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Separated Minors or the Dilemma between General and Individual Interest in European Union Migration Law Compliance

Menores separados: el dilema entre el interés general y el interés individual en la aplicación del Derecho Migratorio de la Unión Europea

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Separated Minors or the Dilemma between General and Individual Interest in European Union Migration Law Compliance

*Menores separados: el dilema entre el interés general
y el interés individual en la aplicación del Derecho Migratorio
de la Unión Europea*

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Summary: I. Separated Minors: A Distinct Situation among Migrant Children without a Specific Legal Framework.—II. A European Case Law–Based Approach to Separated Children’s Protection. 1. The Child’s Right to a Family Depends on the Definition of Family. 2. Separation Measures May Encroach on a Minor’s Family Life. 3. A Public Interest Can Be at Stake: Fighting against Human Trafficking and Abuses. —III. The Best Interests of the Child: A Solomon Sword between General and Specific Protection of Separated Minors for Enhanced Compliance.—IV. Filling the Void: Proposals Rooted in the EU Perception of Migration and Asylum

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Abstract: Separating children traveling accompanied by a nonfamily adult is a current practice serving the general purpose of fighting against sexual exploitation, minor trafficking, or general crime prevention. However, such a routine response could violate a minor's right to family life or preclude an attempted migration to reunification. Although no specific normative framework exists for this migratory category, we will draw our analysis of the conflicting interests by resorting to human rights case law. On the one hand, the expansion of the legally recognized concept of family must help protect interpersonal bonds not based on biological relationships, according to the European Court of Human Rights and the Court of Justice of the European Union. On the other hand, restrictions to the right to family life can be taken for fighting against crime, although a goal of general prevention may not comply with human rights standards on the limitation of rights. The required balance between conflicting interests can be established by resorting to the best interests of the minor. To conclude, we argue that this category could certainly benefit from a concerted, common legislative action at the level of the European Union when revisiting the migration legal regime, alongside operational measures at national, regional, and local levels.

Keywords: migration law, separated minors, foreign unaccompanied minors, right to family life, best interests of the minor, human trafficking.

Resumen: *La separación de los niños que viajan acompañados de un adulto con el que no tienen un vínculo biológico o familiar en sentido legal supone una práctica habitual como forma de protección frente al tráfico de personas. Sin embargo, puede constituir una vulneración del derecho a la vida de familia de un menor o impedir un intento de reunificación familiar. Los menores separados constituyen una categoría no regulada jurídicamente de forma autónoma. Sin embargo, el examen de los intereses legales contrapuestos puede llevarse a cabo a partir de la jurisprudencia europea de derechos humanos. De un lado, la expansión del concepto de familia sancionado por el Tribunal Europeo de Derechos Humanos y el Tribunal de Justicia de la Unión Europea permite proteger vínculos no exclusivamente biológicos. De otro lado, el objetivo de prevención general —lucha contra el tráfico o la trata— no es suficiente por sí mismo para garantizar el respeto de los requisitos de las limitaciones de derechos. El equilibrio entre interés público e individual debe alcanzarse a través de la individualización del interés superior del menor. Para concluir, se proponen medidas normativas y de aplicación, tanto a nivel de la Unión Europea como nacional, regional y local.*

Palabras clave: *Derecho migratorio, menores separados, menores no acompañados, derecho a la vida de familia, interés superior del menor, tráfico de personas.*

I. Separated Minors: A Distinct Situation among Migrant Children without a Specific Legal Framework

Unaccompanied foreign minors are a widely studied category in migration studies and law, while “separated minors” are not.² Throughout this work, “separated minor” will be used to refer to an underage person migrating together with an adult who is not biologically or legally related as “parent” or “guardian”. Without a specialized regime, separated minors are generally considered part of the broader category of foreign unaccompanied migrant children in both international and domestic legal documents and practice. Hence, as current practice directions and policy, they are allegedly “protected” through separation from the accompanying adult when crossing the borders of European Union (EU) Member States (MMSS). This separation measure is generally meant to shield separated minors from human trafficking and similar crimes out of general public interest (public safety, crime prevention) while considering it an abstract realization of the best interests of the minor.³ While this grants a minor a specific and, apparently, more protective regime, which can be generally perceived as an individual gain, an automatic response endangers a proper consideration of the individual interests of the minor and rejects contemporary and structural changes in the concept of family. A more balanced approach to compliance should be stressed in order to avoid cases in which a minor, through this separation, suffers from a violation of their right to family life, as guaranteed both by article 8 of the European Convention of Human Rights (ECHR) and article 7 of the Charter of Fundamental Rights of the European Union (CFREU). Consequently, this research will highlight the need for a set of rules or, at the very least, clarifying guidelines, that could accompany the never-ending reform of EU migration legislation to abide by human rights standards concerning separated migrant minors.

² Some attention has been given to the topic by the European Union Agency for Fundamental Rights (FRA). See, for instance, *Separated, Asylum-Seeking Children in European Union Member States* (Luxembourg: Publications Office of the European Union, 2011) and *Current Migration Situation in the EU: Separated Children* (Luxembourg: Publications Office of the European Union, 2016). Nevertheless, neither policy definition nor legislative action has been adopted at EU or domestic level since. Academic literature on the specific concept of separated minors is nonexistent.

³ One of the few EU policy documents in which “separated minors” are mentioned strictly follows this approach. See *Communication from the Commission to the European Parliament and the Council: The Protection of Children in Migration*, COM (2017) 211 final (Apr. 12, 2017), 4.

Some current cases may illustrate the specificity of the situation of these separated children. An immigrant man who lives illegally in France intends to reunite with his son. The child travels from Africa, where the minor lived with his mother, in the company of the father's new partner, a legal immigrant woman. When crossing the Spanish border, the child and stepmother are separated because they do not have a legal or biological bond, despite the letter of acquiescence that the biological mother provided the son with for the purpose of traveling to France. The child currently remains under governmental custody, whereas the stepmother was allowed to continue her travel. The biological father and mother remain unable to reach their son, who lacks legal documents to travel, and there is no readmission agreement between the countries.⁴ A second situation is that of a minor and their family leaving their country of origin together: after all adults perish during a sea crossing, the minor is taken care of by a third fellow countryman or woman doing the same journey, with whom the minor is not biologically related. A third case is represented by those minors traveling with an adult considered, in a broad sense, "family" in their original culture, whom upon arrival to EU shores is found to be neither biologically nor legally related to the minor. A fourth case is that of minors traveling with an adult with whom they share a legal bond in the country of origin, which is not known or recognized in EU legislation, such as the Algerian *kafala*. A fifth case is that of a newborn traveling with their commissioning parents from a third country, where surrogate motherhood took place, to an EU country where the contract is void and surrogate parenthood is not yet recognized.

As stated above, there is no legally binding definition of separated minors in international law. Nevertheless, the very concept has been clarified in international soft law documents. General Comment no. 6 (2005) of the United Nations Committee on the Rights of the Child (CRC) on the Treatment of Unaccompanied and Separated Children outside Their Country of Origin states that

"Separated children" are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from

⁴ Recent Spanish practice is described in Cristina Manzanedo Negueruela, "Menores extranjeros acompañados. La problemática invisible de los niños y niñas migrantes acompañados que llegan a la frontera sur española", in "La movilidad humana: entre los derechos y la criminalización", ed. Margarita Martínez Escamilla and José Miguel Sánchez Tomás, special issue, *Revista Crítica Penal y Poder* 18 (2019): 260–26.

other relatives. These may, therefore, include children accompanied by other adult family members.⁵

As such, it is clearly differentiated from the concept of “unaccompanied children” (also called unaccompanied minors)—namely, “children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so”.⁶

The same differentiation is also made by the Inter-American Court of Human Rights⁷ and the United Nations High Commissioner for Refugees (UNHCR).⁸ Furthermore, the duality has been acknowledged in Joint General Comment no. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and no. 22 (2017) of the CRC on the general principles regarding the human rights of children in the context of international migration;⁹ Joint General Comment no. 4 (2017) of the CMW and no. 23 (2017) of the CRC on state obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return;¹⁰ and the United Nations’ 2018 Global Compact for Safe, Orderly and Regular Migration.¹¹ Nevertheless, although “unaccompanied minors”

⁵ United Nations Committee on the Rights of the Child (CRC), General Comment no. 6 (2005) on Treatment of Unaccompanied and Separated Children outside Their Country of Origin, paragraph 8, U.N. Doc. CRC/GC/2005/6 (May 17–June 3, 2005).

