Trafficking Directive’s Article 17(1) (2011/36/EU) and Article 19 (3) of the Directive on combating the sexual abuse and sexual exploitation of children (2011/93/EU) also engage with unaccompanied minors. They cover the duty to implement Article 24(2) EUCFR by giving a primary consideration to the best interests of the child, the identification and referral of children at risk, the provision of guardianship and facilitation of family reunification

<sup>5</sup> Charter of Fundamental Rights in the European Union, OJ C 83, 30. 3. 2010, p. 389.



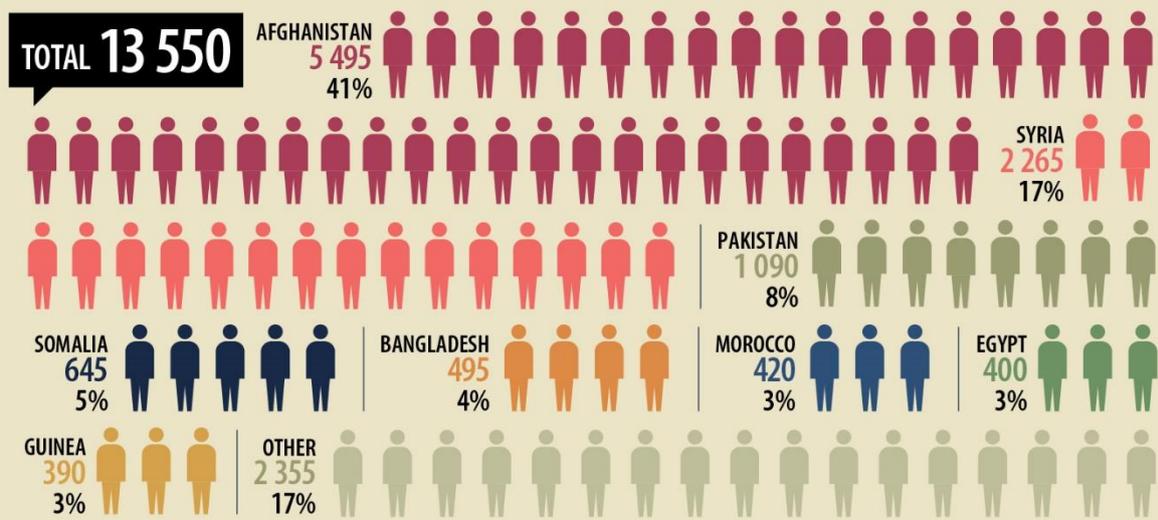
and the provision of assistance and support. The above would, or should, ensure that a child's wish to apply for asylum would trigger the provision of secure accommodation, the appointment of a guardian and the provision of child protection services.

In theory, the above provisions should meet the needs of 13,550 unaccompanied children who have been living in EU countries as well as those who entered the EU and applied for asylum in 2020. These are the only annual statistics available by Eurostat documenting that asylum applications are 4% down from those submitted in 2019 (14,100) and that the majority of the applicants are boys. Among them there are children below the age of 14 accounting for 11% of the group (1500 persons).

Besides this group, however, there are numerous unaccompanied children who do not know how to apply for asylum or cannot apply for it because they migrated for economic reasons or because of feuds and disputes, or debts incurred by the parents who 'lend' their children to their creditors. These children are formally invisible. They live, work and grow up in EU Member States without any legal status (i.e., as irregulars or in limbo) and are vulnerable to exploitation, abuse and victimisation. No statistics exist for them.

## Asylum applicants considered unaccompanied minors in the EU

(number of applicants by country of citizenship, share in the EU total, 2020)

