UNACCOMPANIED FOREIGN IMMIGRANT CHILDREN’S RIGHTS IN ITALY: BETWEEN THE PROTECTION OF “THE BEST INTERESTS OF THE CHILD” AND THE ITALIAN IMMIGRATION REGULATION (LEGAL ASPECTS)
Gabriella Coccia, Università di Palermo, Italia

Summary: 1. The phenomenon: definitions and principal categories; 2. 1989 UN Convention on the rights of the child; 3. EU immigration policy and EU orientation on unaccompanied minors who are nationals of third countries; 4. The Italian legislation and the Committee for foreign minors; 5. The doubts of constitutional legitimacy on legislation; 6. Issue considerations: children repelling and expelling, TAR and Constitutional Court jurisprudence regarding unaccompanied foreign minors, criteria to decide about assisted repatriation or remaining of the unaccompanied foreign children; 7. Conclusions: “unaccompanied foreign children’s rights in Italy”.

1. THE PHENOMENON: definitions and principal categories
The illegal presence in Italy of the unaccompanied immigrant children is not new, but differs now from its quantitative characteristics, especially in this last decade.
Inside the migration general flows towards our country, we have found slow micro-flows distinguished by under age subjects and by the absence of adults accompanying children; they are lonely migrant children remaining so in Italy, or arriving with relatives (brothers, cousins or uncles and aunts) to start, after, a new independent life.
Children migrant alone for different reasons, often are their parents that ask them to escape from bad situations of war or persecution or to leave behind terrible economical conditions, to seek a better future.
From this consideration emerge two general large kind of unaccompanied children: asylum seekers and economic migrants, the latter are very young migrants seeking work, who are the majority arriving in Italy. This phenomenon is not visible only in Italy but also in other EU countries (Spain, France, Germany, United Kingdom), each one have tried to deal with the case elaborating a different regulation of the subject.
In Italy, legal treatment of the unaccompanied immigrant child represents a very stimulating subject, belonging to two “antithetic” disciplines: one on the children, based on protection and support principles, and the one on foreigners, founded upon principles of public security and control. Rules relating the issue also regard all specific fields of Italian law (penal, civil, administrative and constitutional).
The Italian lawmaker has dealt with the matter in a fragmentary way and with frequent modifications, producing this way overlapping of rules and competences; the interpretation difficulties of the legislation depend on the confusion of the provisions, and on the absence of a fundamental system of shares principles that direct in the uncertain cases.
The unaccompanied foreign children subject finds in a secondary marginal position that reason why big and central issues enter in discussion, such as: rights protection, human respect, public security, immigration control and children care; often the principles concerning these questions enter in conflict. To regulate the subject it is fundamental to give a hierarchical order to these principles. It is then needed to give priority to the effective better interests of the child and to the protection of children’s rights in every measure and provision relating unaccompanied foreign children.

This research regards unaccompanied foreign immigrant children that arrive in Italy illegally, by illegal trafficking channels. They reach the territory as economical migrants (to work), a part of them is sent abroad by their families to improve their social and economic life (or for survival), and others arrive in Italy without consent of their parents.

According to the 2003 census dossier of the Committee for foreign minors, unaccompanied immigrant children arrive mainly from Albania, Romania, Morocco and ex Yugoslavia; great part of them is mail, belongs to an age between 15 and 17 and is present mainly in the North of Italy.

According to the Italian legislation (Decree n. 535/99) the “unaccompanied foreign minor” is:
- minor: an under eighteen person, according to the article 2 of the Italian Civil Code;
- immigrant irregular child, third country national child: non Italian national or EU countries national;
- unaccompanied: without care and legal guardianship/appropriate representation of parents or of other adult legally responsible for him, according to the in force acts of the Italian legal system;
- non-admitted in the country territory, but present “for any reason”: in other words illegally present on the Italian territory, so clandestine;
- non applicant (or refused) political asylum or refugee status.

2. 1989 UN CONVENTION ON THE RIGHTS OF THE CHILD

The unaccompanied foreign children subject, concerns two different disciplines: the one on the immigration control policy and the one on children protection.

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1 The Committee for foreign minors is the Italian administrative body competent of measures to adopt for treatment of the unaccompanied foreign children, and to decide and to supervise the execution of children repatriation.
2 The definition adopted by the Italian legislation reproduces the one set forth in 1997 EU Resolution on unaccompanied minors who are nationals of third countries.
3 Nevertheless, according to art. 42.2 of act n. 218/1995 (Italian system reform of private international law), the 1961 Hague Convention on children protection is applied also on people recognized as minors only by their national laws.
Regarding unaccompanied foreign children, Decree n. 286/1998 (the most important Italian normative text on immigration) and the government regulations, Decrees n. 113/1999 and n. 535/1999 (that regulate specifically the matter); they frequently mention the UN Convention on the rights of the child provisions (in force in Italy by act n. 176/1991).

The international Convention content does not regard exactly the migrant children’s rights; anyway provides some rights to ensure to all children, without any discrimination.

The article 28.3 of the Decree n. 286/1999 states that “in all administrative or legislative measures concerning the implementation of the family-unity right and concerning minors, the best interests of the child must be a primary consideration”.

The Italian legislation that regulates the subject justifies its provisions defining them in accordance to the articles of the mentioned Convention, and states that the protection and implementation of the best interests of the child is necessary and proper.

The assessment of “the best interests of the child” is not simple; this turns out to be a vague concept. It lays it open to several interpretations and different uses; also, this may turn out different case by case. The assessment of best interests of the child, following a logical course, should take shape by the other rules content of the Convention and by its general ratio; additionally, such best interests should be implemented, ensuring to the children (even immigrant and illegally present children) the enjoyment of all recognized rights by the UN Convention.

The international Convention on the rights of the child has been adopted, by the General Assembly, on 20th November 1989, and establishes several rights which ensure a complete and total full defence of the childhood.

The definition and redaction work of the Convention articles has been characterised by important news, compared to the other international conventions on children or on human rights; so there is more consideration for the different legal and cultural approaches of the States and for the difference between the Third World Countries needs and the industrial rich countries requests.

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4 For this research, the assessment of UN Convention content allows to detect and outline which rights should be ensured to the children (even illegally present immigrant children). Afterwards we will estimate if and in which way the Italian legislation on unaccompanied foreign immigrant children respects and guarantees these rights.