⁶ *Ibid.*, paragraph 7.

⁷ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (Aug. 19, 2014), paragraph 49.

⁸ See U.N. High Commissioner for Refugees (UNHCR), *2021 UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child* (n. p.: United Nations High Commissioner for Refugees, 2021), 12.

⁹ U.N. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Joint General Comment no. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and no. 22 (2017) of the Committee on the Rights of the Child on the General Principles Regarding the Human Rights of Children in the Context of International Migration, paragraphs 5, 9, 32, 33, 36, 38, 40, and 42, U.N. Doc. CMW/C/GC/3-CRC/C/GC/22 (Nov. 16, 2017).

¹⁰ U.N. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Joint General Comment no. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and no. 23 (2017) of the Committee on the Rights of the Child on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return, paragraphs 8, 13, 16, 17, 27, 30, 34, 39, and 40, U.N. Doc. CMW/C/GC/4-CRC/C/GC/23 (Nov. 16, 2017).

¹¹ G.A. Res. 73/195, paragraphs 15, 23, 24, 27, and 28 (Jan. 11, 2019).

and “separated minors” are presented as a duality of concepts, they are most often considered jointly when policy recommendations are worded.¹²

Divergently, domestic law—both state and EU law—lacks a specific definition or mention of separated minors, thus including the situation of separated children in the broader condition of unaccompanied minors as a protective and special regime, whether in the case of economic irregular migration or of mobility in search of a protection status.¹³

The normative exclusion of this duality hinders an appropriate recollection of diversified statistics on separated children,¹⁴ contrary to what the European Commission already proposed in 2017 in its communication on the protection of children in migration:

Following their arrival in the European Union, children in migration should always be identified and registered as children, using a uniform data set across the European Union (for example, to indicate whether a child is unaccompanied, separated or travelling with family, nationality/statelessness, age, sex, etc.).¹⁵

Moreover, the policy literature of different national and international stakeholders does not clearly consider these two situations apart.¹⁶ In this

¹² For all, see Joint Report of the Special Rapporteur on the Sale and Sexual Exploitation of Children, including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material, and the Special Rapporteur on Trafficking in Persons, Especially Women and Children, U.N. Doc. A/72/164 (July 18, 2017), paragraphs 14, 22, 31–32, 53–56, 59, 72–75, 80, and 83. See also G. A. Res. 76/266, Progress Declaration of the International Migration Review Forum, (June 14, 2022), convened to discuss and share progress on the implementation of all aspects of the Global Compact for Safe, Orderly and Regular Migration, paragraphs 11, 32, and 57.

¹³ For EU law, see Council Directive 2001/55, article 2.f, 2001 O.J. (L 212) (EC), on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001]; Council Directive 2011/95, article 2 (l), 2011 O.J. (L 337) (EU), on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast); Council Directive 2013/33, article 2.e, 2013 O.J. (L 180) (EU), laying down standards for the reception of applicants for international protection (recast). Other EU migration rules, outside the especial protection regime are equally restrictive. For Spanish legislation, see article 189, Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009, BOE 103, April 30, 2011.

¹⁴ European Union Agency for Fundamental Rights, *Current Migration Situation in the EU*, 2–3.

¹⁵ COM (2017) 211 final (Apr. 12, 2017).

¹⁶ Delegación de ACNUR en España, *Menores no acompañados y la protección de asilo* (Madrid: ACNUR-Ministerio de Empleo y Seguridad Social, n. d.); Anja Radjenovic, *Vulnerability of Unaccompanied and Separated Child Migrants* (Brussels: European Union, 2021).

vein, most of the EU policy documents adopted after the 2017 Communication of the European Commission on the protection of children in migration do not mention this specific category anymore.¹⁷

Therefore, the undisputed application of the unaccompanied minors regime, generally transferring the child to the state care system, is elicited without verifying the precise nature and scope of the relationship between the minor and the accompanying adult.¹⁸ Separation from the accompanying adult can lead either to detention and expulsion to the country of origin or to public or private foster placement until the child comes of age in those cases where expulsion is not feasible in the absence of a readmission agreement. An unaccompanied minor's application for a protection statute (asylum, subsidiary protection, or temporary protection) is possible according to the normative framework, although numbers speak of a very low use ratio.¹⁹ Furthermore, this option is hindered when the minor is separated and is dependent on the foster care institution or the guardianship appointment process.

Were the bond with the accompanying adult to amount to a "family" relationship or put at risk the family ties of the child in a third country, a different action other than automatic separation should be adopted in order to avoid the aforementioned consequences. Therefore, attention needs to be given to the expanding case law updating interpersonal links as the cornerstone to determine the child's right to a family and its limits. For this, we shall turn to the Court of Justice of the European Union's (CJEU) and

¹⁷ See, for all, Conclusions of the Council of the European Union and the Representatives of the Governments of the Member States on the Protection of Children in Migration (June 8, 2017); *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum*, COM (2020) 609 final (Sept. 23, 2020); *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Report on Migration and Asylum*, COM (2021) 590 final (Sept. 29, 2021). In European Parliament resolution on the protection of children in migration, May 3, 2018, 2020 O.J. (C 41/41), there is an isolated mention illustrating that data on unaccompanied children encompass undifferentiated data on separated children.

¹⁸ Fundación Abogacía Española, *La protección en Europa de "menores separados" de su acompañante adulto en movimientos migratorios* (Iturria: Fundación Abogacía Española, 2019), 5–6.

¹⁹ María Teresa de Gasperis, Pablo Pérez Pérez, and Sonia Gruben, eds., *Aproximación a la protección internacional de los menores no acompañados en España* (Madrid: La Merced Migraciones, 2009), 30. At EU level, there are no comprehensive statistics of the share of unaccompanied minors lodging applications for protection, let alone separated children. See European Asylum Support Office (EASO), *Annual Report 2018*, section 4.10.1, "Unaccompanied Minors". For information on the increasing trend in applications, see also *Annual Report 2021*, 253.

the European Court of Human Rights' (ECtHR) case law—their decisions being final and binding upon EU MMSS.²⁰

II. A European Case Law–Based Approach to Separated Children's Protection

Both international and domestic law fail to provide a common definition of the family link requirement to consider a child “duly” accompanied or “travelling with family”. While General Comment no. 6 CRC refers to separated children as those accompanied by “other relatives”, “other family members” different from parents, or the “legal or customary primary caregiver”, EU law ignores the separated children concept and considers unaccompanied children any minor arriving without “an adult responsible for him or her whether by law or by the practice of the Member State concerned”. As such, and according to the restrictive concept in EU legislation, any other family relation as regards the state of origin is not to be considered at all when defining the status of a minor. Nevertheless, European Courts have broadened the family bond concept. This should restrain the application of the unaccompanied minor regime, excluding certain situations in which we are before “separated children” cases and not truly unaccompanied minors.

1. *The Child's Right to a Family Depends on the Definition of Family*

The European law concept of family is quite restrictive and conventional²¹ compared to the long tradition of a nonformal approach to family in ECtHR case law.²² For the last fifteen years, the ECtHR has

²⁰ For an analysis of the concept of family in Article 17 ICCPR, see William Schabas and Manfred Nowak, *U. N. Covenant on Civil and Political Rights: Nowak's CCPR Commentary* (Kehl, Germany: N. P. Engel, 2019), 475–84; and for its interpretation by human rights treaty bodies, mainly the Human Rights Committee (HRC) and the CRC, see Frances Nicholson, *The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied* (n. p.: United Nations High Commissioner for Refugees, 2018), 16–18. For the concept of family in UNHCR practice, see *Ibid.*, 34–36.

²¹ *Ibid.*, 19–20; European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Law Relating to the Rights of the Child* (Luxembourg: Publications Office of the European Union, 2022), 207–2012.