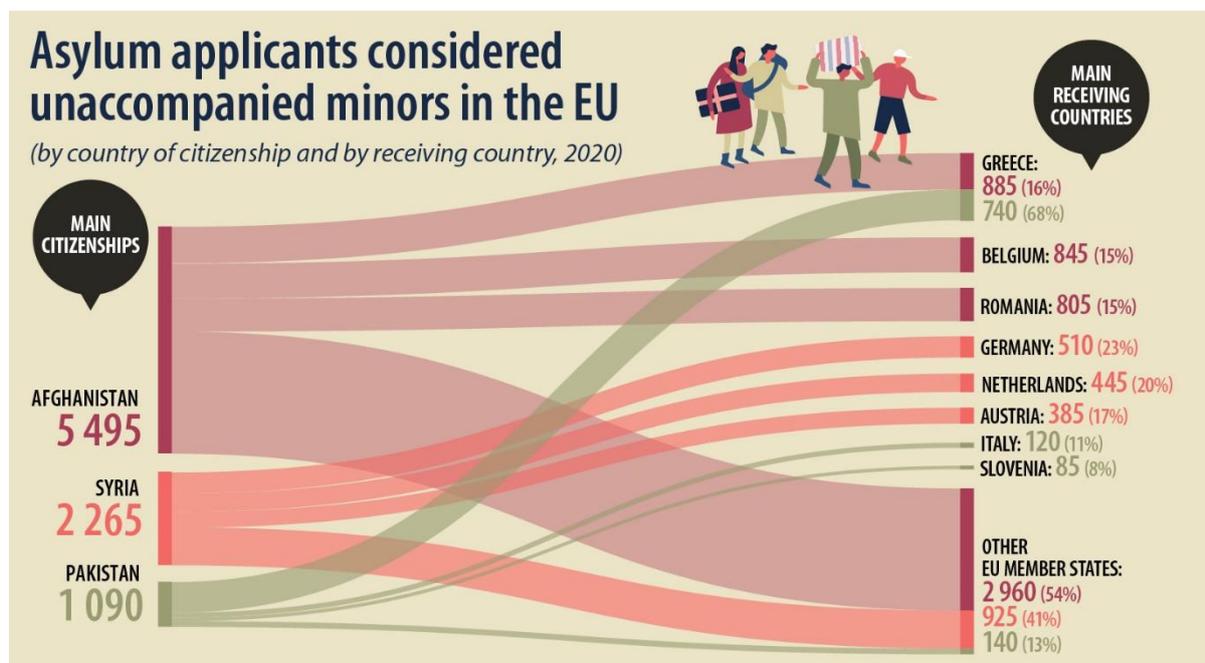


Data are rounded to the nearest five.  
"Other" refers to all other citizenships not presented in the graph.

[ec.europa.eu/eurostat](https://ec.europa.eu/eurostat)

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Some EU member states extend the protective provisions of their systems to all unaccompanied children irrespective of their legal status as asylum applicants and provide a secure residence status until they reach the age of maturity. France is a case in point. Unaccompanied children there are not required to have a residence permit and have access to child protection services until they reach the age of 18 years. The inclusionary effects of a secure residence status and protection allow children to develop, attain education and have access to health care without the obvious disabilities of otherness and the branding of them as non-belongers to the state's society. The grant of national citizenship to them would be a marker of belonging.



Unfortunately, the French regulatory mode is not uniform across the EU member states. Secure and appropriate accommodation, access to guardianship, access to educational institutions and services, access to social and health services, protection from labour exploitation and dangerous working conditions, protection from racial motivated hostility and sexual exploitation and sexual abuse all remain key areas of concern in several member states.

The Fundamental Rights Agency of the EU recently conducted a study pinpointing the problems Pakistani unaccompanied children in Greece face (2021)<sup>6</sup> and has reported in the past on the problems they face and the weaknesses in national protection systems (2017).<sup>7</sup> Such weaknesses are signifiers of the exclusion of those who need protection and support. They are also markers of otherness which shape life prospects as well as the mindsets and characters of children. They instill in them vulnerability and disempowerment as they have difficulties in enjoying basic rights which are available to others. In this

<sup>6</sup> FRA, Unaccompanied children outside the child protection system; Case study: Pakistani unaccompanied children in Greece, Luxembourg Publications Office, 2021.

<sup>7</sup> FRA, Returning unaccompanied children: fundamental rights considerations, Luxembourg Publications Office, 2017; FRA, European legal and policy framework on immigration detention of children, Luxembourg Publications Office, 2017.

respect, they estrange instead of integrate, isolate instead of include and foster inequalities instead of providing equal opportunities. As a result, children are destined to spend formative years of their lives within environments that emit clear signals to them that their lives do not matter and have a lesser value.