5 The Convention content is not just a general principles statement, but, if ratified and in force in a State signing, is a real legal obligation for it (190 States have signed the Convention). The States Parties must adapt their legislation and practice to the Convention dictates, so that the rights and freedom declared in it are effectively ensured.

6 For example: the Convention content provides international cooperation actions to support childhood policies of poorer countries (art. 4) and a strong attention to children’s material needs. Moreover the Convention provisions frequently mention the safeguard of ethnic minorities’ rights and the defence of cultural identity of the children (art. 8 and 20) for example, mentioning the Kafalah of Islamic law among the adoption or foster care institutions.
The UN Convention aims to ensure to the child a suitable and appropriate up-bringing context, and to guarantee a fulfilment of the children interests and rights. In this connection, pursuing the children’s well-being is indicated as the determining condition to achieve their full physical, mental, spiritual, moral and social development (preamble, art. 6 and art. 27). The Convention introduces an innovative aspect comparing to the former children international conventions: that is to say, the recognition of the children’s right to participate actively to their development and to the decisions on their future lives. For this reason, the child is recognized entitled to a series of rights, such as: the right to live and to develop to the maximum extent possible his/her potentialities (art. 6), the right of the child to the enjoyment of the highest attainable standard of health (art. 24), the right to preserve his/her identity (art. 8), the right to education (art. 28 and art. 29), the right to rest and leisure and to engage in play (art. 31), and privacy right (art. 16).

In keeping with the conception of the child as subject of rights and protagonist regarding his/her present and future choices, to the child are recognized: the right to freedom of thought, expression, religion, association (art. 13, 14, 15), moreover to have access to information (art. 17) especially those aimed at the promotion of his/her social, spiritual and moral well-being and physical and mental health. An important aspect on the respect of the child’s safeguard can be found in art. 12, according to it, it is necessary to provide the opportunity that the child is heard in any judicial or administrative proceedings affecting him/her, either directly or through a representative or an appropriate body. In other words, who ever takes care of children and is legitimated to take decisions relating them must know their views and must take into account them, and also their wishes and future expectations.

The Convention ensures other important rights for a harmonious growth of the child, such as: family-unity right (art. 9.1 and 10.1), the right to special protection against all forms of physical or mental violence, abuse, neglect or exploitation (art. 19, 32, 34, 35, 36, 37, 38 and 39) and a special protection if seeking refugee status (art. 22), the right to benefit from social security including social insurance (art. 26).

The United Nations in 1989, adopting this real international “act” to defence children, have entrusted to UNICEF the duty to guarantee and encourage, the effective implementation of the Convention, in the States which have ratified it (Convention art. 45). For the purpose of examining the progress made by the States Parties, concerning the implementation of the commitments taken (by the Convention), it has been established a Committee on the rights of the child. States Parties undertook to submit to the Committee, reports on the measures they have adopted which give effect to the rights recognized in the Convention and on progress made on the children’s enjoyment of those rights.
The Committee on the rights of the child indicated to the States Parties, as interpreting “the best interests of the child” concept, admitting the vagueness of it and mindful of the absence (in the Convention provisions) of precise standards to detect, to guarantee and to realise this principle.

The Committee asserted that to detect the best interests of the child, first of all, it must refer opportunely all rights set forth in the UN Convention and its general ratio. The Committee pointed out 4 key principles to use, contained in the Convention; these must be regarded general criteria to choose the best solution for the child. The first one is, obviously, the prevalence of “the best interests of the child” principle (art. 3.1): “In all actions concerning children, whether undertaken by public or private social welfare institutions, law Courts, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. The second one is the non-discrimination principle (art. 2.1): “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s race, sex, language, religion, nationality, ethnic or social origin….“.

The third one is the child’s right to live and to develop to the maximum extent possible his/her potentialities (art. 6) and the last one is the child’s right to active participation to decisions affecting him/her (art. 12).

In an immigration regulation, children should be considered first of all “children” (so entitled to all rights ensured by the UN Convention), and the fact they are immigrant and illegally present and resident must not be significant to their treatment.

Unaccompanied foreign children, even if entered illegally in the Italian territory, must enjoy of the same Italian children’s rights; so they should have (as children) even the possibility to stay in Italy and to access to the best opportunities for their development.

The Italian legislation mentions the UN Convention children’s rights, in abstract terms; the responsible Italian bodies, which decide on the immigrant children’s future, use the expression “best interests of the child” in a rhetorical way. Instead, States Parties should effectively guarantee, to the unaccompanied immigrant children, their best interests and the appropriate enjoyment of all UN Convention children’s rights. This consideration should be beard in mind in Italian immigration legislation and in Italian practice.

3. EU IMMIGRATION POLICY AND EU ORIENTATION ON UNACCOMPANIED MINORS WHO ARE NATIONALS OF THIRD COUNTRIES

The unaccompanied foreign children subject concerns also the immigration regulation which in Italy follows EU institutions’ indications. Thus it is necessary, in short, to show the principles on which is based the EU immigration policy; this has influenced and bound the Italian legislative choices.

Since the middle of the eighties, some European governments have thought to regulate the immigration matter by common actions, considering it the best and the most efficient solution for their State interests. For this purpose they have defined and draw up the Schengen agreements (since 1985), nevertheless it was still an inter-governmental cooperation.

The Amsterdam Treaty (1997) has entrusted competences, to EU institutions, relating the immigration issues and the treatment conditions of foreign immigrant present in EU territory. This Treaty has introduced in EU Treaty (new title IV) a regulation which was previously reserved to the Member States and to a European inter-governmental cooperation. In this way the matters concerning visas, asylum, immigration control and other policies linked to the free movement of immigrant people, have become EU competence.

Regarding issues such as the admission, entry, residence and stay, expulsion of immigrants, the Italian provisions must be brought into line with the commitments and guidelines of EU law.

The European Union (especially since 09/11) has defined and created step by step a real “Europe stronghold”, characterised by free movement of EU national people and by strict controls, at external frontiers, of non EU immigrants entries.

The EU immigration policy targets are: to combat illegal immigration and to restrict to the maximum legal one; to control severely the EU external frontiers (making use of a close cooperation among Member States police forces) to make more and more impenetrable the “Europe stronghold”. This will open its doors only to non EU immigrant workers, if legally admitted, if required, if necessary. The political issues concerning returns/repatriations/expulsions and the “externalization” of controls at the frontiers, are the EU priority concerns. Furthermore, EU Member States agree in adopting and implementing quick measures to order out irregular immigrants seeking to enter in EU territory. These are priority targets of EU immigration policy.