²² As a starting point, see *Marckx v. Belgium*, App. No. 6833/74, paragraphs 30–34 (June 19, 1979), <https://hudoc.echr.coe.int/eng?i=001-57534>.

recognized family ties protected by article 8 ECHR between minors and adults not sharing a legal or biological bond when the relationship is genuine.²³ This court, and in the same vein the CJEU,²⁴ considers that the family link protected by article 8 ECHR (or article 7 CFREU) is a de facto question rather than a legal one; authorities should thus verify the existence of a real relationship—one of dependence and care. The factors to be weighed up are the role played by the adults and the closeness, duration, and quality of the bond.²⁵ Once verified, the relationship must be respected and protected.²⁶ Nevertheless, no unique legal model for a family bond or relationship exists according to ECtHR case law, which allows states a wide margin of appreciation. Therefore, the case law of the international tribunals is of paramount importance to determine whether a specific tie is already considered protected by family boundaries.

Surrogate motherhood cases are among the new situations the ECtHR has analyzed whereby a minor may cross borders accompanied by an adult who is not legally or biologically related (as in the separated

²³ *Wagner and J. M. W. L. v. Luxembourg*, App. No. 76240/01, paragraph 117 (June 28, 2007), <https://hudoc.echr.coe.int/eng?i=001-81328>; *Moretti and Benedetti v. Italy*, App. No. 16318/07, paragraph 48 (Apr. 27, 2010), <http://hudoc.echr.coe.int/eng?i=001-98441>; *Kopf and Liberda v. Austria*, App. No. 1598/06, paragraph 37 (Jan. 17, 2012), <http://hudoc.echr.coe.int/eng?i=001-108686>; *Paradiso e Campanelli v. Italia*, App. No. 25358/12, paragraphs 148–49 ([GC], January 24, 2017), <http://hudoc.echr.coe.int/eng?i=001-170359>; *Valdís Fjölnisdóttir and Others v. Iceland*, App. No. 71552/17, paragraph 59 (May 18, 2021), <http://hudoc.echr.coe.int/eng?i=001-209992>.

²⁴ Case C-129/18, *S. M. v. Entry Clearance Officer, UK Visa Section*, ECLI:EU:C:2019:248, paragraphs 69–70 (Mar. 26, 2019).

²⁵ *Wagner and J. M. W. L.*, paragraph 117; *Moretti and Benedetti*, paragraphs 49–50; *Kopf and Liberda*, paragraph 37; *Nazarenko v. Russia*, App. no. 38438/13, paragraph 58 (July 16, 2015), <https://hudoc.echr.coe.int/eng?i=001-156084>; *Paradiso e Campanelli*, paragraphs 149, 151, and 153–54. For an analysis, see Idoia Otaegui Aizpurúa, *La relevancia del Tribunal Europeo de Derechos Humanos en la protección de los derechos del menor* (Pamplona: Aranzadi-Thomson Reuters, 2017), 152–64.

²⁶ European Court of Human Rights (ECtHR), *Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life, home and correspondence* (Strasbourg: Council of Europe/European Court of Human Rights, 2021), paragraph 266, and the case law referred therein. The CJEU [GC] stated in *S. M.* (2019) that “In the event that it is established (...) that the child placed under the Algerian kafala system and its guardians, who are citizens of the Union, are called to lead a genuine family life and that that child is dependent on its guardians, the requirements relating to the fundamental right to respect for family life, combined with the obligation to take account of the best interests of the child, demand, in principle, that that child be granted a right of entry and (...) in order to enable the child to (...) live with its guardians in their host Member State.” paragraph 71. Otherwise, “those guardians are in fact prevented from living together in that Member State because one of them is required to remain, with the child, in that child’s third country of origin in order to care for the child”, paragraph 72.

minors concept mentioned above). First and foremost, the ECtHR has never been confronted with a claim introduced by a biological mother against any of the states involved (either the state where the surrogacy takes place or the state to where the intended parents fly with the child). Second, the ECtHR has always been concerned with the rights of the child born in a surrogacy relationship. Thus, the Court has underlined the need for protection of the child's right to an identity and a family, as per article 8 ECHR.

There are only two surrogate motherhood ECtHR cases where minors have been separated from their intended parents when arriving at their home country. In both cases, there were no biological bonds between the child and the intended parents and no legal bond according to the home state. In *Paradiso e Campanelli*, national authorities considered the child "in a state of abandonment for the purposes of the law" and gave him in adoption with a new identity, even though there were publicly commissioned reports of the strong commitment of the intended parents to the welfare of the child. This case was first decided by a chamber that found that there was a de facto family relationship between the intended parents and the child. The ECtHR Chamber (2015) found a violation because "national authorities had failed to strike the fair balance that should be maintained between the general interest and the private interests at stake", "without any specific assessment of the child's living conditions with the applicants, and of his best interests".²⁷ The Grand Chamber (2017) concluded otherwise, as it considered that the duration and quality of the bonds in the specific case did not amount to a de facto family bond. That said, the nonviolation judgment delivered by the Grand Chamber was based on a different appreciation of facts rather than on the legal approach to the de facto family bond.²⁸ That said, an evolution is shown in a second and more recent case, *Valdís Fjölfnisdóttir and Others v. Iceland*. At arrival in Iceland, a child was considered a foreign national (the biological mother was a United States national) and an unaccompanied minor, despite traveling with the intended mothers. The minor was taken into child custody but later given in permanent foster care to one of the intended mothers (since the couple split and subsequent marriages were entered into by both intended mothers), granting equal access to the second mother. No legal adoption was allowed by Icelandic superior courts, and no legal family tie was recognized either, although nationality was granted to the child through

²⁷ *Paradiso e Campanelli*, paragraphs 75–87.

²⁸ *Ibid.*, paragraph 157.

an Act of Parliament. The ECtHR (2021) recognized the existence of de facto family bonds between the two intended mothers and the child and—despite no legal recognition of parenthood being allowed by Icelandic legislation or courts—it found no violation whatsoever because the family bond was neither impeded nor disturbed. Considering the wide margin of appreciation granted to the States Parties to the ECHR concerning surrogate motherhood, the nature or specifics of the applied legal regime—permanent foster care with one of the mothers and contact with the second—were not in conflict with article 8 of the convention. Should the child have been separated from both of them, the ECtHR might have delivered a violation judgment.

In the same vein, the CJEU has already accepted a broad understanding of the family bond for purposes of migration and family reunification in the territory of an EU Member State. In *S. M.*, the Grand Chamber (2019) defined a minor in kafala (an Algerian legal guardianship regime) not in the concept of “direct descendant”, which would require a biological or adoptive relationship, but as one of the “other family members” of a citizen of the European Union. Notwithstanding the nuance, this legal definition acknowledges that, as one of the “other family members” dependent or member of the household of the EU citizen having the primary right of residence, a minor in a kafala relationship should be granted entry and residence rights so as to “maintain the unity of the family in a broader sense”.²⁹ The ECtHR had previously taken position on the matter, and the CJEU endorsed it: the kafala regime establishes family bonds between a minor and a caring adult, secured by article 8 ECHR.³⁰ For the ECtHR, this article protects the minor in kafala against arbitrary action by public authorities and requires those authorities, where the existence of a family bond has been proved, to enable that bond to develop and to establish legal safeguards to make it possible for the child to integrate into their family.³¹ No separation measures should be adopted in those cases, short of violating the minor’s fundamental and legal rights.

Following the aforementioned jurisprudence on surrogate parenthood and kafala, it needs to be concluded that there are several ties that equate to family, either de facto relations or legal bonds in origin not recognized at the national

²⁹ Case C-129/18, *S. M. v. Entry Clearance Officer, UK Visa Section*, ECLI: EU: C: 2019: 248, paragraphs 69–70 (Mar. 26, 2019).

³⁰ *Affaire Chbihi Loudoudi and Others v. Belgium*, App. no. 52265/10, paragraph 78 (Dec. 16, 2014), <https://hudoc.echr.coe.int/eng?i=001-149111>.

³¹ *Harroudj v. France*, App. No. 43631/09, paragraphs 40–44 (Oct. 4, 2012), <https://hudoc.echr.coe.int/eng?i=001-113819>; *Affaire Chbihi Loudoudi and Others*, paragraphs 88–89.

level in the destination country. Consequently, protection of these ties must be ensured, as they inform the right to a family according to article 7 CFREU and article 8 ECHR. Hence, separation of a child currently holding a family bond, whether de facto or not, could amount to a violation of the CFREU or ECHR.