## 1.2 NARRATIVE INEQUITY AND ENGAGING WITH WHAT IS HAPPENING ON THE GROUND

National policies in this field have been designed from a top down perspective and are often based on presumptions that are wrong and on irrelevant domestic political exigencies. Policy makers have a ‘bird’s eye view’ of issues, compartmentalize their responses and often embrace the narrative of young persons as burdens *in spite of* their childhood status. Instead of advancing policies and procedures *because of* the childhood status of persons – a standpoint which should not be open to discussion or questioning in civilized societies - and the active contribution unaccompanied children could make to societies in adulthood if they were given the opportunity to do so as permanent residents or citizens, they often display a lack of empathy for their predicament.

This is where the quest for narrative equity is paramount. Narrative equity is a term developed by OPPORTUNITIES; it refers to principle that everyone should have the same opportunities and levels of support to access, build up and contribute to narratives.<sup>8</sup> Unaccompanied children should be able to tell their stories, know about, and use, formal and informal complaints mechanisms and have access to civil society and institutional actors who would bear witness to their difficulties, traumas, aspirations and the panorama of their concrete experiences. They should be given support in voicing their concerns and negative experiences and should be listened to.

It is in the interests of both the EU and the Member States to eradicate unequal access to societal common goods, resources and opportunities on the basis of migration status and nationality and to reduce the formal (i.e., legal) and informal othering of children. Arguably, this area is not one where states should feel the need to demonstrate their ‘national sovereignty’ and to assert the privileged status of national citizenship. Nor do they need to draw outer circles of membership which stigmatise vulnerable

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<sup>8</sup> OPPORTUNITIES, Migration and Narrative: Key Terms and Concepts, p. 47.



children; alternative narratives of humanism<sup>9</sup> and respect for human dignity and the personhood of children ought to be prioritised. There is nothing to be gained from behaving inhumanely to children, restricting their rights and conditioning them as society's Others. After all, international and supranational law require that all children are recognised, respected and protected; they should not be treated with hostility, contempt and abusively.

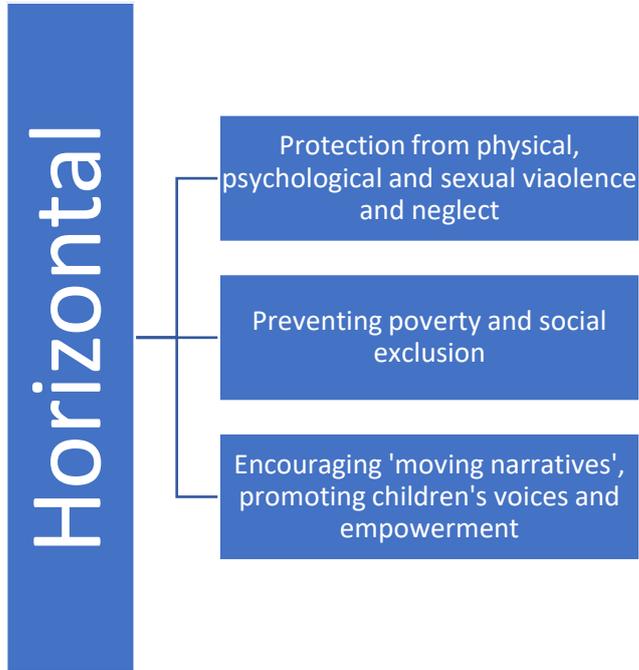
### 1.3 HOW COULD NARRATIVE EQUITY BE ACHIEVED? UNACCOMPANIED CHILDREN'S NARRANDA AND CHILD WELFARE POLICIES

OPPORTUNITIES prioritises an ethic of listening to the experiences of unaccompanied children and the promotion of narrative equity in the design of welfare policies and anti-racism action plans adopted by national authorities. Their voices and their needs ought to be taken into account when policies are formulated for not only they are noticed sporadically by institutions but it also remains the case that even when they are seen, they are not really 'heard'.