The re-admission agreements concluded between several Member States and some countries of origin and transit of immigrants are the favourite instruments to fully implement the expulsions from EU territory. The “externalization” of controls at the EU frontiers is a system based on the cooperation between EU Member States and third countries; it regards a control of migrant flows, to be carried out, from the EU territory frontiers. The system allows the entry in EU territory, only of immigrants, “filtered” through examination and control on their status, made out of the EU frontiers and effected by “collaborative” third countries.
Often immigrants suffer an unfit treatment in temporary detention centres of Member States; this does not take into account duly their needs, requests, rights, and the demands of the most vulnerable categories of immigrants. Moreover they are ordered out of EU territory without attention and proper investigation affecting situations from which they escaped from and where they must return. Referring to the unaccompanied foreign children subject, it is essential, briefly, to observe that there are great differences among Member States legislations, regarding the provided children’s treatment, the decision making and execution of their repatriation, and in general concerning the effective safeguard of the rights established by the 1989 UN Convention on the rights of the child. Some Member States have provided suitable measures to face and run the unaccompanied immigrant children’s matter, the others did not. 

The European Union, so far, did not particularly deal with unaccompanied immigrant children’s issues, but the provided treatment for them emerges by some EU documents. These do not belong to a regulation affecting children, but to the EU common immigration policy.

From these EU provisions, it emerges the intent to balance two different purposes, which can turn out even inconsistent in their implementation. The first one (priority) is the purpose to control restrictively the immigrant flows to reduce the entries, in EU territory, of who is national of third countries and to combat clandestine immigration. The second one is the purpose to take into account the immigrants having special needs (such as children), in the enforcement of common measures provided to combat illegal immigration. Where over the European Union is interested in unaccompanied foreign children (in the few mentions made by EU immigration policy) it emerges the prevalence of the intent to implement strictly the repatriation and expulsion policies. Nevertheless, secondly, it gives attention to the necessity to protect unaccompanied immigrant children through minimum guarantees in procedures.

The only EU document dedicated wholly to the status and treatment conditions of unaccompanied immigrant children is the 1997 EU Resolution on unaccompanied minors who are nationals of third countries. The double-ness of intents (hierarchical placed) pursued by this EU document, is expressed in the last part of its preamble. In this, in a way it says: “The unauthorized presence in the territory of Member States of unaccompanied minors who are not regarded as refugees, must be temporary; Member States must endeavour to cooperate among themselves and with the third countries of origin to return children to their country of origin or to a third country prepared to

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9 EU institutions have not got specific competence in children subject.
10 They are mentions contained in some articles of some EU directives concerning immigration subject (especially regarding minimum provisions on immigrants treatment) and in some EU Communications concerning immigration matters, presented by the EU Commission to other EU institutions.
accept them”; otherwise it continues: “without jeopardizing their safety, in order to find, whenever possible, the person responsible for them, and to reunite children with such people”.

The Resolution\textsuperscript{11} states which is its formal purpose: “to establish guidelines for the treatment for unaccompanied minors, concerning matters such as the conditions for their reception, stay and return....” (art. 1.3).

Referring to the admission on territory of unaccompanied immigrant minors, the EU Resolution (art. 2.1) allows to Member States to refuse admission at the frontier and to provide rapidly their repelling. Likewise the same article (point 2) encourages the cooperation among Member States to prevent illegal entries and illegal residences of unaccompanied immigrant minors on their territory. The EU Resolution article 3 provides minimum guarantees for all unaccompanied minors such as: rapidity and suitability of investigations on their identity and status, enjoyment of the right to protection and basic cares, velocity in tracing their relatives, suitable representation.

The most interesting article of the Resolution is the 5\textsuperscript{th} regarding the unaccompanied minors return. In this article the unaccompanied migrant minors repatriation is regarded as indispensable, nevertheless in its execution must be assured some children’s rights. In addiction in this article, the right to family reunification is regarded priority in the assessment and decision about repatriation or remaining of the immigrant minors.

In the Resolution content it is believed appropriate to repatriate children even in the case in which is only possible to entrust them not to their family but to competent authorities of the country of origin or of another third country. Furthermore the Resolution content provides that Member States (in decision making on repatriation and in its implementation) must take into account the commitments of the 1989 UN Convention on the rights of the child.

From the Resolution provisions emerge some contradictions, among them the most manifest ones are: the incompatibility between the statement to return (in a priority way and necessarily) the unaccompanied immigrant children and the statement to respect all rights established by the mentioned Convention. Why this? because the return to the country of origin or the family reunification may even not correspond to the protection of the best interests of the child (the most important principle of the UN Convention).Moreover the Resolution justifies the repatriation by the family reunification safeguard, but it provides, at once, the possibility to repatriate children entrusting them to the competent authorities of the country of origin or of another third country.

\textsuperscript{11} An EU Resolution is not a document specifically binding Member States legal systems, nevertheless the EU Member States “must” bring their national legislations into line with its provided principles (as remembered by article 1.5 and 6.1 of the 1997 Resolution).
The EU orientation concerning unaccompanied minors who are nationals of third countries, aims to ensure to them minimum guarantees of temporary protection (however the Resolution content does not point out them) in the case of their illegal presence in EU territory. Even so their repatriation must be regarded as priority and (almost) unquestionable by Member States, according to the general logic of the 1997 EU Resolution content.

4. THE ITALIAN LEGISLATION AND THE COMMITTEE FOR FOREIGN MINORS

In the Italian legislation on unaccompanied foreign children subject (especially Decree n. 113/1999 and Decree n. 535/1999) it is evident (for several aspects) the 1997 EU Resolution influence. The EU political positions and targets are reproduced in it: the adoption of the same definition of “unaccompanied foreign minor”, the repelling of the child at the frontier, the provision of an “assisted” repatriation rather than the child’s expulsion from the territory, the repatriation as priority solution motivated by the family reunification, the temporary reception of children.

The Italian government has though to follow mainly one of EU Resolution intents: to repatriate children, whenever possible, and to combat illegal immigrant children presence on national territory, rather than, first of all, to protect unaccompanied immigrant children (this is evident also in the measures enforcement).

The legal status of unaccompanied foreign minors “has suffered” in Italy (since 1998) deep modifications, because of a series of legislative and governmental actions.