2. Separation Measures May Encroach on a Minor's Family Life

The ECtHR has confronted different situations involving separated minors in the sense defined above,³² concluding that there is a state obligation to carefully research the nature and scope of a family bond prior to any decision on expulsion (refoulement) or separation from the accompanying adult and to determine how those decisions would affect a child's right to family life. In *Mubilanzila Mayeka and Kaniki Mitunga* (2006), a five-year-old minor traveling accompanied by an uncle, both arriving from the Democratic Republic of Congo in transit to Canada, where her mother was awaiting a refugee status, was separated by Belgian authorities and deported back to the country of origin. The ECtHR found that Belgium had failed to protect the right to a family—both of the child and of the mother—under article 8 ECHR when preventing the child to continue the travel along with her uncle.³³ In *Bubullima* (2010), an uncle's minor, provided with a notarized power of attorney granting custody in a third country, was not allowed to claim a regularization permit for the child, as domestic norms only authorized legal or biological parents to act on behalf of a minor. This caused the minor to be separated and detained, awaiting expulsion. Unfortunately, the court was not to decide on the right to a family but on the right to challenge the lawfulness of the detention before a court. Therefore, it did not elaborate on the status of the minor as an unaccompanied or separated child.³⁴ In *Rahimi* (2011), a minor escaping Afghanistan was in a detention center in Lesbos, Greece, allegedly—according to local authorities—accompanied by an adult cousin, but alone

³² Not surprisingly, these cases are included in the ECtHR Press Unit fact sheet on “Unaccompanied Migrant Minors Detention” (updated December 2021) and not in the one devoted to “Accompanied Migrant Minors Detention” (updated April 2022), as there is no detached “separated minor” category for the ECtHR Press Unit.

³³ *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, App. No. 13178/03, paragraphs 75–86 (Oct. 12, 2006), <https://hudoc.echr.coe.int/eng?i=001-77447>. For this case, see Vicente A. Sanjurjo Rivo, “La protección del desamparo de una menor inmigrante no acompañada y su familia por el Tribunal Europeo de Derechos Humanos: el caso Mubilanzila Mayeka y Kaniki Mitunga contra Bélgica”, *Estudios Penales y Criminológicos* 29 (2009): 491–507.

³⁴ *Bubullima v. Greece*, App. No. 41533/08 (Oct. 28, 2010), <https://hudoc.echr.coe.int/eng?i=001-101345>.

by his own telling. Without an appointed tutor, he traveled to the mainland with the assistance of an NGO. The ECtHR accorded the utmost importance to elucidating his personal situation, as the obligations on the state would drastically differ whether he was an unaccompanied minor or not. The court, considering the facts of the case, decided that Greece had followed a random proceeding for deciding the existence of a family tie between the minor and the accompanying adult, acknowledging a violation of article 3 ECHR owing to the conditions to which the child was exposed.³⁵ This case underscores, on the one hand, that a bond other than parenthood (e.g., being a cousin) is admitted by the ECtHR for a minor not to be unaccompanied and, on the other, that the state is under the obligation to thoroughly investigate the nature of the bond between a minor and an accompanying adult before any measure is adopted. Finally, in *Moustahi* (2020), two brothers, both minors, traveled without the company of an adult family member in a *kwassa* (migrants' boat) along with other fifteen people from Comoros to Mayotte, a French overseas *département* in that archipelago, where their father resided. Upon arrival, the children were registered as traveling with a certain adult (a person by the name of "M. A.") and were consequently detained. The father, provided with the children's birth certificates, tried to get them released to no avail, and they were sent back to Comoros, where their grandmother took them in charge. The ECtHR found France in violation of both the parent's and the children's rights ex-article 8 ECHR, given that the authorities should have delved into the bonds between the children and M. A. in order to ascertain if a family tie truly existed.³⁶

In sum, minors crossing borders with an adult who is not the legal parent or guardian or does not have a direct biological relationship are, nonetheless, entitled to the full respect of their right to family according to constant jurisprudence of the ECtHR and the CJEU.³⁷ That said, the right to family life may lead to maintaining the bond between the accompanying adult and the child, even when it is a temporary company aimed at restoring another family bond for the minor traveling between countries. Be that as it may, the case law underlines the fundamental obligation of national authorities to thoroughly examine the bonds between a minor and an

³⁵ *Rahimi v. Greece*, App. No. 8687/08, paragraphs 63 and 67–73 (Apr. 5, 2011), <https://hudoc.echr.coe.int/eng?i=001-104366>.

³⁶ *Moustahi v. France*, App. No. 9347/14, paragraphs 111–14 (June 25, 2020), <https://hudoc.echr.coe.int/eng?i=001-203163>.

³⁷ Other international human rights bodies, such as the HRC, have also adopted and extended the concept of family. See Nicholson, *The Right to Family Life and Family Unity of Refugees*.

accompanying adult before any separation, internment, or deportation measure is undertaken. The compatibility of such separation measures with the ECHR is not excluded, although this might depend on the specificities addressed in the following section.

3. *A Public Interest Can Be at Stake: Fighting against Human Trafficking and Abuses*

The right to family life is not an absolute one. Restrictions are accepted both at the regional level, in ECHR and EU law, and at the universal level, as determined by the International Covenant on Civil and Political Rights (ICCPR). Such restrictions must satisfy a set of requirements—namely, they must serve a public interest and be provided for by the law, resulting in a necessary and proportionate restriction in the circumstances of the case to attain said goal. It is not the purpose of this paper to elaborate on these elements, which have been widely addressed in scholarly literature. Attention will only be given to the specifics of taking measures in the public interest as justification for restrictions on the right to family life of a separated minor.

According to article 8.2 ECHR, interference with the exercise of the right to respect for family life must be based on

the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.³⁸

Prevention of crime is the public interest of choice when it comes to detention and migration policies concerning minors, whether to hinder a career into crime of unaccompanied minors arriving illegally in a country or to fight against human trafficking networks in which a minor might be caught.³⁹

³⁸ Article 17 ICCPR only states a general prohibition of “arbitrary or unlawful interference with his privacy, family” without clarifying the specific public interest under which a restriction could be implemented. For clarifications on the interpretative problems this wording brings about, see Schabas and Nowak, *U. N. Covenant on Civil and Political Rights*, 462–66.

³⁹ An analysis centered on the legal regime of detention of minors is a complementary approach to the family rights–based analysis chosen for this paper. See, in that same vein, Joanna Markiewicz-Stanny, “The Rights of the Child and a Problem of Immigration Detention”, *Polish Review of International and European Law* 9, no. 2 (2020): 83–106. This approach becomes relevant whenever a separated minor’s family relation with the accompanying adult is not recognized and the child is detained, as in the ECtHR case *Mubilanziila Mayeka and Kaniki Mitunga v. Belgium*.

Prevention probably represents the main goal for restrictive measures undertaken on unaccompanied and separated minors, which encompass several crimes as well as all modern forms of slavery (e.g., sexual exploitation, domestic servitude, forced labor, recruitment of soldier children, etc.) but could also include forced adoptions, forced marriage of underage girls, or organ trafficking.⁴⁰ It truly constitutes an objective threat to migrant minors, especially those traveling alone, as stated in General Comment no. 6 CRC (2005, paragraphs 50–60); Joint General Comment no. 3 CMW, General Comment no. 22 CRC (2017, paragraphs 40–42); Joint General Comment no. 4 CMW, General Comment no. 23 CRC (2017, paragraphs 39–40); and Joint Report of the Special Rapporteur on the Sale and Sexual Exploitation of Children, including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material, and the Special Rapporteur on Trafficking in Persons, Especially Women and Children.⁴¹

EU migration policy documents and legislation underline a risk approach to heavy human trafficking and other crimes when addressing the situation of migrant children, especially unaccompanied ones,⁴² as separated minors are not generally referred to on their own. Proposals for a new legislative framework on migration and asylum (see section IV) maintain this very approach,⁴³ as submitted by the European Commission in

⁴⁰ For a definition of human trafficking and discussions on the restricted versus broader concept encompassing a multiplicity of crimes, see Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge: Cambridge University Press, 2012); Waldimeiry Correa da Silva, *Regime Internacional de Enfrentamento ao Tráfico de Pessoas: avanços e desafios para a proteção dos direitos humanos* (Rio de Janeiro: Lumen Juris, 2018). Specifically on the concept of child trafficking, see Helmut Sax, “Child Trafficking: A Call for Rights-Based Integrated Approaches”, in *Routledge Handbook of Human Trafficking*, ed., Ryszard Piotrowicz, Conny Rijken, and Baerbel Heide Uhl (New York: Routledge, 2017), 251–60; Kathryn E. Van Doore, *Orphanage Trafficking in International Law* (Cambridge: Cambridge University Press, 2022).