To this end, OPPORTUNITIES recommends national strategies based on both horizontal and vertical objectives, as follows:

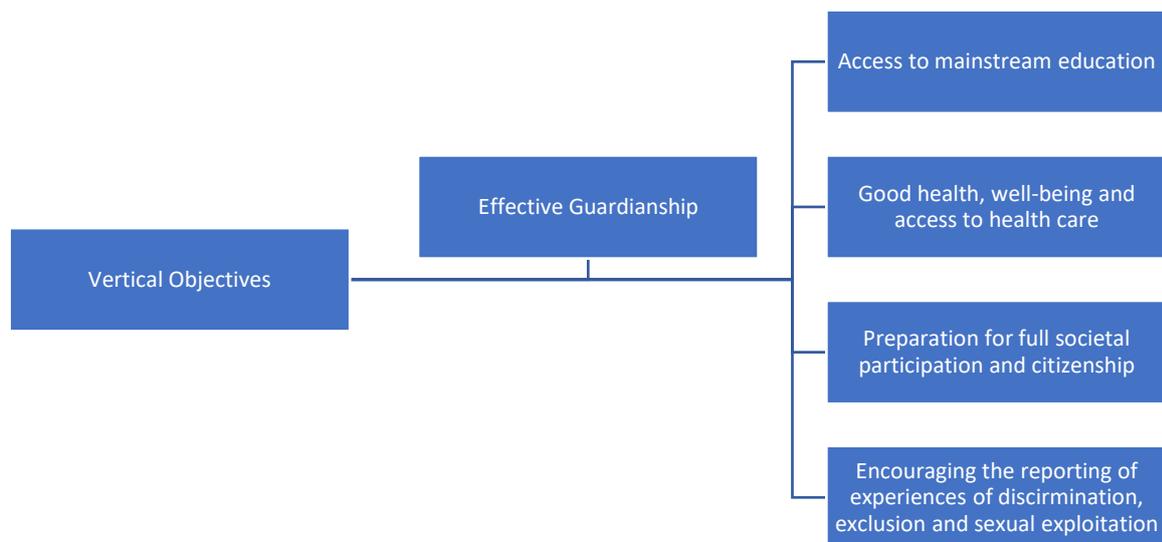
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<sup>9</sup> See N. Ferreira and D. Kostakopoulou (eds.), *The Human Face of the European Union: Are EU Law and Policy Humane Enough?* (Cambridge: Cambridge University Press, 2016).



Protection of unaccompanied children from violence, abuse of all sorts and poor social conditions is a prerequisite for narrative expression and effective voice. Unlike European children’s experiences, the experiences of children from third countries arriving unaccompanied in the EU are captured in ‘moving narratives’. These describe the risks, obstacles and vulnerabilities they faced in their home countries and in transit as well as their experiences in the countries of reception. Their stories are stories of suffering and rights’ denials as well as of resilience. National authorities must ensure that all children receive appropriate protection, are listened and are informed of their rights and welfare services.





An effective guardianship system will enable children to grow in nurturing environments and to make the transition to adulthood and thus to higher education or employment smoothly. A guardian can enable healing to take place and to ensure a child's safety and welfare. Access to mainstream education, to health care, including mental and psychological support and the presence of well-trained and specialised officials endowed with a mandate to receive incident reports and complaints from children are key to encouraging personality development, participation, trust and citizenship skills.

Through the above horizontal and vertical objectives, national authorities in the EU Member States should ensure that unaccompanied children have both voice and agency, that is, they are 'sayers' and 'doers' and do not remain invisible, unequal and underprivileged in relation to both adults and children who are nationals of the Member States and thus EU citizens.

## 2. RESOURCES

### EUROPEAN UNION

European Commission (2021), [EU Strategy on the rights of the child](#), COM(2021) 142 final, 24 March 2021.

European Commission (2021), [European Pillar of Social Rights Action Plan](#), SWD(2021) 46 final, 4 March 2021.

European Commission (2017), *The protection of children in migration*, COM(2017) 211, 12 April 2017.

### COUNCIL OF EUROPE

On 5 May 2021, the CoE adopted the Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025), including the protection of child migrants.

On 10 December 2021 the CoE's Steering Committee for Human Rights published its Guide on family-based care for unaccompanied and separated children.





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