The measures and provisions in force (regarding this matter) are contained in heterogeneous normative acts which regulate the different issues: the children identification, the legal guardianship, the admission and reception in Italy, the authorizations to remain and the conditions to stay, the residence permits, and the unaccompanied foreign minors’ repatriation.

The progressive making of regulation has produced some problems of coordination among adopted rules, and legislative gaps and different practices by local authorities, administrative bodies and public security authorities. In addition the whole subject is regulated (in the specific instance) not by acts but by governmental regulations and ministerial and administrative letters. This regulation has been criticized by the Italian doctrine because of its several formal and substantial defects and flaws, such as: doubts of constitutional legitimacy, scant coordination with the former legislation, gaps concerning administrative proceedings of the Committee for foreign minors, exclusion of the Juvenile Court competence on unaccompanied immigrant children issues, children’s rights breach.

The Italian legislation often mentions, in abstract terms, the principles of the 1989 UN Convention on the rights of the child, but it does not point out which are the criteria to regard to an appropriate implementation of “the best interests of the child”. Furthermore in the Italian practice, the same
The rights established by the mentioned Convention are not effectively and duly safeguarded. In addition, in Italian practice, the minimum guarantees, provided by the 1997 EU Resolution relating unaccompanied immigrant children’s treatment, are not ensured.

To analyse the Italian legislation, it is necessary to keep in mind that according to the art. 2 of the 1989 UN Convention on the rights of the child “the State, where a minor stays, must provide to ensure and carry out his/her rights irrespective of minor’s nationality”. Additionally according to the article 9 of 1961 Hague Convention on children protection “the State, where the child resides “usually” (six months), is responsible for his/her protection and care”. Thus, the Italian legal system has jurisdicitional and legislative competence on unaccompanied foreign immigrant minors’ status.


In this act, several measures regarded children and the family; the unaccompanied foreign children status was not well-defined in act n. 40, but some important principles thereof show a trend pro their integration in Italy. Principles as: the “administrative impossible expulsion” of unaccompanied foreign migrant minors (Decree n. 286/98 art. 19 a.), the priority consideration of the best interests of the child, in all proceedings affecting children (Decree n. 286/98 art 28.3). Moreover the decision to order out children was reserved to the Juvenile Court (Decree n. 286/98 art. 31.4).

The act n. 40/1998 did not provide precise measures and guarantees concerning unaccompanied immigrant children, nevertheless the provisions concerning Italian children treatment were applied to them (even before 1998). As, the Italian juvenile law (based on principles of children care assistance and protection) is in abstract enforceable to the case. Furthermore the responsible bodies to decide on unaccompanied immigrant children status and future were the Judicial Juvenile Authorities (Juvenile Courts) and the Tutelary Judge.

The following year, the Italian government changed its mind and positions, modifying several times the original act n. 40, by provisions aiming to restrict (and not to better ensure) unaccompanied

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13 For example: the indication to be rapid in the investigations concerning children and their families has been accepted by the Italian regulation, but in the Italian practice this produces the adoption of repatriation decisions even if such investigations results are not fully enough.
15 See also article 42 of act n. 218/1995 on private international law subject.
immigrant children’s rights. These modifications aimed to handle the matter by discretionary powers and actions of an administrative body. The decision of Italian government was motivated by political considerations such as: the intention to bring the Italian regulation into line with EU provisions and guidelines of immigration policy, the difficulty of running and the high expenses sustained by local authorities for children reception, the growing number of illegal immigrant children’s presence in Italy, the concern to bolster, by an immigration policy favourable to children, migrant flows of unaccompanied clandestine children.

 Principally by article 5 of Decree n. 113/1999 were introduced corrective provisions to the principal text on immigration (Decree n. 286/1998) chiefly concerning powers, duties and tasks of the Committee for foreign minors. Such administrative body (strictly dependent from the government) it was entrusted expressly with total full responsibility to adopt measures to children treatment and total full decision powers about their repatriation. By this Decree, the Government (one’s own initiative) made a distinction between the expulsion and the assisted repatriation. The “impossible expulsion” principle of unaccompanied immigrant children was revised and rectified; according to the made modifications their “impossible expulsion” does not exclude the possibility to repatriate children”. Moreover the modifications left out any action and competence in matter of the Italian Juvenile Court.

Decree n. 394/1999 (on the implementation of the act n. 40/1998), Decree n. 535/1999 (on duties of the Committee for foreign minors) and some ministerial letters have regulated specifically the subject. First of all, it is necessary to specify that in the Italian definition of “unaccompanied foreign minor” the case of unaccompanied foreign children non-formally fostered to adult relatives is not regarded.

We recall that the examined Italian regulation deals with unaccompanied foreign minors who are present in Italian territory. Children arriving at the frontier without the required documentation and authorizations for admission and entry, or children stopped at the entry in Italian territory or
immediately after, are ordered out without guarantees or special care (according to article 33 of act n. 184/1983 on adoption and foster care).

The principal functions of Committee for foreign minors (mainly made up by ministerial delegates\textsuperscript{20}) are: to run the unaccompanied foreign minors census, to check their identity and status, to supervise residence/stay conditions, to deal with children’s family tracing (in Italy and in the country of origin), to investigate and to assess the family suitability to take care of children, to assess the best interests of each child and to decide and to provide children assisted repatriation (for family reunification) and to supervise its execution and the children meeting with their family or the authorities of the country of origin or a third country.

In particular regarding reception, the Italian regulation provides the children’s rights to health care and to education only if and when they are holders of a residence permit. Furthermore it provides a careful surveillance of children in the Italian institute where they are temporary lodged.

All unaccompanied foreign minors have right to obtain a residence permit as being under age subjects (according to article 28 of Decree n. 394/1999); just because they are minors thus ideally none immediately expellable. In addition, the total length of time of children stay can not exceed 90 days (art. 9 of Decree n. 535/1999).

The regulations did not establish more indications about this residence permit. The ministerial letter of 11/13/2000 giving directions to police headquarters instead declared that such residence permit does not allow working and can not be converted in a residence permit to work or to study after the 18\textsuperscript{th} children birthday. According to the ministerial letter of 04/09/2000, any assessment relating a longer stay of children in the national territory must be carried out exclusively by the Committee for foreign minors; thus this only may decide if converting the residence permit per “under age” in to a residence permit per foster care, family reasons or social protection.