⁴¹ U.N. Doc. A/72/164 (July 18, 2017), paragraphs 17–45.

⁴² For all, see COM (2017) 211 final (Apr. 12, 2017); European Parliament resolution on the protection of children in migration, May 3, 2018, 2020 O.J. (C 41/41), paragraph J.3; and the very recent *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Report on Migration and Asylum*, COM (2021) 590 final (Sept. 29, 2021).

⁴³ *Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management and Amending Council Directive (EC) 2003/109 and the Proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]*, COM (2020) 610 final (Sept. 23, 2020). Article 13.4 (c) includes “safety and security considerations, in particular where there is a risk of the minor being a victim of any form of violence and exploitation, including trafficking in human beings” as a factor to be pondered for the assessment of the best interests of the child.

the New Pact for Migration and Asylum 2020.⁴⁴ The risks of trafficking along migration routes are high, notably for women and girls, who are exposed to becoming victims of trafficking for sexual exploitation or other forms of gender-based violence. Trafficking networks abuse asylum procedures and use reception centers to identify potential victims.⁴⁵ The early identification of potential non-EU victims will be a specific theme of the European Commission's forthcoming approach toward the eradication of trafficking in human beings, as set out in the recent Security Union Strategy.⁴⁶

Nevertheless, neither the general fear of trafficking mafias nor the overall region/country information—i.e., a general prevention goal—can justify a restriction of individual rights (be it the right to family life or the right to security and freedom) as a routine and rigid scheme, even in the case of separated children—i.e., minors accompanied by an adult with whom they share no familial bond. The Inter-American Court of Human Rights set it straight in its advisory opinion on the rights and guarantees of children in the context of migration and/or in need of international protection:

This does not mean, in any way, that in all cases in which a child is traveling independently and is accompanied by an adult who is not a relative, the corresponding authorities should automatically consider this to be a case of trafficking and return the child to her or his country of origin. In this regard, the strictest diligence is required of the border authorities to identify the different situations that require them to intervene in a timely, adequate and fair manner.⁴⁷

Human rights instruments require, along with a general public interest justifying the nature and scope of the measure in abstract terms, a case-by-

⁴⁴ *Communication of the Commission on a New Pact on Migration and Asylum*, COM (2020) 609 final (Sept. 23, 2020), 2.4 in fine. The new approach should strengthen the current rules of Council Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council framework decision 2002/629/JHA, 2011 O.J. (L 101), 1–11 (EU). For unaccompanied children, see Preamble, paragraph 23, and article 16 (“Assistance, Support and Protection for Unaccompanied Child Victims of Trafficking in Human Beings”).

⁴⁵ European Union Agency for Law Enforcement Cooperation (Europol), *European Migrant Smuggling Centre 4th Annual Report: 2020* (Luxembourg: Publications Office of the European Union, 2020).

⁴⁶ *Communication from the Commission on the EU Security Union Strategy*, COM (2020) 605 final (July 24, 2020).

⁴⁷ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (Aug. 19, 2014), paragraph 93.

case examination of the existence of the threat and the necessity and proportionality of the measure to protect a minor against that risk, assuming this measure is set out by the law establishing limits to the discretionary powers of the state at both administrative and judicial levels.⁴⁸

In that vein, the ECtHR has shown a very restrictive approach to the limitation of the right to family based on a “pressing social need” (e.g., a child’s separation from their family—once proved that a legally or de facto family link exists—in a migration context). The necessity requirement (restriction based on a public interest) does not accommodate other close concepts such as “reasonable”, “useful”, or “desirable” restrictions. The separation measure as a legal restriction becomes admissible only when required by a “pressing social need” and if proportionate to the aim pursued. Any restrictive measure at the national level must be subject to domestic judicial review, which should account for individual circumstances and risk assessment.⁴⁹ Although a margin of appreciation is granted to the state, the ECtHR retains the right of review over the analyses made by the national authorities.

Surprisingly, there is no extensive case law on “trafficking in human beings” as a legitimizing basis for restrictions with regard to minors in the HUDOC data base,⁵⁰ while the ECtHR has found that a mother being a victim of trafficking is not sufficient reason per se to sever or impede a familial bond with her children, much less to give them up for adoption.⁵¹ When examining the specific case law concerning separated children, both the CJEU and the ECtHR have seldom been confronted with these public policy restrictions to the right to family life. The CJEU, in *S. M.* (GC 2019), stated that “it is also necessary to take account of possible tangible and personal risks that the child concerned will be the victim of abuse, exploitation or trafficking”.⁵² This pressing social need has been invoked by the parties before the ECtHR in *Rahimi*,⁵³ although this court has not taken

⁴⁸ On the requisite “in accordance with the law” for restrictions on the right to family life, see ECtHR, *Guide on Article 8 of the European Convention on Human Rights*, paragraphs 1–21, and the case law cited therein.

⁴⁹ *Ibid.*, paragraphs 28–30.

⁵⁰ A search for “trafficking in human beings” showed fifty-three judgments, the oldest being *Siliadin v. France*, App. No. 73316/01 (July 26, 2005), <https://hudoc.echr.coe.int/eng?i=001-69891>. There were seventy-five results for “human trafficking”, with the oldest case being *Ramanauskas v Lithuania*, App. No. 74420/01 ([GC], Feb. 5, 2008), <https://hudoc.echr.coe.int/fre?i=001-84935>.

⁵¹ *Affaire A. I. c. Italie*, App. No. 70896/17 (April 1, 2021), <https://hudoc.echr.coe.int/eng?i=001-208880>.

⁵² Case C-129/18, *S. M. v. Entry Clearance Officer, UK Visa Section*, ECLI:EU:C:2019:248, paragraph 70 (Mar. 26, 2019).

⁵³ *Rahimi v. Greece*, paragraph 58.

any consideration into the argument. In *Mubilanzila*, instead, the ECtHR asserted that the detention of the minor could hypothetically be justified based on “the interests of national security or the economic well-being of the country or, just as equally, for the prevention of disorder or crime”, concluding however that this very detention provoked a violation of the minor’s right to family life:

The effect of the second applicant’s detention was to separate her from the member of her family in whose care she had been placed and who was responsible for her welfare, with the result that she became an unaccompanied foreign minor, a category in respect of which there was a legal void at the time. Her detention significantly delayed the applicants’ reunification. The Court further notes that, far from assisting her reunification with her mother, the authorities’ actions in fact hindered it.⁵⁴

In summary, European Courts have found violations of a minor’s right to a family in situations where family reunification was impeded either by not recognizing a non-European legal family bond (kafala) or by not respecting the accompanying adult relationship (extended family) as a caretaker in transit while the child was being safely transferred to or reunited with their legal or biological family, and whereby a separation measure based on a public interest—such as fighting organized crime—did not prove indispensable in the circumstances of the specific case.

III. The Best Interests of the Child: A Solomon Sword between General and Individual Protection of Separated Minors for Enhanced Compliance

The cornerstone of the 1989 United Nations Convention on the Rights of the Child (UNCRC) regarding children’s protection is the “best interests of the child” concept, embodied in article 3.1:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.⁵⁵

⁵⁴ *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, paragraph 82.

⁵⁵ United Nations, *Treaty Series*, vol. 1577 (New York: United Nations, 1999), 3.

Both the CRC⁵⁶ and legal scholars⁵⁷ have stated that the “best interests” clause is both a principle for children’s rights interpretation, from which new and specific rights arise, and a procedural rule.⁵⁸ It is not an abstract notion, yet it gains significance when applied to the specific circumstances of a case.⁵⁹

Although the “best interests” principle is not present in the ECHR, given that minors’ rights are not individualized and the convention dates back to 1950,⁶⁰ it has been gaining ground in ECtHR case law since the 1990s⁶¹ as a criterion to be taken into account when pondering the need for separation against conflicting rights⁶² or when assessing the need in a democratic society for a measure such as the expulsion of a minor.⁶³ On the other hand, the CFREU devotes article 24 to the rights of the child, building on the best interests of the child as a “primary consideration” in “all actions relating to children, whether taken by public authorities or private institutions”. Accordingly, EU secondary law includes specific and direct references to the best interests of the child—inspired by the 1989 UNCRC—to be considered when applying any measure concerning minors.