Article 25 of act n. 189/2002\textsuperscript{21} (modifying art. 32 of Decree n. 286/98) states that “the residence permit can be issued after 18\textsuperscript{th} children birthday (if a contrary decision has not been taken by the Committee for foreign minors) to unaccompanied foreign children admitted to take part (for a time under 2 years) to a social and civil programme of integration run by a public or private authority

\textsuperscript{20} Also by 2 delegates of Italian municipalities Union, 1 delegate of Italian districts, and 2 members belonging to Italian ONG involved in the juvenile area.

\textsuperscript{21} Act n. 189/2002 on immigration has introduced the last modifications to Decree n. 286/1998, but it has affected just marginally unaccompanied foreign minors’ treatment measures.
having national representation. However the final decision to renew a children residence permit is a Committee competence.

Serious problems emerge on tracing, in the country of origin, children relatives and regarding investigations on their socio economic conditions, on their suitability to take care of children, on their views about children return. The Committee entrusted these charges to some Associations working in the area; they cannot easily find information necessary to duly decide, if to repatriate children. They often can not trace children parents, or they do not receive appropriate collaboration by the third country or by parents themselves.

Often the economic status of children families is in straitened circumstances and parents do not give their consent on return, considering that the child can enjoy better working opportunities in Italy. The Committee provides the repatriation even if it does not receive total full information on children families or on country of origin conditions. The view expressed by the Committee (by an administrative letter) is to repatriate children unless there are serious cases of violence or abuse.

According to the Italian regulation, the repatriation is different by expulsion because the first one is executed ensuring children’s rights (established by the 1989 UN Convention), also because the Committee should promote reintegration programmes for children in the countries of origin; such programmes should assure them “sure” working opportunities. Nevertheless such programmes have not been implemented (except in some Albany regions).

In addition repatriation is, in actual facts, decided without adequate consideration of UN Convention rights and of “the best interests of the child”; furthermore the repatriation is executed in a coercive way by police forces (violating children personal freedom), since great part of children do not wish to return to the country of origin.

The regulation provides 60 days to decide about repatriation, frequently the Committee does not observe this term of time; so often children turn 18 waiting for a decision, risking to be ordered out automatically.

The repatriation is executed by private associations and institutions (children are accompanied also by police forces); we can then talk about a real “privatization” of the matter running, since the associations have fundamental functions such as: tracing, investigations, and the return execution.

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22 In addition the number of residence permits issued (in accordance with article 32 mentioned) must be deducted of the annual shares of immigrants entry.

23 The regulation established a timeline of 20 days to carry out such investigations.

Important issues (determined by normative gaps) concern children participation (by legal representative) to the administrative process aiming to decide the repatriation, and the right to appeal against returns decisions.

Concerning the first issue, despite guidelines elaborated by the Committee for foreign minors (2001), children are heard only by the social worker of local authorities when they are stopped. Furthermore regarding the opportunity to participate to the administrative process (by legal representative), article 3.6 of Decree n. 535/1999 provides that “in case of necessity, the Committee may communicate the child status to the competent Tutelary Judge to appoint if necessary a temporary legal guardian”. The enforcement consequences of such governmental provision are serious, because it produces the possibility that children are not represented in the administrative process to decide their return. It is questionable that the opportunity to participate to this process is allowed only to some children; those for which the same Committee has previously and discretionary decided to demand, to the Tutelary Judge to appoint a legal guardian.

Referring to the judicial remedy against returned decisions, the regulations do not mention formally the children option to appeal. Nevertheless according to Italian legal system, people can contest administrative decisions appealing to the Regional Administrative Court (TAR). Therefore we can observe that the government has transferred the competence to assess the best interests of the child from the Juvenile Court to the TAR.

Additionally children can not appeal against return decisions if a legal representative has not been appointed; finally administrative decisions may be contested only for reasons of power excess.

5. THE DOUBTS OF CONSTITUTIONAL LEGITIMACY ON LEGISLATION

Are several the doubts of constitutional legitimacy on Italian legislation, concerning unaccompanied foreign children. Chiefly they can be detected among rules of Decree n. 113/1999 and of Decree n. 535/1999; they regard mainly the assisted repatriation measures.

Such two regulations have been enacted according to the delegation contained in the article 47 of act n. 40/1998, and they have been adopted by government as “corrective provisions necessary to implement fully act n. 40 principles”. Instead they are determined the reversal of one of its fundamental principles: the unaccompanied immigrant children protection.

25. Further more, according to article 343 and following of the Italian Civil Code, it is provided always the legal guardianship for minors without legal representation.

Moreover such Decrees have entrusted ex novo to the Committee for foreign minors, total full discretionary powers to decide unaccompanied foreign minors treatment measures and their repatriation.

Such corrective provisions violate article 76 of the Italian Constitution, because their content is inconsistent with principles and directive criteria of act n. 40/1998; such content does not implement them (rather it twists them); it regulates entirely the subject and expands Committee powers.

The effected delegation violates the law reserve contained in article 10.2 of the Italian Constitution, because the unaccompanied foreign children matter has been regulated by governmental and administrative regulations. Article 10.2 of the Italian Constitution establishes that the legal status of foreigners must be regulated by Parliamentary acts, in accordance to international treaties and rules.

Indeed the delegation provides a general duty of compliance (of regulations) with 1989 UN Convention on children’s rights provisions, but it does not point out the criteria to use to enforce this Convention in immigrant children return and reception matter.

The delegation also violates article 31.2 of the Italian Constitution, in which are provided other law reserves in children protection subject.

The assisted repatriation, executed by police forces in a coercive way and against children wills, is a measure restricting children personal freedom. According to law and jurisdictional reserves, provided in article 13.2 of the Italian Constitution, the restriction of such freedom may be only established by a Judicial Authority (law Court) and by motivated decisions; moreover only in the cases and in the ways provided by Parliamentary acts. Thus a forced return can not be determined by an administrative body (the Committee) and can not be disciplined by regulations or ministerial letters.

The entrusting by regulations and ministerial letters, to an administrative body, final decisional powers concerning unaccompanied foreign minors future and well-being, is inconsistent with the steady decisions of the Italian Constitutional Court. This has often affirmed that the Juvenile Court is among the institutions charged by the Italian Republic to protect childhood. Such children protection is a constitutional duty (art. 31 Const.).

The Italian Juvenile Court, according to several provisions (even of primary legal value) of Italian legal system, is the competent authority in children subject. For example regarding children in an abandonment status (according to articles 33, 37, 9 of act n. 184/1983 on adoption and foster care); regarding children having parents who can not exercise their parental authority and regarding urgent measures to adopt for children protection (according to several Italian Civil Code articles, among such 343 and 403); regarding foreign children (according to the 1961 Hague Convention on
children protection); and regarding unaccompanied foreign minors (according to article 31 of Decree n. 286/1998 and article 28 of Decree n. 394/1999).

It is also necessary to remind an important principle of the Italian legal system, introduced by the Constitutional Court:27 “to the Italian and foreign children must be assured the same treatment in enjoyment of fundamental rights, because inviolable rights of children must be considered extended even to foreign alone children.

In general, the Italian legal system reserves to Judicial Juvenile Authorities the competence to detect, to implement and to protect best children’s interests. Such duties can not be entrusted (to regulate unaccompanied immigrant children matter) to administrative bodies which must take (priority) into account governmental political interests, “good administration” issues, financial interests of local authorities, which deal with reception and stay of unaccompanied foreign children.

6. ISSUE CONSIDERATIONS

6.1. CHILDREN REPELLING AND EXPPELLING

Concerning unaccompanied foreign children subject, the Italian legal system considers two “situations” (in which children are) determining two different normative courses: the moment of children’s entry in the Italian territory and their presence in Italy.

Regarding the first case, Decree on immigration n. 286/1998 does not forbid to drive back unaccompanied children who are at the frontier without required documentation and the authorizations to enter in Italy (even in the case when they are temporary admitted in the territory for rescue) or who are stopped at the entry or immediately after.

Article 33 of act n. 184/1983 on adoption and foster care, establishes a non-entry for children without residence permit and unaccompanied by relatives. This article states also that who has led such children at the Italian frontier, must provide (at their expenses) their immediate repatriation. Moreover the frontier authorities must communicate the case to the Commission for international adoptions, so that it gets in contact with children country of origin.

By analysis of such provisions it is not clear if repatriation decisions are taken by police superintendents (as for clandestine immigrant adults’ expulsions).

In the regulation there is a gap concerning appropriate protection measures for children arriving at the frontier without adults responsible for them. Furthermore it is questionable that the Italian government fails in its duties concerning children (even duties established by unaccompanied foreign minors).

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foreign minors legislation) using as justification the fact that children are not stopped on Italian territory but at the frontier.

Children repelling at the frontier provides also to detain them in temporary “reception” centres, placed near the frontier; such centres do not assure support, cares and accommodation suitable to their age.

Regarding the expulsion, article 19 of Decree n. 286/1998 requires that children can not be ordered out of the Italian territory, except for public order and State security reasons, and except the children right to follow parents or foster adults (foster adults even in fact) expelled.

The Italian legal system reckons that the family-unity right is a primary right to assess in decision making on foreign children, thus, in the case in which children parents or foster adults (children and adults both illegally present on territory) are ordered out, the sons or daughters or children fostered must follow them.

Furthermore children must follow their relatives’ lot inside temporary detention centres for clandestine immigrants waiting for expulsion decisions. There they are debarred from their personal freedom. Frequently in such places there are not essential facilities (such as water), they are characterised by uncomfortable staying conditions and strong emotive tensions, and also they are overcrowded. In addition in such centres, fundamental rights often are not guaranteed (e.g. they are not heard, they do not have right to defence and to legal representation)28.

According to article 9 of the UN Convention on the rights of the child “States Parties shall ensure that a child shall not be separated from his/her parents……except when competent authorities determine that such separation is necessary for the best interests of the child….”; in the examined case, the separation appears proper.

6.2. TAR AND CONSTITUTIONAL COURT JURISPRUDENCE REGARDING UNACCOMPANIED FOREIGN MINORS

The assessment of general orientations of Italian jurisprudence regarding unaccompanied foreign children regulation is a significant aspect of our research. It is through Courts decisions that

28 Reliable sources have lately declared the treatment conditions of immigrants in such centres; among them: UNHCR, Strasbourg Parliament, UN by “Commission on human rights report”, November 2004. Other sources have criticized the treatment of illegally entered foreigners, provided by the Agreement Italy-Libya, November 2004. Such agreement provides the immediate expulsion (and return to Libya) of foreigners illegally arriving in Italy and coming from Libyan costs, without any guarantee of their fundamental rights (they are not heard, also in Libyan territory they are detained in terrible conditions). Among them there are even children and unaccompanied minors (according to a 2005 UNHCR report).
legislation flaws may be evidenced and if necessary censured, to guarantee even to unaccompanied immigrant children, rights recognized by our legal system to Italian children.

In Italy if an unaccompanied foreign child thinks that his/her repatriation is not in his/her best interests, he/she has the right to appeal (with some exceptions) to the Regional Administrative Court (TAR), to obtain the annulment of the decision taken by the Committee for foreign minors. To appeal to the TAR is provided even in the case (in which) police superintendents have refused to renew children residence permit (per under age) when they turn eighteen (the legal age).

From the analysis of a sample of such appeals to The Regional Administrative Courts emerge (in all their evidence) the gaps, the deficiencies and the discretionary decisions of the Committee and of the police superintendents; but also the serious mistakes of interpretation and enforcement of the regulation, from the authorities involved in the subject running.

From the analysis it also emerges that bodies charged to check children status and to decide measures on them, even if not having certain information and necessary factors and details to decide, do it however. Moreover during administrative proceedings relating children, often their views are not required or duly taken into account.

From judgements analyses it emerges that the Italian Regional Administrative Courts (even though by different approaches) generally accept the appeals against children repatriation decisions or against the denial (by police superintendents) to renew children residence permit. Nevertheless such Italian Regional Administrative Courts just censure excesses of delegation and excesses of power of the Committee or of police superintendents, also their formal mistakes in the enforcement of the legislation, but they never utter on the most serious breaches, of children’s rights recognized by our legal system, presented by who appeals. Thereof, usually such administrative Courts accept appeals, but often send back, the Committee or the police superintendents, the decision to return children or to allow children remaining.

In 2003, there have been significant good news by the Italian Constitutional Court which has reinforced unaccompanied foreign children’s rights through two decisions.

The Constitutional Court was involved, by the TAR of Emilia Romagna, to judge the constitutional legitimacy of article 32 of Decree n. 286/1998 “where it does not provide that when children turn 18 (the legal age), their residence permit can be issued even to unaccompanied children under legal guardianship”.

\[29\] Minors under legal guardianship and having a residence permit per under age (not another kind of residence permit such as per foster care), were ordered out automatically when they turned 18 (the legal age).
Whereas the Court of Vercelli required (to the Constitutional Court) a judgement relating the inconsistency with the Italian Constitution of article 33.2 bis of Decree n. 286/1998 “where it does not provide the competence of the Juvenile Court about the children appeals against repatriation decisions of the Committee for foreign minors”.