⁵⁶ U.N. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Joint General Comment no. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and no. 22 (2017) of the Committee on the Rights of the Child on the General Principles Regarding the Human Rights of Children in the Context of International Migration, November 16, 2017, CMW/C/GC/3-CRC/C/GC/22, paragraph 32.f.

⁵⁷ Legal literature on the concept is vast. Among Spanish scholars, attention must be paid to Jorge Cardona Llorens, former member of the CRC (2011–2018): “La Convención sobre los Derechos del Niño: significado, alcance y nuevos retos”, *Educatio Siglo XXI* 30, no. 2 (2012): 47–68, at 48, 53–54; and “El interés superior del niño a los 4 años de la aprobación de la observación general 14 del comité de derechos del niño”, in *El interés superior del niño en la jurisprudencia internacional, comparada y española*, ed. Susana Sanz Caballero (Navarra: Aranzadi Thomson Reuters, 2017), 99–110.

⁵⁸ U.N. Committee on the Rights of the Child (CRC), General Comment no. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (article 3, paragraph 1), U.N. Doc. CRC/C/GC/14 (May 29, 2013).

⁵⁹ G.A. Res. 73/195 (Jan. 11, 2019), paragraph 15 (h).

⁶⁰ The only mention of minors’ rights in the European Convention on Human Rights appears in article 5.1.d, on special rules concerning a minor’s detention. Later, article 5 of the 1984 Additional Protocol 7 mentions children’s interests when addressing equality between spouses.

⁶¹ The term “best interests of the child” can be found in previous cases but only as a reference to national legislation or arguments put forward by the parties. The first mention in the European Court of Human Rights’ reasoning is found in *Hokkanen v. Finland*, App. no. 19823/92, paragraph 58 (Sept. 23, 1994), <https://hudoc.echr.coe.int/eng?i=001-57911>.

⁶² *Johansen v. Norway*, App. no. 17383/90, paragraph 78 (Aug. 7, 1996), <https://hudoc.echr.coe.int/eng?i=001-58059>.

⁶³ *Maslov v. Austria*, App. No. 1638/03, paragraph 82 (June 23, 2008), <https://hudoc.echr.coe.int/eng?i=001-87156>.

Nevertheless, this appears to be a time- and vulnerability-sensitive approach, as we barely find a general reference to the concept in the preamble of older and general migratory rules,⁶⁴ whereas more modern and specific norms defining a protective status include detailed specifications on the best interests of the minor.⁶⁵ At a political level, the “best interests of the child” approach is present in policy documents, although pointing at a general vulnerability approach concerning not only violence, exploitation, and trafficking but also the use of children by parents or other holders of parental responsibility to obtain the possibility of legal entry to the EU.⁶⁶

The very essence of the concept of the best interests of the child lies on the question of determining its concrete meaning in a given case, so as to ponder a minor’s right to a family against the need of protection in a risky context. A triple level must be considered when defining and applying a methodology to assess the “best interests” of a certain child, as proposed by Krutzinna: a) the universal child, b) the categorical child, and c) the individual child. Each of these perspectives contributes in a different way to draw the protective conditions.⁶⁷ Nevertheless, individualization must always reach the individual “best interest”: authorities should not rely on a general best interest approach when adopting specific decisions, but neither on a category-defined one. These should not be based on a general concept or perception of what must be best for a minor (the universal child), a migrant child, or even a separated migrant minor (the categorical child); rather, these decisions should be based on a minor’s needs (the individual child) to avoid presumptions about a child’s typical needs or assumptions about generally

⁶⁴ See preamble to Council Directive 2003/86, 2003 O.J. (L 251/12), 12–18 (EC), on the right to family reunification.

⁶⁵ See Council Directive 2011/95, 2011 O.J. (L 337/9) (EU), paragraphs 18, 19, 27, and 38 (Preamble), as well as articles 20 (General Rules) and 31 (Unaccompanied Minors); see also Council Directive 2013/33, 2013 O.J. (L 180/96) (EU), paragraphs 9 and 22 (Preamble) and articles 2.(j) (Definitions), 11 (Detention of Vulnerable Persons and of Applicants with Special Reception Needs), 23 (Minors), and 24 (Unaccompanied Minors); and paragraphs 13, 16, 24, and 35 of the Preamble, along with articles 2.(k), 6 (Guarantees for Minors), 8 (Minors), and 20 (Start of Procedure) in Regulation no. 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person, 2013 O.J. (L 180/31) (EU).

⁶⁶ Council of the European Union, Conclusions of the Council of the European Union and the Representatives of the Governments of the Member States on the Protection of Children in Migration, Doc. no. 10085/17 (June 8, 2017).

⁶⁷ Jenny Krutzinna, “Who is ‘The Child’? Best Interests and Individuality of Children in Discretionary Decision-Making”, *International Journal of Children’s Rights* 30 (2022): 120–45, proposing a “Model of Individual Child (MIC)” as “a tool for discretionary decision-making”.

perceived threatening situations for migrant children. The European Parliament has expressly acknowledged the need for individualization in its 2018 resolution on the protection of children in migration.⁶⁸

Consequently, the separation decision should be weighed against the eventual risk arising out of organized crime—human trafficking or other—in an individualized manner, too. No general measure is acceptable without a risk assessment. Both the risk and the best interests analysis must be individualized for the minor affected by a potential separation measure.⁶⁹ This idea is not clearly underlined by scholars when addressing the general obligations of the state to prevent human trafficking, as they tend to study “prevention through addressing vulnerability” as a general category, describing factors to be taken into account rather than individual situations.⁷⁰

While the determination is undertaken, a separation measure from the accompanying adult is to be considered exceptional, as declared by the ECtHR (see section II.2 above) and the CRC.⁷¹ Nevertheless, accompanying measures such as observation through public services—either in public premises or through institutions (e.g., assisted housing with the help of collaborative NGOs)—should be in place.⁷² These very measures may contribute to clarifying the case, observing the relationship between the child and the accompanying adult while keeping the minor protected under control and surveillance. Yet no separation or internment measure should be automatically adopted without prior risk determination and assessment unless there is an imminent or actual danger of being held in a human trafficking network or any other form of criminal activity.

In any event, neither the child’s right to be heard (article 12, 1989 UNCRC) nor respect for the non-refoulement principle should be forgotten.⁷³ The best interests of the child require an individualized analysis of the relationship between the accompanying adult and the minor in order to determine whether it amounts to a *de facto* family bond, which immediately engages the minor’s right to family life, or whether the adult is a temporary guardian transferring the child to a family nucleus, guaranteeing

⁶⁸ European Parliament resolution on the protection of children in migration, May 3, 2018, 2020 O.J. (C 41/41), paragraph J.3.

⁶⁹ Clearly established in U.N. Doc. A/72/164 (July 18, 2017), paragraphs 80 (b) and 81 (a).

⁷⁰ For all, see Gallagher, *International Law of Human Trafficking*, 415–32, and specifically on children, 427–30.

⁷¹ U.N. Committee on the Rights of the Child (CRC), General Comment no. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (article 3, paragraph 1), paragraphs 58–66, U.N. Doc. CRC/C/GC/14 (May 29, 2013).

⁷² This idea is supported, in the specific context of human trafficking cases, in U.N. Doc. A/72/164 (July 18, 2017), paragraph 81 (e).