Regarding the first issue, by judgement n. 198/2003 the Constitutional Court has stated that the residence permit (ex article 32 of Decree n. 286/1998) shall be granted even to unaccompanied children under legal guardianship. From this judgement it follows the principle that: on foreign minors’ subject, the rules and principles of Italian juvenile law prevail on the Italian provisions of special regulation concerning foreigners. The Constitutional Court, in this case, to detect reference rules to judge the case, has mentioned several provisions of act n. 184/1983 on adoption and foster care, of Civil Code on legal guardianship, and constitutional provisions concerning family; instead it has not mentioned the Italian regulation on immigrants’ entries and residences control.

Regarding the second issue, by judgement n. 295/2003, the Constitutional Court has claimed that also the ordinary Court has competence concerning children’s appeals against Committee decisions. From this judgement it follows that unaccompanied foreign children subject belongs to the one of family-unity; so the criterion of the prevalence of the best interests of the child (regarded as priority in proceedings relating family-unity right) must be applied to all proceedings concerning foreign children. (Nevertheless the Court has not specifically uttered about Juvenile Court competence).

By such two judgements, the Constitutional Court has cleared up that on unaccompanied foreign minors’ subject, the criteria, rules and principles system affecting children must be regarded as priority on clandestine immigration regulation. Nevertheless the Constitutional Court has not censored yet the other serious flaws of the regulation.

6.3. CRITERIA TO DECIDE ABOUT ASSISTED REPATRIATION OR REMAINING OF UNACCOMPANIED FOREIGN CHILDREN

The Italian discipline relating the unaccompanied foreign children, does not point out the criteria which must be used, by the Committee for foreign minors, to decide on the return of unaccompanied immigrant children. Nevertheless, according to the article 28.3 of immigration
Decree n. 286/1998 “In all administrative or legislative measures concerning the implementation of the family-unity right and concerning minors, the best interests of the child must be a primary consideration”.

The “best interests of the child” is a vague concept which must be assessed case by case, in accordance to the specific status that characterises a child.

The best interests of the child (the best possible solution to ensure to the child) should be detected and assessed, by the Committee for foreign minors, in its return decisions.

The criteria to use to decide if it is appropriate the child’s repatriation, must be based on the consideration of the rights outlined by the 1989 UN Convention on the rights of the child; the whole Convention content depicts “the best interests of the child”; assuring to the child such interests is the most suitable solution to adopt for his/her well-being.

The UN Committee on the rights of the child suggested taking into account three principal rights: the right to enjoy, without discrimination by the States, of all rights established by the Convention, the right to live and to develop to the maximum extent possible the child’s potentialities, the right to child’s active participation to decisions affecting him/her. In order to assess whether or not child’s repatriation to the country of origin is in his/her best interests, a number of interrelated factors should be considered and balanced against each other. Just after this careful consideration it is possible to decide what is better for the child’s future.

The following factors should be considered.

1) The child’s safety and protection. A primary consideration must be that the child will be safe and secure upon their return. Child’s repatriation should not be considered safe simply because his/her country of origin has been designated as “a safe country of origin”. Thus decision makers must be fully satisfied that there are not risks for the child life and for his/her psychological status (in the country of origin, inside the family; e.g. abuse, harm, exploitation, violence, persecution etc.).

2) Family reunification. The UN Convention provides that a child should grow up in his/her family and should not be separated from his/her parents against their will, except when this is in the best interests of the child. Family reunification is the most important factor in favour of a child’s repatriation; conversely, if family reunification is not in the child’s best interests, this is a fundamental factor against a child’s return and thus pro child’s remaining in the host country. To decide whether return and family reunification are in a child’s best interests it is necessary: to trace the child’s family, to assess whether the family is responsible for violence, abuse or neglect, to assess if family agrees to provide immediate and long-term care to the child, to assess the family’s views on the child’s return.
3) The child’s view and the voluntary return. The child’s view must be taken into account according to the age and maturity of the child. Ideally, if the child does not wish to return in the country of origin, he/she should not be repatriated. Where it is believed that there are exceptional circumstance, the decision to repatriate an unaccompanied child against his/her will, should always be made in a Court setting under the jurisdiction of child welfare rather than immigration procedures. A forced return should be decided by a Judicial Juvenile Authority (e.g. Italian Juvenile Court). Anyway forced repatriation is not a suitable solution to adopt, because it debars the child from his/her personal freedom and marks psychologically the child. Forced repatriation is neither a durable and effective solution, because if the child does not want to return, he/she will attempt to leave again his/her country of origin and will seek out new opportunities to gain entry to a third country.

4) The legal guardian and carer’s views about child’s return. They should act in the best interests of the child and be in contact with the child in his/her daily life. Their views should be taken into account in deciding whether repatriation is in a child’s best interests.

5) Socio-economic conditions in the country of origin. The assessment of the standard of living and of the opportunities available to the child in his/her country of origin can be a barrier to return (if the level of deprivation is such that the child’s well-being is at risk). It is necessary to assess carefully the socio-economic conditions in the child’s country of origin, in his/her family and in the area where the family lives; it should be examined: the access to essential services, access to food, housing, clothing, health care, social security, education, vocational training and employment opportunities. It should be considered whether the child may face discrimination in the country of origin that would limit his/her access to these provisions. Furthermore should be considered the financial position of the child’s carers and their suitability to duly provide to the child.

6) The child’s level of integration in the host country. In assessing the best interests of the child, it should be considered: the length of time a child has been living in the host country, the degree of his/her social and cultural integration (affecting school or vocational training or employment), and the child’s emotional ties shaped in the host country.

Even in procedures to decide the return of unaccompanied foreign children must be taken into account the special needs and rights of this vulnerable group. In particular, it is necessary to provide some essential guarantees:

a) The competent authority to decide the return of unaccompanied foreign children should be a child welfare authority whose function is to safeguard children’s rights. This authority should be non-political and independent from immigration institutions.
(e.g. Italian Juvenile Court). This authority should decide whether the child should return to the country of origin or remain in the host country, after appropriate examination of a precise and total full report (based on careful and scrupulous investigations). The report must concern: country of origin conditions, family’s suitability to care the child, the degree of child’s integration in the host country. The competent authority should decide after having carefully listened to the child and who is responsible for him/her.

b) The child should be informed, listened, supported and prepared at all stages of the process affecting him/her.

c) The timing, provided for all proceedings relating the child, should be adequately long to execute accurately the measures that guarantee and protect the child.

d) The child must have the right to appeal, with suspensive effect against repatriation decisions. A legal representative should be available at no costs to the child and deadlines for appeals should be reasonable.