⁷³ U.N. Doc. CRC/GC/2005/6, paragraph 26.

per se the access of the minor to their family as part of the minor's right to family life according to the aforementioned case law. In the latter case specifically, we should stress the need for the EU Member State in which the child arrives to facilitate transit to the country where a family member is present, provided that it is in the best interest of the minor, *mutatis mutandis* what it is already foreseen for asylum seekers.⁷⁴

Methodologies for risk assessment to identify the best interests of a child have been developed both at the universal level—by the UNHCR, with a periodic review last conducted in 2021⁷⁵—and at EU level—by the former European Asylum Support Office (EASO),⁷⁶ replaced since February 2022 by the European Union Agency for Asylum (EUAA).⁷⁷ Interestingly, the International Association of Refugee and Migration Judges⁷⁸ has developed, under an EASO contract, a judicial analysis on vulnerability indicators. The proposed analysis is aimed at making “judicial training materials” available to courts and tribunals, thus facilitating “the involvement of judicial and other experts in a manner that respected the independence of the judiciary”.⁷⁹ Yet involvement of special prosecutors for issues concerning minors and migration law at the national level should also be stressed.⁸⁰ To date, a 2011 collection of best practices has been published by the EU Agency for Fundamental Rights (FRA).⁸¹ It is time to

⁷⁴ See articles 8.1 and 2, Regulation no. 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person, 2013 O.J. (L 180/31) (EU).

⁷⁵ UNHCR, *2021 UNHCR Best Interests Procedure Guidelines*.

⁷⁶ European Asylum Support Office (EASO), *Practical Guide on the Best Interests of the Child in Asylum Procedures* (Luxembourg: Publications Office of the European Union, 2019).

⁷⁷ Council Regulation 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation No 439/2010, 2021 O.J. (L 468/1) (EU).

⁷⁸ This non-for-profit organization is a worldwide association seeking “to foster recognition that protection from persecution on account of race, religion, nationality, membership in a particular social group, or political opinion is an individual right established under international law, and that the determination of refugee status and its cessation should be subject to the rule of law”. It is based in the Netherlands and works through a network of regional chapters. They publish a series of newsletters concerning EU migration, asylum, free movement, and CJEU cases where case law is systematized and updated regularly. For more information, see <https://www.iarmj.org/>.

⁷⁹ IARMJ-Europe, *Judicial Analysis Vulnerability in the Context of Applications for International Protection* (Luxembourg: Publications Office of the European Union, 2021).

⁸⁰ Spanish prosecution covers a variety of special areas, among them minors (“Menores”) and migration issues (“Extranjería”).

⁸¹ European Union Agency for Fundamental Rights (FRA), *Separated, Asylum-Seeking Children in European Union Member States and Current Migration Situation in the EU*.

revisit the approach and practice of EU MMSS along with their regional and local authorities so as to develop a model based on the methodologies proposed by the UNHCR and the EUAA and the indicators developed for judicial authorities.

IV. Filling a Void: Proposals Rooted in the EU Perception of Migration and Asylum

Since 2017, awareness has been raised among EU institutions about the priority of “protecting all children in migration, regardless of status and at all stages of migration”.⁸² The 2017 European Commission communication on the protection of children in migration has been to date and by far the only policy document addressing the situation of separated minors, including references to the definition in General Comment no. 6 CRC and the UNHCR guidelines on best interests to individualize migration decisions.

Nevertheless, opportunity for advancement in the normative protection of separated minors is also at hand. The EU is gaining momentum, as proposals for a new migratory compact in EU legislation are being discussed based on the New Pact for Migration and Asylum 2020 and the previous 2016 and 2018 proposals to reform the Common European Asylum System. The new 2020 compact announced by the President of the European Commission Ursula von der Leyen acknowledges the special vulnerability of migrant minors, calling for the best interests of the child and the right to be heard as primary considerations, specifically stressing the need for a more diligent appointment of legal representatives for migrant children (unaccompanied or separated).⁸³ The new approach focuses on defining a comprehensive framework for all forms of migration, despite the cause and migratory status (ordinary migration versus qualified migration for a protective status), as can be seen in the EU’s proposal on asylum and migration management. Therefore, the new framework offers a unique opportunity for including the separated minors’ concept and a proposal for a differentiated regime in all migrant contexts.⁸⁴

⁸² COM (2017) 211 final (Apr. 12, 2017).

⁸³ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum*, COM (2020) 609 final (Sept. 23, 2020), paragraph 2.4.

⁸⁴ *Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management and Amending Council Directive (EC) 2003/109 and the Proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]*, COM (2020) 610 final (Sept. 23, 2020).

The 2020 New Pact approach embodies a human rights-oriented perspective, which could help and serve our concept, although it fails to address or reference the situation of separated minors. This very avenue is generally followed in the new package of European Commission proposals. In that vein, the *Proposal for a Regulation of the European Parliament and of the Council Introducing a Screening of Third Country Nationals at the External Borders* avoids treating specifically any situation involving unaccompanied or separated minors. It only indirectly addresses this issue under the heading of vulnerabilities.⁸⁵

In a more child-friendly perspective, the *Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management* sets out a number of different elements to be considered to define the best interests of a child under the heading of specific guarantees for minors. This proposal includes specific rules for determining the Member State responsible for an application of protection, entrusting the European Commission with the task of defining “the criteria for establishing the existence of proven family links”.⁸⁶ If and when implemented, this would constitute a rare opportunity to reframe the family bonds protected, as per the contemporary approach of the ECtHR and the CJEU, and therefore set a legal basis for a specific regime for separated minors.

For its part, the *Proposal for a Regulation of the European Parliament and of the Council Addressing Situations of Crisis and Force Majeure in the Field of Migration and Asylum* excludes unaccompanied children and children under twelve years of age traveling together with their families from being subject to the border procedure and confinement unless there are security concerns, yet no mention is made of separated minors. This undifferentiated approach, however, should be read as encompassing separated children also, clearly excluding them from detention.⁸⁷ This represents another opportunity to clarify the specific treatment of children in this situation and in similar contexts, like the current Ukrainian displacements, where a significant number of separated minors have crossed borders seeking refuge and asylum.

⁸⁵ *Proposal for a Regulation of the European Parliament and of the Council Introducing a Screening of Third Country Nationals at the External Borders and Amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817*, COM (2020) 612 final (Sept. 23, 2020), paragraphs 21, 22, 26, and 27 (Preamble) and articles 6.7 and 9.3.

⁸⁶ COM (2020) 610 final (Sept. 23, 2020), articles 13 and 15.

⁸⁷ *Proposal for a Regulation of the European Parliament and of the Council Addressing Situations of Crisis and Force Majeure in the Field of Migration and Asylum*, COM (2020) 613 final (Sept. 23, 2020), 12.

Von der Leyen's New Pact specifically calls for a reinforcement of the European Network on Guardianship, announced in a 2017 communication.⁸⁸ Created in 2019, the network is based on previous project-driven experiences and represents a public-private partnership that aims at a stronger role in coordination, cooperation, and capacity-building for guardians.⁸⁹ In our opinion, it should become a focal point for analysis and prospective policy development for the specificities of separated children. As such, it must also constitute a solid stakeholder to promote normative and operational changes at both EU and national levels. Yet no mention of the Guardianship Network appears in the new proposals package.

The EU has apparently closed its eyes to the separated minors' situation in the past and appears not to be advancing any further on the new legislative package. Nevertheless, there are some glimmers of hope in EU practice, as time has come to rebuild the European Commission's sensitivity toward this category and legal concept. Already expressed in its communication on "the protection of children in migration", it has since highlighted the efforts to build up best practices examples (FRA) and methodologies both for risk assessment and individualization of the best interests of the child (EASO—now EUAA—along with the UNHCR).

Even though Council Directive 2001/55/EC on temporary protection—recently applied for the first time—does not include the separated minors category and refers only to unaccompanied children in article 2 (f), it leaves a door open to deal with nonbiological, nonstandard legal family bonds when offering such a temporary protection. Specifically, article 15 considers previous existing family bonds in the country of origin for family reunification—there is no mention of such in other EU migration law instruments—on the basis of having lived together as part of the family unit at the time of the events leading up to the mass influx or else being dependent on the family member already settled in an EU country.⁹⁰

Concerns have been raised as a result of the most recent developments in 2022—i.e., the mass exodus of Ukrainian citizens in the context of the

⁸⁸ See COM (2017) 211 final (Apr. 12, 2017), recommending a comprehensive set of measures to strengthen their protection at every step of the migratory process.

⁸⁹ The European Network on Guardianship (<https://www.egnetwork.eu>) brings together guardianship authorities and agencies, (local) authorities, and international and nongovernmental organizations in order to promote good guardianship services for unaccompanied and separated children in the EU. As of June 2022, no Spanish public body or private stakeholder is a member.

⁹⁰ Council Directive 2001/55 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, 2001 O.J. (L 212), 12–23 (EC).