All this should be ensured to the unaccompanied foreign child, so that he/she can effectively enjoy and exercise the rights established by the 1989 UN Convention in the rights of the child.

7. CONCLUSIONS: “UNACCOMPANIED FOREIGN CHILDREN’S RIGHTS IN ITALY”

The Italian legislation concerning unaccompanied foreign children appears inadequate because of several aspects. From the analysis done emerge serious formal defects of the legislation that make the matter almost “intractable”: doubts of constitutional legitimacy, inconsistency with important principles of Italian legal system, disjointed and inconsistent provisions, overlapping of competences, normative gaps which allow discretionary decisions, excess of delegation. All this, produces uncertainty in the interpretation and in the enforcement of the legislation.

Comparing the Italian regulation and the statements of the 1989 UN Convention on the rights of the child (to apply to all children), it emerges the breach of significant rights whose children are entitled. In general the unaccompanied foreign child in Italy is discriminated (since he/she is an illegally resident immigrant child) in the enjoyment of rights recognized to children by the UN Convention and by the Italian legal system. The examined case is regulated according to principles and targets of governmental policy made to combat irregular immigrants’ entry and presence (based on fast and unquestionable removals) and not according to the Italian principles of children protection.

Moreover, serious decisions and responsibilities are entrusted to an administrative body which has and uses discretionary powers (it is a political and dependent from the government body), and not to
a Judicial Juvenile Authority (e.g. a Judge specialised in children’s rights, such as the Juvenile Court).

In particular the Italian government does not ensure adequately, to the unaccompanied foreign children:

a) The right to special protection. The Committee for foreign minors (at the discretion of itself) may communicate to Tutelary Judge the child’s status to appoint (if necessary) a temporary legal guardian. The child’s repatriation (often forced) is provided and enforced without thorough investigation affecting the country of origin and the family’s suitability to care the child. The unaccompanied foreign child repelling at the Italian frontier is allowed and executed almost without guarantees. In proceedings and in the practice is not given fit care to psychological status of the child. In this area, it is absent a national network of cooperation between institutions and associations, and there is not a reception and protection programme which can coordinate and support the local authorities and which can standardize actions and measures affecting unaccompanied immigrant children.

b) The right to defence. The Italian discipline does not provide, for all children, the participation (by legal representative) to the administrative process aiming to decide the repatriation. Moreover Italian regulation does not allow to all children to appeal (judicial remedy) with suspensive effect, against return decisions. An unaccompanied foreign child may appeal against repatriation decision (when and if allowed and anyway at child’s expenses) to the Regional Administrative Court (Court competent to judge maladministration of Italian administrative and local bodies) and not to the Italian Juvenile Court.

c) The right to active participation to decisions affecting the child him/herself. The child in Italian proceedings is not duly heard and adequately supported, informed and prepared. Child’s view, if required, is not taken into account properly (usually it is executed the child’s forced repatriation).

d) The right to work. The Italian legislation is not clear about this issue, but some ministerial letters and the practice did not allow to the child to access to working activities, because the child’s residence is regarded temporary.

e) The right to develop fully child’s potentialities. The priority purpose of the Committee for foreign minors is to repatriate the child, without consideration of the best opportunities for his/her future. The access to such opportunities is not ensured to the immigrant children.
f) The family-unity right is regarded as priority. This is fundamental but it should not be the only criterion to use to return decisions. Moreover this right does not appear ensured by the Italian provision which allows to remove the child, entrusting him/her to a competent authority of the country of origin or of a third country prepared to accept the child.

It is necessary to bear in mind that the vulnerability which characterises children does not cease immediately after the 18th birthday, thus to order out the child turned 18 must not be automatic.

When the child’s forced repatriation is executed, the reintegration programmes in the country of origin, provided ideally by Italian legislation, should be effective/operative; since the implementation (and working) of these programmes (but not only) would realise a difference between the assisted repatriation and the expulsion of the child.

The Italian legislation is not just formally and in its content unfit to discipline the examined case, but even it produces self-defeating results as regards to its purposes. The legislation does not protect children but neither can reduce children’s clandestine immigration. In the last few years, just the age of unaccompanied immigrant children reaching Italy is decreased; moreover children present in the Italian territory prefer to stay in illegality.

The Italian discipline appears unsuitable to preserve unaccompanied immigrant children’s rights; against this unsuitability, one of used expedients so far (in the cases in which it has been possible) has been appealing to the jurisdictional protection (against return decisions).

It appears clear that this is not fit to ensure an effective and indiscriminate protection to the unaccompanied immigrant children; rather, it is necessary to reform the whole regulation so that the provided assisted repatriation is not carried out like an expulsion (in disguise); so that the statements of regulation accordance to the UN Convention on the rights of the child are not judged as “rhetoric”, and finally, so that the best interests of the child is ensured.

Our work does not pretend to suggest to the Italian government that all the unaccompanied irregular immigrant children remain in the Italian territory; we are convinced that measures of control for clandestine immigration are necessary to the State interests.

Immigration policies, nevertheless, must ensure fundamental rights to the immigrants; especially they must provide and enforce a protection system of the most vulnerable categories, as unaccompanied children.

31 Since the assignment, to EU Institutions, of new competences relating immigration matters, probably the legislation will be reformed by EU provisions. It will be interesting to observe if, the purpose to protect unaccompanied immigrant children will be priority in future EU provisions.
Our work intends to put in evidence the Italian duty\textsuperscript{32} to guarantee to the unaccompanied foreign children (effectively and without discrimination) all children’s rights, since they are first of all “children”.

Finally this research wants to emphasize the necessity to reform the Italian legislation on unaccompanied foreign children, giving priority to the supranational system of principles which ensures the safeguard of the childhood rights. Because children, object of my analysis and attention, must be regarded “children”, before than immigrant, irregular, clandestine, illegally resident, national of a third country, in other words “different”.

Gabriella Coccia
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\textsuperscript{32} According to precise commitments taken by the Italian State.