Russian invasion and subsequent war. This has shown an influx of children—many of them unaccompanied minors, and many more separated—traveling in the company of adult women who are not their biological family or legal guardians, but rather extended family, neighbors, parents' friends, and so on.

Operationally and at a domestic level, this current “Ukrainian diaspora” has shed light on the specifics of the category. For what it is a domestic experience in Spain, the Special Prosecutor for Minors has—as of June 2022 and for the very first time—issued instructions concerning the fine points and differentiated treatment of unaccompanied minors and separated children in order to develop special measures for risk assessment, opening up to cooperation with a network of specialized NGOs for the transfer, reception, observation, and assessment of separated minors.⁹¹

It is within this evolving context that some propositions are to be advanced to cope with the bafflement of European and domestic legislation—current and forthcoming—toward the specifics of the separated minors' living and legal situation.⁹²

On a normative level, a triple proviso could be specified in EU migration rules, building on the special situation of separated minors. First, the category of separated minors should be made explicit in EU law and, accordingly, in national legislation, properly defined and clarified, as a differentiated situation from the unaccompanied minor status and regime. Second, the broader concept of family bonds as per jurisprudential developments should be expressly acknowledged in legislation. In this regard, it should not be limited—as it is now—to the sole legal or customary bonds in EU MMSS or to a discretionary extension by the state. It should rather include other ties as prescribed or recognized in the minor's country of origin or transit states by default, or else based in the case law criteria of “dependance and care” throughout a sufficient period of time. Third, in cases of intended reunification either in the context of general migration or protection seekers, arrival Member State obligations should not depend on the legality of the adult family member status in the destination Member State. The best interests of the child may be in opposition to a situation in which the separated minor is considered unaccompanied and, consequently, taken into the state care system or expelled because of the irregular migration status of the adult in the same or another EU Member State,

⁹¹ There is no public record of the internal instruction yet, although it has been mentioned and detailed in public appearances by the Special Prosecutor for Minors himself in June 2022.

⁹² For all, see the specificities of the invisibility of separated minors in Punto Nacional de Contacto de la Red Europea de Migración en España, *Estudio sobre el régimen de los menores extranjeros no acompañados tras la determinación de su estatus: España 2017* (Madrid: Red Europea de Migración, 2017).

despite that very family member being willing and in a position to take care of them. The right to family life, identity, and culture of the separated child must prevail, unless their best interests reveal otherwise.

On an operative level, thorough training on the specifics of this category should be compulsory for migration officers either in police corps or in competent national, regional, and local administrations. Such training should include continuous updating for new jurisprudential developments concerning interpretation of minors' rights and state obligations in a migratory context. A clear and straightforward protocol should be defined at the competent domestic level to assess human trafficking risks and other pernicious threats. Such a protocol must avoid automatic responses, such as separation, unless harmful risk for the minor is proved, for which careful monitoring of the relationship between the separated minor and the accompanying adult should be implemented. This would require a stronger and modeled cooperation between the administrative levels involved—both vertically and horizontally—for disparity of criteria to be avoided in the consecutive steps of the assessment process and the adoption of individualized measures. Finally, a data collection mechanism at national, regional, or local levels through distinct and compulsory registration of separated minors, along with a best practices directory, should be introduced, as neither of them are currently being singularized in migration statistics. Their existence would constitute an invaluable tool to be used in self-directed learning for staff, state transparency and accountability, academic research, and prospective policy analysis.

Bibliography

- Bastaki, Jinan. “‘Not Without My Daughter’: EU Asylum Law, Gender, and the Separation of Refugee Families”. *Refugee Survey Quarterly* 38, no. 3 (2019): 266–89. doi.org/10.1093/rsq/hdz006.
- Cardona Llorens, J. “La Convención sobre los Derechos del Niño: significado, alcance y nuevos retos”. *Educatio Siglo XXI* 30, no. 2 (2012): 47–68.
- “El interés superior del niño a los 4 años de la aprobación de la observación general 14 del comité de derechos del niño”. In *El interés superior del niño en la jurisprudencia internacional, comparada y española*, edited by Susana Sanz Caballero. Navarra: Aranzadi Thomson Reuters, 2017.
- Correa da Silva, W. *Regime Internacional de Enfrentamento ao Tráfico de Pessoas: avanços e desafios para a proteção dos direitos humanos*. Rio de Janeiro: Lumen Juris, 2018.
- Delegación de ACNUR en España. *Menores no acompañados y la protección de asilo*. Madrid: ACNUR-Ministerio de Empleo y Seguridad Social, n. d.
- van Doore, K. E. *Orphanage Trafficking in International Law*. Cambridge: Cambridge University Press, 2022.

- European Asylum Support Office (EASO), *Practical Guide on the Best Interests of the Child in Asylum Procedures*. Luxembourg: Publications Office of the European Union, 2019.
- *Annual Report 2018*.
 - *Annual Report 2021*.
- European Union Agency for Fundamental Rights (FRA). *Separated, Asylum-Seeking Children in European Union Member States*. Luxembourg: Publications Office of the European Union, 2011.
- *Current Migration Situation in the EU: Separated Children*. Luxembourg: Publications Office of the European Union, 2016.
- European Union Agency for Fundamental Rights and Council of Europe. *Handbook on European Law Relating to the Rights of the Child*. Luxembourg: Publications Office of the European Union, 2022.
- European Court of Human Rights (ECtHR). *Guide on Article 8 of the European Convention on Human Rights: Right to Respect for Private and Family Life, Home and Correspondence*. Strasbourg: Council of Europe/European Court of Human Rights, 2021.
- Fundación Abogacía Española. *La protección en Europa de “menores separados” de su acompañante adulto en movimientos migratorios*. Iturria: Fundación Abogacía Española, 2019.
- Gallagher, A. T. *The International Law of Human Trafficking*. Cambridge: Cambridge University Press, 2012.
- de Gasperis, M. T., P. Pérez, and S. Gruben, eds. *Aproximación a la protección internacional de los menores no acompañados en España*. Madrid, La Merced Migraciones, 2009.
- IARMJ-Europe. *Judicial Analysis Vulnerability in the Context of Applications for International Protection*. Luxembourg: Publications Office of the European Union, 2021.
- Krutzinna, J. “Who is “The Child”? Best Interests and Individuality of Children in Discretionary Decision-Making”. *International Journal of Children’s Rights* 30 (2022): 120–45.
- Manzanedo Negueruela, C. “Menores extranjeros acompañados. La problemática invisible de los niños y niñas migrantes acompañados que llegan a la frontera sur española”. In “La movilidad humana: entre los derechos y la criminalización”, special issue, edited by Margarita Martínez Escamilla and José Miguel Sánchez. *Revista Crítica Penal y Poder* 18 (2019): 260–26.
- Markiewicz-Stanny, J. “The Rights of the Child and a Problem of Immigration Detention”. *Polish Review of International and European Law* 9, no. 2 (2020): 83–106.
- Nicholson, F. *The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied*. N. p.: United Nations High Commissioner for Refugees, 2018.
- Otaegui Aizpurúa, I. *La relevancia del Tribunal Europeo de Derechos Humanos en la protección de los derechos del menor*. Pamplona: Aranzadi-Thomson Reuters, 2017.
- Punto Nacional de Contacto de la Red Europea de Migración en España. *Estudio sobre el régimen de los menores extranjeros no acompañados tras la determinación de su estatus: España 2017*. Madrid: Red Europea de Migración, 2017.

- Radjenovic, A. *Vulnerability of Unaccompanied and Separated Child Migrants*. Brussels: European Union, 2021.
- Sanjurjo Rivo, V. A. “La protección del desamparo de una menor inmigrante no acompañada y su familia por el Tribunal Europeo de Derechos Humanos: el caso Mubilanzila Mayeka y Kaniki Mitunga contra Bélgica”. *Estudios Penales y Criminológicos* 29 (2009): 491–507.
- Sax, H. “Child Trafficking: A Call for Rights-Based Integrated Approaches”. In *Routledge Handbook of Human Trafficking*, edited by Ryszard Piotrowicz, Conny Rijken, and Baerbel Heide Uhl. New York: Routledge, 2017.
- Schabas, W. and M. Nowak. *U.N. Covenant on Civil and Political Rights: Nowak’s CCRP Commentary*. Kehl, Germany: N. P. Engel, 2019.

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